



GAHC010186852014

Page No.# 1/25



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4947/2014

SAWARMAL AGARWALLA and 27 ORS
S/O- LT. NATHMAL AGARWALLA, VILL.- NO. 1 KATHIAKHUNDA GAON,
P.O./P.S.- SAPEKHATI, DIST.- SIVASAGAR, ASSAM.

2: SRI RATEN AGARWALLA

S/O. LT. NATHMAL AGARWALLA
VILL.-NO.-1
KATHIAKHUNDA GAON
PO. and PS.- SAPEKHATI
DIST.-SIVASAGAR
ASSAM.

3: ANANDA AGARWALLA

S/O. LT. NATHMAL AGARWALLA
VILL.- NO.-1 KATHIAKHUNDA GAON
PO. and PS.- SAPEKHATI
DIST.-SIVASAGAR
ASSAM.

4: SRI LAKHINARAYAN AGARWALLA

S/O. LT. BANSI DHAR AGARWALLA
VILL.-NO.1 KATHIAKHUNDA GAON
PO./PS.-SAPEKHATI
DIST.-SIVASAGAR
ASSAM.

5: SMTI. BASANTI DEVI

W/O. LT. NAGARMAL AGARWALLA
VILL.-NO.1 KATHIAKHUNDA GAON
PO./PS.- SAPEKHATI



DIST.-SIVASAGAR
ASSAM. PETITIONER NO.2 TO 5 IS REPRESENTED BY PETITIONER NO.1 AS
THEIR POWER ATTORNEY.

6: SRI PRAFULLA KR. SARMA

S/O. GIRIDHAR SARMA
VILL.-NO.1 KATHIAKHUNDA GAON
PS.-SAPEKHATI
DIST.-SIVASAGAR
ASSAM. REPRESENTED BY THE POWER OF ATTORNEY NAMELY - SRI JITU
SARMA S/O. SRI PRAFULLA KR. SARMA
VILL.- NO.1 KATHIAKHUNDA GAON
PS.-SAPEKHATI
DIST.- SIVASAGAR
ASSAM.

7: SRI RANJIT BARUAH

S/O. SRI AMULYA BARUAH
VILL.-NO.1 KATHIAKHUNDA GAON
PS.-SAPEKHATI
DIST.-SIVASAGAR
ASSAM.

8: SRI GUNESHWAR SAIKIA

S/O. LT. DADHIRAM AHOM
VILL.- NO.1 KATHIAKHUNDA GAON
PS.-SAPEKHATI
DIST.-SIVASAGAR
ASSAM
REPRESENTED BY THE POWER OF ATTORNEY NAMELY - RAJIB SAIKIA
S/O. SRI GUNESHWAR SAIKIA
VILL.-NO. KATHIAKHUNDA GAON
PS.-SAPEKHATI
DIST.-SIVASAGAR
ASSAM.

9: SRI MANOJ KR. DEY

S/O. LT. ABONI KANTA DEY
VILL.- NO.1 KATHIAKHUNDA GAON
PS.-SAPEKHATI
DIST.-SIVASAGAR
ASSAM.

10: SRI ANUP KR. DEY



S/O. LT. ABONI KANTA DEY
VILL.-NO.1 KATHIAKHUNDA GAON
PS.-SAPEKHATI
DIST.-SIVASAGAR

ASSAM. PETITIONER NO. 10 IS REPRESENTED BY THE PETITIONER NO. 9
AS POWER OF ATTORNEY.

11: SRI KRISHNA BANIK

12: SRI BISNU BANIK

13: SRI SAKTI BANIK

14: SRI SUKUMER BANIK

PETITIONER NO. 13 TO 16 ARE THE S/O. LT. MAKHANLAL BANIK.

15: SRI DIPAK BANIK.

16: SRI PRODEEP BANIK.

17: SRI PRONOB BANIK

PETITIONER NO. 15 TO 17 ARE THE S/O. LT. KANAI LAL BANIK
PETITIONER NO. 11 TO 17 ARE THE RESIDENT OF VILL.- NO.1
KATHIAKHUNDA GAON
PS.-SAPEKHATI
DIST.-SIVASAGAR

ASSAM. PETITIONER NO. 12 TO 17 IS REPRESENTED BY THE PETITIONER
NO. 11 IS POWER OF ATTORNEY.

18: SRI RATHINDRA DAS

19: SRI SAKTI DAS

BOTH PETITIONER NO. 18 and 19 ARE S/O. LT. RAMENDRA DAS.



20: SMTI. BEELA RANI DAS

W/O. LT. RAMENDRA DAS
PETITIONER NO. 19 and 20 ARE RESIDENT OF VILL.- NO.1
KATHIAKHUNDA GAON
PS.-SAPEKHATI
DIST.- SIVASAGAR
ASSAM. PETITIONER NO. 19 and 20 IS REPRESENTED BY THE PETITIONER
NO. 18 AS THEIR POWER OF ATTORNEY.

21: SRI SUSHIL BHATTAR

S/O. LT. GOPAL BHATTAR
VILL.- NO.1 KATHIAKHUNDA GAON
PS.-SAPEKHATI
DIST.-SIVASAGAR
ASSAM. REPRESENTED BY THE PETITIONER NO.1 AS HIS POWER OF
ATTORNEY.

22: SRI RAJU PHUKON

23: SRI GOKUL PHUKON

BOTH PETITIONERS NO. 22 and 23 ARE S/O. LT. BALIN CHANDRA PHUKON
VILL.- NO.1 KATHIAKHUNDA GAON
PS.-SAPEKHATI
DIST.- SIVASAGAR
ASSAM. PETITIONER NO. 23 IS REPRESENTED BY THE PETITIONER NO.
22.

24: SRI NAGEN BARTHAKUR

S/O. LT. KHAGEN BARTHAKUR
VILL.-1 KATHIAKHUNDA GAON
PS.-SAPEKHATI
DIST.-SIVASAGAR
ASSAM.

25: SRI KUMUD SARMA

S/O. LT. GIRIDHAR SARMA
VILL.- NO. 1 KATHIAKHUNDA GAON
PS.-SAPEKHATI
DIST.- SIVASAGAR
ASSAM.



26: SRI KHAGEN BARUAH

S/O. LT. BUNDESWAR BARUAH
VILL.- NO.1 KATHIAKHUNDA GAON
PS.- SAPEKHATI
DIST.- SIVASAGAR
ASSAM.

27: SRI MUKTI KURMI

S/O. LT. DEBEN NARAYAN KURMI
VILL.- NO.1 KATHIAKHUNDA GAON
PS.- SAPEKHATI
DIST.- SIVASAGAR
ASSAM.

28: SRI SURJYA KR. PHUKON

S/O. LT. CHANDRA NATH PHUKON
VILL.- NO.1 KATHIAKHUNDA GAON
PS.-SAPEKHATI
DIST.- SIVASAGAR
ASSAM

VERSUS

THE UNION OF INDIA and 9 ORS
REP. BY THE MINISTRY OF ROADS, TRANSPORT and NATIONAL
HIGHWAYS ETC., NEW DELHI- 1.

2:THE STATE OF ASSAM

REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GHY.-6.

3:THE COMMISSIONER and SECRETARY

TO THE GOVT. OF ASSAM
REVENUE and DM. LR DEPTT.
DISPUR
GHY.-6.

4:THE COMMISSIONER and SECRETARY

TO THE GOVT. OF ASSAM
PWD.
NH. DEPTT.



DISPUR
GHY.-6.

5:THE DEPUTY COMMISSISONER

SIVASAGAR
DIST.- SIVASAGAR
ASSAM.

6:THE ADDL. DEPUTY COMMISSIONER-CUM-LAND ACQUISITION
OFFICER

SIVASAGAR.

7:THE EXECUTIVE ENGINEER

PWD. NH. DIVISION
JORHAT
DIST.- SIVSAGAR
ASSAM.

8:THE SUB-DIVISIONAL OFFICER CIVIL

SONARI
DIST.- SIVASAGAR
ASSAM.

9:THE CIRCLE OFFICER

SONARI REVENUE CIRCLE
SONARI
DIST.-SIVASAGAR
ASSAM.

10:THE CIRCLE OFFICER

SAPEKHATI REVENUE CIRCLE
SAPEKHATI
DIST.- SIVSAGAR
ASSAM

Linked Case : WP(C)/6312/2015

SAWARMAL AGARWALLA and 21 ORS
S/O LT. NATHMAL AGARWALLA



VILL. NO.1 KATHIAKHUNDA GAON
P.O. / P.S. SAPEKHATI
DIST- SIBASAGAR
ASSAM

VERSUS

THE UNION OF INDIA and 11 ORS
REP. BY THE SECY. TO THE GOVT. OF INDIA
MINISTRY OF ROAD
TRANSPORT and NATIONAL HIGHWAYS
TRANSPORT BHAWAN
PARLIAMENT STREET
NEW DELHI-1

Linked Case : WP(C)/5326/2015

MONURANJAN BARUAH and 4 ORS
S/O LT. SHYAMA PRASHAD BARUAH R/O VILL- NO. 1 KATHIAKHUNDA P.O.
and P.S. SAPEKHATI DIST. SIVASAGAR
ASSAM
PIN - 78785692 PH 8403962532

2: SHRI JYOTIRMOY DEY
S/O LT. JAMINI MOHAN DEY R/O VILL- NO. 1 KATHIAKHUNDA
P.O. and P.S. SAPEKHATI DIST. SIVASAGAR
ASSAM PIN - 785692
PH. NO. 9085698043.

3: SHRI NILAMBAR DAS
S/O SRI CHANDRA DAS R/O VILL- NO. 1 KATHIAKHUNDA
P.O. and P.S. SAPEKHATI DIST. SIVASAGAR
ASSAM PIN - 785692. PH. NO. 7662009866

4: SHRI PARIMAL DUTTA
S/O LT. MUNUNDRA MOHAN DUTTA R/O VILL- NO. 1 KATHIAKHUNDA
P.O. and P.S. SAPEKHATI DIST. SIVASAGAR
ASSAM PIN - 785692
PH. NO. 9954097473

5: SHRI CHANDRA PRADHAN
S/O LT. BALBAHADUR PRADHAN R/O VILL- NO. 1 KATHIAKHUNDA



P.O. and P.S. SAPEKHATI DIST. SIVASAGAR
DIST. SIVASAGAR
ASSAM PIN - 785692
PH. NO. 9435358286
VERSUS

THE UNION OF INDIA and 10 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
TRANSPORT BHAWAN
1
PARLIAMENT STREET
DNEW DELHI- 110001.

2:THE SECRETARY TO THE GOVT. OF INDIA

MINISTRY OF DEVELOPMENT OF NORTH EAST REGION
VIGYAN BHAWAN
ANNEXE
MAULANA AZAD ROAD
NEW DELHI- 110011.
3:THE STATE OF ASSAM

REP. BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM
REVENUE AND DISASTER MANAGEMENT DEPARTMENT
ASSAM SECRETARIAT
DISPUR
GUWAHATI - 781006.
4:THE COMMISSIONER

REVENUE AND DISASTER MANAGEMENT DEPARTMENT
GOVT. OF ASSAM
ASSAM SECRETARIAT
DISPUR
GUWAHATI - 781006.
5:THE SECRETARY TO THE GOVT. OF ASSAM

REVENUE AND DISASTER MANAGEMENT DEPARTMENT
ASSAM SECRETARIAT
DISPUR
GUWAHATI- 781006.
6:THE DEPUTY SECRETARY TO THE GOVT. OF ASSAM
LAND ACQUISITION BRANCH
REVENUE and DISASTER MANAGEMENT LR DEPARTMENT
ASSAM SECRETARIAT
DISPUR
GUWAHATI- 781006.
7:THE DEPUTY COMMISSIONER/COLLECTOR



SIVASAGAR DISTRICT SIVASAGAR
P.O. and DIST. SIVASAGAR
ASSAM - 785640.
8:THE ADDITIONAL DEPUTY COMMISSIONER

SIVASAGAR OFFICE OF THE DEPUTY COMMISSIONER
SIVASAGAR
P.O. and DIST. SIVASAGAR
ASSAM- 785640.
9:THE CIRCLE OFFICER

SAPEKHATI REVENUE CIRCLE
SAPEKHATI
P.O. and P.S. SAPEKHATI DIST. SIVASAGAR
ASSAM
PIN - 785692.
10:NATIONAL HIGHWAYS AUTHORITY OF INDIA

REP. BY ITS CHAIRMAN
G 5 and 6
SECTOR 10
DWARKA
NEW DELHI -110075.
11:THE CHIEF ENGINEER
NATIONAL HIGHWAYS PUBLIC WORKS DEPARTMENT BUILDING and NH
GOVT. OF ASSAM
CHANDMARI
GUWAHATI - 781003.

For the Petitioner(s) : Mr. J Ahmed, Advocate
: Mr. P.D Nair, Advocate

For the Respondent(s) : Mr. D Nath, Advocate

Date of Hearing : 14.11.2023

Date of Judgment : 14.11.2023



**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

1. These three writ petitions are taken up together for disposal taking into account the common issues and the similarity of the facts.
2. The facts involved in the writ petitions briefly stated are that in order to construct the Trans Arunachal High Way 52(B) from Kanubari to Bogibil Bridge Project, a land acquisition proceedings being LA Case No.13/2008 was registered and notification No.RLA3256/2010/11 dated 28.09.2011 was issued under Section 4 of the Land Acquisition Act, 1894, (for short "the Act of 1894"). The said notification was duly published in the manner set forth in Section 4(1) of the Act of 1894.
3. Pursuant to the said notification, there are various objections filed and proceedings under Section 5A of the Act of 1894 carried out. Pursuant thereto, on 06.01.2012, the declaration under Section 6 of the Act of 1894 was made holding inter alia that the land mentioned in the Schedule to the said Declaration was required to be acquired for public purpose.
4. The records further reveals that various persons submitted representations before the Govt. of Assam, Revenue Department and after receiving such representations, the Deputy Secretary to the Govt. of Assam, Revenue and Disaster Management Department issued a letter No.RLA.256/2010/489 dated 04.11.2013 to the Deputy Commissioner, Sivasagar forwarding the copy of a representation dated 10.10.2013 for taking necessary action. It is alleged that there was no action being taken on the basis of the said representation. On the

other hand, the Deputy Commissioner, Sivasagar prepared the land acquisition estimate and award in respect of LA Case No.13/2008 for acquisition of land for construction of the Trans Arunachal High Way 52(B) from Kanubari to Bogibill Bridge Project of village No.1 Kathiakunda, Mouza Sapekhati under Sonari Revenue Circle and forwarded the same to the appropriate Government for approval. The Petitioners further alleged that they came to learn that the Deputy Secretary to the Govt. of Assam, Revenue and Disaster Management Department had also issued a letter No.RLA.256/2010/535 dated 30.12.2023 to the Deputy Commissioner, Sivasagar informing that the government had approved the rectified land acquisition estimate of sum of an amount of Rs.15,04,57,038.00 in so far as the Land Acquisition Case No.13/2008 is concerned.

5. It is further the case of the petitioners that they could come to learn that the Additional Deputy Commissioner, Sivasagar issued letter No.SLVA.13/2008/153 dated 21.01.2014 to the Executive Engineer, PWD NH Division, Jorhat informing that the programme of handing over of the advance possession of the land as per the schedule mentioned therein proposed to be acquired for construction of the Trans Arunachal High Way NH 52(B) from Kanubari to Bogibill Bridge Project of village No.1 Kathiakunda under LA Case No.13/2008 was refixed on 29.01.2014 and requested to depute his representatives to contact the LA staff and Circle Officer so as to assemble all concerned on the spot without trial. Although the petitioners in their writ petitions have stated that there has been many infractions to the provisions of the Act of 1894 in the said land acquisition proceeding but however the petitioners are not against the acquisition of the land but the grievances of the petitioners are that they are entitled to compensation in terms with the

provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the Act of 2013").

6. It is the specific case of the petitioners that as the Award was approved on 30.12.2013 and that the award was filed in terms with the Act of 1894 pursuant to 01.01.2014, the petitioners are entitled to compensation in terms with the Act of 2013 taking into account the provisions of Section 24(1)(a) of the Act of 2013. However as the respondents have informed the petitioners that they would be entitled to compensation only in terms with the Act of 1894, the petitioners have therefore, approached this Court under Article 226 of the Constitution by filing the writ petitions.

7. The record reveals that the Respondents have filed their respective affidavits. This Court has duly perused the same. Conjointly from a perusal of the affidavits, it transpires that initially on 28.09.2011 the notification under Section 4 of the Act of 1894 was issued in respect to Land Acquisition Case No.13/2008 for acquisition of 36 bighas 2 kathas and 12 lechas of land at village No.1 Kothaikunda or pargana Sapekhati Mouza for construction of Trans Arunachal High Way NH 52(B) in Sivasagar district. The said Notification was published in the Official gazette on 28.09.2011 was followed by the publication in two newspapers on 21.12.2011. Subsequent thereto, the DC Sivasagar was requested by the Revenue and Disaster Management Department vide communication dated 29.04.2013 to clarify on certain observations made in respect to the notification under Section 4(1) and the LA estimate submitted by him. In response to the same the DC Sivasagar had submitted a fresh draft notification under Section 4(1) and a draft declaration under Section 6(1) for 44

bighas, 4 kathas, 3.5 lechas in respect to the LA Case No.13/2008. In the report so submitted by the Deputy Commissioner, Sivasagar, it was mentioned that some new dags were incorporated in the draft notification/declaration and the area of land in respect of some new dags which were notified and declared earlier were found either reduced or decreased. Thereupon the DC Sivasagar was requested by the Revenue and Disaster Management Department of the Govt. of Assam vide a communication dated 25.10.2013 to submit a draft derequisition notification under Section 48(1) of the Act of 1984 to withdraw the area from acquisition as earlier notified in the Assam Gazette on 07.10.2011 and declared on 30.12.2011, in order to proceed for acquisition as per the fresh proposal. In response to the same, the DC Sivasagar had also informed the Revenue and Disaster Management Department of the Govt. of Assam that fresh acquisition steps should be taken by invoking the urgency clause. Pursuant thereto, the de-acquisition notification under Section 48(1) of the Act of 1894 was issued for publication and the same was published in the Assam Gazette on 18.11.2013. Consequently, a fresh Notification under Section 4(1) was published in the Assam Gazette on 19.11.2013. In the said notification issued under Section 4 of the Act of 1894, the urgency clause was invoked i.e., Section 17 of the Act of 1894 and thereby the enquiry under section 5A was done away with.

8. The record further reveals that on 03.12.2013, the declaration was made under Section 6 of the Act of 1894 which was published in the Assam Official Gazette on 05.12.2013 whereby it was declared that the land described in the said declaration was required to be taken by the government for public purpose i.e., for Trans Arunachal High Way NH 52 by the National Highway Authority of India (NHAI) in the village No.1 Kathiakunda, Mouza Sapekhati Zila Sivasagar.

9. It further reveals from the records that on 20.12.2013, the Deputy Commissioner, Sivasagar had forwarded the award statement involving Rs.15,05,99,038.00 (Rupees fifteen crores five lakhs ninety nine thousand and thirty eight only) as the land and zirat compensation in respect of LA No.13/2008 for acquisition of land thereby requesting the Revenue and Disaster Management (LR) Department to provide the necessary approval for making of the Award.

10. The record further reveals that on 30.12.2013 the Deputy Secretary to the Govt. of Assam, Revenue and Disaster Management LR Department had issued a communication to the Deputy Commissioner, Sivasagar thereby forwarding the Approved copies of the rectified Land Acquisition estimate amounting to Rs.16,55,16,692.00 (Rupees sixteen crores fifty five lakhs sixteen thousand six hundred and ninety two only) and the award amounting to Rs.15,05,57,038.00 (Rupees fifteen crores five lakhs fifty seven thousand and thirty eight only) in connection with the acquisition of land for the project pertaining to LA Case No.13/2008 for taking necessary action from his end.

11. The records further reveals that thereupon on 20.01.2014 the Additional Deputy Commissioner, Sivasagar had issued a communication to the Executive Engineer PWD for advance possession of land for construction of the Trans Arunachal High Way NH 52 and for deputing the representative. This Court, however, finds it pertinent to mention that the Affidavit filed by the Respondents are completely silent as to when the Award was published or made pursuant to the Approval made on 30.12.2013 inasmuch as it is the mandate of proviso to Sub-Section (1) of Section 11 read with Section 12 of the Act of 1894 that the award has to be made subsequent to the approval, and thereafter filed in the

Collector's Office, then only the Award become final and conclusive as between the Collector and the persons interested.

12. This Court at this stage finds it however relevant to take note of the submission of the learned counsels appearing on behalf of the Petitioners wherein they had drawn the attention of this Court to the communication dated 24.10.2014 issued by the Additional Deputy Commissioner (R) Sivasagar which was issued in pursuance to an information sought for under the Right to Information Act, 2005. In the said communication, it was mentioned that the Award under Section 11 of the Act of 1894 was made on 20.12.2013 and the Award under the Act of 1894 in LA Case No.13/2008 was pronounced by the Deputy Commissioner Sivasagar on 22.01.2014.

13. In the backdrop of the above facts, it is the contention of the learned counsel for the Petitioners that as the Award pursuant to the approval was only pronounced on 22.01.2014 the Petitioners are therefore entitled to compensation in terms with the Act of 2013, taking into account the provisions of Section 24(1)(a) of the Act of 2013 as well as the notification dated 19.12.2013 issued by the Ministry of Rural Development Department of Land Resources, Govt. of India whereby 01.01.2014 was notified as the appointed date for coming into effect of the Act of 2013. It is the case of the Petitioners that till the award is not filed as per Section 12 of the Act of 1894, the land acquisition proceedings continue to remain pending and accordingly in view of the mandate of Section 24(1)(a) of the Act of 2013, all the provisions of the Act of 2013 relating to the determination of compensation shall apply.

14. Mr. D Nath learned Senior Govt. Advocate appearing on behalf of the Respondent State submitted that once the award has already been made, the

Deputy Commissioner/the Collector becomes *functus-officio* and as such a writ cannot be issued directing him to reassess the compensation in terms with the Act of 2013 even assuming arguendo, the Act of 2013 was applicable to the facts. He further submitted that the Petitioners are aggrieved at the quantum of compensation which comes within the ambit of the Reference Court to decide and as such it was necessary on the part of the Petitioners therefore to have approached the Collector/Deputy Commissioner seeking a reference in terms with the provisions of Section 18 of the Act of 1894 read with Section 64 of the Act of 2013.

15. I have heard the learned counsels for the parties. Before deciding the respective contentions forwarded by the learned counsels for the parties, this Court finds it necessary to take note of some of the provisions of the Act of 1894 as well as the provisions of the Act of 2013. Section 11 of the Act of 1894 relates to enquiry and the award by the Collector. The Collector as per Sub-Section (1) of Section 11 after considering the objections if any, which any person interested had stated pursuant to a notice under Section 9 of the Act of 1894 to the measurement made under Section 8 and into the value of the land at the date of publication of the notification under Section 4(1) and into the respective interest of the persons claiming the compensation shall make an award under his hand as regards (i) the true area of the land; (ii) the compensation which in his opinion should be allowed for the land; and (iii) the apportionment of the said compensation amongst all the persons known or believed to be interested in the land, of whom or of whose claims, he has informations, whether or not they have respectively appeared before him. However, in order to make the award, the Collector has to seek the approval of the appropriate Government or of such officer as the appropriate Government

may authorize in this behalf. The second proviso to Section 11(1) stipulates that the appropriate Government can direct the Collector to make such award without such approval in such class of cases as the appropriate Government may specify in that behalf.

16. Section 12 of the Act of 1894 is of relevance taking into account the issues involved inasmuch as the said Section stipulates as to when the award of the Collector becomes final. The said Section 12 is reproduced hereinunder:

“12. Award of Collector when to be final :

(1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.”

17. From a perusal of the above quoted Section, it stipulates that the award so made by the Collector under Section 11(1) of the Act of 1894 has to be filed in the Collector's Office and shall except as provided in the Act of 1894, be final and conclusive evidence as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and apportionment of the compensation among the persons interested.

18. At this stage, this Court finds it relevant to take note of the judgment of the Supreme Court in the case of ***Sharda Devi Vs. State of Bihar and Another***

reported in **(2003) 3 SCC 128** wherein the Supreme Court had observed at paragraph No.34 that the Award made by the Collector is final and conclusive as between the Collector and the "persons interested", whether they have appeared before the Collector or not, on the following issues (i) as to the true area i.e. the measurement of land acquired, (ii) as to the value of the land i.e. the amount of compensation, and (iii) as to the apportionment of the compensation amongst the "persons interested". However, the Supreme Court made it also clear in the said paragraph of the judgment that the said aspects would be final and conclusive insofar as between the Collector and the "persons interested" and not as amongst the "persons interested" inter se. It was further observed by the Supreme Court that the final and conclusive nature of the award can be varied/superseded by the Civil Court. Paragraph No.34 of the said judgment being relevant is quoted hereinbelow:

"34. The award made by the Collector is final and conclusive as between the Collector and the "persons interested", whether they have appeared before the Collector or not, on two issues: (i) as to true area i.e. measurement of land acquired, (ii) as to value of the land i.e. the amount of compensation, and (iii) as to the apportionment of the compensation among the "persons interested"" — again, between the Collector and the "persons interested" and not as amongst the "persons interested" inter se. In the event of a reference having been sought for under Section 18, the Collector's award on these issues, if varied by the civil court, shall stand superseded to that extent. The scheme of the Act does not attach a similar finality to the award of the Collector on the issue as to the person to whom compensation is payable; in spite of the award by the Collector and even on failure to seek reference, such issue has been left available to be adjudicated upon by any competent forum."

19. This Court further finds it relevant to take note of Section 18 of the Act of 1894 which stipulates that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for determination of the Court, whether his objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable, or the apportionment of the compensation amongst the persons interested. Sub-Section (2) of Section 18 further mandates that the application to be filed to the Collector shall state the grounds on which objection(s) are made to the award. The proviso to Sub-Section (2) of Section 18 stipulates that such application shall be made (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award; or (b) in other case, within six weeks of the receipt of the notice from the Collector under Section 12, Sub-Section (2), or within six months from the date of the Collector's award, whichever period shall first expire. Therefore, it would be seen that in order to supersede the finality and conclusive nature of the award statutorily mandated under Section 12 of the Act of 1894, the person interested has to file an application seeking a reference by the Collector for determination of the Court.

20. This Court before further proceeding however finds it relevant to mention as regards Section 30 of the Act of 1894 which is a provision relating to dispute as to the apportionment. A perusal of the said provision would reveal that when the amount of compensation has been settled under Section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court. This provision is referred

to by this Court taking into account that though there is a finality and conclusiveness arrived at between the Collector and the person interested, then also, the Collector can make a reference suo moto without any application by the person interested on the issue as to the person to whom the compensation is payable. This very aspect of the matter can also be seen from a perusal of paragraph No.34 of the judgment of the Supreme Court in the case of ***Sharda Devi (supra)***.

21. Be that as it may, as regards the true area i.e. measurement of the land and as to the value of the land i.e. the amount of compensation, the said award so made by the Collector is final and conclusive and the Collector in the opinion of this Court becomes *functus-officio* pursuant to the making of the award as regards the true area i.e. the measurement of the land as well as the value of the land i.e. the amount of compensation. The provisions of the Act of 1894 would show that the jurisdiction only available with the Collector pursuant to the making of the award is only to give effect to the Award. In fact, Section 30 of the Act of 1894 is also in the nature of giving effect to the Award inasmuch as while giving effect to the Award, any dispute arises as regards the apportionment or persons who are entitled, the discretion is conferred upon the Collector to refer the same to the Court.

22. In the backdrop of the above propositions and taking into consideration the question involved in the instant proceedings, this Court finds it relevant to take note of the provisions of Section 24(1) of the Act of 2013. The said Section 24(1) is produced hereinbelow:

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.—

(1) *Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894)*

—

(a) *where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or*

(b) *where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.*

(2).....”

23. A perusal of the said provision would reveal that by the said provision, the land acquisition proceedings initiated under the Act of 1894 were saved. Clause (a) of Sub-Section (1) of Section 24 of the Act of 2013 applies to cases where land acquisition proceedings was initiated under the Act of 1894 but no award under Section 11 of the Act of 1894 was made and in that circumstances, all the provisions of the Act of 2013 relating to determination of compensation shall apply, meaning thereby the said determination has to be made in respect to such land acquisition proceedings by following the mandate of Section 26, 27, 28, 29 and 30 of the Act of 2013 read with First Schedule to the said Act of 2013. However, a perusal of Clause (b) of Sub-Section (1) of Section 24 relates to land acquisition proceedings initiated under the Act of 1894 where award under Section 11 of the Act of 1894 had been made, then such proceedings shall continue under the provisions of the Act of 1894, as if the Act of 1894 has not been repealed.

24. The above two sub-clauses therefore hinges upon the aspect as to



whether the award was made or not under Section 11 of the Act of 1894 on or before 01.01.2014 i.e. the date when the Act of 2013 came into force. In the backdrop of the above, if this Court reverts back to the facts and contentions so forwarded by the learned counsels for the parties, the question involved is as regards the inadequacy of the compensation inasmuch as it is the case of the Petitioners that the determination of the compensation should be as per the Act of 2013 which however have been denied by the Respondents. Therefore, in effect the question lies on disturbing, the finality and conclusiveness of the Award of the Collector as regards the compensation to be paid which statutorily by operation of Section 12 of the Act of 1894 had become final and conclusive. It is the opinion of this Court that as the Award so made in Land Acquisition Case No.13/2008 had already become final and conclusive between the Collector and the persons interested insofar as the question of the quantum of compensation and that too by operation of law, the said aspect cannot be unsettled by this Court in exercise of the jurisdiction under Article 226 of the Constitution more so, taking into account that both the statutes i.e. the Act of 1894 and the Act of 2013 stipulates a mode by which the same can be superseded. The above rationale is also based upon the observations made by the Supreme Court in the case of **Sharda Devi (supra)** wherein it was observed that Civil Court in exercise of the powers upon being referred can supersede the finality and conclusiveness attached to the Award. It is also the opinion of this Court that directing the Collector/Deputy Commissioner to reassess the compensation would be nullifying the Award which would also unsettle settled acquisition proceedings between the Acquiring Authority and all the persons interested in L.A. Case No.13/2008. Under such circumstances, this Court is therefore of the opinion

that no writ can be issued for directing determination of compensation as per the provisions of the Act of 2013 even assuming arguendo that the Award was made after 01.01.2014.

25. This Court cannot also be unmindful of the fact that the Petitioners in the batch of writ petitions had duly approached this Court pursuant to the Award and have been litigating bonafide and diligently that the Petitioners are entitled to compensation as per the Act of 2013 and not under the Act of 1894 in view of Sub-Clause (a) of Sub-Section (1) of Section 24 of the Act of 2013. Under such circumstances, this Court therefore is of the opinion that the Petitioners herein ought to be granted an opportunity so that the Petitioners are in a position to file applications before the Collector/DC, Sivasagar for making a reference for determination by the Court. At the same time, this Court cannot also disregard the fact that the writ petitions have been pending since 2014 and 2015 and if there is any enhancement to the compensation, it would result payment of interest upon the enhanced compensation for the first year @9% from the date the possession had been taken and thereafter @15% per annum from the expiry of the said period of the one year. This is the mandate of Section 28 of the Act of 1894 and Section 72 of the Act of 2013. It is the opinion of this Court that the Petitioners herein having not applied before the Collector for making a reference and instead have approached this Court would not be entitled to the benefit of the interest during this period till the applications are filed before the Collector seeking reference for determination by the Court.

26. During the course of the hearing, the learned counsels appearing on behalf of the Petitioners and the Respondents submitted that although at that

relevant point of time, the DC, Sivasagar was the Collector taking into account that the land was situated in Charaideo Sub-Division which was a part of the District of Sivasagar. However, at present, the Sub-Division of Charaideo have been made a district and the District Commissioner, Charaideo would be the appropriate authority to whom the applications seeking reference requires to be made.

27. Accordingly, the instant batch of writ petitions stands disposed of with the following observations and directions:

(i) This Court in view of the above findings and reasons, is not inclined to issue a writ to the District Commissioner/Collector, Charaideo to re-determine the compensation as per the Act of 2013.

(ii) This Court grants liberty to the Petitioners to file respective application before the Collector/District Commissioner, Charaideo forthwith and not later than 45 days from today.

(iii) The District Commissioner/Collector, Charaideo upon receipt of the respective application(s) so filed by the Petitioners within the time permitted by this Court shall within 30 days therefrom make the reference to the Court of the District Judge, Charaideo.

(iv) This Court further directs the Reference Court that in the eventuality it is found that the Petitioners would be entitled to the compensation as per the Act of 2013, no interest should be awarded on the enhanced amount for the period from the date of the taking over possession till the date of filing of the applications by the Petitioners before the District Commissioner/Collector, Charaideo. It is pertinent to mention that as the entitlement to the enhanced



compensation would accrue from the date of filing application by the Petitioners if the possession had already been taken, therefore it is of utmost necessity that there should not be any delay on the part of the District Commissioner, Charaideo to comply with the directions given at Serial No.(iii) at the earliest.

(v) The interim order so passed earlier stands vacated and the Respondent Authorities would be at liberty to take possession of land in question, if not already taken.

(vi) A copy of the instant judgment be served by the Registry upon Mr. D. Nath, the learned Senior Government Advocate for necessary compliance by the Authorities abovementioned.

JUDGE

Comparing Assistant