IN THE HIGH COURT OF JUDICATURE AT PATNA

Girish Kedia and others.

vs.

The State of Bihar and others.

Criminal Writ Jurisdiction Case No. 6863 of 2018

with

(Criminal Writ Jurisdiction Case No. 15091 of 2017; Criminal Writ Jurisdiction Case No. 6345 of 2018; Criminal Writ Jurisdiction Case No. 7943 of 2018; Criminal Writ Jurisdiction Case No. 8046 of 2018; Criminal Writ Jurisdiction Case No. 8052 of 2018; Criminal Writ Jurisdiction Case No. 8360 of 2018; Criminal Writ Jurisdiction Case No. 8700 of 2018; Criminal Writ Jurisdiction Case No. 10255 of 2018; Criminal Writ Jurisdiction Case No. 11474 of 2018; Criminal Writ Jurisdiction Case No. 11697 of 2018)

29.11.2024

(Hon’ble Mr. Justice Harish Kumar)

Issue for Consideration

- Whether the Collector has the jurisdiction to reopen land acquisition proceedings after compensation has been paid and the land handed over?
- Whether the freezing of petitioners' bank accounts by the Land Acquisition Officer is legally valid under the Act, 2013?
- Whether disputes concerning land classification post-compensation fall within the jurisdiction of the Land Acquisition, Rehabilitation and Resettlement Authority?

Headnotes

Administrative decision which is not based on a dispute between the two parties and which is not rendered after hearing the parties, does not operate as *res judicata*. (Para 39)

Court does not find any error in the action of the respondents in determining the nature of the land and its rate, if the same was found to be

unjust, all the more, the Government is entitled to review an administrative decision, if the same is unjust and contrary to law; that too, in the case in hand, when the process of acquisition is yet to be finalized by preparation and approval of the award under Section 37 of the Act, 2013. (Para 42)

Court does not find that it is a case where the Collector has reviewed his order; on the contrary, the process has never been completed inasmuch as award has never been prepared and approved. The compensation paid to the petitioners were only based upon estimation; Later on having apprised and acquainted with the mistake committed by the Land Acquisition Officer and the other responsible authorities, the same has been rectified by constituting a Six Men Committee and action has been taken against the erring officials. (Para 43)

Court does not find any merit in this batch of the writ petitions. (Para 51)

Case Law Cited

Kalabharti Advertising v. Hemant Vimalnath Narichania & Ors., (2010) 9 SCC 437; Bankatlal v. Special Land Acquisition Officer, (2014) 15 SCC 116; N. Padmamma v. S. Ramakrishna Reddy & Ors., (2008) 15 SCC 517; State of Jharkhand v. Ambay Cements & Anr., (2005) 1 SCC 368; Union of India v. Bikash Kuanar, (2006) 8 SCC 192; Rai Sahib Ram Jawaya Kapur v. State of Punjab, AIR 1955 SC 549; J & K Public Service Commission v. Narinder Mohan, (1994) 2 SCC 630; Dhan Jee Pandey v. Union of India & Ors., 2023 (3) PLJR 773

List of Acts

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; Public Demand Recovery Act, 1914; Indian Stamp Act, 1899; National Highway Authority Act, 1956

List of Keywords

Land Acquisition; Emergency Provision; Compensation Dispute; Function of Collector; Residential vs Agricultural Land; Six Men Committee; Bank

Account Freezing; Public Demand Recovery; Functus Officio; LARRA Jurisdiction

Case Arising From

Proceedings initiated by District Magistrate, Araria under the Act, 2013 regarding compensation for land acquired for Indo-Nepal Border Road, including Memo No. 459 dated 28.07.2017 and Memo No. 181 dated 17.03.2018.

Appearances for Parties

(In Civil Writ Jurisdiction Case No. **6863** of 2018)

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate ;Mr. Atal Bihari Pandey, Advocate; Mr. Alok Kumar Jha, Advocate; Mr. Mukund Kumar, Advocate; Mr. Akash Kumar, Advocate; Mr. Aditya Raman, Advocate

For the Respondent/s : Mr. Rishi Raj Sinha, SC- 19; Mr. Birendra Prasad Singh, AC to SC- 19

(In Civil Writ Jurisdiction Case No. **15091** of 2017)

For the Petitioner/s : Mr. Amar Nath Singh, Advocate; Mr. Kamal Kishore Singh, Advocate;

For the Respondent/s : Mr. Rishi Raj Sinha, SC- 19

(In Civil Writ Jurisdiction Case No. **6345** of 2018)

For the Petitioner/s : Mr. Sharda Nand Mishra, Advocate

For the Respondent/s : Md.Khurshid Alam, AAG- 12

(In Civil Writ Jurisdiction Case No. **7943** of 2018)

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate ;Mr. Atal Bihari Pandey, Advocate; Mr. Alok Kumar Jha, Advocate; Mr. Mukund Kumar, Advocate;Mr. Akash Kumar, Advocate; Mr. Aditya Raman, Advocate

For the Respondent/s : Mr. Raj Kishore Roy, GP- 18

(In Civil Writ Jurisdiction Case No. **8046** of 2018)

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate; Mr. Atal Bihari Pandey, Advocate; Mr. Alok Kumar Jha, Advocate; Mr. Mukund Kumar, Advocate; Mr. Akash Kumar, Advocate; Mr. Aditya Raman, Advocate

For the Respondent/s : Mr. Subhash Chandra Yadav, GP-15

(In Civil Writ Jurisdiction Case No. **8052** of 2018)

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate; Mr. Atal Bihari Pandey, Advocate; Mr. Alok Kumar Jha, Advocate; Mr. Mukund Kumar, Advocate; Mr. Akash Kumar, Advocate; Mr. Aditya Raman, Advocate

For the Respondent/s : Mr. Raj Kishore Roy, GP- 18

(In Civil Writ Jurisdiction Case No. **8360** of 2018)

For the Petitioner/s : Mr. Sharda Nand Mishra, Advocate

For the Respondent/s : Mr. Sajid Salim Khan, SC- 25

(In Civil Writ Jurisdiction Case No. **8700** of 2018)

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate; Mr. Atal Bihari Pandey, Advocate; Mr. Alok Kumar Jha, Advocate; Mr. Mukund Kumar, Advocate; Mr. Akash Kumar, Advocate; Mr. Aditya Raman, Advocate

For the Respondent/s : Mr. Sajid Salim Khan, SC- 25

(In Civil Writ Jurisdiction Case No. **10255** of 2018)

For the Petitioner/s : Mr. Sharda Nand Mishra, Advocate

For the Respondent/s : Mr. Raj Kishore Roy, GP-18

(In Civil Writ Jurisdiction Case No. **11474** of 2018)

For the Petitioner/s : Mr. Sharda Nand Mishra, Advocate

For the Respondent/s : Mr. Sajid Salim Khan, SC- 25

(In Civil Writ Jurisdiction Case No. **11697** of 2018)

For the Petitioner/s : Mr. Sharda Nand Mishra, Advocate

For the Respondent/s : Md. Khurshid Alam, AAG-12

Headnotes prepared by Reporter : Amit Kumar Mallick, adv.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6863 of 2018

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Girish Kedia, Son of Jai Prakash Kedia, resident of R.B. Lane, P.O. and P.S.- Forbesganj, District- Araria.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum-Commissioner Department of Revenue and Land Reforms, Government of Bihar, Patna
2. The Principal Secretary cum Commissioner, Department of Revenue and Land Reforms, Government of Bihar, Patna
3. The District Magistrate Collector Araria.
4. The District Land Acquisition Officer, Araria.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 15091 of 2017

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1. Mahesh Prasad Yadav
2. Ghanshyam Yadav @ Shyam Prasad Yadav
3. Bindeshwari Yadav
   All Sons of late Sadanand Yadav, Resident of Village- Gimrahi, Post- Sonapur, Police Station- Narpatganj, District Araria.

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna
2. The District Magistrate, Araria.
3. The District Land Acquisition Officer, Araria.
4. The Circle Officer, Narpatganj, District Araria.
5. The Chief Manager, State Bank of India Forbesganj Branch, Code 00077, District- Araria.
6. The Chief General Manager, State Bank of India, Bihar, Patna.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 6345 of 2018

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Saroj Mishra, Wife of Suman Kumar Mishra, Resident of Village- Mishra Tola, Part Kohaliya, Anchal + P.S.- Forbesganj, District- Araria.

... ... Petitioner/s

Versus

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1. The State of Bihar through Principal Secretary, Revenue and Land Reforms Department, Govt. of Bihar, Patna
2. The Principal Secretary, Land Acquisition Department, Govt. of Bihar, Patna.
3. The Director, Land Acquisition and Rehabilitation Department, Govt. of Bihar, Patna.
4. The District Magistrate/Collector, Araria, District- Araria.
5. The Special Land Acquisition Officer, Araria, District- Araria.
6. The District Land Acquisition Officer, Araria, District- Araria.
7. The Executive Engineer, Road Construction Department, Road Division, District- Araria.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 7943 of 2018

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Anil Kumar Agrawal, Son of Braj Mohan Agrawal, Resident of Sadar Road, P.O. and P.S.- Forbesganj, District- Araria.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The Principal Secretary, Commissioner Department of Revenue and Land Reforms, Government of Bihar, Patna.
3. The District Magistrate Collector, Araria.
4. The District Land Acquisition Officer, Araria.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 8046 of 2018

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Abhishek Singhi Alias Abhishek Kumar Singhi, Son of Sunil Kumar Singhi, Resident of High School Road, P.O. and P.S.- Forbesganj, District- Araria.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner Department of Revenue and Land Reforms, Government of Bihar, Patna
2. The Principal Secretary, Commissioner Department of Revenue and Land Reforms, Government of Bihar, Patna.
3. The District Magistrate Collector, Araria.
4. The District Land Acquisition Officer, Araria.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 8052 of 2018

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Sunil Kumar Singhi, Son of Late Moolchan Singhi, Resident of High School Road, P.O. and P.S. Forbesganj, District- Araria through its power of attorney holder namely Abhishek Singhi alias Abhishek Kumar Singhi, Son of Sunil Kumar Singhi, Resident of High School Road, P.O. and P.S.- Forbesganj, District- Araria.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The Principal Secretary, Commissioner Department of Revenue and Land Reforms, Government of Bihar, Patna.
3. The District Magistrate cum Collector, Araria.
4. The District Land Acquisition Officer, Araria.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 8360 of 2018

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Rameshwar Mehta, Son of Baukai Mehta, Resident of Village- Bela, Ward No 5, P.S.- Narpatganj, Dist.- Araria.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna
2. The Principal Secretary, Land Acquisition Department, Govt. of Bihar, Patna.
3. The Director, Land Acquisition and Rehabilitation Department, Govt. of Bihar, Patna.
4. The District Magistrate/Collector, Araria, District- Araria.
5. The Special Land Acquisition Officer, Araria, District- Araria.
6. The District Land Acquisition Officer, Araria, District- Araria.
7. The Executive Engineer, Road Construction Department, Road Division, District- Araria.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 8700 of 2018

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Shailesh Kumar Jain, Son of Santosh Chand Baid, Resident of Sadar Road, P.O. and P.S. Forbesganj, District- Araria.

... ... Petitioner/s

Versus

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1. The State of Bihar through the Principal Secretary cum Commissioner, Department of Revenue and Land Reforms, Government of Bihar, Patna
2. The Principal Secretary Cum Commissioner, Department of Revenue and Land Reforms, Government of Bihar, Patna
3. The District Magistrate Collector, Araria.
4. The District Land Acquisition Officer, Araria.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 10255 of 2018

==========

Tuliya Devi, Wife of Vishwanath Gupta, Resident of Village- Barouganj, P.O.- Bela, P.S.- Narpatganj, Dist.- Supaul.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Revenue and Land Reforms Department, Government of Bihar, Patna.
2. The Principal Secretary, Land Acquisition Department, Govt. of Bihar, Patna.
3. The Director, Land Acquisition and Rehabilitation Department, Govt. of Bihar, Patna.
4. The District Magistrate/Collector, Araria, District- Araria.
5. The Special Land Acquisition Officer, Araria, District- Araria.
6. The District Land Acquisition Officer, Araria, District- Araria.
7. The Executive Engineer, Road Construction Department, Road Division, District- Arwal.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 11474 of 2018

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Indradev Yadav, S/o Late Domi Yadav, R/o Village- Bela, Anchal + P.S.- Narpatganj, District- Araria

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna
2. The Principal Secretary, Land Acquisition Department, Govt. of Bihar, Patna
3. The Director, Land Acquisition and Rehabilitation Department, Govt. of Bihar
4. The District Magistrate/Collector, Araria, District- Araria
5. The Special Land Acquisition Officer, Araria, District- Araria
6. The Director Land Acquisition Officer, Araria, District- Araria

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7. The Executive Engineer, Road Construction Department, Road Division, District- Araria

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 11697 of 2018

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Kanchan Devi, Wife of Gowardhan Sah, Resident of Village- Bhadeswar, P.S.- Farbisganj, District- Araria.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
2. The Principal Secretary, Land Acquisition Department, Govt. of Bihar, Patna.
3. The Director, Land Acquisition and Rehabilitation Department, Govt. of Bihar, Patna.
4. The District Magistrate/Collector, Araria, District- Araria.
5. The Special Land Acquisition Officer, Araria, District- Araria.
6. The Special Land Acquisition Officer, Araria, District- Araria.
7. The Executive Engineer, Road Construction Department, Road Division, District- Araria.

... ... Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 6863 of 2018)

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
Mr. Atal Bihari Pandey, Advocate
Mr. Alok Kumar Jha, Advocate
Mr. Mukund Kumar, Advocate
Mr. Akash Kumar, Advocate
Mr. Aditya Raman, Advocate

For the Respondent/s : Mr. Rishi Raj Sinha, SC- 19
Mr. Birendra Prasad Singh, AC to SC- 19

(In Civil Writ Jurisdiction Case No. 15091 of 2017)

For the Petitioner/s : Mr. Amar Nath Singh, Advocate
Mr. Kamal Kishore Singh, Advocate

For the Respondent/s : Mr. Rishi Raj Sinha, SC- 19

(In Civil Writ Jurisdiction Case No. 6345 of 2018)

For the Petitioner/s : Mr. Sharda Nand Mishra, Advocate

For the Respondent/s : Md.Khurshid Alam, AAG- 12

(In Civil Writ Jurisdiction Case No. 7943 of 2018)

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
Mr. Atal Bihari Pandey, Advocate
Mr. Alok Kumar Jha, Advocate
Mr. Mukund Kumar, Advocate
Mr. Akash Kumar, Advocate
Mr. Aditya Raman, Advocate

For the Respondent/s : Mr. Raj Kishore Roy, GP- 18

(In Civil Writ Jurisdiction Case No. 8046 of 2018)

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate

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Mr. Atal Bihari Pandey, Advocate
Mr. Alok Kumar Jha, Advocate
Mr. Mukund Kumar, Advocate
Mr. Akash Kumar, Advocate
Mr. Aditya Raman, Advocate

For the Respondent/s : Mr. Subhash Chandra Yadav, GP-15

(In Civil Writ Jurisdiction Case No. 8052 of 2018)

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
Mr. Atal Bihari Pandey, Advocate
Mr. Alok Kumar Jha, Advocate
Mr. Mukund Kumar, Advocate
Mr. Akash Kumar, Advocate
Mr. Aditya Raman, Advocate

For the Respondent/s : Mr. Raj Kishore Roy, GP- 18

(In Civil Writ Jurisdiction Case No. 8360 of 2018)

For the Petitioner/s : Mr. Sharda Nand Mishra, Advocate

For the Respondent/s : Mr. Sajid Salim Khan, SC- 25

(In Civil Writ Jurisdiction Case No. 8700 of 2018)

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
Mr. Atal Bihari Pandey, Advocate
Mr. Alok Kumar Jha, Advocate
Mr. Mukund Kumar, Advocate
Mr. Akash Kumar, Advocate
Mr. Aditya Raman, Advocate

For the Respondent/s : Mr. Sajid Salim Khan, SC- 25

(In Civil Writ Jurisdiction Case No. 10255 of 2018)

For the Petitioner/s : Mr. Sharda Nand Mishra, Advocate

For the Respondent/s : Mr. Raj Kishore Roy, GP-18

(In Civil Writ Jurisdiction Case No. 11474 of 2018)

For the Petitioner/s : Mr. Sharda Nand Mishra, Advocate

For the Respondent/s : Mr. Sajid Salim Khan, SC- 25

(In Civil Writ Jurisdiction Case No. 11697 of 2018)

For the Petitioner/s : Mr. Sharda Nand Mishra, Advocate

For the Respondent/s : Md. Khurshid Alam, AAG-12

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 29-11-2024

Considering the identical grievance based upon similar facts, with the consent of all the parties; these batch of the writ petitions were heard simultaneously and being disposed of by this common order/judgment. The facts of CWJC No. 6863 of 2018 are being taken note of as a lead case.

2. The petitioners in all these batch of the writ petitions happened to be the owner of the lands, particulars of

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which have been duly mentioned in their respective writ petitions and were acquired for the purpose of constructing Indo-Nepal Border Road under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (For the brevity 'the Act, 2013').

3. The petitioners are aggrieved by the letter/notice issued under Memo No. 459 dated 28.07.2017, as also other identical letters, issued on different dates, as well as the entire proceeding initiated by the District Magistrate/Collector, Araria on the basis thereof the respondents have re-opened the proceeding of acquisition already finalized and the amount of compensation and solatium already paid to the petitioners and, as such, barred in terms of Section 37 of the Act, 2013. The petitioners are also aggrieved by the letter no. 452 dated 28.07.2017 and other similar letters issued by the District Land Acquisition Officer, Araria whereby the Bank account of the petitioners have been made frozen with instructions to the lead Bank to stop permitting operations until permission of the respondent Collector. The petitioners also sought quashing of the letter as contained in Memo no. 181 dated 17.03.2018, as also other identical letters, whereby the differential amount of compensation has been demanded from the petitioners. The

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petitioners further sought a declaration that once the whole mechanism and process of acquisition of land right since preliminary notice published under Section 11 of the Act till payment of compensation pursuant to finality of award under Section 37 of the Act has been completed, no provisions of the Act confers any jurisdiction and authority upon the respondent Collector or the respondent no.4 to reopen the award by disputing the parameters and the basis leading to such finality of land acquisition proceeding.

4. Before adjudicating the legality of the impugned action of the respondents leading to issuance of impugned orders, the facts, which are relevant in the matters, to be noted hereinbelow:

5. A total 456.01.200 acres of land from 64 villages falling under four Anchals viz Narpatganj, Forbesganj, Kurshakanta and Sikta were intended to be acquired by the State Government for constructing Indo-Nepal Border Road. The necessity and requirement expressed by the Road Construction Department for construction of aforenoted road, the land owned by the petitioners and other similar such landowners were proposed to be acquired by way of notification No. 639 dated 11.05.2016 issued under Section 11(1) of the Act, 2013,

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published in the official gazette as well as in newspapers. On 12.05.2016, the respondents published another notification under Section 19(1) of the Act, 2013 regarding declaration and summary of rehabilitation and resettlement as prescribed in law for the land proposed to be acquired.

6. It is stated that in course of acquisition of the land of the petitioners, the respondent District Land Acquisition Officer, Araria called upon the petitioners to furnish the particulars of land, documents of title, details of interest in the said land, land possession certificate, rent payment receipts etc. The petitioners submitted the copies of the respective title deed/sale deed of the land, rent payment receipts and land possession certificate before the respondent District Land Acquisition Officer and also executed an affidavit as required by the said authority. Having completed all the paraphernalia, the respondent District Land Acquisition Officer took possession of the land of the petitioners, before the publication of final award. However, subsequent thereto, the petitioners received payment of compensation and solatium on different dates. The land(s) so acquired were handed over to the concerned agency after awarding contracts for construction of roads and finally roads have been constructed on almost all such acquired land and it is

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in public use for the present and thus the purpose, for which the lands have been acquired, have already been served and the whole project of acquisition has been finalized.

7. All of a sudden in the month of August, 2017, the petitioners learnt from their respective Banks that their accounts existing in the said Bank has been rendered frozen at the instance of the respondent District Land Acquisition Officer. The petitioners learnt from the contents of the letter that for undisclosed reasons, their Bank accounts had been subjected to stop operation until permission of the Collector. The petitioners received a letter bearing memo No. 459 dated 28.07.2017 by the respondent District Land Acquisition Officer whereby it was intimated that complaints were received from which it was inferred that in collusion with the requisitioning department, the nature of lands belonging to the petitioners were got converted. The issue was enquired by a team constituted for that purpose and the enquiry concluded that the aforesaid lands belonging to the petitioners happened to be agricultural in nature. By the aforesaid letter, the petitioners were asked to appear before the respondent Collector for hearing in the matter. The petitioners in some of the cases ensured their appearance and submitted reply. However, in the submission of the petitioners, no further

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information was made by any of the respondents and all of a sudden, the petitioners received a letter bearing Memo No. 181 dated 17.03.2018 issued by the respondent District Land Acquisition Officer whereby the petitioners have been called upon to repay the differential amount of compensation on account of alleged excess compensation received by them, which were held recoverable in course of enquiry conducted by six men committee. As per the letter aforenoted, the lands of the petitioners were found to be agricultural whereas they have received compensation for the said land being residential in nature.

8. Mr. Gautam Kumar Kejriwal, learned Advocate for the petitioner in C.W.J.C. No. 6863 of 2018, while assailing the impugned action of the respondent authorities and the consequential impugned orders has firstly taken this Court through all the relevant provisions of Act, 2013. It is contended that Section 11 of the Act deals with the preliminary notification for requirement of land acquisition and the said provision itself empowers the land acquisition authority to determine that category of land sought to be acquired. The preliminary notification dated 11.05.2016 issued under Section 11 of the Act, 2013 itself speaks of the land under acquisition being

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residential in nature. The respondents having themselves notified the land of the petitioners as residential and determined the compensation accordingly and paid the same to the petitioners could not retract from their stand and revise their understanding and decision about the category of land. Further Section 11(5) of the Act obliges the respondents to update the land records within two months of such notification. Section 12 of the act authorizes the respondents to conduct a preliminary survey of the lands to be acquired by authorized officer of the Government. Section 15 of the Act, 2013 deals with requiring inviting objections from the interested persons with respect to the land sought to be acquired. A perusal of Section 15 of the Act, 2013 would show that complaints or objections of such persons could be entertained only at that stage which falls in the interregnum of notification under Section 11 and the notification under Section 19 of the Act, 2013 and not after completion of the process of payment of compensation and physical possession taken of the land sought to be acquired.

9. Learned Advocate for the petitioners contended that, in the case in hand, the so called complaints made by the busybody has been entertained after the compensation was determined and paid to the petitioners. Section 16 of the Act,

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2013 talks about another survey by the Administrator for rehabilitation and resettlement, which is an another round of verification of the nature, category, use and other important aspects associated to the land sought to be acquired. Likewise, Section 17 further requires the respondent Collector to make a review of the draft scheme prepared under Section 16(6) of the Act, 2013 for the purpose of rehabilitation and resettlement of the affected families. Section 20 is said to be an important provision of law, which requires marking, measurement and planning of the land sought to be acquired by the respondents. Thus it is contended that while marking, measurement and planning of the land sought to be acquired, it is not possible that the nature of land as to whether it is residential or agricultural would escape the attention of the land acquisition authorities.

10. Section 21 of the Act, 2013 further deals with the statutory provision for notification inviting claims for compensation and interest. No complaint was made by the so-called complainant/busybody as regards the nature of land of the petitioners. One another important provision have been read over and explained over this Court that the evaluation of the land sought to be acquired is to be done by the collector in terms of Section 26 of the Act, 2013. As per the said provision, while

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determining the market value of the land, the collector has to take into consideration the market value, as specified in terms of the Indian Stamp Act, 1899 for the purpose of registration of sale deeds or agreement to sell, as the case may be in the area where the land is situated. Secondly, the average sale price of similar type of land situated in the nearest village, near vicinity area has to be considered. Thirdly, the date of determination of market value shall be the date on which the preliminary notification under Section 11 of the Act, 2013 is issued by the Collector.

11. Drawing the attention of all the aforenoted prescriptions, learned Advocate for the petitioners vigorously contended that altogether 7-8 stages have been provided when the respondent could have verified the true nature of the land before determination of the compensation payable to the petitioners. In no stretch of imagination, it is believed that all through the process of determination of market value of the land by the Collector, the nature of land, in question, would have been ignored.

12. Mr. Kejriwal, learned Advocate further urged before this Court that in case of difference of opinion on the point of nature of the land sought to be acquired, such dispute is

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always amenable to the jurisdiction of the Land Acquisition, Rehabilitation and Resettlement Authority, which consists of sufficient mechanism available for redressal of grievance of any of the parties to a land acquisition proceeding. Therefore, even if the Collector and other Land Acquisition Authorities opined that the true nature of the land under acquisition was wrongly determined or there existed a confusion, the best remedy was available to take recourse to the statement of reference to the said authority constituted under Section 51 of the Act, 2013. In the entire Act of 2013, there is no provision and power to the Collector to review any of the functions and exercise completed in course of land acquisition proceeding. Once the Collector having completed the process of determination of market value of the land under acquisition and compensation payable to the land owners, which is finally paid, he becomes functus officio for all purposes and cannot give a relook to any of the process already concluded even if the same suffers from illegality, confusion or violation of any provision.

13. In order to fortify the aforesaid contention, reliance has also been placed on decisions rendered by the Hon'ble Supreme Court in the Case of **Kalabharti Advertising Vs. Hemant Vimalnath Narichania & Ors**., reported in **(2010)**

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9 SCC 437 and further in the case of **Bankatlal Vs. Special Land Acquisition Officer**, reported in **(2014) 15 SCC 116.**

14. It is next contended that there is no provision in the Act, 2013, which empowers the Land Acquisition Officer much less the Collector to recover the alleged excess of compensation paid to a land owner by attachment of their Bank accounts. The action of attachment of the Bank accounts of the petitioners is wholly without jurisdiction, as there is absence of any such law.

15. Mr. Kejriwal, challenging the constitution of Six Men Committee and its report submitted that there is no provision under the Act, 2013, which empowers the Collector or any other authority to constitute the so-called Six Men Committee and make an enquiry into any such stray complaint made by any person and thus the very basis of the decision of the Collector being the enquiry report submitted by Six Men committee is wholly without jurisdiction and has got no sanctity in the eye of law.

16. Summarizing the submissions, learned Advocate for the petitioners also contended that the respondents have undertaken an exercise, which is not authorized in terms of the Statute and in fact the manner in which they moved is contrary

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to the scheme of the Act, hence the action of the respondents is in violation of the principles of law held in Maxim "**Expressio Unius Est Exclusio Alterius**", which prescribes the procedure prescribed in law for a particular process/act exclude any of the procedure. To support the aforesaid principle, reliance is placed on the decision of the Hon'ble Supreme Court in the case of **N. Padmamma Vs. S. Ramakrishna Reddy & Ors**., reported in **(2008) 15 SCC 517;** and the **State of Jharkhand Vs. Ambay Cements & Anr**. reported in (**2005) 1 SCC 368**.

17. Mr. Sharda Nand Mishra, learned Advocate appearing for another set of petitioners in C.W.J.C. No. 6876 of 2017 and another analogous cases, reiterated the aforenoted contention; and has further drawn the attention of this Court to the notification issued under Section 11 of the Act, 2013 dated 11.05.2016 as well as notification issued under Section 19 of the Act, 2013 dated 12.05.2016 and contended that there is no dispute that the nature of the land of the petitioners was determined as residential after following all the due procedure for acquisition, which also got approval from the State Government and thereafter payment has been made to the petitioners. However, in some of the cases only 80% of the compensation amount has been paid and the rest of the amount

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are yet to be paid, though the lands of the petitioners have been acquired in the year 2016. Mr. Mishra also contended that Section 33 of the Act, 2013 clearly prescribes that the Collector has no jurisdiction to correct the award latter than six months of the award. Once the entire process of acquisition has been completed, the Collector has no authority to review its own decision and reopen the entire proceeding afresh.

18. Mr. Amar Nath Singh, learned Advocate representing the petitioner in C.W.J.C. No. 15091 of 2017 has submitted that there is no provision for constitution of Six Men Committee once the compensation paid and approved by the State Government. There is neither any notice to the land holders; or opportunity provided, the copy of report of the Six Men Committee has never been handed over to any of the aggrieved person. Moreover, the collector has not given any finding as to how the earlier report suggesting the nature of the land as residential was bad, if any party has had any grievance, he can move before the Land Acquisition, Rehabilitation and Resettlement Authority, then why not the Collector; he may also refer the matter to LARRA. Reliance has also been placed on a decision rendered by this Court in the case of **Dhan Jee Pandey @ Gauri Shankar Pandey Vs. The Union of India & Ors**.,

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reported in **2023 (3) PLJR 773**.

19. On the other hand, The State is represented by Md. Khurshid Alam, learned AAG-12, Mr. Dhurjati Kumar Prasad and Mr. Sajid Salim Khan, learned Government Pleaders.

20. The learned Advocates for the State countering the afornoted submissions primarily contended that the land(s) in question, were acquired for constructing Indo-Nepal Border Road under the Emergency provision of Section 40 of the Act, 2013. Sub Section 4 of Section 40 clearly stipulates that "in the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1), sub-section (2) or sub-section (3) are applicable, the appropriate Government may direct that any or all of the provisions of Chapter II to Chapter VI shall not apply, and, if it does so direct, a declaration may be made under section 19 in respect of the land at any time after the date of the publication of the preliminary notification under sub-section (1)of section 11 of the Act.

21. In the case in hand soon after the notification issued under Section 11(1) of the Act, 2013, the notification under Section 19(1) of the Act, 2013 has also been issued on 12.05.2016 itself. The aforenoted notifications made it clear that

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since the acquisition proceeding has initiated under the Emergency provision of Section 40 of the Act, 2013 no provisions for social impact assessment study provided under Section 4 and the provisions of hearing of objections under Section 15 of the Act, 2013 shall be applicable.

22. It is the contention of the learned Advocate for the State that on the basis of the submission of the land measurement report by the Anchal Amin as well as on Jamabandi report of Narpatganj, an estimate was prepared and the petitioners have been paid the estimated compensation in two installments. However, it has been informed that till date, the award has not been approved as yet. On receipt of various complaints from all corners regarding the nature of the land, the Collector, Araria ordered to enquire into the matter vide letter no. 1937 dated 24.07.2017. In response thereto, the District Land Acquisition Officer, Araria submitted a report that the land was found as agricultural. In the aforesaid premise, the Collector, Araria directed to enquire the dispute by setting up Six Men Committee consisting of Additional District Magistrate, Deputy Development Commissioner, District Sub-Registrar, District Land Acquisition Officer, Executive Engineer (RCD) vide letter no. 473 dated 05.08.2017. The Six Men

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Enquiry Committee after thorough enquiry found the land, in question, as agricultural. Taking note of the report of the Six Men Committee under consideration, the Collector, Araria issued notice to the petitioners and passed summary order to treat this land as Agricultural. Thus, the contention of the petitioners that no notice or any opportunity was given is not sustainable. The petitioners in almost all the cases either appeared personally or filed their reply and thereafter the impugned orders have been passed. The learned Advocate for the State also contended that on account of the misconduct committed by the then Executive Engineer (RCD) and District Land Acquisition Officer, recommendations have also been made for disciplinary proceeding against them after framing of the Memo of Charge. In the light of the aforesaid facts, the respondent no.4 issued notice directing the petitioners to deposit deferential amount, which are paid in excess.

23. With respect to the submissions that the Bank accounts of the petitioners have been frozen without there being any authority, it is contended that operation of the Bank accounts was restricted only to the extent of amount paid in lieu of compensation, against their respective lands, which later on found to be erroneous. It is next contended that the entire

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exercise for determination of the nature of the land has been proceeded in terms of the letter issued by the Government of Bihar in the Department of Revenue and Land Reforms, as contained in Memo No. 150 dated 15.02.2018, the copy of which has been placed on record and marked as Annexure-E Series to the counter affidavit filed on behalf of respondent nos. 3 and 4. The learned Government Advocates, while summing up their arguments, uniformly contended that neither any chit of paper nor any averment has been made that the lands, in question, are residential land. Since the award has not been approved till date, the Collector being the competent authority had the jurisdiction to rectify the mistake, if a mistake is committed in passing an administrative order, the same may be rectified. In order to substantiate such contention reliance has also been placed on a decision of the Hon'ble Supreme Court in the case of **Union of India and Ors. vs Bikash Kuanar,** reported in **(2006) 8 SCC 192** wherein the Hon'ble Supreme Court held that "it is now trite that if a mistake is committed in passing an administrative order, the same may be rectified. Rectification of a mistake, however, may in a given situation require compliance of the principles of natural justice. It is only in a case where the mistake is apparent on the face of the

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records, a rectification thereof is permissible without giving any hearing to the aggrieved party."

24. This Court has given anxious consideration to the submissions advanced on behalf of the learned Advocates for the respective parties and also meticulously perused the materials available on record.

25. Undisputedly the land, in question, was acquired from the Raiyats/petitioners for constructing road over Indo-Nepal Border under the Emergency Provision of Section 40 of the Act, 2013. Section 40 of the Act, 2013 deals with the Special powers in case of urgency to acquire land in certain cases.

26. Section 40 (1) clearly stipulates that in cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of thirty days from the publication of the notice mentioned in section 21, take possession of any land needed for a public purpose.

27. Sub-Section 3 of Section 40 makes it clear that before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall tender payment of eighty per cent of the compensation for such land as estimated by him to

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the person interested entitled thereto.

28. Sub-Section 4 of Section 40, which would be relevant in the present matter needs to be quoted hereinbelow:

> *"(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1), sub-section (2) or sub-section (3)are applicable, the appropriate Government may direct that any or all of the provisions of Chapter II to Chapter VI shall not apply, and, if it does so direct, a declaration may be made under section 19 in respect of the land at any time after the date of the publication of the preliminary notification under sub-section (1)of section 11."*

29. Bare reading of the aforesaid provision, it is explicit that the appropriate Government is empowered to direct that any or all of the provisions of Chapter II to Chapter VI shall not apply, and, if it does so direct that a declaration made under section 19 in respect of the land at any time after the date of the publication of the preliminary notification. The initial payment of compensation is only based upon estimation done by the

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Collector.

30. Admittedly after issuance of notification under Section 11(1) of the Act, 2013 immediately further notification under Section 19(1) of the Act, 2013 as contemplated to invoke the Emergency provisions under Section 40 of the Act, 2013 has been issued on 12.05.2016.

31. From cumulative reading of both the notifications issued under Section 11(1) and Section 19(1) of the Act, 2013, it is axiomatic that the land, in question, is acquired under the Emergency Provision of Section 40 of the Act, 2013 and thus the social impact assessment study provided under Section 4 and the provisions of hearing of objections under Section 15 of the Act, 2013 shall not be applicable; in as much as the compensation paid by the Collector was based upon estimation. Thus any acquisition proceeding commenced under Section 40 of the Act, 2013 excludes the provision of Chapter II to Chapter VI, if otherwise it is directed under Section 19 of the Act, 2013.

32. In view of the aforesaid facts, the submission of the learned Advocates for the petitioners to the effect that at all the stages, as discussed above, the nature of land as to whether it is residential or agricultural have brought to the attention of the acquisition authority and such an important aspect would not

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have been eluded the attention of the authorities while carrying out such an exercise with ground level, in the opinion of this Court does not stand substantiated.

33. It is noteworthy that the Government of Bihar in the Department of Revenue and Land Reforms vide its letter contained in Memo No. 450 dated 12.04.2017 and further in Memo No. 150 dated 15.02.2018, brought on record by way of counter affidavit, issued under the signature of Principal Secretary of the concerned Department communicated to all the Collectors of the State of Bihar in public interest that to resolve the dispute with regard to acquisition of the land and its nature, category or the rate, a committee was required to be constituted under the Chairmanship of the District Magistrate. Accordingly, the Government of Bihar took a decision to constitute a Six Men Committee consisting of District Magistrate, Additional Collector-cum Rehabilitation and Resettlement Officer, District Land Acquisition Officer, District Sub-Registrar, Representative of Requisitioning Authority, Deputy Development Commissioner-cum-Chief Executive Officer. The aforenoted letter also made it clear that after publication of notification under Section 19(1) of the Act, 2013 and before issuance of notice upon the affected land holders/raiyats, there shall be a

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proper inspection of the notified land and thereupon the rate of the land shall be determined.

34. In **Rai Sahib Ram Jawaya Kapur and Ors. Vs. The State of Punjab**, reported in **AIR 1955 SC 549**, the Hon'ble Supreme Court held that ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away. The executive Government, however, can never go against the provisions of the Constitution or of any law. The executive function comprises both the determination of the policy as well as carrying it into execution.

35. In the case of **J & K Public Service Commission vs. Narinder Mohan (Dr)**, reported in **(1994) 2 SCC 630**, the Hon'ble Supreme Court observed that the executive power could be exercised only to fill in the gaps but the instructions cannot and should not supplant the law, but only supplement the law. Accordingly exercising of Executive power cannot be in contravention of the Constitution or any other law.

36. While executive power is circumscribed by the limits imposed by the Constitution, and by any other law, this does not imply that executive power can be exercised only when there is a law already in existence. The executive's powers are

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not restricted solely to carrying out the laws passed by Parliament. It includes other functions such as supervising general administration, formulation, and execution of policy, *etc*.

37. The Hon'ble Supreme Court has also consistently held that such clarificatory circulars cannot amend or substitute principal legislation. But if the principal legislation made thereunder is silent, then the Government can issue clarifications to supplement principal legislation by issuing instructions.

38. In the case in hand, the notification under Sections 11(1) and 19(1) of the Act, 2013 have been issued on 11.05.2016 and 12.05.2016 before issuance of the aforenoted letters, nonetheless the modalities as contemplated there, in the letters of the State Government is not in any manner contrary to the prescriptions as provided under the Act, 2013.

39. It is axiomatic that an administrative decision which is not based on a dispute between the two parties and which is not rendered after hearing the parties, does not operate as *res judicata*. The party affected by it as also the authority making the decision are amenable to review the same. The interests of fairness to individuals whose interests will otherwise

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be directly and prejudicially affected may lead the Courts to attribute binding effect to administrative acts and decisions which the competent authority wishes to repudiate or rescind. Indeed, it would seem that the legal competence of administrative bodies to rescind their decisions depends at least as much on considerations of equity and public policy as on conceptual classification (Prof. S.A.De Smith in his "Judicial Review of Administrative Action", 3rd Edn.).

40. Any administrative decision, there is no legal obligation upon the person charged with the duty of reaching the decision to consider and weigh submissions and arguments or to collate any evidence, to solve any issue. The grounds upon which he acts, and the means which he takes to inform himself before acting, are left entirely to his discretion. Subsequently, not only administrative action, but also administrative decision can be reviewed to redress injustice caused thereby. It is implicit in this principle that in redressing injustice to one injustice should not be caused to someother.

41. The law is well settled that any amount paid/received without the authority of law can always be recovered barring exceptions of extreme hardships or prohibited under any Statute/ Rules, but not as a matter of right. In such

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situation, law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment. The Hon’ble Supreme Court on various occasions held that the excess payment of public money which is often described as "tax payers money" belongs neither to the officers who have effected over-payment nor that of the recipients. Possibly, effecting excess payment of public money by officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. This Court is also not unmindful of the fact that the land of the petitioners have been acquired by the State Government in terms of the prescription of Act, 2013 and thus they should be compensated adequately in commensurate with the valuation of the land. In case, the land holders get less payment against the value of their acquired land, it would be certainly transgress the statutory and constitutional right to property as mandated under Article 300A of the Constitution, but once they receive excess payment to the value of their land, it would certainly amount to unjust enrichment.

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42. In view of the above, this Court does not find any error in the action of the respondents in determining the nature of the land and its rate, if the same was found to be unjust, all the more, the Government is entitled to review an administrative decision, if the same is unjust and contrary to law; that too, in the case in hand, when the process of acquisition is yet to be finalized by preparation and approval of the award under Section 37 of the Act, 2013.

43. This Court does not find that it is a case where the Collector has reviewed his order; on the contrary, the process has never been completed inasmuch as award has never been prepared and approved. The compensation paid to the petitioners were only based upon estimation; Later on having apprised and acquainted with the mistake committed by the Land Acquisition Officer and the other responsible authorities, the same has been rectified by constituting a Six Men Committee and action has been taken against the erring officials.

45. So far the contention of the petitioners that in case of difference of opinion on the point of nature of the land, such dispute is always amenable to Land Acquisition, Rehabilitation and Resettlement Authority (hereinafter referred to as ‘the

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LARRA') is concerned the same does not find any substance in the facts of this case. The Act, 2013, especially Section 51 of the Act provided a forum i.e. LARRA to adjudicate the disputes relating to acquisition of land, compensation payable and the preparation of compensation of which interested persons have made different claim. If there would have been any dispute with regard to the determination of the nature of the land, such a dispute may be referred to the jurisdiction of the said authority having sufficient mechanism available for redressal of grievance of any of the parties to a land acquisition proceeding, which might have arisen in relation to any issue associated with such proceeding.

46. There is no dispute that if the Collector comes to the conclusion that the lands, in question, are agricultural, but the compensation has been paid by treating it as residential, in such circumstances, the aggrieved party was supposed to take recourse to the remedy available, as provided under Section 64 of the Act, 2013 by getting the matter referred to the said authority, only if there is an award and parties are aggrieved and not accepted the award.

47. Section 64 contemplates under the Act, 2013 empowering the Collector to refer the dispute to the Authority, if

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any person interested, who has not accepted the award may by written application require that the matter be referred for determination of the Authority, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable or the apportionment of the compensation. Section 64 (2) of the Act, 2013 mandates that the application shall state the grounds on which objection to the award is taken, provided that such application shall be filed within six weeks from the date of the Collector's award; and in other cases, within six weeks of the receipt of the notice from the Collector under section 21, or within six months from the date of the Collector's award, whichever period shall first expire.

48. Perusal of the prescriptions as contemplated under Section 64 of the Act, 2013, clearly indicates that to invoke this provision it is absolutely necessary to challenge the award, if any person interested has not accepted the award. In the case in hand, it is the admitted position that award has not even been approved till date.

49. Reliance of the petitioner on a decision of this Court in the case of **Dhan Jee Pandey** (supra) has no application in the case in hand as that was the case where land

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was acquired under the National Highway Authority Act, 1956, which is a self contained code and, moreover, there was already an award passed by the competent authority, but later on a decision has been taken by the State to get the excess amount refunded, which had already been paid, on account of having found the nature of the land agriculture instead of residential.

50. This Court has also gone through the materials on record and found that before reassessment/determination of the land, in question, the land owners have been noticed and many of them filed their response, thus, the contention of the petitioners' that no notice or any opportunity was given prior to determination of land also does not get supported form the record.

51. In view of the aforesaid facts, circumstances and the position in law, this Court does not find any merit in this batch of the writ petitions. Let the award may be passed within a period of three months, if not passed till date after completing all the formalities. Suffice it to observe that the petitioners would have the liberty to assail the same in accordance with prescription, as provided under the Act, 2013, if any person interested has not accepted it.

52. Now coming to the legality of the impugned

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action of the respondent Collector to the extent whereby, apart from directing the petitioners to ensure the payment of deferential amount of compensation; for the said purpose has frozen the Bank accounts of the petitioners, this procedure is apart from illegal and arbitrary, do not have any sanction of law. Thus this Court deprecate such action. However, the respondent authorities shall be at liberty to recover the differential amount by taking recourse of Public Demand Recovery Act, 1914 or through any other Act, in accordance with law, after finalization of the award, but without any interest accrued thereupon, as the petitioners were never at fault.

53. All the writ petitions stand dismissed with the aforesaid observation.

(Harish Kumar, J)

uday/-

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