Punjab and Haryana High Court

Before: Uma Nath Singh and Rajive Bhalla, JJ.

**M/S. Golden Iron And Steel Forging v. Union Of India**

C.W.P. No. 11461 of 2005

28.03.2008

**Rajive Bhalla, J**.— This order shall dispose of CWP Nos. 11461 of 2005, 626 and 10687 of 2006.

The petitioners impugn notifications, dated 13.4.2005 and 11.7.2005, issued and published under Section 3-A(1) of the National Highways Act, 1956 (for short herein after referred to as “the Act”), and Section 3-D of the Act, respectively, acquiring the petitioners’ land for building of NH No. 8 from KM 24000 to KM 42000 including construction of a Toll Plaza at KM 42000 in Gurgaon District in the State of Haryana.

CWP No. 11461 of 2005

2. Counsel for the petitioner submits that the petitioner is owner of land measuring 23.8 kanals, bearing Khasra Nos. 35/4 min East, 5/1, 6/2/2, 7 Min East, situated in village Kherkidaula, Tehsil and District Gurgaon, recorded in the revenue records as agricultural land. The petitioner applied for change of land use under the Punjab Scheduled Roads and Constructed Areas (Restriction of Unregulated Development) Act, 1963. Vide order, dated 3.3.2000, permission was granted for change of land use with respect to 12357 sq. yards. The petitioner constructed a four storeyed building with a covered area of 55,000 sq. feet. The petitioner was approached by officials, representing respondent Page: 377No. 4 (the concessionaire) for lease of this building, as they had been awarded a tender to construct a Toll Plaza at Highway 8. The petitioner declined the request. On 26.5.2005, officials, representing respondent No. 4, forcibly entered the petitioner’s premises and began taking measurements. The petitioner was handed over a photo copy of the notification, dated 13.4.2005, purportedly published under sub-section (1) of Section 3A of the Act proposing to acquire his building for construction of a Toll Plaza.1

3. The petitioner filed objections, before the competent authority-cum-Sub Divisional Magistrate, Gurgaon on 27.5.2005 On 9.6.2005, when the petitioner was called for a hearing, it submitted supplementary/additional objections. The petitioner asserted that the notification was a colourable exercise of power, a mala fide attempt to acquire his building, and the building was wrongly described as agricultural land, whereas it was a factory etc. The petitioner also asserted that as adjoining land was lying vacant, the Toll Plaza could easily be constructed on vacant land without damaging the building. Respondent No. 1 filed a reply to the objections and without denying the objections, asserted that the Toll Plaza could not be shifted, in view of the scope of the agreement/project of the Expressway, which had been decided by technical experts. It is further submitted that the competent authority, in its report, dated 28.6.2005, forwarded to the Sub Divisional Magistrate (C),

recommended the shifting of the Toll Plaza. The said officer, after recording that the area is heavily populated and a large number of factories exist around the proposed site, recommended that the site of the Toll Plaza be shifted to a vacant area near village Manesar. The Deputy Commissioner, Gurgaon, vide letter dated 29.6.2005, forwarded a request to the Financial Commissioner-cum-Principal Secretary, Public Works Department (B&R), Haryana for shifting of the Toll Plaza. However, in its final order, dated 11.7.2005, the authority recorded a strange order, namely, that though "solid grounds" exist, yet keeping in view public interest, the objections could not be accepted. It is submitted that the aforementioned rejection is contradictory to and in derogation to the powers, conferred upon the competent authority, under the Act. The prescribed authority, under the Act, has to act independently, while examining the pros and cons of an acquisition. Objections cannot be rejected by stating that the objections are not acceptable in view of the public interest. Section 3C(1) of the Act entitles a landowner to file objections "…… to the use of the land ...." i.e the public purpose set out in the notification, issued under Section 3-A of the Act. Section 3C(2) of the Act requires the competent authority to grant an opportunity of hearing to an objector and after hearing all such objections as may be raised and after making further enquiry, the competent authority may allow or disallow the objections. Thus, a prescribed authority is required to pass a reasoned order, while allowing or rejecting objections. A perusal of the order, dated 11.7.2005, rejecting the petitioner's objections discloses a complete non-application of mind and a failure to discharge jurisdiction in accordance with law. The order is cryptic, non-speaking, void and, therefore, violates the provisions of Section 3C of the Act. As the order, rejecting the objections, is void, all subsequent proceedings stand vitiated.

4. It is further submitted that the petitioner's refusal to lease out his factory is the mala fide cause for issuance of the notification. The petitioner's factory measures 55,000 square feet, whereas even if it is conceded that a building is required for the Toll Plaza, the concessionaire does not require such a large building.

5. Another argument, put-forth by counsel for the petitioner, is that the Toll Plaza was intentionally located opposite the petitioner's building. The center line of the road was shifted to the petitioner's side of the road so as to ensure that his building fell within the acquired land. The over all width of the Toll Plaza is 101.8 meters and from the center line of the Highway, respondent No. 2 required 50.9 meters on the petitioner's side. In addition, respondent No. 2 required 10 meters for services like sewage, drainage, electrical overhead and underground cables, fiber optic cables for telephones as well as cable TV, gas pipe lines etc. The maximum width required on the petitioner's side of the highway was a mere 60.9 meters and under no circumstance would the petitioner's building fall within the proposed Toll Plaza. It is further submitted that the site of the Toll Plaza was changed, without justification. The entire endeavour of respondent No. 4 was to ensure that the petitioner's building is acquired. The shifting of the center line towards the petitioner's land, without just cause, and repeated alterations of the plans, clearly establishes mala fides on the part of the respondents.

6. It is further submitted that in order to acquire the petitioner's land, 110 meters have been acquired, on the petitioners' side, whereas only 49 meters have been acquired on the

opposite side. It is, thus, apparent that the site of the Toll Plaza, the alteration of its location, the change in the center line were affected, and the plans were so tailored to acquire the petitioner's building. It is further submitted that other factors that strengthen the plea of mala fide is the failure of the respondents to produce the original plan, as directed by this Court, and the alteration of the Center Line, during the pendency of the present writ petition, more particularly after the petitioner made a statement that he has no objection to the construction of the Toll Plaza, provided his building is excluded from acquisition.

Page: 3787. It is further argued that the notification, issued under Section 3 of the Act, refers to acquisition of agricultural land and not to the acquisition of any industrial building, thus, disclosing an absolute nonapplication of mind. The land use was altered from agricultural to industrial, after due permission was granted, and a building was constructed thereon. It is further submitted that for the Toll Plaza building, respondent No. 4 requires an area for a building measuring 150 sq. feet with two levels. The impugned notifications, however, propose to acquire a four storeyed building with 55000 sq. feet of space.

8. Another argument advanced is that the acquisition of the petitioners' land and building for the benefit of the concessionaire, a private person, and, therefore, cannot be stated to be a public purpose.

9. As regards the vires of the Act, challenge is primarily laid to Act No. 16 of 1997, whereby the National Highways Act, 1956 was amended to provide for acquisition of land by the Central Government for the National Highway Authority. It is contended that the provisions for acquisition, being violative of Article 14 of the Constitution of India, are arbitrary, irrational and sacrifice the interest of private landowners. 9A. The Amending Act lays down principles and procedures for acquisition that are in stark contrast to the provisions of the Land Acquisition Act, on the ostensible reasoning that the purpose of acquisition would justify such a departure. The Amending Act enacts Section 3, 3A to J, Section 8-A, 8-B and Section 9(2)(aa) of the Act prescribing the procedure for acquisition of land for the National Highway Authority and matters related thereto.

10. Counsel for the petitioners submit that the procedure for acquisition is arbitrary, unreasonable and an unwanted departure from the time honoured procedure, set out in the Land Acquisition Act. The Amending Act, enacted with the ostensible purpose of removing the so called delays in the Land Acquisition Act, in essence, does away with the rights of landowners, while conferring unprecedented powers on the Union to acquire land without providing for procedural safeguards. The rights of landowners have been sacrificed for the so-called "speedy implementation of highway projects".

11. It is further submitted that the failure to provide an appellate forum to landowner renders the provisions of the Amending Act ultra vires.

12. It is contended that the Amending Act does not provide for payment of statutory benefits as payable under the Land Acquisition Act namely payment of solatium and interest. The purpose underlying acquisitions under the Act is a public purpose, and is

therefore no different from public purpose under the Land Acquisition Act. Landowners, whose lands are acquired, under the Land Acquisition Act, would statutorily receive solatium and interest, whereas if their land is acquired under the impugned statue they would not receive any solatium or interest. The nature of public purpose, in the absence of a valid classification based upon an intelligible diffrentia, shall not determine statutory payments of compensation. There is no rationale or classification to deprive landowners of solatium merely because their land is sought to be acquired for “a national highway”. The purpose of acquisition would not determine the extent of compensation, namely, the payment of solatium and interest. As the purpose of acquisition is to acquire land, the State cannot differentiate between land owners, whose lands are acquired under the impugned enactment, and those, whose lands acquired under the Land Acquisition Act. It is vehemently contended that as the purpose of acquisition cannot determine the amount of compensation, Section 3G of the Act violates the provisions of Article 14 of the Constitution and is, therefore, ultra vires.

13. Section 3H of the Act is arbitrary and unconstitutional, as it requires a dispute with respect to the amount of compensation to be compulsorily referred to an arbitrator, under the Arbitration and Conciliation Act, 1996. The Arbitration and Conciliation Act presumes the existence of a binding agreement that would require parties to appoint an arbitrator, and submit their disputes to the Arbitrator. An Arbitrator, in essence, draws his jurisdiction from an agreement. In the absence of any agreement, and infact the existence of an element of coercion that statutorily compels a party to approach an arbitrator, the Amending Act, is illegal and void.

14. It is further contended that the provisions of Section 3-C(2) of the Act are unconstitutional, and arbitrary, as the procedure for disposal of objections is unjust and arbitrary. The right of landowners to raise objections cannot be curtailed by confining the objections to the “user” of the land. This limited right to file objections is in-comprehensible and should, therefore, be struck down.

CWP No. 626 of 2006

15. The petitioner herein claims to be the owner of land measuring 17 kanals and 8 marlas, situated in village Kherkidula, Tehsil and District Gurgaon. The petitioner also asserts that it has constructed a factory, after grant of permission for change of land use on 13.9.2005 by the Director, Town and Country Planning, Haryana. Arguments, raised against the acquisition, are in essence, no different to those raised by counsel for the petitioner in CWP No. 11461 of 2005 and, therefore, do not merit repetition.

CWP No. 10687 of 2006

16. The petitioners herein claim to have purchased land, measuring 8100 sq. yards on 8.9.2004 and Page: 37914.10.2004 They, however, do not assert the existence of any structure and in essence, adopt the arguments, raised by counsel for the petitioner in CWP No. 11461 of 2005.

Counsel for the National Highway Authority, on the other hand, submits that the Delhi-

Gurgaon Section of NH-8 from KM 14.300 to KM 42.000 provides a vital link to the Domestic and International Terminal of Indira Gandhi International Airport. It would also serve the rapidly expanding city of Gurgaon and provide connectivity from Delhi to Jaipur. As the available infrastructure was insufficient to accommodate the volume of traffic, it was decided to augment the capacity of the Delhi-Gurgaon Section of NH-8 on a build, operate and transfer basis. Accordingly, to assess the technical feasibility and financial viability, a detailed project report was called from M/S RITES Ltd in June 1997. The report was submitted in June 2000 only with respect to KM 15.000 to KM 36.300 The project was, however, extended upto KM 42.000 in Haryana by upgrading the already existing four lane highway, completed under an Asian Development Bank Funded Project). The final report was submitted in October 2001. The National Highway Authority invited international bids for the project costing Rs. 555 crores so as to select a concessionaire to execute the work on a build, operate and transfer basis for a period of 20 years, including a construction period of 30 months. The project consists of 9 fly overs and 2 underpasses. The work was awarded to M/S. Jaypee DSC Ventures Ltd (respondent No. 2) on 18.4.2002

17. It is further submitted that the existing entry point is at KM 42.000 and, therefore, the Toll Plaza has to be constructed within KM 42.000 The total length of the Toll Plaza is 810 meters. The length of a KM is 1000 meters and, therefore, the site of the Toll Plaza, cannot be altered or changed. It is further argued that the Toll Plaza road ends at KM 42.000 In case the Toll Plaza is to be shifted to another site, the road would have to be extended or curtailed, thus, necessitating the issuance of fresh tenders and, therefore, jeopardizing the entire project.

18. As regards the plea of mala fide, it is submitted that this plea lacks material particulars as facts necessary to establish a plea of mala fide have not been pleaded. Even otherwise, mala fides are alleged against respondent No. 4.

19. As regards the allegation that the Toll Plaza was repeatedly shifted so as to ensure its location opposite the petitioners' building, it is submitted that shifting of the site, was minimal and made prior to the issuance of the notification, under Section 3 of the Act. The allegation that the Toll Plaza was shifted, so as to acquire the petitioners' land/building is, therefore, incorrect and should be rejected. It is further submitted that the petitioners did not raise any plea of mala fide or a plea akin thereto in the objections, filed before the competent authority. These pleas appear to be an after thought. It is further submitted that detailed reasons have been assigned for alteration of the center line (mid line), and the changes in the site of the toll plaza. The concessionaire agreement between the National Highway Authority and respondent No. 4 was executed on 18.4.2002 Schedule A of the agreement provides that the project shall consist of a Toll Plazas at KM 42 and KM24 and a small arrangement for toll collection at Indira Gandhi International Airport link road for traffic to Indira Gandhi International Airport. The exact location was to be decided by the concessionaire with the approval of the National Highway Authority of India. Clause 4.1 of Schedule C to the Concessionaire Agreement stipulates the location, and the technical description of these Toll Plazas. The Toll Plaza is required to have a closed system of 16 lanes, each lane being 4.0 meter wide etc.

20. It is further submitted that there is no question of intentionally placing the toll plaza opposite the petitioners' building. The selection of the site depends upon numerous factors. In a high level meeting of the officers of the Ministry of Road, Transport and Highways with the National High Authority and the Government of Haryana on 31.8.2004, the feasibility of shifting the toll plaza was considered and rejected. Subsequently, the task of checking technical feasibility of the proposed toll plaza was entrusted to a Director General, Road Development. A joint inspection was carried out with an independent consultant on 25.3.2005 The report dated 26.11.2005 concluded that the location and the layout design of the toll plaza was in accordance with the provisions of the Concessionaire Agreement, technical operations and site considerations. It is further submitted that during the four laning of the highway under the Asian Development Bank Loan Assistance, two lanes were added on the left side of the Delhi-Jaipur side instead of adding one lane on each side. As a result, the median of the existing four lane carriageway was not in the center of the right of way. The implementation of the present project, therefore, led to a shifting of the median. Another reason for shifting the median was the asymmetric condition of the road.

21. It is further pointed out that the location of a toll plaza was not selected arbitrarily. The placement and positioning of a toll plaza depends on the topography of land, geometrical alignment of the road, super elevation, the strata and general land conditions in the vicinity of the toll plaza etc. Another factor is the design of the toll plaza that includes the lane width, platform size, lanes and slip lengths etc.

22. The selection of the present site was neither arbitrary nor irrational. The location of the toll plaza Page: 380was shifted on 16.10.2003 from KM 41.012 to KM 41.712 i.e within KM 42, as the plaza ended 400 meters short of KM 42.000 The earlier location was close to a curve in KM 41 which gave a curvilinear view and was accident prone, as the toll plaza appeared to be farther than it actually was. On 3.5.2004, the location was moved from KM 41.712 to 41.490 as the plaza was extended beyond KM 42 which was beyond the scope of the concessionaire agreement.

23. It is further submitted that the lane area is 101.8 meters and does not include the requirement of land to develop curbs, embankments, slopes, drainage and plan for services/utilities. The Toll Plaza has to provide two slow free lanes which add to the width of the toll plaza services/utilities, sale office, parking area on each side with separate zones for cars and heavy vehicles, water supply, fencing, power supply, toilets, police and guard room, generator room, toll plaza supporting room, as detailed in Schedule C.

24. It is further contended that as the site of the toll plaza was selected after due consideration, which included the possibility of locating it at a distance from the petitioners' property and detailed surveys by experts were conducted, the petitioners' contention that the toll plaza was intentionally located opposite their buildings, is devoid of any truth. The additional affidavit, filed by the respondents, sets out in detail the reasons that lead to shifting of the toll plaza. It is a mere coincidence that the petitioners' building is situated opposite the toll plaza. A part of the petitioners' building falls within the utilities/services to be developed for the toll plaza and would, therefore, have to be demolished. The other part of the building would be used to house the toll plaza building.

25. In response to the assertion that the petitioner's building (in CWP No. 11461 of 2005) is 55,000 sq. feet, whereas the concessionaire requires a smaller building, it is submitted that the entire matter has been considered by the concessionaire, as also by technical experts and, therefore, does not call for interference. Even otherwise, the concessionaire has to eventually transfer the building to the National Highway Authority, after 20 years, in accordance with the agreement.

26. As regards the plea of vires, it is submitted that there is no absolute rule, whether constitutional or legal that requires all acquisitions to follow the procedure, prescribed by the Land Acquisition Act. Parliament or a State Legislature may and do, in the exercise of their powers, prescribe different procedures for different types of acquisitions, dependent upon the nature of acquisition. In the present case, though the procedure for acquisition is a departure from the procedure, prescribed under the Land Acquisition Act, but this alone would not render the provisions of the Act ultra vires. It is further argued that reference of any dispute as to the amount of compensation payable, to an Arbitrator under the Arbitration and Conciliation Act, 1996 would speed up the process of determining compensation. The procedure under the Land Acquisition Act, is by its very nature, fraught with delays. Parliament, therefore, in its wisdom, and in the exercise of its powers, decided to prescribe a different procedure for hearing and deciding objections, doing away with the cumbersome procedure of repeated objections, notices, hearings etc. It is further submitted that the offer of compensation to a landowner may not be titled as an award but is in essence no different. The fact that the applicability of the Land Acquisition Act has been specifically excluded is indicative of a clear and unequivocal legislative intent to depart from the procedure under the Land Acquisition Act. It is further argued that the absence of a right to appeal as provided under the Land Acquisition Act, does not render the Amending Act illegal. An appeal is a creation of a statute, absence thereof would not attract the charge of an arbitrary or illegal exercise of legislative power. It is further submitted that the right to raise objections has been confined to the user of the land so as to prevent unnecessary and illogical objections with respect to the acquisition. It is further argued that reference of the dispute with respect to compensation to an Arbitrator, in accordance with the provisions of the Arbitration and Conciliation Act, 1996, has been provided so as to shorten the procedure for determination of compensation and the absence of an agreement is immaterial.

27. As regards the absence of any provision in the statute for payment of solatium and interest, counsel for the Union of India submits that the special nature and purpose of acquisition, namely, acquisition for national highways, would not protect the Act from Article 14 of the Constitution. The need to upgrade infrastructure, namely, National Highways is urgent and, therefore, a special purpose that cannot be achieved expeditiously under the Land Acquisition Act. Parliament, therefore, was justified in treating the Amending Act as sufficiently different from acquisition under the Land Acquisition Act so as to deny solatium and interest to landowners. It is further submitted that under the impugned statute the landowners would receive compensation quickly and any disputes attendant thereto would be resolved expeditiously, by an arbitrator. The need, therefore, to provide solatium as a measure of solace was dispensed. The provisions for acquisition, under the Act fall within the expression "authority of law" appearing in Article 300A of the

Constitution, and as property is no longer a fundamental right, challenge to the denial of solatium and interest on the plea that such a denial violates Article 14 of the Constitution, is not sustainable.

Page: 38128. The purpose of the Act is to develop a national asset i.e national highways and, therefore, distinguishes it from acquisition under the Land Acquisition Act. The mere fact that solatium is not to be paid would not render the Act or its provisions ultra vires.

29. It is further argued that the absence of an appeal cannot be a ground to declare the Act ultra vires. Even otherwise, the award by the Arbitrator would be an award under the Arbitration Act, which provides for an appeal.

30. Counsel for respondent No. 4, the concessionaire, submits that the allegations of mala fide are an afterthought. It is categorically denied that any officer of respondent No. 4 approached the petitioners for lease of their building. The petitioners' land was already notified for acquisition and, therefore, the allegations of mala fide are clearly an after thought. Sufficient reasons have been assigned for shifting the Toll Plaza adjoining the petitioners' land.

30A. We have heard learned counsel for the parties and perused the paper book.

31. The submissions of counsel for the petitioners can be broadly divided into two segments, the first being a challenge to the acquisition proceedings on the ground of mala fides, non application of mind and an arbitrary exercise of statutory and executive power and second to the vires of the Amending Act.

32. As regards the first segment, counsel for the petitioners have laid great emphasis upon the repeated alterations of the location of the toll plaza and the center line of the road. It is submitted that this repeated change was effected with mala fide intent so as to ensure that the toll plaza came to be located opposite the petitioners' industrial buildings.

32A. We express our inability to accept these contentions. As noticed in the arguments, addressed by counsel for the respondents, and duly supported by the counter affidavit and two additional affidavits, sufficient and satisfactory explanation has been put-forth by the respondents to explain the changes in the site of the toll plaza and for alteration of the center line. After considerable deliberations that commenced in 1995, reports by consultants, both technical and financial, it was proposed to have an express highway with three toll plazas. A global tender notice was published inviting offers for construction of an express highway on a build, operate and transfer basis with Toll plazas at Indira Gandhi International Airport road junction for traffic going towards the Indira Gandhi International Airport, at KM 24 (Delhi-Gurgaon border) and at KM 42 (the toll plaza in dispute). However, no definite site for the toll plaza was identified and a conceptual drawing was provided to the bidders. Respondent No. 4 was selected as the concessionaire and a concession agreement, dated 18.4.2002 was executed for conversion of the Delhi-Gurgaon Section of NH-8 into an access controlled 8/6 lane highway from KM 14.300 to KM 42.000 on a build, operate and transfer basis. Schedule A, in addition to other particulars, provides for the building, operation and maintenance of the Toll Plazas. The schedule incorporates a clause

that the locations of the toll plaza would be determined by the concessionaire with the approval of the National Highway Authority of India. Clause 4.1 of Schedule C provides for location, sizing and technical descriptions of toll plazas, details whereof are reproduced herein under. The agreement requires that the toll plaza to be constructed within KM 42. It would be necessary to mention here that prior to the acquisition of land, a high level meeting of the officers of the Ministry of Road, Transport and Highways was held with the National Highway Authority of India and the Government of Haryana on 31.8.2004 Various proposals including a proposal to shift the Toll Plazas at KM 24 and KM42 on the Delhi-Gurgaon Section of NH- 8, were discussed. It was, however, decided that these toll plazas cannot be shifted. A former Director General (Road Development) was assigned the task to ascertain the technical feasibility of the Tell Plaza at KM 42. A joint inspection was conducted with independent consultants on 23.5.2005 and a report, dated 26.11.2005 approved the location of the toll plaza. A perusal of the affidavit further discloses that the possibility of reducing the area was explored but was not found feasible. The additional affidavit further details the reasons for alteration of the location of the toll plaza from time to time upto the final location referred to herein above. It would be appropriate to extract the relevant part of the affidavit as under :—

Revision No. Dated Reason 1 16.10.03 Location of Toll Plaza moved from KM 41.012 to KM 41.712 This was done to locate the Toll Plaza at KM 42 as the plaza was ending over 400m short of KM 42.000, This allowed the plaza to be clearly visible in both directions. There was a curve near KM 41 which gave curvilinear view and was accident prone as the Plaza appear to be farther than it actually was to a motorist approaching Toll Plaza with high speed (It being an Express Way has been designed for 85 KMPH Speed) Page: 3822 03/05/04 Location of Plaza moved from KM 41.712 to KM 41.490 This was done as the plaza was extending beyond the KM 42.000 point and this would have placed the Toll Plaza beyond KM 42.000 point. Besides, the Super Elevation in this Section of the road around KM 42 would have required a significant amount of work to be done in the stretch which was beyond the scope of Concession Agreement. 3 14.6.04 The Center Line was shifted to the RHS to align the medians on either side of the Plaza to accommodate the High Speed Non Stop traffic. The center lanes of the plaza are Non Stop Lanes to reduce queue lengths and Toll Plaza Clearance in minimum time. The clearance in this Toll Plaza is 5-7 seconds. 4 07/10/04 Removal of Auxiliary building from RHS and reduce the number of lanes from 22 to 18, the Honourable IC indicated that these were not necessary. 5 18.7.06 This Revision added the boundary dimensions to the drawing clarity and better understanding.

33. It is, thus, apparent that the entire matter was considered in detail by experts and eventually the best site, namely, the site opposite the petitioner’s building was selected. We find no arbitrary exercise of administrative or statutory power or any mala fide as would require interference. Technical matters are best left to the wisdom of experts. Courts, in our considered opinion, should not transpose their own perception or opinion on technical matters and must resist the temptation to interfere, except where the decision is palpably arbitrary, unreasonable, illogical or violates any law. We find no reason as would lead us to a conclusion that the decision to locate the toll plaza opposite the petitioner’s land/building suffers from any of the above infirmities. As noticed herein above, surveys were conducted and consultants were appointed. They submitted detailed reports and even considered the

possibility of shifting the toll plaza, but to no avail. As per the agreement, the toll plaza has to be constructed within KM 42. The length of the toll plaza is 825 meters and, as a kilometer measures 1000 meters, there is apparently very little space to manoeuvre and manipulate the toll plaza's location so as to ensure that it is not located opposite the petitioners' existing building.

34. As regards the other contention that the center line was shifted towards the petitioners' building so as to ensure that a part of the building fell within the line required for the toll plaza, suffice it to say that the respondents have put-forth a cogent and reasonable explanation for the said change, namely, that the road was initially four laned, but two lanes were added to the left hand side of the Delhi-Jairpur side instead of adding one lane on each side. Thus, the median of the four lane carriage-way was not in the center of the right of way. The construction of the express way led to the shifting of the median. Another reason, put-forth, is the asymmetric condition of the road. The mere fact that the center line was shifted towards the petitioners' building, cannot by itself be a ground sufficient to infer mala fides or an arbitrary exercise of administrative powers.

35. As regards the disposal of objections, we find no reasons to interfere. The order, deciding objections, though brief, has to be read in the context of the previous recommendations of the prescribed authority and the Deputy Commissioner. These officers sought a re-location of the toll plaza. Their recommendation was considered and rejected. Consequently, in view of the limited right available as regards objections, the prescribed authority had no option but to reject the objections.

36. Another submission that the impugned notification described the building as agricultural land, thus, disclosing non application of mind, cannot be accepted. Section 3(b) of the Act defines "land" as land and things attached thereto. Consequently, reference to the petitioners' building as agricultural land would not render the notification illegal.

37. Another plea, namely, the plea of mala fides, levelled against respondent No. 4, remains unsubstantiated for want of material particulars.

38. We would now proceed to deal with the plea challenging the vires of the National Highways Act, 1956, as amended by Act 16 of 1997.

39. The main thrust of the petitioners' arguments is their plea, that the absence of a statutory provision, providing for the payment of solatium and interest on the market value of compensation, in the impugned statute, violates Article 14 of the Constitution.

40. Counsel for the petitioners assert, as noticed herein before, that the public purpose underlying the provisions for acquisition in the impugned statute is the acquisition of land for construction of national highways, a public purpose that can be achieved equally under the Land Acquisition Act. The denial, therefore, of solatium and interest to landowners whose lands are acquired under the impugned statute violates Article 14 of the Constitution of India. The petitioners, in essence, assert a plea of hostile discrimination by contending that in the absence of a reasonable classification, based upon an intelligible differentia between the public purpose that underlines the two statues, the impugned statute violates

the equality clause contained in Article 14 of the Constitution, by denying solatium and interest, for compulsory acquisition of Page: 383land.

41. The power of the State to compulsorily appropriate private property, divesting its owner of proprietary rights, so as to achieve a public purpose flows from the doctrine of Eminent Domain. The bedrock of the exercise of the power of eminent domain is the existence of a public purpose. The doctrine of Eminent Domain has found statutory expression in the Land Acquisition Act, 1894, a pre-independence statute, and a host of other statutes such as Town Improvement Acts, Municipal laws, statutes relating to acquisition of land for the defence of India like the Requisition and Acquisition of Immovable Property Act, 1952 (for short herein after referred to as “the RAIP Act”), the Defence of India Act, and other similar statutes. The doctrine of Eminent Domain also finds expression in the Constitution of India, as Entry 42 of list III confers powers of acquisition and requisition of property upon legislatures both the Union and State.

42. As originally enacted in the Constitution, the right to property was a fundamental right. However, with the deletion of Article 19(1)(f) from Chapter III of the Constitution, property was denuded of its status as a fundamental right. Article 300-A of the Constitution, however, mandates that no person shall be deprived of his property except by authority of law.

43. Parliament and State Legislatures have enacted statutes that provide for compulsory acquisitions of land, for a public purpose. The principle that underlines such statutes is the endeavour of a State to achieve a public purpose. The nature of the public purpose may vary as may the mode and manner for acquisition, but underlying every such statute is a public purpose. As regards the question of compensation, all such statutes provide for payment of market value or just compensation generally awarded upon principles drawn from or based upon the principles contained in the Land Acquisition Act. Apart from the Land Acquisition Act, there exist three types of statutes that provide for compulsory acquisition of land :— namely statutes that incorporate the provisions of the Land Acquisition Act, statutes that make the provisions of the Land Acquisition Act applicable by reference, and statutes that specifically exclude the provisions of the Land Acquisition Act.

44. The impugned statute falls in the last category. Section 3(J) of the Act, postulates that nothing in the Land Acquisition Act, 1894 shall apply to an acquisition under this Act, thus emphatically ousting even a remote possibility of payment of solatium and interest. Section 3G(5) of the Act that provides for assessment and payment of compensation does not provide for payment of solatium and interest. Before we proceed to examine the statutory provisions of the impugned statute, and the Land Acquisition Act, and answer the question posed before us, it would be appropriate to examine in detail various pronouncements by the Hon’ble Supreme Court, on the question whether a public purpose can govern the amount of compensation, more particularly grant of solatium and interest and in what circumstances the non grant of solatium and interest would render such an enactment immune from the charge of violating the equality clause enshrined in Article 14 of the Constitution.

45. The Hon'ble Supreme Court in State of West Bengal v. Mrs Bella Banerjee, AIR 1954 SC 170, held that the power to lay down principles that would govern the determination of compensation vest with the legislature but the power to determine whether the principles incorporate all elements which make up the true value of the property is to be adjudicated by Courts. A relevant extract from the above referred judgement is reproduced so as to place the above conclusion in its correct perspective :—

*"6. We are unable to agree with this view. While it is true that the legislature is given the discretionary power of laying down the principles which should govern the determination of the amount to be given to the owner for the property appropriated, such principles must ensure that what is determined as payable must be compensation, that is a just equivalent of what the owner has been deprived of. Within the limits of this basic requirement of full indemnification of the expropriated owner, the constitution allows free play to the legislative judgment as to what principles should guide the determination of the amount payable. Whether such principles take into account all the elements which make up the true value of the property appropriated and exclude matters which are to be neglected, is a justiciable issue to be adjudicated by the Court. This, indeed, was disputed."*

46. It is, therefore, apparent that it would fall to the jurisdictional domain of a Court to adjudicate, whether the principles that govern the determination of compensation to be assessed under an impugned statute have taken into account all elements that constitute the true value of the appropriated property.

47. Where a statute proposes to grant market value alone, as in the impugned statute, without awarding solatium and interest or disguises the market value as compensation, would such a statute violate the provisions of equality enshrined in Article 14 of the Constitution? The answer to the said query lies in judgments of the Hon'ble Supreme Court referred to herein after.

48. In P. Vajravelu Mudaliar v. The Special Deputy Collector for Land Acquisition West Madras, Page: 384AIR 1965 SC 1017, while upholding legislative power to make a reasonable classification for the purpose of legislation and while considering whether different rates of compensation could be granted for different public purposes, the Hon'ble Supreme held that such a classification must pass the following tests :—

*(i) the classification must be founded on an intelligible differentia which distinguishes persons and things left out of the group; and*

*(ii) the differentia must have a rational relation to the object sought to be achieved by the statute in question."*

49. It was also held that to ascertain whether the reasonable classification passes these tests, the following questions would require to be answered :—

*(1) what is the object of the Act?*

*(2) what are the differences between persons whose lands are acquired for the housing*

*schemes and those whose lands are acquired for purposes other than housing schemes or between the land so acquired? and*

*(3) whether those differences have any reasonable relation to the said object. On a comparative study of the Principal Act and the Amending Act, we have shown earlier that if a land is acquired for a housing scheme under the Amending Act, the claimant gets a lesser value than he would get for the same land or a similar land if it is acquired for a public purpose like hospital under the Principal Act."*

50. Thereafter, the Hon'ble Supreme Court proceeded to evaluate the two Acts i.e the Principal Act and the Amending Act and held that the alleged differences had no reasonable relation to the objects sought to be achieved under the two Acts and it was one thing to say that the existing differences between persons and properties have a reasonable relation to the objects sought to be achieved and it is a totally different thing to say that the object of the Act itself created the differences and, therefore, the Amending Act was held to infringe Article 14 of the Constitution of India. A relevant extract from the judgment in P. Vajravelu Mudaliar's case (supra) reads as follows :—

*"…….. On a comparative study of the Principal Act and the Amending Act, we have shown earlier that if a land is acquired for a housing scheme under the Amending Act, the claimant gets a lesser value than he would get for the same land or a similar land if it is acquired for a public purpose like hospital under the Principal Act. The question is whether this classification between persons whose lands are acquired for housing schemes and persons whose lands are acquired for other public purposes has reasonable relation to the object sought to be achieved.*

*xx xx xx xx xx xx xx*

*From whatever aspect the matter is looked at, the alleged differences have no reasonable relation to the object sought to be achieved. It is said that the object of the Amending Act in itself may project the differences in the lands sought to be acquired under the two Acts. This argument puts the cart before the horse. It is one thing to say that the existing differences between persons and properties have a reasonable relation to the object sought to be achieved and it is totally a different thing to say that the object of the Act itself created the differences. Assuming that the said proposition is sound, we cannot discover any differences in the people owning lands or in the lands on the basis of the object. The object is to acquire lands for housing schemes at a low price. For achieving that object, any land falling in any of the said categories can be acquired under the Amending Act. So too, for a public purpose any such land can be acquired under the Principal Act. We, therefore, hold that discrimination is writ large on the Amending Act and it cannot be sustained on the principle of reasonable classification. We, therefore, hold that the Amending Act clearly infringes Art, 14 of the Constitution and is void."*

51. While considering a similar challenge, in Balammal v. State of Madras, AIR 1968 SC 1425, the Hon'ble Supreme Court held as follows :—

*"7. But, in our judgment, counsel for the owners are right in contending the sub-cl. (2) of Cl.*

*6 of the Schedule to Act 37 of 1950, insofar as it deprived the owners of the lands of the statutory addition to the market value of the lands under S. 23(2) of the Land Acquisition Act is violative of the equality clause of the Constitution, and is on that account void. If the State had acquired the lands for improvement of the town under the Land Acquisition Act the acquiring authority was bound to award in addition to the market value 15 per cent solatium under S. 23(2) of the Land Acquisition Act. But by acquiring the lands under the Land Acquisition Act as modified by the Schedule to the Madras City Improvement Trust Act 37 of 1950 for the Improvement Trust which also is a public purpose, the owners are it is claimed deprived of the right to the statutory additions. An owner of land is ordinarily entitled to receive the solatium in addition to the market value for compulsory acquisition of his land, it is acquired under the Land Acquisition Act, but not if it is acquired under the Madras City Improvement Trust Act. A clear case of discrimination which Page: 385infringes the guarantee of equal protection of the law arises and the provision which is more prejudicial to the owners of the lands which are compulsorily acquired must on the decisions of this court, be deemed invalid."*

52. The correctness of the aforementioned judgments eventually came up for consideration before a Constitution Bench of the Hon'ble Supreme Court in Nagpur Improvement Trust v. Vithal Rao, AIR 1973 SC 689. While considering whether the Nagpur Improvement Trust Act, 1936, discloses a valid and reasonable classification so as to uphold the denial of solatium and interest, the Hon'ble Supreme Court answered this question as also the question as to what would be a reasonable classification so as to justify the award/payment of different rates of compensation and held as follows :—

*"23. It is now well-settled that the State can make a reasonable classification for the purpose of legislation. It is equally well-settled that the classification in order to be reasonable must satisfy two tests (i) the classification must be founded on intelligible differentia and (ii) the differentia must have a rational relation with the object sought to be achieved by the legislation in question. In this connection it must be borne in mind that the object itself should be lawful. The object itself cannot be discriminatory, for otherwise, for instance, if the object is to discriminate against one section of the minority the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved.*

*24. What can be reasonable classification for the purpose of determining compensation if the object of the legislation is to compulsory acquire land for public purposes?*

*25. It would not be disputed that different principles of compensation cannot be formulated for lands acquired on the basis that the owner is old or young, healthy or ill, tall or short, or whether the owner has inherited the property or built it with his own efforts, or whether the owner is a politician or an advocate. Why is this sort of classification not sustainable? Because the object being to compulsory acquire for a public purpose, the object is equally achieved whether the land belongs to one type of owner or another type.*

53. Thereafter, the Hon'ble Supreme Court framed a question, which in our opinion is of paramount significance to the present controversy, namely, whether the public purpose

could determine the amount of compensation, and answered the question in the following manner :—

*26. Can classification be made on the basis of the public purpose for the purpose of compensation for which land is acquired? In other words can the legislature lay down different principles of compensation for lands acquired say for a hospital or a school or a Government building? Can the legislature say that for a hospital land will be acquired at 50% of the market value, for a school at 60% of the value and for a Government building at 70% of the market value? All three objects are public purposes and as far as the owner is concerned it does not matter to him whether it is one public purpose or the other. Article 14 confers an individual right and in order to justify a classification there should be something which justifies a different treatment to this individual right. It seems to us that ordinarily a classification based on the public purpose is not permissible under Article 14 for the purpose of determining compensation. The position is different when the owner of the land himself is the recipient of benefits from an improvement scheme, and the benefit to him is taken into consideration in fixing compensation. Can classification be made on the basis of the authority acquiring the land? In other words can different principles of compensation be laid if the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government? It seems to us that the answer is in the negative because as far as the owner is concerned it does not matter to him whether the land is acquired by one authority or the other.*

*27. It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts would enable the State to give one owner different treatment from another equally situated the owner who is discriminated against, can claim the protection of Art. 14.*

*28. It was said that if this is the true position the State would find it impossible to clear slums, to do various other laudable things. If this argument were to be accepted it would be totally destructive of the protection given by Art. 14. It would enable the State to have one law for acquiring lands for hospital, one law for acquiring lands for schools, one law acquiring lands for clearing slums, another for acquiring lands for Government building one for acquiring lands in New Delhi and another for acquiring lands in Old Delhi. It was said that in many cases, the value of the land has increased not because of any effort by the owner but because of the general development of the city in which the land is situated. There is no doubt that this is so, but Art. 14 prohibits the expropriation of Page: 386the unearned increment of one owner while leaving his neighbour untouched. This neighbour could sell his land and reap the unearned increment. If the object of the legislation is to tax unearned increment it should be done throughout the State. The State cannot achieve this object piecemeal by compulsory acquisition of land of some owners leaving others alone. If the object is to clear slums it cannot be done at the expense of the owners whose lands are acquired, unless as we have said the owners are directly benefited by the Scheme. If the object is to build hospitals it cannot be done at the expense of the owners of the land which is acquired. The hospital, schools etc. must be built at the expense of the whole community.*

*29. It will not be denied that a statute cannot tax some owners of land leaving untaxed*

*others equally situated. If the owners of the land cannot be taxed differently how can some owners be indirectly taxed by way of compulsory acquisition? It is urged that if this were the law it will tie the hands of the State in undertaking social reforms. We do not agree. There is nothing in the Constitution which debars the State from bettering the lot of millions of our citizens. For instance there is nothing to bar the State from taxing unearned increment if the object is to deny owners the full benefit of increase of value due to development of a town. It seems to us, as we have already said, that to accede to the contentions of the appellant and the States would be destructive of the protection afforded by Art. 14 of the Constitution. The States would only have to constitute separate acquiring bodies for each city, or Division or indeed to achieve one special public purpose and lay down different principles of compensation"*

54. A perusal of the preceding paragraphs leave no manner of doubt that the nature of the public purpose shall not determine the amount of compensation except where the public purpose, set out in the statute, discloses a classification founded upon an intelligible differentia having a rational relation with the object sought to be achieved by the legislation in question. Another conclusion that emerges is that the object itself cannot be discriminatory as discrimination cannot be justified on a ground that it is a reasonable classification and has a rational relation to the object sought to be achieved. It was also held that the state cannot prescribe different rates of compensation for different public purposes as the landowner has no concern with the nature of the public purpose.

55. In Om Prakash v. State of U.P, AIR 1974 SC 1202, the Hon'ble Supreme Court, after placing reliance upon the judgment in Nagpur Improvement Trust case (supra) and held as follows :—

*"16. There can be no dispute that the Government can acquire land for a public purpose including that of the Mahapalika or other local body, either under the unmodified Land Acquisition Act, 1894, or under that Act as modified by the Adhiniyam. If it chooses the first course, then the land-owners concerned will be entitled to better compensation, including 15% solatium; the potential value of the land etc; nor will there be any impediment or hurdle – such as that enacted by Section 372(1) of the Adhiniyam – in the way of such landowners, dissatisfied by the Collector's award, to approach the Court under Section 18 of that Act. If the Government, for the same purpose, resorts to the Land Acquisition Act as modified by the Adhiniyam, the land-owner (s) concerned will suffer from all the disabilities or restrictions envisaged by the modifications. In this way, the impugned legislation enables the Government to discriminate in the matter of acquiring land between similarly situated landowners.*

*17. The impugned modifications do not satisfy the well-known tests of reasonable classification which is permissible for the purpose of legislation. It is not founded on any intelligible differentia, nor has this differentia a rational nexus with the object sought to be achieved, namely, compulsory acquisition of land for a public purpose. It is not necessary to dilate further on this point as this matter stands concluded by this Court's decision in Nagpur Improvement Trust's case by the ratio of which we are bound."*

56. In State of Kerala v. T.M Peter, AIR 1980 SC 1438, after placing reliance upon the judgments in P. Vajravelu Mudaliar's case (supra), Nagpur Improvement Trust case (supra), and Om Prakash case (supra), the Hon'ble Supreme Court summed up the principles of law with respect to equality in matters of compensation in the following terms :—

*"19. The principle that may be distilled from these rulings and the basics of 'equality' jurisprudence is that classification is not permissible for compensation purposes so long as the differentia relied on has no rational relation to the object in view viz. reduction in recompense.*

*20. Is it rational to pay different scales of compensation, as pointed out by Sikri, C.J in the Nagpur Improvement Trust case, depending on whether you acquire for housing or hospital, irrigation scheme or town improvement, school building or police station? The amount of compensation payable has no bearing on this distinction, although it is conceivable that Page: 387classification for purposes of compensation may exist and in such cases the statute may be good. We are unable to discern any valid discremen in the Town Planning Act vis-a-vis the Land Acquisition Act warranting a classification in the matter of denial of solatium.*

*21. We uphold the Act in other respects but not when it deals invidiously between two owners based on an irrelevant criterion viz. the acquisition being for an improvement scheme. We are not to be understood to mean that the rate of compensation may not vary or must be uniform in all cases. We need not investigate this question further as it does not arise here although we are clear in our mind that under given circumstances differentiation even in the scale of compensation may comfortably comport with Art. 14. No such circumstances are present here nor pressed. Indeed, the State, realising the force of this facet of discrimination offered, expiratory fashion, both before the High Court and before us, to pay 15 % solatium to obliterate the hostile distinction."*

57. In P.C Goswami v. Collector Of Darrang, AIR 1982 SC 1214, the Hon'ble Supreme Court held as follows :—

*"7. There is, however, one contention advanced by Mr. Nandy which, in our opinion, deserves to be accepted. He contends that in the matter of payment of solatium, no discrimination can be made between acquisitions under the Assam Act and those made under the Land Acquisition Act. Section 4(3) of the Assam Act itself says that if a land is acquired under that Act, the State Government shall be empowered to apply to such land any of the provisions of the Land Acquisition Act, 1894. In a judgment (Judgment dated April 1, 1980 in Civil Appeal No. 848 of 1977 (reported in AIR 1980 SC 1438) entitled State of Kerala v. T.M Peter) given by this court very recently, to which Mr. Nandy has drawn our attention, it was held that there is no justification for discriminating between an acquisition under one Act and an acquisition under another Act in so far as payment of solatium is concerned. This should be more so in respect of acquisition to which the State Government is empowered to extend the provision of the Land Acquisition Act. Mr. Naunit Lal has not been able to controvert this position in view of the judgment to which we have referred above. We accordingly direct that the State Government shall pay to the appellant solatium*

*at the rate of 15 per cent on the compensation awarded to him by the High Court. Except for this modification, the decree passed by the High Court is confirmed. The order of remand passed by the High Court will stand."*

58. In Maharashtra State Road Transport Corporation v. State of Maharashtra, AIR 2003 SC 1909, the Hon'ble Supreme Court held as follows :—

*"20. We have a similar situation here. The ratio and reasoning in U.P.A.E.V Parishad case applies with equal, if not greater force, to the acquisition under Chapter VII of MRTP Act of which S. 126(3) is a part. In fact the modifications made by MRTP Act to the provisions of L.A Act are minimal and at any rate, less substantial than those effected by U.P Adhiniyam except in regard to the urgent acquisition dealt with by S. 129. The matters covered by the earlier Act have not been specifically referred to or restated because it is already ordained by S. 126(3) that the provisions of L.A Act should be applied to the acquisition of land notified under the MRTP Act. As regards the determination of compensation, there are no modifications of substantial or drastic nature. The modification in S. 126(3) relating to the date of ascertainment of market value is only warranted in the context of the scheme of the Act. Section 126(4) read with the proviso to sub-sec. (2) is aimed at giving a fair deal to the land holder while at the same time reserving the power to issue a fresh declaration notwithstanding the expiry of one year. If such fresh declaration is issued, the market value shall be assessed with reference to the date of publication of fresh declaration. In our view, the provisions contained in S. 126 or any other provisions occurring in Chapter VII (discussed supra), far from manifesting an intention not to apply the provisions of L.A Act as amended from time to time vis-a-vis compensation seem to suggest that the legislature did not intend to make a marked departure from the L.A Act on the subject of compensation and other allied monetary benefits. Reiterating the observation made in U.P Awas Parishad case in para 31, we hold that there is nothing in the MRTP Act which precludes adopting the construction that the provision of L.A Act, as amended by 1984 Act relating to award of compensation, would apply with full vigour to the acquisition of land under that Act. Unless such interpretation is placed on S. 126(3) the acquisition under MRTP Act will be afflicted with the vice of invidious discrimination and palpable arbitrariness hit by Article 14 of the Constitution. If the interpretation which is sought to be placed by the appellant is accepted S. 126(3) itself is liable to be struck down as violative of Article 14 in which case the entire process of acquisition contemplated by Chapter VII will become unworkable and ineffectual. The land-holders whose lands are acquired under Chapter VII of Page: 388MRTP Act cannot, in our view, be subjected to a disability or disadvantage in the matter of obtaining monetary recompense for the deprivation of land depending upon the nature of public purpose or the authority for whose benefit the land is acquired."*

59. In Savitri Cairae v. U.P Avas Evam Vikas Parishad, AIR 2003 SC 2725, the Hon'ble Supreme Court held as follows :—

*"9. It is true that ordinarily equality clause enshrined in Art. 14 of the Constitution of India cannot be invoked in the matter of enforcement of a State Legislation vis-a-vis a Parliamentary Legislation and/or the legislation of an another State.*

*12. But the said decisions have no application in the instant case. The Adhiniyam provides for acquisition of land in terms of Land Acquisition Act. By reason of legal fiction created under the Adhiniyam, the Parishad is deemed to be a local authority. The Parishad invokes the provisions of the Land Acquisition Act in its capacity as a local authority under the Land Acquisition Act. The State issue a notification in terms of S. 29 of the Adhiniyam and make declaration in terms of S. 32 thereof which are on similar terms as contained in Ss. 4 and 6 of the Land Acquisition Act respectively.*

*13. The purpose for acquisition of land both under the Parliamentary Act and the State Act is the same. An order of acquisition is to be passed only by the State. In Nagpur Improvement Trust v. Vithal Rao, (1973 (3) SCR 39) a 7-Judges Bench of this Court categorically held that an owner of the land is not concerned with the nature of the public purpose that is whether land is acquired for a hospital or for school or for housing. So long as the acquiring authority, and the public purposes where-for lands are acquired are the same; in view of the fact that provisions have been made for payment of compensation in terms of the provisions of Land Acquisition Act, although acquisition is made under the State Act, but if higher amount of compensation is payable under the latter, such higher amount of compensation will be payable. It was held:*

*"It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts could enable the State to give one owner different treatment from another equally situated the owner who is discriminated against, can claim the protection of Art. 14."*

14. It may be, as contended by the learned counsel, that therein this Court was concerned with two enactments of States but the principles laid down therein would be attracted, having regard to the fact that although acquisition is to be made in terms of the Adhiniyam but the procedures laid down therefor under the Land Acquisition Act are to be followed and in both the cases, the acquiring authority is the State."

60. In Panna Lal Ghosh v. Land Acquisition Collector, AIR 2004 SC 1179, the Hon'ble Supreme Court held as follows :—

"16. The learned counsel for respondents had contended that solatium is not applicable because the West Bengal Land Development and Planning Act, 1948, under which this present area falls, does not contemplate it. The provision of solatium is mandatory and cannot be done away with. It has been held in a number of cases that the deprivation of solatium by the West Bengal Land Development and Planning Act is violative of Article 14 and Section 8(2) of the Act is held to be invalid. (See : Monoranjan Routh v. State of W.B, AIR 1972 Cal 487 and Ramendranath v. State of W.B, AIR 1975 Cal 325). Therefore, the contention that Section 8(2) of the Act excludes compensation by way of solatium does not hold good."

61. Thus, the essential principles that emerge from a reading of the aforementioned precedents, are :—

(a) the public purpose shall not determine the amount of compensation;

(b) it is immaterial whether land is acquired under one statute or another;

(c) different compensation cannot be granted to different land owners based upon a different public purpose;

(d) where, however, a statute denies solatium and interest to a landowner, the said statutory provision must satisfy the tests of a reasonable classification based upon an intelligible differentia and must disclose a rational nexus with the object sought to be achieved.

62. The question that would now merit consideration is whether the public purpose underlying the National Highways Act discloses a valid classification based upon an intelligible differentia as would enable us to hold that the provisions of the Act, do not suffer from the vice of discrimination in matters of payment of compensation vis-a-vis lands, acquired under the Land Acquisition Act.

63. Counsel for the Union of India, as also counsel for the National Highway Authority of India would have us hold that the absence of a statutory provision providing for payment of solatium and interest would not render the impugned statute violative of Article 14 of the Constitution. It is submitted that Section 3J of the Act prohibits the applicability of the Land Acquisition Act and as Legislative intent Page: 389to do away the payment of solatium and interest is clear and categoric the denial of solatium would not render the impugned enactment ultra vires of Article 14 of the Constitution. It is further submitted that the impugned statute is a complete code in itself and does away with the archaic and cumbersome procedures that govern the acquisition of land and assessment of compensation. The impugned statute provides for a speedy mechanism for resolution of disputes with respect to quantum of compensation by a reference to an arbitrator. It is further asserted that the impugned statute enables the government to ensure expeditious development of road infrastructure necessary for the rapid economic development of the country and also enables the government to access private capital and draw upon the resources and skill of private entrepreneurs. The object of the Act is a speedy and quick development of road infrastructure, which cannot be achieved under the Land Acquisition Act. It is, therefore, submitted that as the impugned enactment discloses a public purpose, as would fulfill the test of a reasonable classification based upon an intelligible differentia, which distinguishes it from acquisitions under the Land Acquisition Act, the impugned statute is legal and valid and cannot be held to be ultra vires of Article 14 of the Constitution. It is also submitted that a similar challenge, raised before the Rajasthan High Court was considered and rejected in a judgment reported as Banshilal Samariya & Ors. v. Union Of India & Ors., 2005 (10) RDD 4234 (Raj) (DB).

64. Before we proceed further, it would be necessary to appraise the relevant provisions of the National Highways Act, 1956, the National Highways Authority Act, 1988, and the provisions of the National Highways Laws (Amendment) Act, 1997, namely, Act No. 16 of 1997, more particularly the provisions that provide for acquisition of land, its objects and reasons, as also relevant provisions of the Land Acquisition Act.

65. The National Highways Act, 1956, was enacted by parliament to provide for the declaration of certain highways to be National Highways and for matters connected therewith. The said Act provides that all National Highways would vest in the Union and also defines the word “Highways”. Section 5 of the said Act places the responsibility for development and maintenance of national highways upon the Central Government. Section 7 thereof empoweres the Central Government to levy fees at such rates for use of bridges, tunnels on national highways.

66. The National Highways Authority of India Act, 1988 was enacted to provide for the constitution of an authority for the development, maintenance and management of national highways and for matters connected therewith or incidental thereto. The authority is to be constituted under Section 3 of the said Act. Section 11 empowers the Central Government to vest in or entrust to the authority such national highway or any stretch thereof as may be specified by way of a notification. Section 12 of the Act provides for transfer of assets and liabilities of the Central Government to the authority. Sections 14 and 15 enable the authority to enter into and perform any contract necessary for the discharge of its functions under the Act and Section 15 provides for the mode of execution of such contracts. Section 16 enumerates the functions of the authority. The other provisions do not merit mention as they are not relevant to the present controversy.

67. It is admitted that upto the year 1997, land for construction, and maintenance of national highways was acquired by invoking the provisions of the Land Acquisition Act.

68. The National Highways Laws (Amendment) Act, 1997, namely, Act No. 16 of 1997 was enacted by Parliament to amend the National Highways Act, 1956 and the National Highways Authority of India Act, 1988. The objects and reasons that led to the amendment are as follows :—

*“1. In order to create an environment to promote private investment in national highways, to speed up construction of highways and to remove bottlenecks in their proper management, it was considered necessary to amend the National Highways Act, 1956 and the National Highways Authority of India Act, 1988.*

*2. One of the impediments in the speedy implementation of highways projects has been inordinate delay in the acquisition of land. In order to expedite the process of land acquisition, it is proposed that once the Central Government declares that the land is required for public purposes for development of a highway, that land will vest in the Government and only the amount by way of compensation is to be paid and any dispute relating to compensation will be subject to adjudication through the process of arbitration.*

*3. It was also felt necessary to ensure continuity of the status of bypasses built through private investment. To achieve this, it is proposed to amend the National Highways Act, 1956 so as to include the highway stretches situated within any municipal area as a part of National Highway. Further, as the National Highways Act, 1956 permits participation of the private sector in the development of the National Highways, it became imperative to amend the National Highways Authority of India Act, 1988 so as to provide that the National*

*Highway Authority of India may seek the participation of the private sector in respect of the highways vested in the Authority.*

*4. With a view to provide adequate capital and Page: 390loans to the National Highways Authority of India by the Central Government, it is proposed to make amendment in the National Highways Authority of India Act, 1988.*

*5. With a view to achieve the above objectives and also as both Houses of Parliament were not in session and the President was satisfied that circumstances existed which rendered it necessary for him to take immediate action, the National Highways Laws (Amendment) Ordinance, 1997 was promulgated by the President on the 24th day of January, 1997.*

*6. The Bill seeks to replace the aforesaid Ordinance."*

69. The National Highways Authority of India Act, 1988 was amended by incorporating Section 13 and Section 16(h) & (k). Section 13 postulates that any land required by the authority for the discharge of its functions under this Act shall be deemed to be land needed for a public purpose and such land may be acquired for the authority, under the provisions of the National Highways Act, 1956. Section 16(h) provides that the authority may engage or entrust any of its functions to any person on such terms and conditions as may be prescribed. Section 16(k) enables the authority to collect fees on behalf of the Central Government for services or benefits, rendered under Section 7 of the National Highways Act, 1956.

70. The National Highways Act, 1956 was amended, to incorporate Sections 3A to 3J relating to acquisition of land. It would be relevant to make a reference that Section 8A(1) empowers the Central Government to enter into an agreement with any person in relation to the development and maintenance of a whole or any part of a national highway and Section 8A(2) that empowers the person referred to in Section 8A(1) to collect and retain fees at such rate so as to recover the cost expended in the building, maintenance, management and operations of such national highway along with a reasonable return, stood incorporated by a prior amendment, namely, Act No. 26 of 1995.

71. Section 3(b) defines the expression "land" as including benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth, a definition similar in all respects to the definition of land contained in the Land Acquisition Act. Acquisition proceedings commence with the issuance of a notification under Section 3A of the Act, followed by the power to enter the land for survey etc. under Section 3B of the Act. Objections are to be heard and decided under Section 3C and a final declaration is issued under Section 3D. Section 3E enumerates the power to take possession, and Section 3F of the Act concludes the provisions for acquisition of land by vesting of the acquired land in the Central Government.

72. Section 3G of the Act prescribes the mode and manner for determining compensation and is the primary cause for the argument that the amending Act is ultra vires of Article 14 of the Constitution of India. Section 3G of the Act reads as follows :—

*"3G. Determination of amount payable as compensation.— (1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.*

*(2) Where the right of user or any right in the nature of an easement on any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent of the amount determined under sub-section (1) for that land.*

*(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.*

*(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.*

*(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.*

*(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.*

*(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration—*

*(a) the market value of the land on the date of publication of the notification under section 3A;*

*(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;*

*(c) the damage, if any, sustained by the person Page: 391interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;*

*(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such damage."*

73. Section 3G(1) of the Act, which is titled as "Determination of amount payable as compensation" prescribes that where any land is acquired, the landowner shall be paid an

amount, determined by the competent authority. Section 3G(7) enumerates the factors to be considered while assessing the amount, namely, the compensation i.e market value of the land on the date of publication of the notification under Section 3A, the damage, if any, sustained by the person interested at the time of taking possession of the land by reason of severance of such land from other land, the damage, if any, by reason of the acquisition injuriously affecting the landowner's other immovable property, in any manner or his earnings, and any amount, which the person interested would incur in change of his residence or place of business. These factors are a verbatim reproduction of Section 23(1) of the Land Acquisition Act. A significant departure, however, from the provisions of the Land Acquisition Act is the absence of any provision providing for payment of solatium and interest, and other statutory benefits similar to the provisions contained in Sections 23(1)(A), 23(2) and 28 of the Land Acquisition Act.

74. As regards the Land Acquisition Act, compensation is assessed, by the Collector, under Section 11 of the Land Acquisition Act. For assessing the value of compulsorily appropriated property, the Land Acquisition Act uses two expressions "market value" and "compensation". Compensation includes the market value to be assessed in accordance with the principles contained in Sections 23 and 24 of the Land Acquisition Act and statutory amounts as provided by Section 23(1)(A) and Section 23(2) of the Land Acquisition Act, the latter amount being commonly known as solatium. If a party is dissatisfied with the compensation assessed by the Collector, it may file a reference under Section 18 of the Land Acquisition Act, calling upon the Collector to forward the reference to the District Judge for adjudication of the true market value and the compensation. A party aggrieved by a determination by the District Judge may file an appeal before the concerned High Court under Section 54 of the Land Acquisition Act. Where the District Judge enhances the market value and consequently the compensation, the landowner shall be paid amounts enumerated under Section 23(1)(A) of the Land Acquisition Act (i.e the amount of 12%) and Section 23(2) (i.e the solatium) and under Section 28 interest on the enhanced compensation. Compensation, thus, includes the market value along with solatium and interest.

74A. We have carefully considered the submissions of counsel for the Union of India and the National Highway Authority of India and have also carefully perused the objects and reasons, that precede the impugned enactment and the other statutes, the statutory provisions reproduced herein before, and the provisions of the National Highways Act, 1956, the National Highways of Authority India Act, 1988, as amended by Act No. 16 of 1997 and express our inability to accede to their arguments.

75. The judgments in State of West Bengal v. Mrs Bella Banerjee case (supra), P. Vajravelu Mudaliar's case (supra), Balammal case (supra), Nagpur Improvement Trust case (supra), Om Prakash case (supra), State of Kerala case (supra), P.C Goswami's case (supra), Maharashtra State Road Transport Corporation's case (supra), Savitri Cairae's case (supra), and Panna Lal Ghosh case (supra), relevant extracts whereof have been reproduced in the preceding part of this judgment, are unequivocal in their ratio and hold that the nature of the public purpose shall not govern the quantum of compensation, except where the public purpose discloses an intelligible diffrentia based upon a reasonable classification.

Legislature cannot, therefore, provide for payment of different rates of compensation, based on different public purposes, except where the legislation that purports to discriminate, sets out :—

(i) a classification founded on an intelligible differentia,

(ii) the differentia must have a rationale relation with the object sought to be achieved, and

(iii) the object itself must be lawful and must not discriminate.

76. A purported classification that does not meet the aforementioned tests would perpetuate the vice of discrimination and violate the principles of equality postulated in Article 14 of the Constitution. As held by the Hon'ble Supreme Court in P. Vajravelu Mudaliar's case (supra), in order to ascertain whether the reasonable classification passes these tests, the following question would require to be answered :—

*"(1) what is the object of the Act?*

*(2) what are the differences between the public purpose underlying the two statutes?*

*(3) Whether the public purpose is so distinct as to be not achievable under the Land Acquisition Act;*

*(4) whether those differences have such a Page: 392reasonable relation to the object sought to be achieved as to justify a different rate/amount of compensation."*

77. We fail to discern any such distinction or peculiarity in the public purpose underlying the impugned statute as would validly enable us to hold that public purpose underlying the provisions of the impugned Act is so distinct or peculiar as can only be achieved under the impugned statute so as to clothe it with the protective shield of a classification founded on an intelligible differentia, the differentia being such that it has a rational relation with the object sought to be achieved.

78. The only differences discernible in the impugned statute, vis-a-vis the provisions of the Land Acquisition Act are differences of procedures and provisions that operate post acquisition so as to enable the government to associate private entrepreneurs and access private capital for the construction etc. of national highways i.e differences that have no relation to the public purpose, in so far as it concerns the acquisition of land or the rights of the landowner. What is acquired under the impugned statute is the entire bundle of proprietary rights vested in a landowner. There appears to be no distinction between the public purpose underlying the impugned statute and the Land Acquisition Act, as also between landowners who are divested of their property under the Land Acquisition Act or the impugned statute. The differences, in essence, arise from different procedure for acquisition and in addition the statutory power of the National Highway Authority, a post acquisition power to entrust the development and maintenance of national highway or a part thereof to a private party. These factors, in our considered opinion, do not have any rational nexus with the object sought to be achieved, which remains the acquisition of

proprietary rights in land or with the amount of compensation to be awarded. As to how such difference would justify payment of a lesser amount of compensation is incomprehensible. It would be necessary to reiterate that so as to infer a valid classification, the public purpose must be so different and distinct as to validly and justifiably inhere a classification that would be sufficient for a Court to uphold a different amount of compensation to be awarded for acquisition of land.

79. The objects and reasons that underline the National Highways Act, 1956, the National Highways Authority of India Act, 1988 are the development of national highways. The objects and reasons that precede the Amending Act, namely, Act No. 16 of 1997 emphatically support our conclusions recorded in the preceding paragraphs. The objects and reasons that precede the Amending Act and led to the amendment of the above statutes are "……. to create and environment to promote investment for national highways, to speed up construction of national highways and to remove bottleneck in their proper management……" and as set out in the objects and reasons, one of the impediments to the speedy implementation of highways projects is the inordinate delay in acquisition of land. The objects and reasons further state that in order to expedite the process of land acquisition, it is proposed that once the Central Government declares that the land is required for the public purpose of development of a highway, that land will vest in the Government and only question that would remain would be the amount of compensation to be paid and any dispute relating to compensation would be subject to adjudication through the process of arbitration. It is further stated in the objects and reasons that though the National Highways Act permits private participation, it would be imperative to provide a similar power to the National Highway Authority of India.

80. The reasons, therefore, that led to the amendment of the aforementioned statutes were (a) a need for an expeditious execution of such projects, and (b) a need to encourage private participation. The objects and reasons, detailed herein above tend to fortify our conclusions and do not refer to nor disclose legislative intent that could justifiably be pressed into service to support the existence of a public purpose so distinct and different as to justify the award of a different rate of compensation by denying solatium and interest. The question, therefore, that merits further consideration is whether the objects and reasons supported by the provisions incorporated by the Amending Act would by themselves be sufficient to deprive land owners of solatium i.e disclose a public purpose that would warrant the grant of a lesser compensation. The answer to the aforementioned question in our considered opinion must be in the negative and lies in the provisions of the National Highways Act, 1956 and in the National Highways Authority of India Act, 1988.

81. The acquisition of land for national highways commences with the issuance of a notification under Section 3A of the National Highways Act, 1956 and enables the Central Government to acquire land for a public purpose if it is satisfied that the land in required for the building, maintenance, management or operation of National Highway or a part thereof. Section 13 of the National Highways Authority of India Act, 1988 provides that any land required by the authority for discharging its functions under the said Act shall be deemed to be land required for a public purpose. Another feature of the aforementioned enactments is the power of the government to associate private companies and to access

private capital for an expeditious execution of projects relating to national highways. The expeditious development of infrastructure cannot be over emphasized as it is necessary for the economic well Page: 393being of the Nation. Similarly, the need to access private capital and associate private entrepreneurs cannot be discounted. The question, however, is whether these objects are sufficient to deny solatium and interest to landowners and as legally put, sufficient to hold a valid classification based upon an intelligible differentia.

82. The expeditious constructions of Highways, the expeditious conclusion of acquisition proceedings, the reference of disputes regarding compensation to an arbitrator, the statutory power to associate private entrepreneurs and the legal ability to access private capital, in our considered opinion has no relevance to the assessment/payment of compensation. The expeditious acquisition of land can be validly achieved by resorting to the urgency provisions contained in Section 17A of the Land Acquisition Act. The impugned enactment merely replaces the procedure for acquisition, envisaged by the Land Acquisition Act with a new procedure, stated to be expeditious, more efficient and in tune with the need for an expeditious construction of national highways, but does not disclose a distinct or peculiar public purpose as would justify the denial of solatium and other statutory benefits relating to compensation.

83. Section 8A of the National Highways Act, 1956 was incorporated by another Amending Act, namely, Act No. 26 of 1995 and empowers the Central Government to enter into an agreement with any person in relation to development and maintenance of the whole or any part of a national highway. Section 8A(2) enables such a person to collect and retain fees at such rates so as to recover a reasonable return on the investment involved in the building, maintenance, management and operation of the national highway. It is, therefore, apparent that Section 8(A) of the Act, which existed before Act No. 16 of 1997, empowered the Central Government to acquire land for the National Highway Authority. In order to remove any impediment, in achieving the above objective that was already available, the National Highways Authority of India Act, 1988 was amended by Act No. 16 of 1997 by incorporating Section 16(h) and (k), to enable the authority to engage or entrust any of its functions to any person. These provisions are pressed into service by the respondents to assert that the public purpose can now be achieved by associating private person who would expend private capital, thus, disclosing a public purpose distinct from and unachievable under the Land Acquisition Act.

84. The aforementioned arguments, in our considered opinion, are inherently flawed. The Central Government acquires land under the National Highways Act, 1956 for a public purpose, namely, for the National Highway Authority of India, to develop, manage, maintain and operate national highways. What the National Highway Authority does with the land, namely, proceeds to construct, develop, manage, maintain and operate the highway itself or entrusts the aforementioned functions to private individuals is of no concern to the landowner and irrelevant for the public purpose in so far as it relates to acquisition of land or for the assessment of compensation. Prior to amendment of the aforementioned statutes by Act No. 16 of 1997, the Central Government acquired land for construction of national highways through a State Government by invoking the provisions of the Land Acquisition Act. The Central Government expended money, as provided by Section 7 of the National

Highways Act, 1956 and Section 8-A of the National Highways Act, 1956 enabled it to enter into any agreement with any person for development and maintenance etc of any national highway or a part thereof. Section 16(2)(k) of the National Highways Authority of India Act, 1988, empowered the authority to collect fees on behalf of the Central Government for services or benefits rendered under Section 7 of the National Highways Act, 1956 and levy and recover fees for the construction etc of the national highway. Sections 14 and 15 of the National Highways Authority of India Act, 1988 allowed the authority to enter into and perform any contract necessary for the discharge of its functions under this Act. We, thus, fail to comprehend as to how upon transfer of the right to build, maintain, manage and operate national highways to private persons, and grant to them of the right to recover their investment with reasonable profit, a right already available to the Central Government under Section 8A of the National Highways Act, 1956 read with Sections 14, 15 and 16(2) of the National Highways Authority of India Act, 1988, would alter the public purpose as to suddenly disclose an intelligible differentia based on a reasonable classification so as to justify the apparent discrimination between two sets of equally situated landowners. A person who loses his land, has no concern with the mode of the execution of the project, financial arrangements relating thereto and the arrangement between the National Highway Authority of India and any private party. To hold otherwise, in our considered opinion, would uphold a statutory provision that perpetuates discrimination.

85. Solatium is not a largesse or a mere subsidy that the State doles out to a hapless landowner in discharge of some benevolent exercise of governmental power. Solatium is an amount, paid by the State to an unwilling land owner, for compulsory appropriation of his property. The word solatium draws its meaning from the word “solace” that is comfort money given as a statutorily recognized gesture of conciliation for compulsorily depriving a land owner of his property. The importance of “solatium” cannot be over emphasized and any departure Page: 394therefrom would, in our considered opinion, be justified only where the enactment discloses a reasonable classification for treating land owners differently. Solatium forms an integral component of compensation and, therefore, can only be denied where the statute satisfies the tests of valid classification.

86. Difference in procedure would not govern rights of parties to compensation. The difference, as repeatedly emphasized herein before, must be such as would disclose a valid classification based upon an intelligible differentia and not mere differences of procedure. The public purpose must be such as cannot be achieved by resort to the provisions of the Land Acquisition Act and disclose such a distinct or peculiar object as could not be achieved under the Land Acquisition Act. We have carefully perused the Act, in our endeavour to understand the so called differentia sought to be pressed into service by counsel for the respondents and have made a concerted effort to understand their submissions but express our inability to determine any justification whether legal, factual or theoretical that would have us hold that the public purpose, underlying the amending Act constitutes a separate class and is so different from the public purpose under the Land Acquisition Act that denial of solatium and interest could be held to be based upon a valid classification and consequently a valid exercise of legislative power. We find no basis whether in the objects and reasons, in the written reply, the written submissions, as also from the assistance rendered to hold anything other than that as the provisions of the Act do not provide for

grant of solatium and interest, they suffer from the vice of discrimination and violation of the provisions of Article 14 of the Constitution and would, therefore, be held to be ultra vires.

87. As the respondents have placed reliance upon a judgment rendered by an Hon'ble Division Bench of the Rajasthan High Court namely, Banshilal Samariya & Ors. v. Union Of India & Ors. (supra), upholding the vires of the impugned statute, it would be necessary to record our opinion in respect thereof. The said judgment has upheld the vires of the impugned enactment primarily on the basis of judgments of the Hon'ble Supreme Court in Union Of India v. Hari Krishan Khosla (Dead) By Lrs. (dead) by L.Rs, Union of India v. Chhajju Ram (dead) by L.Rs, Dayal Singh v. Union of India, Union of India v. Dhanwanti Devi, and Prakash Amichand Shah v. State of Gujarat (infra). We express our respectful disagreement with the conclusions, drawn by the Division Bench of the Rajasthan High Court. The judgment in Union Of India v. Hari Krishan Khosla (Dead) By Lrs. (dead) by L.Rs etc, deals with the peculiar features of the RAIP Act, which does not provide for payment of solatium and interest and is an illustration of a valid classification that denies solatium and interest. The RAIP Act was enacted by Parliament to provide for requisitioning and acquisition of immovable property for the purpose of the Union. Sections 3 to 6 of the said Act provides for requisition of immovable property. Section 7 prescribes the power to acquire requisitioned property. Section 8 prescribes the principles and method for determining compensation with respect to property but does not provide for payment of solatium or interest. The vires of this Act, more particularly the provisions of Section 8, were impugned on the ground that failure to provide for payment of solatium and interest violated Article 14 of the Constitution. The Hon'ble Supreme Court in Union Of India v. Hari Krishan Khosla (Dead) By Lrs. (dead) by L.Rs, 1993 Supp (2) SCC 149, affirmed and relied upon in Union of India v. Chhajju Ram (dead) by L.Rs, 2003 (2) R.C.R (Civil) 682 : AIR 2003 SC 2339, Dayal Singh v. Union of India, 2003 (1) R.C.R (Civil) 787 : (2003) 2 SCC 593, Union of India v. Dhanwanti Devi, (1996) 6 SCC 44, repelled challenge to the vires of Section 8 of the RAIP Act and held that the public purpose and the mode and manner of acquisition, disclosed a valid classification, based upon an intelligible differentia vis-a-vis acquisitions, carried out under the Land Acquisition Act, as property could not be requisitioned under the Land Acquisition Act. It was also held that after requisition, a landowner is divested of possession, the most important attribute of ownership, in the bundle of rights that constitute ownership. Acquisition of his remaining-rights, without payment of solatium and interest, as prescribed under the Land Acquisition Act, would, therefore, not visit Section 8 of the RAIP Act with the vice of discrimination. It was, therefore, held that the RAIP Act was not ultra vires of Article 14 of the Constitution. Another circumstance that distinguishes acquisition under the RIAP Act is that after a period of requisition the land can be returned to the owner and acquisition is not a certainty. A similar view was adopted by the Hon'ble Supreme Court in Dayal Singh case (supra) and Union of India v. Dhanwanti Devi case (supra); The failure to provide for payment of solatium and interest was upheld on the ground that land cannot be requisitioned under Land Acquisition Act and before acquisition a landowner is already deprived of possession and, therefore, need not be compensated with solatium as what is acquired under the Land Acquisition Act are the remaining rights that constitute the bundle of rights called ownership. In our considered opinion, neither the RAIP Act nor the judgments in Union Of India v. Hari Krishan Khosla (Dead) By Lrs. (dead) by

L.Rs (supra), could be pressed into service to uphold the vires of this Act.

Page: 39588. The situation in the impugned enactment, with due respect to the Division Bench judgment of the Rajasthan High Court, is entirely different. The object, sought to be achieved, under the impugned enactment, namely, acquisition of land for national highways cannot be said to be a public purpose that cannot be achieved under the Land Acquisition Act. Governments do and have always acquired lands for roads and highways by resorting to the provisions of the Land Acquisition Act. The mere fact that the impugned statute would enable the government to invite private entrepreneur and access private capital or resolve disputes expeditiously, in our considered opinion has no relevance to the nature of the public purpose of acquisition, which remains the acquisition of land for the construction of a highway. The mode of finance or the agency that would construct the highway would not alter the nature of the public purpose nor determine the amount of compensation. What is acquired, at one stroke, under both the impugned statute and the Land Acquisition Act unlike under the RAIP Act, are proprietary rights of a landowner in land. It has not been canvassed before us and rightly, so that land for national highways cannot be acquired under the Land Acquisition Act or that the public purpose underlying the impugned statute cannot be achieved by resorting to the provisions of the Land Acquisition Act, or that the public purpose is so distinct and different as would warrant a lesser amount of compensation to land acquired under the impugned statute. We, therefore, fail to comprehend as to how the public purpose, underlying the provisions of the impugned statute would enable authorities under the Act to justifiably deprive landowners of solatium and interest.

89. A faint submission, that Section 3J of the Act emphatically ousts the Land Acquisition Act or that the Land Acquisition Act is not applicable either by reference or by incorporation begs the question in hand. The question is not whether the Land Acquisition Act is applicable by reference or by incorporation but whether the impugned enactment discloses a public purpose so distinct as to disclose a valid classification and satisfy the tests prescribed in respect thereof in the judgments of the Hon'ble Supreme Court, referred to herein before. A statute or a statutory provision which perpetuates discrimination amongst equals cannot shroud its inequality under provisions akin to Section 3J of the Act. Consequently, we are satisfied that Sections 3J and 3G of the Act are ultra vires of Article 14 of the Constitution of India in so far as they deny solatium and interest to landowners. However, this would not necessitate the striking down of the entire provisions of Section 3J and Section 3G of the Act. In this regard, a reference needs to be made to paragraphs 22 and 23 of the judgment of the Hon'ble Supreme Court in State of Kerala v. T.M Peter (supra), wherein when faced with a similar situation, the Hon'ble Supreme Court held as follows :—

*"22. The core question now arises. What is the effect even if we read a discriminatory design in Sec. 34? Is plastic surgery permissible or demolition of the section inevitable? Assuming that there is an untenable discrimination in the matter of compensation does the whole of Section 34 have to be liquidated or several portions voided? In our opinion, scuttling the section, the course the High Court has chosen, should be the last step. The Court uses its writ power with a constructive design, an affirmative slant and a sustaining*

*bent. Even when by compulsions of inseverability, a destructive stroke becomes necessary the court minimises the injury by an intelligent containment. Law keeps alive and operation pulldown is de mode. Viewed from this perspective, so far as we are able to see, the only discriminatory factor as between S. 34 of the Act and S. 25 of the Land Acquisition Act vis-a-vis quantification of compensation is the non-payment of solatium in the former case because of the provision in S. 34(1) that S. 25 of the Land Acquisition Act shall have no application. Thus, to achieve the virtue of equality and to eliminate the vice of inequality what is needed is the obliteration of S. 25 of the Land Acquisition Act from S. 34(1) of the Town Planning Act. The whole of S. 34(1) does not need to be struck down. Once we excise the discriminatory and therefore void part in Sec. 34(1) of the Act, equality is restored. The owner will then be entitled to the same compensation, including solatium, that he may be eligible for under the Land Acquisition Act. What is rendered void by Art. 13 is only 'to the extent of the contravention' of Article 14. The lancet of the Court may remove the offending words and restore to constitutional health the rest of the provision.*

*23. We hold that exclusion of S. 25 of the Land Acquisition Act from S. 34 of the Act is unconstitutional but it is severable and we sever it. The necessary consequence is that S. 34(1) will be read omitting the words 'and S. 25'. What follows then? Section 32 obligates the State to act under the Land Acquisition Act but we have struck down that part which excludes Sec. 25 of the Land Acquisition Act and so, the 'modification' no longer covers S. 25. It continues to apply to the acquisition of property under the Town Planning Act. Section 34(2) provides for compensation exactly like S. 25(1) of the Land Acquisition Act and in the light of what we have just decided S. 25(2) will also apply and "in addition to the market value of the land Page: 396as above provided, the court shall in every case award a sum of fifteen per centum on such market value in consideration of the compulsory nature of the acquisition."*

90. We, therefore, strike down Section 3J and Section 3G of the Act as arbitrary, irrational and violative of Article 14 of the Constitution, in so far as they deny payment of solatium and interest and hold that landowners, who are compulsorily divested of their property under the impugned statute would henceforth be entitled to solatium and interest as envisaged by the provisions of Section 23 and Section 28 of the Land Acquisition Act.

91. As regards the other submissions as to the vires of the National Highways Act, the petitioners' contention that the Amending Act lays down a procedure for acquisition that is an unwarranted departure from the provisions of the Land Acquisition Act and is therefore, illegal and arbitrary, cannot be accepted. There is no rule of law that requires all statutes, providing for acquisition of land to follow the procedure, prescribed under the Land Acquisition Act. As long as the procedure prescribed for acquisition is just and fair and meets the requirements of the expression "authority of law" appearing in Article 300A of the Constitution, procedural provisions can not be held to be illegal or arbitrary merely because they prescribe a procedure different from the procedure prescribed under the Land Acquisition Act. Section 3-C(2) of the Act, which confines consideration of objections to the "user" of the land is neither arbitrary nor illegal. Counsel for the petitioners have failed to assert the violation of any legal right that would be infringed by confining adjudication of objections to the "user" of the land. The use of the word "user" in Section 3-C(2) of the Act,

in our considered opinion, would not render the provision arbitrary, unjust or illegal.

92. The next submission that despite the absence of any agreement, disputes with respect to compensation are to be compulsorily referred to an Arbitrator exercising powers under the Arbitration and Conciliation Act, 1996, merits rejection. Section 3-H of the Act merely applies to the provisions of the Arbitration and Conciliation Act, 1996 for determining disputes with respect to market value and in essence replaces the Reference Court, as provided under the Land Acquisition Act with an Arbitrator exercising powers under the Arbitration and Conciliation Act, 1996. We are unable to discern any infraction of rights and obligations as would necessitate striking down of the said provision.

93. Another submission that as the impugned statute does not provide for an appeal and is, therefore, ultra vires cannot be accepted. An appellate forum is an entity, brought into existence by a statute. The right to file an appeal is neither fundamental nor necessary. It is settled law that the absence of an appellate forum or the right to file an appeal does not render a statute unconstitutional. Even otherwise, a claimant would be entitled to challenge the arbitrator's award by invoking the provisions of Section 34 of Arbitration and Conciliation Act, 1996. Thus, the aforementioned submissions, in our considered opinion, do not render the impugned enactment, arbitrary, illegal or ultra vires of any provisions of the Constitution of India.

94. As we have upheld the legality of the proceedings for acquisition, the writ petitions are dismissed in respect thereof. But as the provisions of Section 3J and 3G are ultra vires of Article 14 of the Constitution of India, all acquisitions made under the National Highway Act, 1956 would necessarily have to grant solatium and interest, in terms similar to those contained in Section 23(2) and Section 28 of the Land Acquisition Act.

The writ petitions stand disposed of accordingly with no orders as to costs.

Petition disposed of.

Land Acquisition Act.Land Acquisition Act.Land Acquisition Act.Land Acquisition Act.Land Acquisition Act.