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HIGH COURT OF CHHATTISGARH BILASPUR

WA No. 81 of 2022

- Bali Nagwanshi, Son of Shri Buter Nagwanshi, Aged About 54 Years, Resident of House No. 87, Sun City, Jagdalpur, District Bastar Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh, Through The Secretary, Department of Revenue and Disaster Management, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur Chhattisgarh.
2. Dr. Ayyaj Tamboli, Collector, Bastar, earlier having office at Jagdalpur, District Bastar Chhattisgarh.
3. Police Station Kotwali, Jagdalpur through its Station House Officer, Jagdalpur District Bastar Chhattisgarh.
4. Bank of Baroda through its Branch Manager, Branch Jagdalpur, District Bastar Chhattisgarh.
5. Union of India, through the Secretary, Ministry of Railways, Rail Bhawan, New Delhi-1.
6. Bastar Railway Private Limited (Joint venture Of NMDC, IRCON, SAIL and CMDC) through its Chief Executive Officer, having its office at Global Exploration Centre, NMDC, Green Valley City, Housing Board Colony, Boriyakala, Raipur, District-Raipur Chhattisgarh.

---- Respondents

WA No. 64 of 2022

- Bali Nagwanshi, Son of Shri Buter Nagwanshi, aged about 54 Years, resident of House No. 87, Sun City, Jagdalpur, District Bastar Chhattisgarh.

---- Appellant

Versus

1. State of Chhattisgarh, Through The Secretary, Department of Revenue and Disaster Management, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur Chhattisgarh.
2. Dr. Ayyaj Tamboli, Collector, Bastar, having office at Jagdalpur, District Bastar Chhattisgarh.
3. Police Station Kotwali, Jagdalpur through its Station House Officer, Jagdalpur District Bastar Chhattisgarh.



4. Bank of Baroda through its Branch Manager, Branch Jagdalpur, District Bastar Chhattisgarh.
5. Union of India, through the Secretary, Ministry of Railways, Rail Bhawan, New Delhi-1.
6. Bastar Railway Private Limited (Joint venture Of NMDC, IRCON, SAIL and CMDC) through its Chief Executive Officer, having its office at Global Exploration Centre, NMDC, Green Valley City, Housing Board Colony, Boriyakala, Raipur, District-Raipur Chhattisgarh.

---- Respondents

WA No. 77 of 2022

- Smt. Neelima Belsaria, W/o Shri T.V. Ravi, Aged 36 Years, R/o Village-Pallai, Tahsil Jagdalpur, District Bastar Chhattisgarh.

---- Appellant

Versus

1. Bastar Railway Private Limited Through Chief Executive Officer Bastar Railway Private Limited Global Exploration Centre, NMDC Green Valley City, Housing Board Colony, Boriyakala, Raipur, District Raipur Chhattisgarh.
2. State of Chhattisgarh Through The Secretary To The Government of Chhattisgarh Department of Revenue and Disaster Management: Mahanadi Bhawan, Atal Nagar, Raipur, District-Raipur Chhattisgarh.
3. Union of India Through The Secretary to the Department of Railway, Raisina Road, Rail Bhawan, 1, New Delhi
4. The Commissioner-Cum-Arbitrator Bastar Division, Bastar District Bastar Chhattisgarh.
5. The Collector Jagdalpur, District Bastar Chhattisgarh.
6. Additional Collector-cum-Land Acquisition Officer / Competent Authority Bastar, District-Bastar Chhattisgarh.
7. Bali Nagwanshi, S/o Shri Buter Nagwanshi, R/o Sun City, Jagdalpur Chhattisgarh.
8. Smt. Pakli, W/o Shri Maniram, R/o Palli Village, Jagdalpur Chhattisgarh.
9. Nitya Gopal, S/o Shitij Chand, R/o Reena Village Kangoli, District Bastar Chhattisgarh.
10. Seema Rathi, W/o Shri Ajay Rathi, R/o Village-Palli, Jagdalpur , District-Bastar, Chhattisgarh.

---- Respondents





WA No. 83 of 2022

- Smt. Neelima Belsaria, W/o Shri T.V. Ravi, aged 36 Years, R/o Village-Pallai, Tahsil-Jagdalpur, District Bastar, Chhattisgarh.

---- Appellant

Versus

1. State of Chhattisgarh Through: The Secretary to the Govt. of Chhattisgarh: Department of Revenue and Disaster Management: Mahanadi Bhawan, Atal Nagar, Raipur, District Raipur, Chhattisgarh.
2. Union of India Through: The Secretary to the Department of Railway, Raisina Road, Rail Bhawan, 1, New Delhi.
3. The Collector Jagdalpur, District Bastar, Chhattisgarh.
4. Station House Officer Police Station-Jagdalpur, District Bastar, Chhattisgarh.
5. Bastar Railway Private Limited Through: Chief Executive Officer Bastar Railway Private Limited Global Exploration Centre, NMDC Green Valley City, Housing Board Colony, Boriyakala, Raipur, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

WA No. 115 of 2022

- Hira Lal Nayak, S/o Late Kunwar Singh Nayak, Aged 63 Years, R/o Vijay Nagar Chowk, Near Avanti Vihar Sector - 2, Tehsil and District Raipur Chhattisgarh.

---- Appellant

Versus

1. State of Chhattisgarh Through Secretary, Department of Revenue and Disaster Management Mahanadi Bhawan, Mantralaya, Atal Nagar, Raipur, Chhattisgarh.
2. Collector District Jagdalpur Chhattisgarh.
3. Union of India, Through Secretary, Ministry of Railway Rail Bhawan, Rafi Marg, New Delhi - 110001.
4. Station House Officer Police Station Jagdalpur, District-Bastar, Chhattisgarh.

---- Respondents

WA No. 129 of 2022

1. Siyaram Kurre, S/o Shri Sant Ram Kurre, aged 64 Years, Retired Additional Collector R/o Patrakar Colony, Ring Road-2 Bilaspur Chhattisgarh.



2. Dindyal Mandavi, S/o Shri Bharat Singh Mandavi, aged 40 Years, At Present:Sub Divisional Officer Keshkal, Kondagaon District-Kondagon, Chhattisgarh.
3. Arjun Shrivastava, aged 57 Years, S/o Shri Y.L. Shrivastava Tahsildar (In-Charge) - Lohandiguda Bastar, District Bastar Chhattisgarh.
4. Dharam Narayan Sahu, aged 64 Years, S/o Shri Lakhan Sahu Retd Patwari, R/o Bhagat Singh Ward-6 Patharaguda, Jagdalpur District Jagdapur Chhattisgarh.

---- Appellants

Versus

1. State of Chhattisgarh Through The Secretary to the Govt. of Chhattisgarh: Department of Revenue and Disaster Management: Mahanadi Bhawan, Atal Nagar, Raipur District-Raipur Chhattisgarh.
2. Union of India Through The Secretary To The Department of Railway, Raisina Road, Rail Bhawan, 1, New-Delhi.
3. The Collector Jagdalpur, District Bastar Chhattisgarh.
4. Station House Officer Police Station Jagdalpur, District-Bastar Chhattisgarh.
5. Bastar Railway Private Limited Through: Chief Executive Officer Bastar Railway Private Limited Global Exploration Centre, NMDC Green Valley City, Housing Board Colony, Boriyakala, Raipur, District-Raipur Chhattisgarh.

---- Respondents

WA No. 144 of 2022

- Koushal Kumar Thakur, S/o Sevak Ram Thakur, Aged About 30 Years, R/o Village and Post Puri, Tahsil and Police Station Charama, District-Kanker(Chhattisgarh). at present R/o D.N.K. Colony, Kanera Road, Kondagaon, Police Station-Kondagoan, District-Kondagoan, Chhattisgarh.

---- Appellant

Versus

1. State of Chhattisgarh Through The Secretary, Department of Revenue and Disaster Management, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, District-Raipur (Chhattisgarh).
2. Secretary, Union of India, Department of Railway, Raisina Road, Rail Bhawan, 1, New Delhi.
3. The Collector, Jagdalpur, District-Jagdalpur Chhattisgarh.



4. Station House Officer, Police Station Jagdalpur, District Jagdalpur Chhattisgarh.

---- Respondents

WA No. 119 of 2022

1. Suresh B. Matali, S/o Shri B.S. Matali, Aged About 52 Years Addl. General Manager (Civil), R/o House No. 10, Aashoka Lifestyle, Dharampura-3, Police Station City Kotwali, Jagdalpur, District Bastar Chhattisgarh. Permanent R/o H.No.- MIG-39, Jalanagar, Vijayapura, 586101, Karnatka,
2. A.V.R. Murty, S/o Shri A. Krishna Murty, Aged About 54 Years, Joint General Manager (Civil), R/o House No. 69, Ashoka Lifestyle, Dharampura-3, Police Station City Kotwali, Jagdalpur, District Bastar Chhattisgarh. Permanent R/o H/No. 12-2-16/2, Chinna Veedhi, Samalkot, 533440, East Godawari District, Andhra Pradesh.

---- Appellants

Versus

1. State of Chhattisgarh, Through The Secretary to the Government of Chhattisgarh Department of Revenue and Disaster Management Mahanadi Bhawan, Atal Nagar, Raipur District Raipur Chhattisgarh.
2. Union of India Through The Secretary to the Department of Railway, Raisina Road, Rail Bhawan, 1, New Delhi, District New Delhi, Delhi.
3. The Collector Jagadalpur, District Bastar, Chhattisgarh.
4. Station House Officer, Police Station Jagdalpur, District-Bastar, Chhattisgarh.

---- Respondents

(Cause-title taken from Case Information System)

For Appellants	: Heard Mr. Prashant Bhushan, learned senior counsel (through video-conferencing) assisted by Mr. Amit Verma, learned counsel, appearing for the appellant in WA No. 81/2022 and WA No. 64/2022, Mr. Anurag Dayal Shrivastava, learned counsel, appearing for the appellant, in WA No. 77/2022, 83/2022 and 129/2022, Mr. Siddharth Shukla, learned counsel, appearing for the appellant in WA No. 115/2022, Mr. Arvind
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Shrivastava, learned counsel, appearing for the appellant, in WA No. 119/2022, Mr. Varun Sharma, learned counsel, appearing for the appellants, in WA No. 144/2022.

For Respondents : Mr. Vikas Singh, learned senior counsel (through video-conferencing), assisted by Mr. Vaibhav Shukla, Mr. Ujjwal Choubey and Mr. Chandradeep Prasad, learned counsel, appearing for the respondent-Bastar Railway Private Limited, Ms. Astha Shukla, learned Government Advocate and Mr. Vikram Sharma, learned Deputy Government Advocate for the State and Mr. Ramakant Mishra, learned Assistant Solicitor General for the Union of India.

Date of hearing : 13-05-2022

Date of Judgment : 28-06-2022

Hon'ble Shri Arup Kumar Goswami, Chief Justice

Hon'ble Shri Rajendra Chandra Singh Samant, Judge

C.A.V. Judgment

Per R.C.S. Samant, J.

1. Writ Appeal No.64/2022 has been preferred challenging the order dated 10.01.2022 passed in Writ Petition(Civil) No. 3355/2019 by which the petition was allowed and the award dated 12.02.2018 passed by the Competent Authority and the Arbitration Award passed by the Commissioner, Jagdalpur dated 11.7.2019 were set aside.

Writ Appeal No.81/2022 has been preferred against the order dated 10.1.2022 in Writ Petition(Cr.)



No.1031/2019. Writ Appeal No.81/2022 is preferred against the same order by which the order dated 10.1.2022 in WPC No.3355/2019 has been challenged.

In Writ Appeal No.119/2022 the order of Single Bench in Writ Petition(Cr.)No.828/2019 passed on 10.1.2022, dismissing the petition is under challenge.

In Writ Appeal No.144/2022 the order of Single Bench dated 10.1.2022 dismissing the Writ Petition(Cr.) No.1096/2019 has been challenged.

Writ Appeal No.129/2022 has been preferred against the same order dated 10.1.2022 by which the Writ Petition(Cr.) No.674/2019 preferred by the appellants, was dismissed.

Writ Appeal No.83/2022 has been preferred by the appellants against the order dated 10.1.2022 of Single Bench dismissing the Writ Petition(Cr.) No.751/2019.

Writ Appeal No.115/2022 has been preferred against the order dated 10.1.2022 of Single Bench by which the Writ Petition(Cr.) No.1037/2019 has been dismissed.

Writ Appeal No.77/2022 has been preferred against the judgment dated 10.1.2022 by which the Writ Petition(Civil) No.3355/2019, was allowed.

2. A project for construction of single railway line of length of



140km named as Rowghat, Jagdalpur broad-gauge single railway line was declared as Special Railway Project by Gazette Notification dated 4.4.2016. For execution of this railway project, 1863 hectares of land was proposed to be acquired, out of which 140.233 hectares were private lands. A notification dated 21.8.2017 was issued under Section 20A of the Railways Act, 1989 (for short 'the Act, 1989'), by the competent authority declaring the intention to acquire the lands for the execution of the Special Railway Project. After granting time for objections, the notification for acquisition of lands was issued under Section 20E of the Act, 1989, on 21.12.2017. The appellants in Writ Appeal No.64/2022, 81/2022, 77/2022 and 83/2022 were the land owners, whose land was situated in Village-Palli. They were the affected persons as their lands were acquired for this Special Railway Project. The Additional Collector District-Bastar/Competent Authority, proceeded for determination of the award in application No.34/2017 and passed the award date 12.2.2018 granting compensation of Rs.188.83 crores. Khasra No.123/1 of area 7000 sq. meter and khasra No.123/2 of area 19900 sq.meter was acquired from appellant Bali Nagwanshi. Plot bearing Khasra No.125/1 to 125/29, 125/31, 125/33 to 125/37, which were plots situated in the colony developed in the name of "Neelima Spandan"





were also acquired for this project. Compensation for land acquired from Bali Nagwanshi was determined as 70.62 Crores for the total area of the land which was acquired being 2.69 hectares. Similarly, the compensation was determined in favor of appellant Neelima Belsariya to the tune of Rs.25.19 Crores for the total area of the land which was acquired being 1.040 hectares.

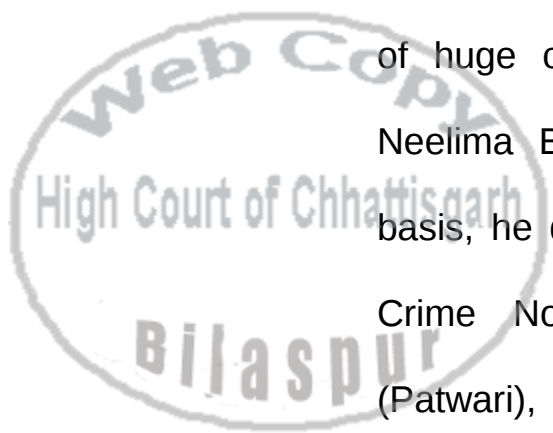
3. Appellant Bali Nagwanshi in WA No.81/2022 & 64/2022, not being satisfied with the compensation determined, preferred arbitration reference before the Commissioner, Bastar Division, on which vide order dated 11.7.2019, the Arbitration Award was given, by enhancing the compensation and granting additional amount of Rs.7,79,04,091/-.
4. The arbitration reference was also made by appellant- Neelima Belsariya in WA No.83/2022 & 77/2022 before Additional Commissioner, Bastar Division, which was decided by order dated 11.7.2019 and she got an enhancement of Rs.98,39,610/-.
5. The Collector District-Bastar took cognizance of a news item published in daily newspaper- Navbharat dated 19.7.2019 about discrepancies and scam in the acquisition matter and





he constituted a Committee of three members to inquire into the matter.

6. The Committee made an inquiry and submitted a report. The Collector District-Bastar, by a memo dated 30.7.2019, by relying upon the report of the Committee, came to the conclusion that the determination of compensation by the Competent Authority and the Arbitrator was erroneous and that the Railway Officials, the then Additional Collector, SDM and others were involved in the conspiracy for determination of huge compensation in favor of Bali Nagwanshi and Neelima Belsariya beyond their entitlement and on this basis, he directed lodging of FIR. The FIR was lodged as Crime No.409/2019 against the Dharmnarayan Sahu (Patwari), Arjun Shrivastava (Revenue Inspector), Deendayal Mandavi (Tahsildar), Siyaram Kurre (SDO, Revenue), Heeralal Nayak (Additional Collector cum Competent Authority), Kaushal Thakur (in-charge sub-Registrar), Officer from IRCON Suresh B. Mitali, Officer from IRCON A.R. Murthy, Range Officer G.R. Rao, Bali Nagwanshi and Neellima Belsariya. Various writ petitions have been disposed off by the Single Bench by the impugned order and they are the appellants before this Court in their respective writ appeals.





7. The petitioners in Writ Petition(Cr.) 674/2019 Siyaram and others are the Revenue Officers. The petitioners in Writ Petition(Cr.) No.1027/2019, Heeralal Nayak was Competent Authority, the petitioner in Writ Petition(Cr.) No.1096/2019 Kaushal Kumar Thakur was the Clerk/In-Charge of Sub-Registrar Office, Neelima Belsariya and one another petitioner in Writ Petition(Cr.) No.97/2019. Neelima Belsariya again the petitioner in Writ Petition(Cr.) No.751/2019, Bali Nagwanshi the petitioner in Writ Petition(Cr.) No.1031/2019 and Suresh B. Mitali and another petitioner in Writ Petition(Cr.) No.828/2019 had preferred the writ petitions praying for quashment of the FIR lodged against them. The Bastar Railway Pvt. Ltd. (for short 'BRPL'), petitioner in Writ Petition(Civil) No.3355/2019 had preferred the petition praying for quashment of the compensation award of the Competent Authority and also the Arbitration Award given by the Arbitrator / Commissioner, Bastar Division. The learned Single Bench has by the detailed order allowed the Writ Petition(Civil) No.3355/2019, by setting aside the Award passed by the Competent Authority dated 12.2.2018 and by the Commissioner dated 11.7.2019. All the other writ petitions(criminal) preferred were dismissed.

8. Mr. Prashant Bhushan, learned counsel for the petitioner Bali



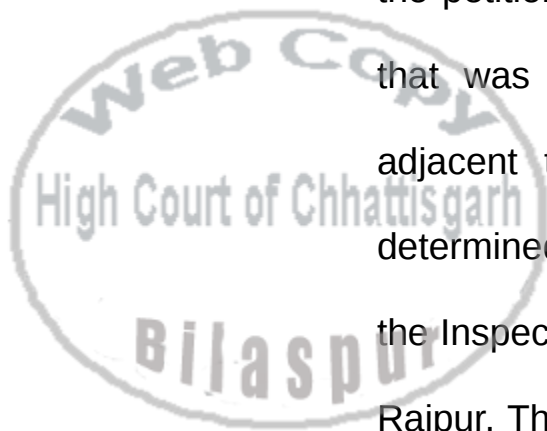
Nagwanshi submits, that Writ Petition(Civil) No.3355/2019 was not maintainable, as there was remedy available under Section 34 of the Arbitration and Conciliation Act, 1996., (for short, 'the Act, 1996'). Such an application has also been preferred by the respondent Bastar Railway Pvt. Ltd, before the Court of District Judge, Bastar. Hence, the petition was not maintainable on this ground. It is further submitted, that according to the reliefs that were claimed by the petitioner BRPL in Writ Petition(Civil) No.3355/2019, initially, the petition was not maintainable. An application for amendment was filed by which additional relief, which was prayer for setting aside the award dated 11.7.2019 passed by the Commissioner was allowed at the final hearing stage and then the same relief was granted to the petitioner BRPL. It is further submitted that after filing of an application under Section 34 of the Act, 1996, such a prayer for setting aside the Award of the Arbitrator under Article 226 Constitution was not maintainable. Reliance was placed on judgment of Supreme Court in **SBP & Co. Vs. Patel Engg. Ltd.**, reported in (2005) 8 SCC 618 and **Haryana Urban Development Authority, Karnal Vs. Mehta Construction Company**, reported in 2022 SCC OnLine SC 396. This objection was raised by the petitioner side, but the same was not decided. Hence, the order allowing the Writ





Petition(Civil) No.3355/2019, is erroneous. The learned Single Judge has made an erroneous mention in the paragraph No. 117 of the impugned order, that no one has raised objection about maintainability of the writ petition at the initial stage, which is not a correct statement and hence, the order of the learned Single Bench in Writ Petition(Civil) No.3355/2019, is liable to be set aside.

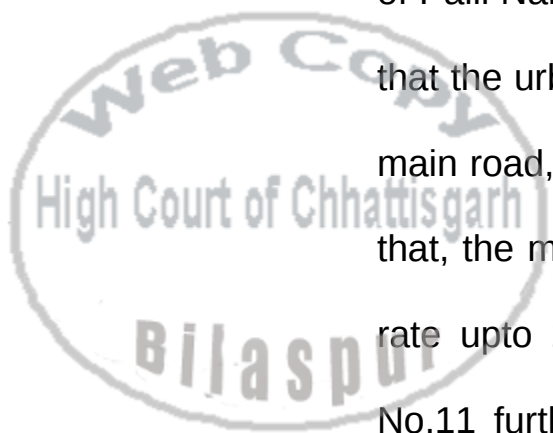
9. It is submitted by Mr. Prashant Bhushan, learned counsel for the petitioner, that the land of the petitioner Bali Nagwanshi that was acquired was urban land, which was situated adjacent to the main road and the compensation was determined in accordance with guidelines of 2017-2018, by the Inspector General Registrar and Superintendent(Stamp), Raipur. There was provision of compensation in accordance with per square meter market value of the plot situated within the depth of 20 meters from the main road and accordingly, compensation was determined by the Competent Authority and was enhanced by the Commissioner, Bastar Division / Arbitrator.
10. The guidelines of 2017-2018 specifically mentions in Serial No.34 & 37, that for the land situated on the way from MGM School to Palli Naka, the compensation was to be





determined at the rate of Rs.13,800/- per sq. meter, for such lands which are situated within the 20 meters depth from the main road.

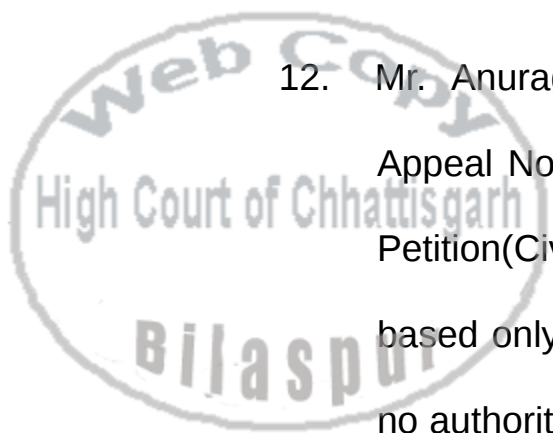
11. By the Government Notification dated 2.7.2014, the State Government determined the Extent of Wards of Nagar Nigam, Jagdalpur. According to the Schedule, the Serial No.37 mentions of Lokmanya Tilak Ward, which includes the Palli area. In the details of the Ward No.37, there is mention of Palli Naka. Clause No.10 of the guidelines itself mentions, that the urban residential area which is situated adjacent the main road, being used for Commercial/Industrial purpose for that, the market price was to be calculated at the enhanced rate upto 25% of the compensation for that area. Clause No.11 further provides, that the locality/colony/route in the urban area, which has been shown in the guidelines, in that place, the market price will be calculated according to the rate of the locality/colony/route, which has been followed in determining the compensation. It is submitted that the Collector is bound to follow the provision under Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the Act, 2013') and, therefore, there is no error committed by the Competent Authority, in determining the





compensation and, further, the Commissioner also has not committed any error in enhancing the compensation in favor of the appellant Bali Nagwanshi. The Award of the Competent Authority and the Arbitrator both are sustainable. The land that had been acquired by the respondent authorities was purchased by the petitioner Bali Nagwanshi about nine years prior to its acquisition. On these grounds, the impugned order is challenged and he contends that the FIR is baseless and vexatious.

12. Mr. Anurag Dayal Shrivastava, learned counsel in Writ Appeal No.77/2022, 129/2022 & 83/2022 submits, that Writ Petition(Civil) No.3355/2019 was not maintainable as it was based only on the report of the Collector. The Collector has no authority to inquire into the matter under the provisions of the Act, 1989. The whole procedure of acquisition has taken place under the provisions of the Act, 1989. The Additional Collector was notified as Competent Authority. The notification dated 21.8.2007 issued under Section 20A of the Act, 1989, can neither be challenged in any Court nor can it be examined by a Criminal Court. It is submitted that the petitioners filed a Writ Petition(Civil) No.3355/2019 after long delay and hence it was not maintainable. On the basis of the prayer clause which was initially present the petition was not





maintainable. The learned Single Bench has allowed the amendment in prayer clause, which was included later on, regarding which the objection was raised, that when an application under Section 34 of the Act, 1996, was pending, prayer for setting aside the award of the arbitrator should not have been entertained by this Court in the writ petition. Hence, the order of Single Bench in Writ Petition(Civil) No.3355/2019 is not sustainable.

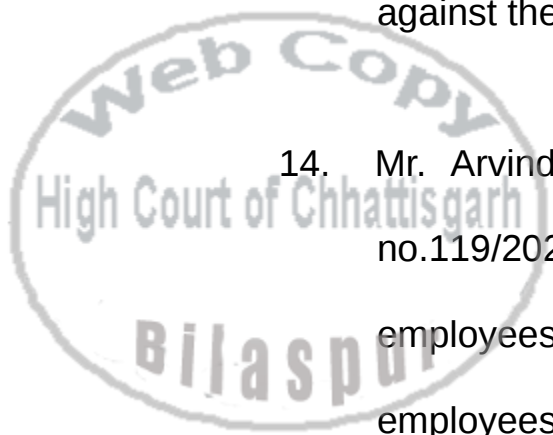
13. It is further submitted by Mr. Shrivastava, learned counsel that the land belonging to the appellant- Neelima Belsaria was urban land situated in Ward No.37 and there was a diversion order for the same regarding land use. This land was present in the colony developed and styled as "Neelima Spandan". The State Government had passed the order restraining transfer/ sale of land in the project area for the Railway construction. The appellant- Neelima Belsaria had challenged this order in Writ Petition(227) No.238/2012 which was disposed off on 07.08.2014 by the learned Single Judge partly allowing the petition. It was held in that order that the diversion for the land use was just and proper and in accordance with law.

He endorses the submissions made by the learned counsel for Bali Nagwanshi, that the land in question is



situated in the urban area under the municipal limits of Municipal Corporation, Jagdalpur. Therefore, the determination of compensation as per the guidelines, was proper. It is again submitted that in the Collector report, suspicion has been raised on the notification itself regarding which the Collector has no authority or jurisdiction and, therefore, the notification concerned cannot be examined by a criminal Court. Hence, the order in Writ Petition(Civil) No.3355/2019 is not sustainable and also the FIR lodged against the petitioner is liable to be quashed.

14. Mr. Arvind Shrivastava, learned counsel in Writ Appeal no.119/2022 submits, that the appellants are not the employees of Bastar Railway Private Limited. They are employees of the IRCON International Limited(Government of India undertaking under the Ministry of Railways). These appellants have nothing to do with the acquisition process or determination of compensation. There had been no involvement of these appellants in whatsoever manner. In the FIR lodged, the offence under Section 109 of IPC has been added to show a conspiracy and that these appellants were the part of the conspiracy. It is submitted that the proposal for construction of Railway Station in Palli, was not given by these appellants. In the report of the Collector





dated 30.7.2019, it is mentioned in Clause F , that there is requirement for inquiry by Competent Railway Authorities, regarding the involvement of Railway Officers and necessity of criminal action against them. Therefore, it was not a recommendation for making any inquiry against the appellants, who are not the railway employees. The learned Single Bench has very cursorily decided this point raised by the appellants/petitioners holding, that the ground raised cannot be examined by the Writ Court, which is erroneous, therefore, the appellants in this case are entitled for grant of relief as prayed in this writ appeal.

15. Mr. Varun Sharma, learned counsel for the appellant in Writ Appeal No.144/2022 submits, that the appellant in this case was Registration Clerk and his only role was to provide the calculation sheet as per the guidelines, which was laid down under the provisions of Stamp Act. A departmental action was initiated against this appellant which was withdrawn later on. It is further submitted that under Section 186 of the Act, 1989, immunity has been granted to the public servant under which this appellant is also protected, hence, the lodging of FIR against him was liable to be quashed, it is prayed that this writ appeal be allowed and relief be granted.



16. Mr. Siddharth Shukla, learned counsel for the appellant in Writ Appeal No.115/2022 submits, that the appellant in this case was the Competent Authority and he has not played any role in the said conspiracy as alleged in the Collector's report. The award was passed on the basis of the documents that were supplied, which included the guidelines of 2017-2018. The appellant has performed his duty strictly in accordance with law. Therefore, there is no criminality present on the part of this appellant. The learned Single Judge has erred in holding, that the case requires investigation. Whereas the FIR lodged was liable to be quashed, hence, it is prayed that this writ appeal be allowed and the appellant may be granted relief as prayed.

17. Ms. Astha Shukla, learned State counsel, representing State of Chhattisgarh, Collector, Bastar and the S.H.O. of the Police Station, Kotwali, Jagdalpur, submits that the Collector had the authority to make an inquiry into the allegation of corruption and fraud, in determination of compensation by the concerned authority and also against the persons hugely benefited, without there being any entitlement of them. As soon as the matter came to the notice of Collector from the news reports published regarding large scale irregularity and illegality committed in land acquisition proceeding for Bastar



Railway project, inquiry has been ordered and on the basis of the inquiry report the F.I.R. has been lodged. The learned Single Judge has very correctly held that Collector is competent to make such an inquiry and that the lodging of F.I.R. is a correct step taken. It is further submitted that the land belonging to the appellant Bali Nagwanshi and Neelima Belsariya was clearly situated in the rural areas, which has been erroneously considered as urban area for determining enhanced compensation in favour of these appellants, therefore, there is no error in the impugned order passed by the learned Single Judge. Therefore, all the Writ Appeals are liable to be dismissed.

18. Shri Vikas Singh, learned Senior Counsel for respondent BRPL, firstly submits on the ground of maintainability of WPC No.3355/2019, that the High Court is empowered under Article 226 of the Constitution to entertain the petition regarding which he has placed reliance on the judgments of Hon'ble the Supreme Court in the cases of **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust Vs. V.R. Rudani**, (1989) 2 SCC 691, **PRP Exports & Ors. Vs. Chief Secretary, Government of Tamil Nadu & Ors.**, (2014) 13 SCC 692, **State of U.P. Vs. Mahindra & Mahindra Ltd.**, (2011) 13

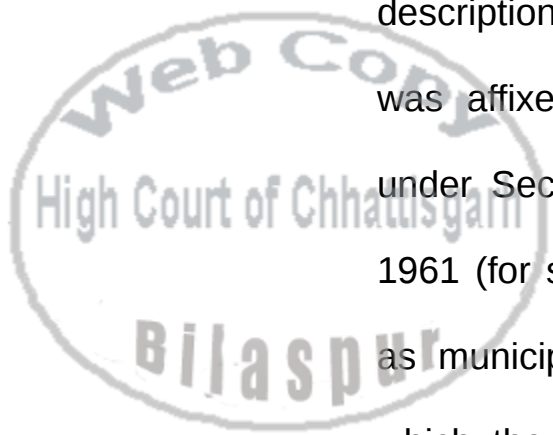


SCC 77. It is submitted that it is a case of large scale corruption and huge discrepancy in the determination of the compensation in the acquisition process. Therefore, it is an exceptional case which was required to be challenged under Article 226 of the Constitution of India. Therefore, invoking of Section 34 of the Act, 1996 is not adequate remedy. It is further submitted that at the time of filing of WPC No.3355/2019 on 12-09-2019, no proceeding was initiated under Section 34 of the Act, 1996. However, an application under Section 34 of the Act, 1996 had been filed on 18-02-2021, which is not yet registered by the court concerned. Hence, it is only under Article 226 of the Constitution, the efficacious remedy can be sought. Hence, for these reasons WPC No.3355/2019 was maintainable and the question of maintainability has been correctly decided by the learned Single Bench.

19. Countering the submissions made by learned counsel for the appellants it is submitted that the acquired lands are situated in village Palli which is a panchayat area and is not notified so far as municipal area. The last notification including villages in the limits of the municipal council Jagdalpur of Bastar District is dated 03-09-2002, by which Village Palli was not included as the municipal area. Claim of the



appellants that village Palli is included in the Ward No.37, that is Lokmanya Tilak ward, is without any basis. The description of the Ward No.37 Lokmanya Tilak ward mentions that the western boundary of the ward is shared with the eastern boundary of Village Palli. The description of northern boundary mentioning Palli Naka is not to be understood as Palli Village. It is further submitted that the appellants, namely, Bali Nagwanshi and Neelima Belsaria have made purchase of agricultural lands, regarding which description of area given is in hectares and the stamp duty was affixed accordingly. There is no notification present under Section 5(A) of the Chhattisgarh Municipalities Act, 1961 (for short 'the Act, 1961) for inclusion of Village- Palli as municipal area. The notification dated 22-07-2014 on which the appellants' side is placing reliance was issued under Section 29(1) of the Act, 1961 only for the election purposes and no inference can be drawn that villages included in the extension of ward under Section 29 of the Act, 1961 are municipal areas. The last notification for the inclusion in municipal areas was dated 03-09-2002. It is further submitted that by notification dated 21-07-2014, Gram Panchayat area has been constituted by the State of Chhattisgarh (C.G.) in which serial No.23 shows, that Gram Panchayat Kumhraband includes Village Palli, which





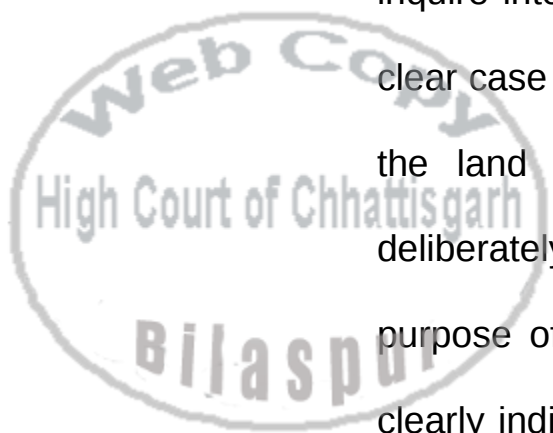
confirms that Village Palli is a notified Gram Panchayat area. The guidelines of 2017-18 issued by the IG and Superintendent of Stamps, C.G. very clearly shows Village Palli was an area for which determination of market price of agricultural lands was to be done on hectare basis and not on the basis of per square meter. It is submitted that land acquisition was made from 9 other persons apart from the petitioners/appellants Bali Nagwanshi and Neelima Belsaria and the compensation for their land has been determined on hectare basis, whereas, the compensation of lands belonging to Bali Nagwanshi and Neelima Belsaria has been determined on per square meter basis, which shows gross irregularity committed to bestow undue favour to them as also the conspiracy involved.

20. It is submitted that in the order passed by the competent authority dated 12-02-2018, it is mentioned in paragraph 4 that claim of Bali Nagwanshi regarding assessment of compensation at enhanced rate was accepted, whereas, claim of other three claimants, namely, Paramjeet Jaswal, Onkar Singh and Mohd. Abu Natik were rejected and then the Commissioner by following the same guidelines has ordered for enhancement of the compensation. Whereas, the similarly placed other land oustees have not been



compensated on equal terms. Hence, it is clearly a case of fraud, which was committed through a conspiracy hatched between appellants Bali Nagwanshi and Neelima Belsaria and the officials involved in determination of the compensation. It is submitted that learned Single Bench has noticed fraud and mentioned about the same in the impugned order.

21. It is submitted that the Collector has jurisdiction and power to inquire into the allegations of corruption, fraud etc. There is clear case of violation of the guidelines present and also that the land situated in village panchayat area has been deliberately shown to be in the municipal area, for the purpose of benefiting only two of the land oustees, which clearly indicates commission of offences which are required to be inquired and accordingly inquiry has been done and acted upon. Hence, the award dated 12-02-2018 by the competent authority and dated 11-07-2019 by the Commissioner are non-est and void being vitiated by fraud and criminal conspiracy. Reliance has been placed on the judgments of Hon'ble the Supreme Court in the cases of **S.P. Chengalvaraya Naidu Vs. Jagannath**, (1994) 1 SCC 1, **Bhaurao Dagdu Paralkar Vs. State of Maharashtra**, (2005) 7 SCC 605, **State of U.P. and others Vs. Ravindra**





Kumar Sharma and others, (2016) 4 SCC 791 and **Rameshwar Vs. State of Haryana**, (2018) 6 SCC 215.

It is also submitted that subsequent events can be taken into consideration by a writ Court, regarding which reliance has been placed on the judgment of Hon'ble the Supreme Court in the case of **State of U.P. Vs. Mahindra & Mahindra Ltd.**, (2011) 13 SCC 77.

It is submitted that in the peculiar circumstances of the case, the writ is maintainable even if there exists any alternative remedy, as has been held in the case of **Whirlpool Corpn. Vs. Registrar of Trade Marks**, (1998) 8 SCC 1.

It is submitted by learned Senior Counsel that the writ appeals are not fit to be entertained, therefore, the same may be dismissed and also the interim protection granted by learned Single Judge may be quashed.

22. Shri Prashant Bhushan learned counsel for appellant Bali Nagwanshi submits in rebuttal, that the notification dated 02-07-2014 is not meant only for elections. The boundaries and areas are very clearly defined with respect to ward No.37, Lokmanya Tilak ward. It starts from Palli Naka via Dharampura No.2 via Shankar Mandir upto Urwasshi Pandey's house in the North and mentions starting from



Shankar Mandir Narmunda via Rajat Jainti Kangoli via B.M. cold storage upto Palli Naka. Village Palli is situated well within this area. The land belonging to appellant Bali Nagwanshi is adjacent to the road leading from MGM school to Palli Naka. It is on this basis the competent authority has calculated the compensation and enhancement of 25% was given according to the guidelines present. Therefore, on the basis of the notification dated 02-07-2014, it can be assumed that land belonging to appellant Bali Nagwanshi was urban land and the assessment was to be done in accordance with Section 20(G) of the Act, 1989 and Section 26 of the Act, 2013, which has been done by the competent authority and further enhancement has been granted by the Commissioner. Therefore, the award of the compensation of the competent authority and the Commissioner are maintainable and lodging of the FIR against appellant Bali Nagwanshi is baseless, which is liable to be quashed.

23. Shri Anurag Dayal Shrivastava, learned counsel for appellant Neelima Belsaria submits in rebuttal, that the notification under Section 29 of the Act, 1961 is not limited for the purposes of elections only. The guidelines that has been issued by the authorities is to be strictly applied and the same has been applied accordingly, in determining the

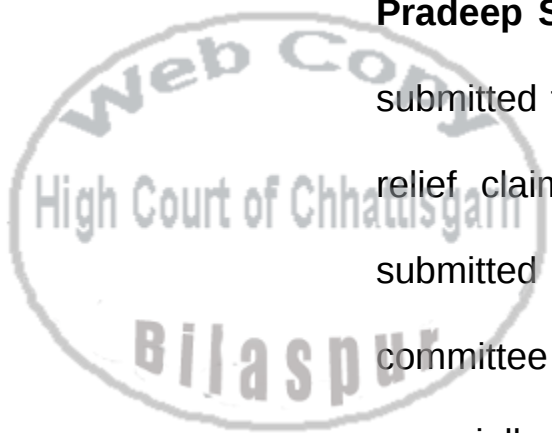


compensation. The submission of the counsel for respondents regarding conspiracy is totally baseless. In the report given by the Collector, the planning regarding construction of railway station has been assailed, which could not have been assailed by the Collector. The notification issued under Section 20(E) of the Act, 1989 has resulted in the vesting of acquired lands with the Central Government, which has not been challenged by the respondent BRPL. The diversion and transfer of project in the matter of construction of railway station at Palli has not affected the original acquisition plan and the construction of railway station only is not the reason for enhancement of the compensation amount. As the lands acquired were in the acquisition plan from the very beginning, therefore, conspiracy theory as propounded by the respondent BRPL finds no support. It is submitted that the lands that were acquired from appellant Neelima Belsaria were diverted plots regarding which the appellant has the confirmation from the order of the High Court in WP227 No.238/2012. Therefore, it was fit to be assessed for compensation at market value per square meter. Respondent BRPL has not challenged the guidelines of 2017-18.

It is submitted, that in the report of the Collector even the grant of 12% interest has been considered as



conspiracy, whereas, the appellant has entitlement of such interest on the compensation. Reliance has been placed on the judgment in the matter of **Union of India and another Vs. Tarsem Singh and others**, AIR 2019 SC 4689. It is submitted that Section 20(F) (vi) and (vii) of the Act, 1989, provide for remedy against the award passed, which shall be by way of arbitration. Respondents BRPL has challenged the award before the Court of District Judge. Relying on the judgment of Hon'ble the Supreme Court in matter of **Pradeep Singh Vs. State of U.P.**, 2010 (2) SCC 114, it is submitted that in case of concealment of fact by a party the relief claimed can be denied by the court. It is further submitted that the Collector had constituted inquiry committee of officers below the rank of the persons accused, especially the Competent Authority who held the rank of Addl. Collector. Further, the application under Section 34 of the Act, 1996 has also been filed with delay, which is clearly barred by limitation as held by Hon'ble the Supreme Court in the case of **P. Radha Bai and others Vs. P. Ashok Kumar and others**, AIR (2018) SC 5013. Hence, there is no basis or evidence of conspiracy present in the case. The prayer made in the appeals filed by Neelima Belsaria are fit to be allowed.





24. Shri Siddharth Shukla, learned counsel for appellant in WA No.115/2022 submits in rebuttal, that appellant Hira Lal Nayak passed the initial award dated 12-02-2018 and then he was transferred. Therefore, compensation amount was neither deposited in his tenure nor was disbursed. The calculation of the compensation was made on the basis of the guidelines and also on the report submitted by the office of the Sub-Registrar. This appellant has no part in conspiracy as alleged. The lodging of the FIR against him is unsustainable.

25. Shri Arvind Shrivastava, learned counsel for appellants in WA No.119/2022 submits in rebuttal, that railway station at Pali was proposed by BRPL. The appellants in this appeal had not played any part in the diversion of the railway project. Therefore, the allegation regarding their participation in the conspiracy is totally baseless.

26. Shri Varun Sharma, learned counsel for appellant in WA No.144/2022 submits in rebuttal, that the appellant in this case was working as Registration Clerk and he had proposed the calculations for making assessment of compensation on the basis of the guidelines of 2017-18. The spot inspection was conducted by Sub-Registrar, Jagdalpur

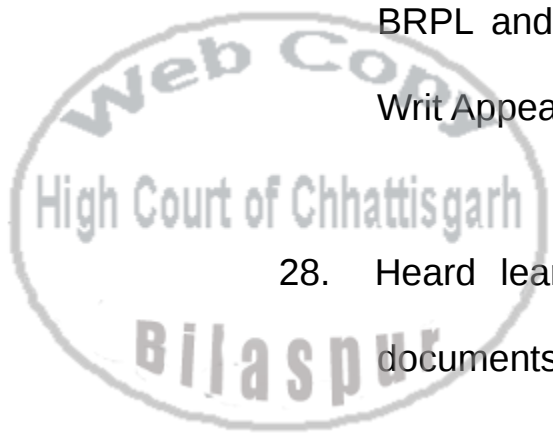


and it was reported by letter dated 03-01-2011 to the appellant Neelima Belsaria, that her land is situated in municipal area of Jagdalpur. Therefore, there is no conspiracy at all and neither any offence has been committed in this case. Therefore, the writ appeal filed by this appellant is fit to be allowed.

27. Mr. R.K. Mishra, learned Asst.S.G. for U.O.I. adopts the arguments advanced by the learned counsel for respondent-BRPL and learned State counsel and submits that all the Writ Appeals are fit to be dismissed.

28. Heard learned counsel for the parties and perused the documents available on record of all the Writ Appeals.

29. The appellants had challenged the report dated 30.07.2019 by the Collector, the lodging of F.I.R. dated 04.08.2019 by Police Station, Kotwali, Jagdalpur and also the order of the S.H.O. Police Station, Jagdalpur directing the respective Banks to seize the bank accounts of the respective appellants/petitioners. The learned Single Judge, framed following questions for determination in paragraph 67 of the impugned order / judgment:-





“67. In view of the above stated factual matrix, following points required to be determined by this Court are :-

(1) Whether the Collector is competent to conduct enquiry with regard to the project carried out by the Central Government.

(2) Whether the facts and grounds raised by the petitioners can be examined by this Court at this stage to quash the FIR.

(3) If the charge-sheet and the suspension order has already been revoked, then what is the effect with regard to criminal proceedings initiated against the petitioner in WPCR No.1096 of 2019.

(4) Whether the State House Officer was justified in issuing the notice dated 05.08.2019 for freezing the bank account.”

30. The learned Single Judge has held in paragraph 75 of the impugned judgment that the role, power and jurisdiction of the Collector cannot be curtailed under any circumstances. The Collector upon the receiving information from any sources whatsoever about discrepancies in the land acquisition proceedings, was well within his authority to order for inquiry and direct lodging of F.I.R. with respect to commission of cognizable offences. In view of the judgment of Supreme Court in **Lalita Kumari Vs. Government of Uttar Pradesh & Others** reported in (2014) 2 SCC 1, held



that the report of Collector is the basis of the F.I.R. lodged against the concerned and whatever ground taken by the appellants/petitioners is their defence, which cannot be adjudicated by the Writ Court.

31. Relying on the judgment in the case of **Kaptan singh Vs. State of U.P. & Others**, reported in 2021 SCC OnLine SC 580 and the judgment of Supreme Court in the case of **State of Odisha Vs. Pratima Mohanty**, in Criminal Appeal Nos.1455-1456/2021, decided on 11.12.2021, the learned Single Bench has rejected the plea of the petitioners for quashing the F.I.R. against them and held in paragraph No.97 as follows:-

“97. In view of the above, Point No. 1 is decided against the petitioner that the Collector is Competent to conduct the enquiry with regard to the project carried out by the Central Government and Point No. 2 is also decided against the petitioners that the facts and grounds raised by them cannot be examined by this Court at this stage to quash the FIR.”

32. On the basis of the submissions of Kousal Kumar Thakur, who is the petitioner in W.P.(Cr.) No.1096/2019 and appellant in W.A. No.144/2022, the development in his favour was examined and the point No.3 was decided in



paragraph No.100 of the impugned judgment which is as follows:-

“100. From the above stated legal position and considering the factual matrix of the case, this Court is of the view that even though the departmental enquiry has been closed, the FIR cannot be closed on this count alone, as such, **Point No.3** decided **against the petitioner.**”

33. The **Point No.4** regarding the authority of Station House Officer to freeze the bank accounts was examined and by placing reliance on the judgment of Supreme Court in the case of **Teesta Atul Setalvad Vs. State of Gujarat** reported in (2018) 2 SCC 372, it was held as follows in paragraph 102:

“102. From the above stated facts and circumstances of the case, it is crystal clear that in such circumstances, the police officer can very well seize the bank account which is a property as per Section 102 of the Cr.P.C. Thus, the **Point No.4** decides **against the petitioner.**”

34. W.P.C No.3355/2019 was separately considered and allowed regarding which paragraph Nos.127, 128, 129 130 and 131 are relevant, which are as follows:-



“127.In view of the above stated legal position, it is quite clear that the petitioner/BRPL is interested person, as such, he should have been noticed by the learned Arbitrator where the award was challenged by respondent No. 7. Thus, the arbitration award passed by the Commissioner is in violation of principle of natural justice and is liable to be set aside by this Court also.

128. Accordingly, the award dated 12.02.2018 passed by the Competent Authority and the award passed by the Commissioner, Jagdalpur dated 11.07.2019 are set aside. Resultantly WPC No. 3355 of 2019 is allowed. In consequence, the learned Competent Authority is directed to re-calculate the award after considering the circular, guidelines and if required to ascertain the factual matrix, he may direct for recording of the evidence also while passing the award. The exercise should be carried out within six months from the date of receipt of copy of this order. Considering the fact that this Court has granted interim protection of no coercive steps in WPCR No. 1031 of 2019 shall be continued till the award is passed by the Competent Authority afresh subject to condition that the petitioner/land losers whose lands

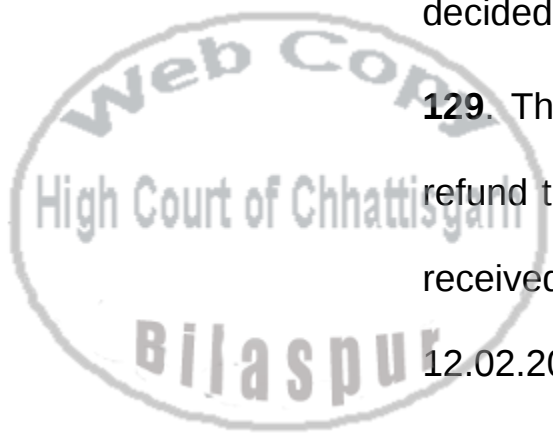




have been acquired or purported to be acquired shall file an affidavit before the concerned Bank within a period of one month from the date of receipt of copy of this order for transfer of amount, which they have received towards compensation within one month from the date of receipt of copy of this order. Thereafter, the Bank shall immediately transfer the amount in account of the land acquisition officer, who shall not disburse the amount till the award is finally decided by the Competent Authority.

129. The petitioners/land losers are also directed to refund the amount of compensation, which has been received by them in pursuance of award dated 12.02.2018 passed by the Competent Authority. Their entitlement of compensation and quantum will be decided by the Competent Authority afresh, in accordance with law giving opportunity of hearing to Bastar Railway Private Limited and others.

130. So far as the Government Officers are concerned, they are also granted protection of no coercive steps with a condition that they will mark their presence before the Station House Officer, Jagdalpur every month till the award is finally decided by the Competent Authority and subsequent presence





will be dependable on final outcome of the award.

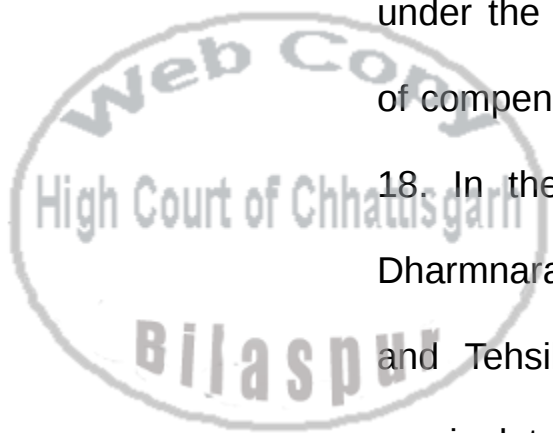
131. With these observations and directions, WPCR No. 674 of 2019, 979 of 2019, 1037 of 2019, 751 of 2019, 828 of 2019, 1031 of 2019 & 1096 of 2019 are disposed of and WPC No. 3355 of 2019 is allowed.”

35. A point has been raised by the appellant side regarding the maintainability of W.P.(C.) No.3355 of 2019. It was submitted that the remedy was available under Section 34 of the Act, 1996, therefore, the award of the Competent Authority and that of the Commissioner was not subject to challenge in the Writ Petition. During the arguments, it has been brought to the notice of this Court, that at a later point of time, the respondent BRPL has preferred an application under Section 34 of the Act, 1996, but the same has not been registered till date and further, the application has been filed beyond the limitation period as provided under Section 34(3) of the Act, 1996.

36. The main contention of the respondent State, respondent-BRPL and respondent- Union of India is this that the whole process for determination of compensation was based on fraud and criminal conspiracy, as out of numerous land oustees, only two of them, namely, Bali Nagwanshi and



Neelima Belsariya have been benefited hugely and unjustly in the matter of grant of compensation and enhancement in compensation which is a windfall gain on their part. Whereas rest of the land oustees, who were similarly situated, have not been benefited in the similar fashion. Secondly, for the purpose of determining compensation in favour of Bali Nagwanshi and Neelima Belsariya, the land acquired from them was considered as urban land, whereas those lands are situated in rural area of village- Palli, which is a village under the Gram Panchayat Kumravand. The determination of compensation was further against the guidelines of 2017-18. In the F.I.R. lodged, it is alleged that the Patwari- Dharmnarayan Sahu, Revenue Inspector- Arjun Shrivastava and Tehsildar Deen Dayal Mandavi had conspired and manipulated the revenue records, by forging the entries for the benefit of appellant Bali Nagwanshi and Neelima Belsariya. There is allegation of involvement of Sub Divisional Officer (Revenue) Siyaram Kurre, Clerk/In-charge of Sub-registrar Office- Koushal Thakur, who provided the calculation for compensation at the inflated rate, on which basis the total 2.69 hectares belonging to Bali Nagwanshi was compensated with the amount of Rs.70.6 crores, whereas according to guidelines for rural area, the total compensation should have been Rs.7.79 crores only and





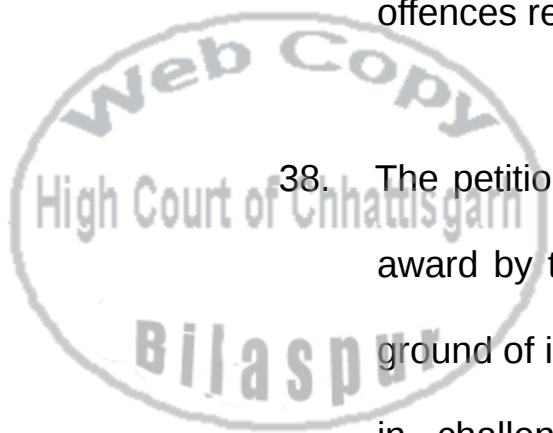
similarly because of this conspiracy and on the basis calculation at the inflated market rates, 1.04 hectare land acquired from Neelima Belsariya was determined to be compensated at Rs.25.19 crores, whereas according to the guidelines for rural area, the compensation would have been Rs.4.38 crores only. It is also alleged that the 25% additional compensation has been granted showing the land belonging to Bali Nagwanshi and Neelima Belsariya adjacent to the road and also of commercial importance, whereas similarly placed other land oustees have been compensated as per the rural criteria. It is also alleged in the F.I.R. that the calculation of the interest at the rate of 12% per annum is illegal and against the provisions of the Act, 1989 and also the Act, 2013.

37. There are number of allegations present in the report of the Collector, which is the basis of the lodging of the F.I.R., which are directed against the assessment of compensation made in the land acquisition process. After passing of the award by a Competent Authority and the enhancement of award by the Commissioner and also deposit of the compensation amount by the BRPL, inquiry was made by the office of the Collector, the report was submitted and on that basis, the F.I.R. has been lodged. Consequent to this



development, the petitioner- BRPL in W.P.C. No.3355/2019 has raised the ground, that the award passed by the competent authority is null and void with respect to the respondents Bali Nagwanshi and Neelima Belsariya and others, as the award was illegally determined against the provisions of law, against the guidelines for market price for the year 2017-18 and that the determination of the compensation in favour of the respective parties, who have been illegally benefited is the result of commission of offences regarding which, F.I.R. has been lodged.

38. The petitioner in W.P.(C.) No.3355/2019 has challenged the award by the competent authority dated 12.02.2018 on the ground of illegality. Same ground of illegality has been raised in challenging the award of the Commissioner dated 11.07.2019. The main allegation being both the awards had been the result of fraud committed by the concerned. In the case of **S.P. Chengalvaraya Naidu Vs. Jagannath** (Supra), it was held by the Supreme Court that the judgment and decree obtained by playing fraud on the court was a nullity. In the case of **Bhaurao Dagdu Paralkar Vs. State of Maharashtra and others** (Supra), it was held that "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. It has been similarly held in the case of





State of U.P. and Others Vs. Ravindra Kumar Sharma and Others (Supra) and **Rameshwar Vs. State of Haryana** (Supra). Section 34 (2) of the Act, 1996 is relevant in this case, which is as follows:-

“Section 34(2) in THE ARBITRATION AND CONCILIATION ACT, 1996:-

(2) An arbitral award may be set aside by the Court only if

—

(a) the party making the application furnishes proof that—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or





(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

39. On a plain reading of this provision under Section 34(2) of the Act, 1996, it is revealed that fraud and conspiracy is not one of the grounds present for challenging an arbitral award. It was held in the case of **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust Vs. V.R. Rudani** (Supra) in paragraph No.17 and 19, which are as follows:-

“17. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The 'public authority' for them mean every body which is created by statute-- and whose powers and duties are defined by statute. So Government departments, local authorities, police authorities, and statutory undertakings and



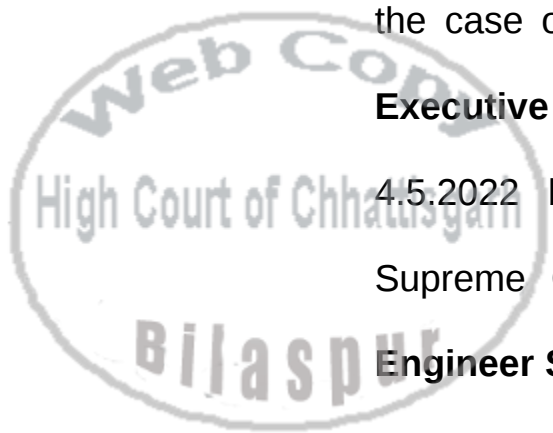
corporations, are all 'public authorities'. But there is no such limitation for our High Courts to issue the writ 'in the nature of mandamus'. [Article 226](#) confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under [Article 226](#), writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose".

40. In the case of **State of U.P. Vs. M/s Mahindra & Mahindra Ltd.** (Supra), it is held that the High Court can always take notice of the subsequent events and developments that have taken place after filing of the Writ Petition etc., which is the case present here, that the application under Section 34 of Act, 1996 has been filed by the respondent BRPL before the District Court, but the fact remains that the same application is clearly time-barred, therefore, the said remedy is no longer available to the respondent BRPL. On the other hand, it has been amply discussed here-in-above that the fact and scenario of the present case is totally different as the respondent BRPL is claiming that the award dated 12.02.2018 by the competent authority and the award dated 11.07.2019 by the Commissioner are non-est and void being



vitiated by fraud and criminal conspiracy. Therefore, in such a case, we are of the view that the Writ Petition Civil No.3355 of 2019 was maintainable under Article 226 of Constitution of India.

Reliance on the judgment in **SBP & Co. Vs. Patel Engg. Ltd.** (supra) and **Haryana Urban Development Authority, Karnal vs M/S. Mehta Construction Company and another** (supra) by the appellant side is distinguishable. Similarly, the reliance of the appellant on the judgment on the case of **M/s Kelkar and Kelkar Vs. M/s Hotel Pride Executive Pvt. Ltd** in Civil Appeal No.3479/2022 decided on 4.5.2022 by the Supreme Court and the judgment of Supreme Court in **Bhaven Construction vs Executive Engineer Sardar Sarovar Narmada Nigam Ltd.& another**, reported in AIR OnLine 2021 SC 6, are also distinguishable on the basis of the discussions made hereinabove as the alternative remedy, though available against the arbitration award, here the challenge of the respondent side to the same is based on the touch-stone of commission of offences of fraud and conspiracy, therefore, the remedy under Article 226 of Constitution of India can be availed in view of the pronouncement of Supreme Court in **Andi Mukta Sadguru** (supra). As per the submissions and the facts presented, the filing of application under Section 34 of the Act, 1996 was





done subsequent to the filing of Writ Petition(Civil) No.3355/2019. Therefore, it cannot be said that there had been any concealment of fact. Reliance of the appellant side on the judgment in the case of **Pradeep Singh Vs. State of U.P.** (supra) does not give any guidance in such a case. Similarly, the judgment in the case of **Union of India and another Vs. Tarsem Singh and others** (supra) can also be distinguished on the basis of the facts and circumstances present in this case.

41. Another ground raised by the appellant side is that the application for amendment to incorporate additional relief for setting aside the award dated 11.07.2019 was allowed at the final hearing stage and as the application under Section 34 of the Act, 1996 was already filed, therefore, this amendment for additional relief was not fit to be allowed. The objection raised by the appellant/petitioner side was not decided by the learned Single Judge.

42. It has been discussed in detail here-in-above while considering the question of maintainability of W.P.(C.) No.3355/2019, that the circumstances are present permitting the filing of the petition under Article 226 Constitution of India. It is true that the application for amendment was filed at a later stage and the same was decided on 29.10.2021.



The order of the Single Judge has mentioned about the objections raised by the opposite counsel and the court has after due consideration, allowed the application for amendment. Subsequent to which, the arguments were heard and the case was reserved for judgment on 16.11.2021 and then the judgment has been delivered on 10.01.2022. Therefore, there is no such case present that the prayer for amendment was allowed immediately before delivering the judgment in this case.

43. As the question of maintainability of the W.P.C. No.3355/2019 has been decided, therefore, the objection that there was alternative remedy present under Section 34 of the Act, 1996, is without any basis. In the case of **Whirlpool Corpn. Vs. Registrar of Trade Marks** (Supra), it was held by the Supreme Court in paragraph 15 as follows:-

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions on of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its



jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of fornicities whirlpool we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

44. Section 34(2) of the Act, 1996 empowers the Court to set aside the award passed by the arbitrator only and therefore, this petition does not empower the Court to set aside the initial award passed by the Acquisition Officer/Competent Authority. Further, on the basis of the discussions made here-in-above, we are of the view that the objection, which was raised by the appellant side before the learned Single Bench, has been considered and decided, therefore, this objection raised again needs no further consideration.





45. The contention of the learned counsel for the appellants that the notification dated 21.08.2017 issued under Section 20A of the Railway Act, 1989 (hereinafter referred to as “the Act, 1989”) cannot be challenged in any Court nor it can be examined by a Criminal Court. The report of the Collector mentions about the diversion of the project in the matter of construction of Railway Station. The matter is merely focused on the commission of various offences under the penal provisions of Indian Penal Code. In case, the F.I.R. lodged is investigated and charge-sheet is filed, the Criminal Court shall have jurisdiction to examine the facts regarding the commission of offences for which the charge-sheet may be filed, therefore, there shall be no reason present to examine the veracity of the notification issued under Section 20A of the Act, 1989. The allegations which are required to be investigated in the case would be mainly on the method of assessment of compensation as alleged that same was done for the purpose benefiting specific beneficiaries only who are the appellants. The bonafide or the lack of it shall be found out in the investigation and, therefore, there is no reason that the Criminal Court shall examine the notification for acquisition of lands under Section 20A of the Act, 1996.

46. The main contention of the appellants/ petitioners is that the



lands acquired from the appellants, namely, Bali Nagwanshi and Neelima Belsariya, were situated in urban area. By the notification dated 21.8.2017, notice under Section 20A of the Act, 1989 was issued showing the intention of the railway authorities to acquire lands. The details of the lands, which were to be acquired situated in village – Palli, are as follows :-

Name of District : Bastar				Name of District : Bastar			
Taluka : Jagdalpur				Taluka : Jagdalpur			
Serial Number	Name of Village	Khasra/ Plot Number	Area(in Hect.)	Serial Number	Name of Village	Khasra/ Plot Number	Area (in Hect.)
(1)	(2)	(3)	(4)	(1)	(2)	(3)	(4)
1	Palli	123/1	1.990				
2	Palli	123/2	0.700				
3	Palli	123/3	0.120				
4	Palli	124	0.249				
5	Palli	125/1 to 125/29, 125/31, 125/33 to 125/37	1.040				
6	Palli	125/30	0.010				
7	Palli	125/32	0.020				
8	Palli	27	0.550				
Total			4.679				

47. The lands above mentioned in the table are shown as situated in village – Palli and the area of the same is also shown in the hectares. It has been vehemently argued by the appellants side that by the notification dated 02.07.2014, village – Palli was included in the municipal area, regarding which, the attention of this Court has been drawn to the



description of Ward No.37 i.e. Lokmanya Tilak Ward. The description of Lokmanya Tilak Ward in the schedule of notification dated 02.07.2014 is relevant, which is as follows :-

“Ward no.37 Lokmanya Tilak Ward

- North - starting from Palli Naka via Dharampura No.-2 via Sankar Mandir upto Urwasshi Pandey's house.
- East - starting from Devi Gudi L.I.C road upto Champa Bai house.
- South - starting from Champa's house upto Sankar Mandir house.
- West - starting from Sankar Mandir Narmunda via Rajat Jainti Kangoli via B.M cold storage upto Palli Naka.”



48. From the description as given in the notification dated 21.08.2017, it is clearly mentioned that Palli is village area. The emphasis of the appellants submission that the village – Palli has been included in Lokmanya Tilak Ward is not reflected from the description given in Notification dated 2.7.2014 regarding Ward No.37 Lokmanya Tilak Ward. The description given for the North mentions that the ward starts from Palli Naka but does not mention Palli village. The description regarding East and South does not mention Palli village and the description regarding Western area of the



ward also mentions of Palli Naka only and it does not make a mention of Palli village in any respect.

49. The contention of the respondents' side is that the village- Palli was never notified as a municipal area. Section 5A of the Act, 1961, empowers the Governor to declare the intention to include within or exclude from the limits of a municipal area, any specific area by making publication of notification. Attention of this Court was drawn to the notification dated 03.09.2002 to submit that this notification was the last notification for inclusion of specified area in the municipal limits of Municipal Council Jagdalpur, which is as under :-



“Raipur, the 3rd September 2002

NOTIFICATION

No.4719/18/2002 – In exercise of the powers conferred under clause (b) of Sub-section (1) of Section 5-A of Chhattisgarh Municipalities Act, 1961), the State Government, hereby, include following villages within the limits of Municipal Council, Jagdalpur of Bastar District, from the date of its notification in the Gazette as given in the Schedule-I.

SCHEDULE - I

The details of the villages to be included within the limits of Jagdalpur Municipal Council.

(1)	Village Sargipal Tahsil	Survey Nos.5, 6, 7, 8, 9, 10 and
-----	-------------------------	----------------------------------



	Jagadapur	part portion of 3/1 G, area 33.600Hec.
(2)	Village Kangoli Tahsil Jagadapur	Survey Nos.1 to 76, 80, 83 to 99, 121/1, total area 616.85 Hec.
(3)	Village Dharampura Tahsil Jagadapur	Survey Nos.1 to 117, 122, 124, 141 and 142, total area 233.758 Hec.
(4)	Village Adhanpur Tahsil Jagadapur	Survey Nos.1 to 139/1, 140 to 147, 150 to 152 and part portion of 149/1 total area 279.989 Hec.
(5)	Village Pakhanguda Tahsil Jagadapur	All Survey Nos. form 1/1 to 97/3 total area 189.567 Hec.
(6)	Village Frazerpur Tahsil Jagadapur	All Survey Nos. from 1/1 K to 27 total area 118.391 Hec.
(7)	Village Hatkalchora Tahsil Jagadapur	All Survey Nos. from 1/1 K to 230 total area 270.725 Hec.
(8)	Village Karakapal Tahsil Jagadapur	Survey Nos.from 1/1 to 26/1, 133/1, 133/8, 135/1, 134/1 total area 54.875 Hec.
(9)	Village Kohakapal Tahsil Jagadapur	All Survey Nos. from 1/2 to 95 total area 75.015 Hec.
(10)	Village Asna Tahsil Jagadapur	Survey Nos. from 266/330 to 628/1 total area 260.468 Hec.
(11)	Village Jagdalpur Khas Tahsil Jagadapur	All Survey Nos. from 1 to 146/35 total area 189.344 Hec.

50. This notification certainly does not include village – Palli within the municipal area. The appellants' side have not brought to the notice of this Court about any other notification under Section 5-A of the Act, 1961, showing the inclusion of village Palli in the municipal area. The arguments of the appellants' side, that the notification dated 02.07.2014 issued under Section 29 of the Act, 1961 shows village- Palli in municipal area is not borne out by the description given with respect to Ward No.37 i.e. Lokmanya Tilak Ward Jagdalpur. Submissions have been made by the appellants' side that the notification under Section 29 of the



Act, 1961 provides for extension of the ward constituted for each municipality has the effect of including the specified area mentioned in the municipal area.

51. The municipal area has been defined under Section 3(18) (a) of the Act, 1961, which is as follows :-

“Section 3 (18-a) – “Municipal area” means the smaller urban area or the transitional area, as the Governor may, by public notification, specify, in accordance with the provisions laid down in Section 5 of this Act;”

52. This provision makes reference to only Section 5 of the Act, 1961 and further Section 5-A of the Act, 1961 has been brought by amendment of 1994. The definition of municipal area does not mention of Section 29 of the Act, 1961.

Section 29 of the Act, 1961 is as under :-

³[29.Determination of number and extent of wards and conduct of elections.-(1) The State Government shall from time to time, by notification in the Official Gazette, determine the number and extent of wards to be constituted for each Municipality :

Provided that the total number of wards shall not be more than forty and not less than fifteen.

(2) Only one Councillor shall be elected from each ward.



(3) The formation of the wards shall be made in such a way that the population of each of the wards shall, so far as practicable be the same throughout the Municipal area and the area included in the ward is compact.

(4) As soon as the formation of wards of a Municipality is completed, the same shall be reported by the State Government to the State Election Commission.

(5) ¹[* * *]

(6) ¹[* * *].

53. It is not relevant to discuss or interpret Section 29 of the Act, 1961 as this Court has already come to a conclusion that inclusion of village- Palli is not specifically mentioned in the notification dated 02.07.2014, which was notified under Section 29 of the Act, 1961 and further, it was not included in the notification of 03.09.2002. No such other notification has been brought to the notice of this Court. As has been submitted by learned counsel for the respondents' side that, Palli Naka should not be identified as Palli village. It is observed that Palli Naka is a particular point for crossing on the road having a barrier and therefore, Palli Naka can not be referred to as Palli village in any respect.

54. Section 6 of the Act, 1961 provides for publication of notification under Section 5 or Section 5-A of the Act, 1961.



Section 7 of the Act, 1961 provides that after the establishment of municipal area and inclusion of a panchayat area, such specified area shall cease to exist in the panchayat area.

55. Respondents' side has referred to notification dated 02.07.2014, which is a notification regarding constitution of gram panchayats. In Sr. No.23 there is mention of Gram Panchayat- Kumrawand, which includes villages Kumrawand and Palli. The relevant extract is as follows :-

“कार्यालय, कलेक्टर, जिला बस्तर (छत्तीसगढ़)

बस्तर, दिनांक 21 जुलाई 2014

अधिसूचना

क्रमांक / 482 / पंचायत / 2014-15- छत्तीसगढ़ शासन, पंचायत एवं ग्रामीण विकास विभाग की अधिसूचना क्रमांक एफ -1-11- 95- 22- पं -02, दिनांक 23 फरवरी 1999 द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए, छत्तीसगढ़ पंचायत राज अधिनियम 1993 (क्रमांक 1 सन् 1994) (जिसे इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 129 ख (1) के प्रावधानों के अधीन में अंकित आनंद, कलेक्टर, जिला बस्तर संलग्न सारणी (जिसे, इसके पश्चात् “सारणी” कहा गया है) के स्तंभ (4) में दर्शाये गये गांव या गांवों के समुह के लिए जिसकी जनसंख्या सारणी के स्तंभ (5) में दर्शायी गई है, सारणी के स्तंभ (3) में उल्लेखित नाम से उक्त अधिनियम के प्रयोजनों के लिए “ग्राम Sds :i es विनिर्दिष्ट करता हूँ तथा सार्वजनिक जानकारी के लिए एतद् द्वारा प्रकाशित किया जाता है।

इस स्थापित ग्राम में अधिनियम की धारा 8 (क) के अनुसार ग्राम पंचायत का गठन किया जायेगा, इस प्रकार गठित ग्राम पंचायतों को अधिनियम की धारा 11 के अंतर्गत वर्णित अधिनियम के प्रयोजन के लिए आवश्यक अन्य समस्त शक्तियां प्राप्त होंगी.





Sr. No.23 is as follows :-

23	कुम्हरावंड	कुम्हरावंड	912	2
		पल्ली	618	2
		योग	1530	

56. Although this notification does not mention the lands included in the panchayat area but inclusion of village – Palli in the panchayat area is sufficient to reflect that the village- Palli continues as a village in the gram panchayat Kumrawand. It is the submission of the respondents' side that the respective lands that were purchased by the appellants/petitioners are shown as agricultural lands in the respective sale deeds and their areas were mentioned in hectares, which had not been denied by the appellants' side.

57. In the guidelines issued by the Office of Inspector General of Registrar and Superintendent (Stamp), Raipur for the year 2017-18, market price is mentioned with respect to Ward No.37, which is as follows :-

प्रारूप –एक
(नियम-7 देखिये)
नगरीय संपत्तियों के बाजार मूल्य मार्गदर्शिक सिद्धांत वर्ष 2017-2018
नगर पालिक निगम-जगदलपुर

क्र०	वार्ड का नाम एवं क्रमांक	मोहल्ला/कॉलोनी/सोसायटी/मार्ग का नाम	(दर प्रतिवर्गमीटर रुपये में) भूखण्ड का मूल्य	
			संपत्ति मुख्य मार्ग पर स्थित होने की स्थिति में 20 मीटर तक दर	संपत्ति मुख्य मार्ग से अंदर होने पर दर (जिसमें मुख्य मार्ग से 20 मीटर पश्चात की दर भी सम्मिलित हैं)
37	लोक मान्य तिलक वार्ड क्रमांक 1.	एम.जी.एम. स्कूल जाने का रास्ता से पल्ली नाका तक	13800	
	2.	पल्ली नाका से गिट्टी खदान तक	6000	8500
	3.	अशोका लाईफ स्टायल/नागवंशी रेसीडेन्सी/निलीमा	...	11300



37	स्पंदन (पल्ली)		
	4. गणेश चौक से रायल गार्डन तक (नागवंशी रेसीडेंसी)	7300	5400
	5. गणेश चौक से गिट्टी खदान जाने वाली रोड तक	7100	5300

58. There is mention of “Nagwanshi Residency” and “Neelima Spandan”, regarding which, the appellants have their claims. However, these properties are shown to be present beyond 20 meters from the road.

59. Further in the same guidelines under Format -III, there is mention of village- Palli in Revenue Inspector Circle Jagadalpur. The relevant entry at Sr.No.2 is as follows :-



प्रारूप –तीन (नियम-7 देखिये) कृषि भूमि के लिये बाजार मूल्य मार्गदर्शिक सिद्धांत वर्ष 2017-2018 तहसील-जगदलपुर जिला – बस्तर						
(दर प्रति हेक्टेयर में)						
प. ह. नं.	ग्राम का नाम	सभी किस्म मुख्य मार्ग पर स्थित	सिंचित	असिंचित	कृषि भूमि के टुकड़े 500 वर्गमीटर तक	
					सड़क से 20 मीटर तक	सड़क से 20 मीटर बाद
1						
2	घाटपदमूर	4795500	3294000	3212	2188	
	कुम्हरावंड	5061000	3294000	2891	2188	
	पल्ली	5061000	3294000	2891	2188	

60. On a minute perusal of the order dated 12.02.2018, given by the Competent Authority, there appears to be no mention that land that was acquired from the appellants Bali Nagwanshi and Neelima Belsaria were within that the Ward



No.37 of the Jagdalpur Municipal Corporation and that the lands were not situated in the rural area of village – Palli.

61. The notification under Section 20A of the Act, 1989 dated 21.08.2017 mentions the description of lands, situated at village- Palli, regarding which, the intention for acquisition was notified. After the publication of this notification in the local news paper, the persons concerned have the liberty to raise objection as provided under Section 20D of the Act, 1989, which was to be made within 30 days from the date of publication under Section 20A of the Act, 1989. Sub-section 2 of Section 20-D of the Act, 1989 provides that the Competent Authority shall give an opportunity of hearing to the objector and to make an inquiry as may be necessary and either allow or disallow the objections. Thereafter, notification under Section 20-E of the Act, 1989 is to be issued. The notification under Section 20E of the Act, 1989 was issued on 21.12.2017. The relevant part of this notification is reproduced as under :-

MINISTRY OF RAILWAYS

(Railway Board)

NOTIFICATION

Bilaspur, the 21st December, 2017

**Notification under Section 20E of the
Railways Act, 1989**

S.O.3000(E.) – Whereas by the notification of



the Gov. of India, In the Ministry of Railways (Railway Board) number S.O.2856 (E), published in the Gazette of India (Extra-Ordinary) on dt.31.08.2017 Part-II section 3, sub section (ii), herein after referred to as the said notification under subsection (1) of 20A of the Railway Act,1989 (24 of 1989) (hereinafter referred to as the said Act), the central Government declared its intention to acquire the land specified in the schedule annexed to the said notification for execution of special Railway Project, namely Rowghat-Jagdalpur (140 km.) of Dallirajhara-Jagdalpur in the state of Chhattisgarh.

And, whereas the substance of the said notification was published in the daily Newspapers, Nava Bharat (Hindi) Bastar Edition on 23.09.2017, and Dandakaranya Samachar (Hindi) dt.24.09.2017 under subsection (4) of section 20A of the said act.

And whereas, there are four objections received within the set time period & all were rejected by the Competent Authority.

And, whereas, in pursuance of subsection (1) of section 20E of the said act, the Competent Authority has submitted his report to the central Government; Now, therefore, upon receipt of the said report of the Competent Authority, and in exercise of the powers conferred by subsection (1) of the section 20E of the said act 1989, the central Government hereby declares that the lands specified in the





schedule annexed here to shall be acquired for the aforesaid purpose;

And, further, in pursuance of subsection (2) of section 20E of the said Act, the Central Government hereby declares that on publication of this notification in the official Gazette, the land specified in the Schedule annexed here to shall vest absolutely in the Central Government free from all encumbrances.

Relevant entries in Sr. No. 1, 2 and 5 of the notification are as under :-

SCHEDULE

Name of District: Bastar
Taluka: Jagdalpur

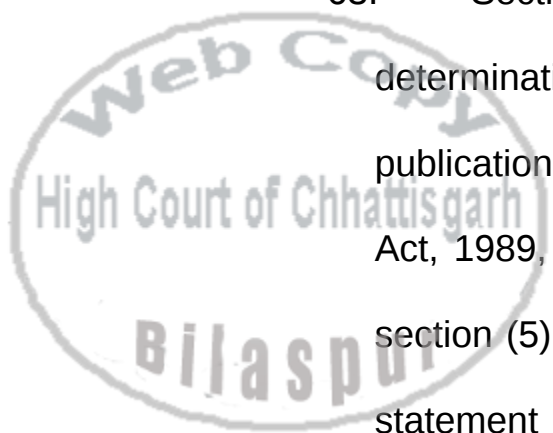
Serial No.	Name of Village	Khasra /Plot Number	Area (in Hect.)	Type of Land	Nature of land	Name of Land Owner
1.	Palli	123/1	1.990	Pvt.	Fallow Land	Bali Nag Vanshi Father Buter Nagvanshi Caste Hulba
2.	Palli	123/2	0.700	Pvt.	Fallow Land	Bali Nag Vanshi Father Buter Nagvanshi Caste Hulba
3.	-	-	-	-	-	-
4.	-	-	-	-	-	-
5.	Palli	125/1 to 125/29, 125/31, 125/33 to 125/37	1.040	Pvt.	Fallow Land	Shirmati Neelima Father Pillu Ram, Bell Saria Husband T.K. Ravi Caste Hulba

62. It goes to show, that after the notification of intention to acquire the lands, the appellants/petitioners did not raise any



such objection that the lands proposed to be acquired from them was not a land situated in the rural area and that the same was situated in the urban area under the limits of the municipal corporation/council. Therefore, the notification under Section 20E of the Act, 1989 mentions about the lands acquired from the appellants Bali Nagwanshi and Neelima Belsaria as agricultural land with description that the lands acquired were fallow lands.

63. Section 20F of the Act, 1989 provides for determination of compensation amount, in which after publication of notification, under sub-section (4) of 20F of the Act, 1989, the interested party may appear and under sub-section (5) of Section 20F of the Act, 1989, he may make a statement regarding the nature of his respective interest in such lands, and not regarding the market valuation of the acquired property, as it is the duty of the competent authority to determine the compensation in accordance with Section 20F (8) of the Act, 1989 taking into consideration the market value. Here the case is quite different. The respective notifications and the documents show that village Palli were never included in the municipal area under any notification issued under Section 5A of the Act, 1989. The claim of the appellant- Bali Nagwanshi and Neelima Belsaria is that the





land shown in the guidelines by 2017-18 i.e. “Nagwanshi Residency” and “Neelima Spandan” were subject to acquisition. On the contrary, the notification under Section 20A of the Act, 1989 and then the notification under Section 20E of the Act, 1989, make a clear mention of the lands acquired from the village- Palli, which are shown to be fallow lands, without there being presence of any construction on the same. The report of the Collector dated 30.07.2019, which is filed as Annexure P-10 (in W.P.(C) No. 3355 of 2019), mentions that seven persons were the land oustees from village – Palli and the total compensation determined was Rs. 99.07 Crores, out of which only two of the lands oustees, who are the appellants Bali Nagwanshi and Neelima Belsaria, have received Rs.95.82 Crores out of the total amount. There is allegation of serious irregularities committed in determination of compensation with specific mention, that the land acquired from the appellants Bali Nagwanshi and Neelima Belsaria were lands situated in village area. This enquiry was conducted by a committee of three members, constituted by the Collector, Jagdalpur, who also happen to be the members of the revenue department and the report given by them has relevance alongwith other facts, which support the conclusion/ ground in this report which has been described herein above. Therefore, the





conclusion drawn by the learned Single Judge in the impugned order in favour of the report submitted by the Collector does not appear to suffer from any kind of infirmity.

64. The grounds raised by the appellant – Hiralal Nayak in W.A. No. 115 of 2022, by the appellant – Siyaram Kurre in W.A. No. 129 of 2022, and by the appellant – Koushal Kumar Thakur in W.A. No. 144 of 2022, are that they performed their duties in exercise of power vested in them. The compensation was determined by the competent authority in accordance with the documents provided to him and the calculation sheet was provided by the registration clerk – Koushal Kumar Thakur in accordance with the guidelines of 2017-2018. It has also been contended that the appellant – Hiralal Nayak passed the award dated 12.02.2018, subsequent to which, he was transferred. No amount of compensation was deposited during his tenure. Appellant – Siyaram Kurre was the then S.D.O. (Revenue), the appellant – Dindayal Mandavi was the then Tahsildar, appellant – Arjun Shrivastava was the then Revenue Inspector and appellant – Dharam Narayan Sahu was the then Halka Patwari and their submission is that they have performed their duties lawfully.





65. Section 186 of the Act, 1989 provides for immunity to the Railway Administration or Railway Servant or any other person from any civil action or criminal action, provided, that the action of such administration or public servant was done in good faith. The point of good faith is required to be investigated and it is only after that the conclusion can be drawn whether the action of the public servant concerned was done in good faith on a lawful exercise of the duty. As there are several allegations present regarding the conspiracy and fraud, therefore, these allegations are required to be investigated before drawing any conclusion whether the act done by the public servant was done in good faith or not and whether the public servant has the immunity under Section 186 of the Act, 1989 ?

66. In the inquiry report submitted and the report of the Collector dated 30.07.2019, there are specific details of irregularities committed and responsibility fastened. Firstly, it is reported that the Patwari – Dharam Narayan Sahu manipulated the revenue records showing the land of Neelima Belsaria and Bali Nagwanshi as separate khatas, whereas earlier the revenue record was showing the lands in joint khata with others. Incharge Sub-Registrar, Koushal Kumar Thakur had first submitted a report on 30.01.2018 showing the lands of



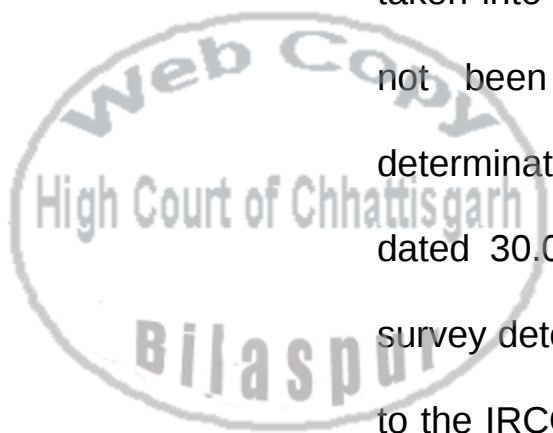
the appellants Bali Nagwanshi and Neelima Belsaria in one khata. Subsequent to which, the second report has been submitted on 31.01.2018 showing the lands of these appellants in separate khatas. It is alleged that the Revenue Inspector - Arjun Shrivastava, Dindyal Mandavi and Siyaram Kurre, connived in the submission of the report. The calculation sheet was provided by the In-charge Sub-Registrar Koushal Kumar Thakur, and based on the same compensation has been assessed in favour of the appellants Bali Nagwanshi and Neelima Belsaria. The responsibility of appellant – Hiralal Nayak has been fixed on this point, that he also connived with the submission of report by the other officials and did not consider, that only two land oustees are receiving huge compensation as compared to the other land oustees and it is on this basis, criminal liability has been imposed upon these appellants, regarding which, FIR has been lodged. The grounds on which the appellants are placing reliance needs to be investigated. The writ Court or this appellate Court can not go into the details of the accusation and grounds that are present or the grounds that have been raised by the appellants in their defence. The learned Single Bench has rightly held that the grounds and the defence of these appellants can not be adjudicated by this Court and further the FIR lodged requires to be





investigated and truth will be revealed during the investigation. Hence for these reasons, we are of the view that the grounds raised by these appellants are not fit to be considered by the writ Court and similarly are not fit to be considered in these writ appeals.

67. The contentions of the appellant – Suresh B. Matali and A.V. R. Murty, the appellants in W.A. No.119 of 2022 that they have no involvement in the alleged commission of offence is taken into consideration. It is true that these appellants had not been involved in the process of acquisition in determination of compensation. In the report of the Collector dated 30.07.2019, it is reported, that the responsibility of survey determination of rail track and construction was given to the IRCON. IRCON is one of the partners in joint venture with National Mineral Development Corporation (NMDC), Steel Authority of India (SAIL) and Chhattisgarh Mineral Development Corporation (CMDC). It is alleged in the report, that IRCON made a survey for diversion of project proposing construction of railway station at village – Palli, as a result of which, excess land was acquired and such lands were acquired because of which, the burden of payment of compensation was enhanced and therefore, the lands of the village- Palli were acquired, leading to the discrepancy in





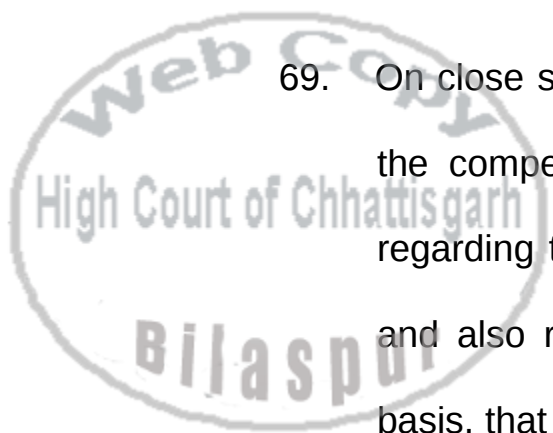
determining huge compensation and also in determining compensation in favour of the appellants Bali Nagwanshi and Neelima Belsaria in different manner, compared to the compensation determined for the other land oustees. In this case, the land acquisition procedure has taken place only once, for which, notification dated 21.08.2017 under Section 20A of the Act, 1989 was published showing the intention of the railway authorities to acquire the lands. This notification included the lands belonging to the appellants – Bali Nagwanshi and Neelima Belsaria. Subsequent to that, the notification under Section 20E, which was published on 21.12.2017 for making acquisition of the lands, in which, the acquisition of the lands proposed in notification under Section 20A, was finalized. Hence, it is not a case that any additional acquisition of lands has taken place at any later point of time. The lands in question were already there in acquisition plan, since the very beginning.

68. Now the question is whether diversion of project in the matter of construction of railway station at village Palli is one of the reasons for determining enhanced compensation in favour of the land oustees. In our view, when the lands acquired were already in the construction plan of the special railway project, change in plan and construction of railway



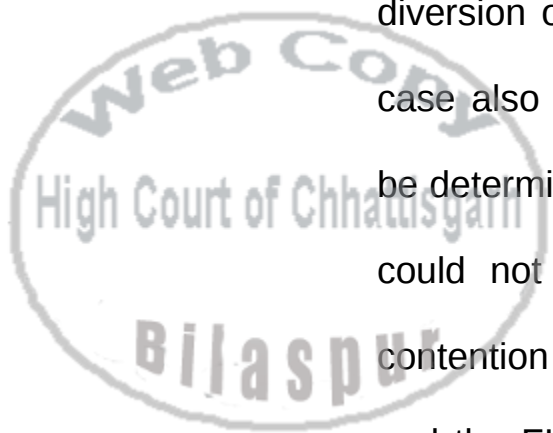
station at village – Palli or any diversion without there being any additional acquisition for the same, does not affect the determination of compensation in any manner because the compensation is to be determined in accordance with the guidelines 2017-18 issued by the Inspector General and Superintendent (Stamp), Raipur, which prescribes for grant of compensation according to the market price of the land only and not on the ground of any other importance, for example, construction of railway station.

69. On close scrutiny of the award dated 12.02.2018 passed by the competent authority, there appears to be no mention regarding the construction of railway station at village- Palli and also regarding determination of compensation on this basis, that railway station is to be constructed at village Palli. Similarly, the order of Commissioner (Arbitrator) dated 11.07.2019 also does not mention any such ground for enhancement of compensation granted to the appellant Bali Nagwanshi and the order has been similarly passed in the arbitration matter referred by the appellant – Neelima Belsaria on 11.07.2019. On the contrary, it appears that the grounds for determination of compensation had been only the market price of the lands, which has been classified as agricultural land, land of commercial value, land adjacent to





the road, urban land and rural land, which are the only criteria prescribed in the guideline of 2017-18. Therefore, we are of the view, that in the report of the Collector, an erroneous conclusion has been drawn regarding the involvement of Suresh B. Matali and others, the appellants in W.A. No. 119 of 2022 holding that their action in the matter of survey of railway lands etc. has been the reason of erroneous determination of compensation in favour of the appellants – Bali Nagwanshi and Neelima Belsaria. The diversion of railway project, if any, has taken place, in that case also the structure of the compensation, which was to be determined in accordance with the guidelines of 2017-18, could not have changed. On the other hand, the main contention in the report of the Collector dated 30.07.2019 and the FIR lodged dated 04.08.2019 is only to this extent that the lands belonging to the appellants Bali Nagwanshi and Neelima Belsaria were assessed for compensation on the basis of their being urban land, being situated within the municipal limits of Jagdalpur and also being situated adjacent to the road, which is subject for investigation in the FIR lodged. Hence, we are of the view that involvement of these appellants in the FIR as accused persons is baseless. Hence, their prayer for quashing of FIR against them is fit to be allowed.





70. It had been the submission of the appellants' side that the Collector had no authority to make an inquiry into the acquisition process for the railway project as there is no such provision present in the Act, 1989. In this matter, the Collector has not enquired into the acquisition process. The inquiry has been conducted with respect to the erroneous determination of compensation, regarding which, the report has been submitted and it was on the basis of this report, the FIR has been lodged. Section 39 of the Code of Criminal Procedure provides that every person aware of commission of any offence punishable under the provisions of IPC specified in the section is duty bound to give information to the nearest Magistrate or Police Officer. The offence under Section 409 is included in this provision.

71. Section 154 of Cr.P.C. provides that information which discloses commission of cognizable offence, can be given to the police station in the manner provided therein. Hence, on the basis of these provisions in Criminal Procedure Code and also the Collector being the administrative head of revenue district, has the responsibility to see that the rule of law prevails and he is duty bound to take cognizance whenever there is some information regarding commission



of offence. Although the cognizance was taken by the Collector on the basis of the news publication, but the Collector did not proceed to lodge FIR only on that basis. An enquiry was conducted by a team constituted by the Collector and on the submission of report of the inquiry by the said Committee, the action has been taken for lodging of FIR in this case. There is no such restriction under the provisions of the Act, 1989 and further, the inquiry report can not be said to be against the railway authorities or against the railway project. The report mentions about the diversion of railway project, regarding which, suspicion has been raised, which has been dealt with here-in-above. Therefore, we are of the view that the Collector has ordered for enquiry well within his authority and hence, the enquiry report dated 30.07.2019 does not suffer from any infirmity or illegality.

72. In conclusion, we are of the view that W.A. No. 81 of 2022, W.A. 64 of 2022, W.A.77 of 2022, W.A. 83 of 2022, W.A. 115 of 2022, W.A.129 of 2022 and W.A.144 of 2022 are not fit to be allowed. Hence, they are dismissed.
73. However, the W.A. No. 119 of 2022 is fit to be allowed, which is allowed and the FIR dated 04.08.2019 under Crime No. 409 of 2019 to the extent, lodged against the appellants



Suresh B. Matali and A.V.R. Murty are hereby quashed.

Sd/-

(Arup Kumar Goswami)
Chief Justice

Sd/-

(R.C.S. Samant)
Judge

Nisha/Aadil/Monika/
Nirmala/Balram

