A DELHI METRO RAIL CORPORATION LTD.

v.

TARUN PAL SINGH & ORS.

(Civil Appeal No. 19356 of 2017)

B NOVEMBER 15, 2017

[ARUN MISHRA AND MOHAN M. SHANTANAGOUDAR, JJ.]

Right to Fair Compensation and Transparency in Land
C *Acquisition, Rehabilitation and Resettlement Act, 2013:*

ss. 24(1)(b) and proviso to s.24(2) – Whether Proviso to sub- section (2) of s. 24 governs sub-section (1)(b) of s. 24 or is confined to sub-section 24(2) alone – Held: ss.24(1) and 24(2) operate in two different fields – The proviso is only an exception to
D *the main provision – For applicability of the proviso, the case has to be covered by s.24(2) – The object of the proviso is to give benefit of computation of compensation to all landholders and to save land acquisition proceedings – The legislative intention is clear that it is enacted as proviso to s.24(2) – If it is read as proviso to s. 24(1)(b), it would create repugnancy with said provision and provisions of*
E *s.24(1)(b) and 24(2) would become wholly inconsistent with each other – The interpretation which creates inconsistency or repugnancy has to be avoided – No contrary intention is available in the provisions so as not to read the proviso as part of s.24(2) – Interpretation of Statutes.*

F *Interpretation of Statutes:*

Proviso to a provision – Construction of – Discussed.

Allowing the appeals, the Court

HELD: 1. Effect of a proviso is to except all preceding
G **portion of the enactment. It is only occasionally that proviso is unrelated to subject matter of preceding section, it may have to be interpreted as a substantive provision. Ordinarily, a proviso is not interpreted as stating a general rule. Provisos are often added as saving clauses. A proviso must be construed with reference to the preceding parts of the clause to which it is**
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appended. The proviso is ordinarily subordinate to the main Section. A construction placed on proviso which brings general harmony to the terms of the Section should prevail. A proviso may sometime contain substantive provision. Ordinarily, proviso to a section is intended to take out a part of the main section for special treatment. Normally, a proviso does not travel beyond the main provision to which it is a proviso. A proviso is not interpreted as stating a general rule, it is an exception to main provision to which it is carved out as a proviso. Proviso can not be construed as enlarging the scope of enactment when it can be fairly and properly constructed without attributing that effect. It is not open to read in, the words of enactment which are not to be found there and which would alter its operative effect. [Para 9] [225-D-G]

H. Nizam's Religious Endowment Trust, Hyderabad v. Commissioner of Income-tax, Andhra Pradesh, Hyderabad **AIR 1966 SC 1007: [1966] SCR 384;** *Kederanath Jute Manufacturing Co. Ltd. v. The Commercial Tax Officer & Ors.* **AIR 1966 SC 12 : [1965] SCR 626 ;** *Ishverlal Thakorelal Almaula (Deceased) after him his heirs and Legal Representatives v. Motibhai Nagjibhai* **AIR 1966 SC 459 : [1966] SCR 367 ;** *Shah Bhojraj Kuverji Oil Mills & Ginning Factory v. Subhash Chandra Yograj Sinha* **AIR 1961 SC 1596 ;** *S.Sundaram Pillai & Ors. v. V.R. Pattabiraman & Ors.* **(1985) 1 SCC 591: [1985] 2 SCR 643;** *Haryana State Cooperative Land Development Bank Ltd. v. Haryana State Cooperative Land Development Banks Employees Union & Anr.* **(2004) 1 SCC 574 : [2003] 6 Suppl. SCR 1039 ;** *Romesh Kumar Sharma v. Union of India & Ors.* **(2006) 6 SCC 510: [2006] 4 Suppl. SCR 227 ;** *Nagar Palika Nigam v. Krishi Upaj Mandi Samiti & Ors.* **AIR 2009 SC 187 : [2008] 14 SCR 419 ;** *Shimbhu & Anr. v. State of Haryana* **(2014) 13 SCC 318 : [2013] 14 SCR 136 – relied on.**

Statute Law *by Craies,* **Seventh Edition – referred to.**

2.1 Section 24(1) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

A Resettlement Act, 2013 begins with non-obstante clause. The Parliament has given overriding effect to this provision over all other provisions of 2013 Act. Section 24(2) also begins with non-obstante clause. This provision has overriding effect over Section 24(1). It is apparent that Sub-Section (2) of Section 24 deals with
B the lapse of acquisition in case the award had been made five years or more prior to commencement of the Act but the physical possession of the land had not been taken or the compensation had not been paid. The provision of Section 24(2) and its proviso together further clarify that, in case the award has been made and compensation in respect of majority of land holdings has not
C been deposited in the account of the beneficiaries, then, all the beneficiaries specified in the notification for Acquisition shall be entitled to compensation in accordance with the provisions of 2013 Act. Even if, minority of the claimants are disbursed with the compensation, such claimants also would get benefit of
D compensation under 2013 Act. Thus it is clear that even if the acquisition does not lapse, all the beneficiaries to whom the compensation is payable would be entitled to compensation under 2013 Act. [Para 12] [227-A-D]

2.2 Reading of Sections 24(1) and 24(2) conjointly & homogenously makes it abundantly clear that they operate in two
E different fields. Section 24(1)(b) unequivocally indicates that in case the award has been passed under the Land Acquisition Act, 1894, all the proceedings shall continue as if 1894 Act has not been repealed. Section 24(1)(a) makes the provision of 2013 Act applicable only in case where the award has not been passed.
F In other words, it gives a clue that when an award has been passed, obviously further proceedings have to be undertaken under the 1894 Act, to that extent proceedings under the said Act is saved, and the Act of 2013 will not apply. In such cases, there is no necessity of initiation of acquisition proceedings afresh except in cases as provided under Section 24(2). Whereas Section
G 24(2) would be applicable, if the Award under Section 11 of the old Act has been made five years or more prior to commencement of 1894 but physical possession of the land has not been taken or the compensation has not been paid. Proviso to Section 24(2) further makes it clear that in case the compensation in respect of
H majority of land holdings has not been deposited in the account

of the beneficiaries, then, all the beneficiaries, specified in the notification for Acquisition shall be entitled to compensation in accordance with the provisions of Act of 2013. The legislature has provided different consequences in the provisions keeping in mind the time gap as enumerated in Sections 24(1) and 24(2). The legislature has visualized and expected that the things would not happen overnight on passing of an award. [Para 12] [228-B-F] A B

2.3 Three contingencies are provided under Sub-Section (2) of Section 24 i.e. (i) in case if award was passed five years or more prior to the commencement of 2013 Act and (ii) if compensation has not been paid, or (iii) possession has not been taken. Exception is carved out by adding the proviso to Section 24(2) - wherein the land acquisition would not lapse, in case some of the land losers are paid compensation but land owners of majority of holding are not paid. Thus the proviso to Section 24(2) cannot be lifted and made part of Section 24(1)(b). [Para 12] [227-G-H; 228-A] C D

2.4 The proviso to Sub-Section (2) makes it clear that when the Award has been made and, compensation in respect of majority of holdings has not been deposited in the account of beneficiaries, the acquisition would not lapse. However, all the beneficiaries shall be entitled to enhanced compensation under 2013 Act. This proviso is to be necessarily part of Sub-Section (2) of Section 24 only. The legislative intention is clear that it is enacted as proviso to Section 24(2), and otherwise also if read as if it were a proviso to Section 24(1)(b), it would create repugnancy with said provision and the provisions of section 24(1)(b) and proviso to 24(2) would become wholly inconsistent with each other. This is a trite law that the interpretation which creates inconsistency or repugnancy has to be avoided and proviso has to be part of Section 24(2) as enacted. As per fundamental rule of its construction, no contrary intention is available in the provisions so as not to read it as part of Section 24(2). As Section 24(1)(b) provides, in case award has been passed under 1894 Act, the proceedings shall continue of the said Act as if it has not been replaced whereas Section 24(2) provides deemed lapse in case award is passed 5 years or more before commencement of 2013 Act and possession has not been E F G H

A taken or compensation has not been paid and as per the proviso with respect to majority of holding compensation has not been deposited in account of land owners. In case award has been passed few days before commencement of the 2013 Act, then deposit of compensation with respect to majority of holding is
B bound to take time, that is why legislature has made difference of consequences based upon time gap in passing of award as requisite steps to be taken are bound to consume some time by providing proceedings to continue under 1894 Act. [Para 11] [226-C-H]

C 2.5 A proviso appended to a provision has to be specifically interpreted in the manner so as to enable the field which is covered by the main provision. The proviso is only an exception to main provision to which it has been enacted and no other. The proviso deals with a situation which takes something out of the main enactment to provide a particular course of action, which course
D of action could not have been adopted in the absence of the proviso. The proviso appended to Section 24(2) indicates that it carves out an exception for a situation where the land acquisition proceedings shall not be deemed to lapse. Thus, for the applicability of the proviso, a case has to be covered by Section 24(2) i.e. (1) award has been made five years or more prior to the
E enforcement of 2013 Act. [Para 13] [228-F-H; 229-A]

2.6 The purpose and object of the proviso is to give benefit of computation of compensation to all landholders and to save land acquisition proceedings. Hence, it is evident that the proviso is appropriately be treated as a proviso to Sub- Section (2) of
F Section 24 and cannot be read as proviso to Section 24(1)(b) of Act of 2013. [Para 13] [229-C]

Delhi Development Authority v. Sukhbir Singh & Ors. (2016) 16 SCC 258 : [2016] 5 SCR 227 – distinguished.

G Case Law Reference

[2016] 5 SCR 227	distinguished	Para 6
[1966] SCR 384	relied on	Para 8 (b)
[1965] SCR 626	relied on	Para 8 (c)
[1966] SCR 367	relied on	Para 8 (d)
H AIR 1961 SC 1596	relied on	Para 8 (e)

[1985] 2 SCR 643	**relied on**	**Para 8 (f)**
[2003] 6 Suppl. SCR 1039	**relied on**	**Para 8 (i)**
[2006] 4 Suppl. SCR 227	**relied on**	**Para 8 (j)**
[2008] 14 SCR 419	**relied on**	**Para 8 (k)**
[2013] 14 SCR 136	**relied on**	**Para 8 (l)**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 19356 of 2017.

From the Judgment and Order dated 21.05.2015 of the High Court of Delhi at New Delhi in C. W. Petition No. 8596 of 2014

WITH

Civil Appeal Nos. 19362, 19361, 19358, 19357, 19360, 19359, 19363, 19364 and 19412 of 2017

Sanjay R. Hegde, Sr. Adv., Ms. Shashi Kiran, Satish Chandra, Sujit Kumar Jha, Ms. Priya Sharma, Manoj Jain, Hara Prasad Sahu, Kamlesh Kumar Mishra, Shiv Kant Mishra, Pranaya Kumar Mohapatra, Parveen Swarup, Manish Kaushik, Ms. Aradhana Sharma, Anil Goel, Sachin Gupta, Ms. Rachana Srivastava, Ms. Monika, Sukrit R. Kapoor, Ms. Nitya Madhusoodhanan, Muhammad Khan, R.V. Prabhat, Umar Hoda, Gaurav Goel, Siddhartha Chowdhury, Vishaal Maan, Satyawan Rathee, Abhishek Gupta, Keshav Ranjan, B.V. Balaram Das, Advs. for the appearing parties.

The following Order of the Court was passed:

ORDER

1. Leave granted.

2. The only issue involved in the present case is whether the provision of Section 24(1)(b) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the Act of 2013') is governed by the proviso to Sub-section (2) of Section 24 of the said Act or it has to be read as part of section 24(2).

3. For the purpose of Delhi Metro Railways, land acquisition was initiated by issuing a Notification on 04.06.2009 under Section 4 read with Section 17(1) and (4) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act of 1894').

A 4. As per letter dated 16.6.2009, written by the appellant-Delhi Metro Rail Corporation Ltd. ('DMRC', for short) to the Land & Building Department of the Delhi Government, 80% of the land compensation amounting to Rs.3,28,56,687.49p. (Rupees Three Crores, Twenty Eight Lakhs, Fifty-Six Thousand, Six Hundred Eighty-Seven and Forty Nine Paise only) was deposited by the appellant vide cheque dated 15.6.2009. The matter travelled to this Court; and this Court dismissed the Special Leave Petition. Thereafter, declaration under Section 6 of the Act of 1894 had been issued on 9.10.2009, and possession of the land was taken by the DMRC. Award was pronounced on 14.9.2011 by the Land Acquisition Collector ('the LAC', for short). On 16.9.2009, the DMRC deposited the amount of compensation determined by the LAC. The balance amount i.e. Rs.60,81,04,200/- (Rupees Sixty Crores, Eighty One Lakhs, Four Thousand, Two Hundred only) was demanded by the Land & Building Department by writing a letter dated 15.10.2011; and, that amount was also paid, vide cheque dated 02.11.2011. It was deposited on 3.11.2011. Thus, the DMRC has deposited the total assessed compensation. The DMRC was in possession of the land and after development, it has been handed over for the public purpose, *i.e.*, MRTS project, for construction of Chattarpur Metro Station and Electrical Relay Sub-Station to cater to the Metro Line from Mehrauli to Gurgaon and Chattarpur Metro Station. The claimants have already sought reference under Section 18 of the Act of 1894, for enhancement of the compensation, which is stated to be pending. In the High Court, certain writ petitions were filed by the claimants in which, vide its judgment and order dated 21.5.2015, it was directed that the acquisition would stand, but the compensation would be paid to the writ petitioners under the Act of 2013. Hence, the appeals have been preferred by DMRC in this Court.

5. It was urged by learned counsel appearing on behalf of the appellant that Award has been passed within 5 years prior to the commencement of the Act of 2013; the Act came into force on 1.1.2014; the Award was passed on 14.04.2011. Thus, the provisions of Section 24(1)(b) of the Act of 2013 would be applicable and such, proceedings would not lapse and compensation would not be payable as per proviso to Sub-Section (2) of Section 24 of the Act of 2013. The view taken by the High Court, that the proviso to section 24(2) is applicable, is not correct. The amount has already been deposited before the Land Acquisition Collector. Rs.21 Crores is said to have been paid towards

compensation. The High Court has, thus, erred in holding that the compensation is required to be paid under the Act of 2013.

6. On the other hand, learned counsel appearing on behalf of the landowners contended that the proviso to Section 24(2) has to be read as part of Section 24(1)(b) of the Act of 2013, and it cannot be read as part of Sub-Section (2) of Section 24, as legislature have carved out a different independent provision which would be applicable to an Award passed, as contemplated under Section 24(1)(b), and since in the instant case, the amount has not been deposited with respect to the majority of the land holdings in the account of the beneficiaries, the compensation becomes payable to all the beneficiaries under the Act of 2013. Reliance has been placed on the decision of this Court in *Delhi Development Authority Vs. Sukhbir Singh & Ors.*, (2016) 16 SCC 258.

7. Section 24 of the Act of 2013 is extracted hereunder:

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

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

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

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of landholding has not been deposited in the account of the beneficiaries, then, all

A beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

8. Before coming to the construction of the proviso to section 24, we deem it appropriate to consider rules regarding construction of proviso.

B (a) Craies on Statute Law, Seventh Edition referring to various decisions for construction of provisos has observed :

"The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something C enacted therein, which but for the proviso would be within it; and such a proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect."

"When one finds a proviso to a section," said Lush J. in D Mullins v. Treasurer of Surrey (1880) 5 Q.B.D. 170, 173, "the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso."

In West Derby Union v. Metropolitan Life Assurance Co. E [1897] A.C. 647, 652 Lord Watson said: "I am perfectly clear that if the language of the enacting part of the statute does not contain the provisions which are said to occur in it, you cannot derive these provisions by implication from a proviso. When one regards the natural history and object of provisos, and the manner F in which they find their way into Acts of Parliament, I think your Lordships would be adopting a very dangerous and certainly unusual course if you were to import legislation from a proviso wholesale into the body of the statute, although I perfectly admit that there may be and are many cases in which the terms of an intelligible proviso may throw considerable light on the ambiguous G import of the statutory words."

And Lord Herschell in the same case said : "I decline to read into any enactment words which are not to be found there and which would alter its operative effect because of provisions to be found in any proviso," though he admitted that a proviso H may be a useful guide in the selection of one or other of two

possible constructions of words in the enactment or to show the scope of the latter in a doubtful case. A

In R. v. Dibdin [1910] P.57, 125 Moulton L.J. said: "The fallacy of the proposed method of interpretation is not far to seek. It sins against the fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso. It treats it as if it were an independent enacting clause instead of being dependent on the main enactment. The courts, as, for instance, in Ex p. Partington, (1844) 6 Q.B. 649, 653, Re Brocklebank (1889) 23 Q.B.D 461, and Hill v. East and West India Dock Co. (1884) 9 App.Cas.448 have frequently pointed out this fallacy, and have refused to be led astray by arguments such as these which have been addressed to us, which depend solely on taking words absolutely in their strict literal sense, disregarding the fundamental consideration that they appearing in the proviso." B C

So where section 65 in a group of sections from section 62 onwards in a private Act at the side of which was a note "Sewers – Sanitary arrangements," provided that "nothing in the Act shall authorise the Corporation of Newcastle-on-Tyne to commit a nuisance," and the Improvement Act of 1885 by section 22 authorised the corporation to erect posts, rails, and fences for the protection of passengers and traffic, it was argued that this authority must be read subject to the proviso as to nuisance; but the court held that the proviso affected only the group of sections to which it was attached and was not a proviso to section 22. But sections, though framed as provisos upon preceding sections, may exceptionally contain matter which is in substance a fresh enactment, adding to and not merely qualifying what goes before." D E F

(b) In *H.E. H.Nizam's Religious Endowment Trust, Hyderabad v. Commissioner of Income-tax, Andhra Pradesh, Hyderabad* AIR 1966 SC 1007, this Court has observed : G

"7. As has been pointed out by Craies in his book on Statute Law, 6th Edn. at p. 217, "The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it." The proviso to clause (i) excepts the two classes of income H

A subject to the condition mentioned therein from the operation of the substantive clause. It comes into operation only when the said income is applied to religious or charitable purposes without the taxable territories. In that event, the Central Board of Revenue, by general or special order, may direct that it shall not be included in the total income. The proviso also throws light on B the construction of the substantive part of clause (i) as the exception can be invoked only upon the application of the income to the said purposes outside the taxable territories. The application of the income in praesenti or in futuro for purposes in or outside the taxable territories, as the case may be, is the necessary C condition for invoking either the substantive part of the clause or the proviso thereto."

(c) In *Kedarnath Jute Manufacturing Co. Ltd. v. The Commercial Tax Officer & Ors.*, AIR 1966 SC 12, this Court has discussed the purpose of the proviso thus :

D "8. Section 5(2)(a)(ii) of the Act in effect exempts a specified turnover of a dealer from sales tax. The provision prescribing the exemption shall, therefore, be strictly construed. The substantive clause gives the exemption and the proviso qualifies the substantive clause. In effect, the proviso says that part of E the turnover of the selling dealer covered by the terms of sub-cl. (ii) will be exempted provided a declaration in the form prescribed is furnished. To put it in other words, a dealer cannot get the exemption unless he furnishes the declaration in the prescribed form. It is well settled that "the effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except F out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it" : see "Craies on Statute Law", 6th Edn., p. 217. If the intention of the Legislature was to give exemption if the terms of the substantive part of sub-cl. (ii) alone are complied with, the G proviso becomes redundant and otiose. To accept the argument of the learned counsel for the appellant is to ignore the proviso altogether, for if his contention be correct it will lead to the position that if the declaration form is furnished, well and good; but, if not furnished, other evidence can be produced. That is to rewrite the clause and to omit the proviso. That will defeat the express

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intention of the Legislature. Nor does R. 27A support the contrary construction. The expression "on demand" only fixes the point of time when the declaration forms are to be produced; otherwise, the rule would be inconsistent with the section. Section 5(2)(a)(ii) says that the declaration form is to be furnished by the dealer and r. 27A says that it shall be furnished on demand, that is to say, it fixes the time when the form is to be furnished. This reconciles the provisions of r. 27A with those of s. 5(2)(a)(ii) of the Act, whereas the construction suggested by the learned counsel introduces an incongruity which shall be avoided. Section 21A on which reliance is placed has no bearing on the question to be decided. It only empowers the Commissioner or any person appointed to assist him under sub.section (1) of s. 3 to take evidence on oath etc. It can be invoked only in a case where the authority concerned is empowered to take evidence in respect of any particular matter, but that does not enable him to ignore a statutory condition to claim exemption."

(d) In *Ishverlal Thakorelal Almaula (Deceased) after him his heirs and Legal Representatives v. Motibhai Nagjibhai*, AIR 1966 SC 459, the intendment of the proviso has been discussed thus :

"8. The proper function of a proviso is to except or qualify something enacted in the substantive clause, which but for the proviso should be within that clause. It may ordinarily be presumed in construing a proviso that it was intended that the enacting part of the section would have included the subject-matter of the proviso. But the question is one of interpretation of the proviso and there is no rule that the proviso must always be restricted to the ambit of the main enactment. Occasionally in a statute, a proviso is unrelated to the subject-matter of the preceding section, of contains matters extraneous to that section, and it may have then to be interpreted as a substantive provision, dealing independently with the matter specified therein, and not as qualifying the main or the preceding section."

(e) In *Shah Bhojraj Kuverji Oil Mills & Ginning Factory v. Subhash Chandra Yograj Sinha*, AIR 1961 SC 1596, this Court has discussed the object of the proviso and how it is to be interpreted thus:

"9. The law with regard to provisos is well-settled and well-understood. As a general rule, a proviso is added to an enactment

A to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule. But, provisos are often added not as exceptions or qualifications to the main enactment but as savings clauses, in which cases they will not be construed as controlled by the section. The proviso which has been added to s. 50 of the Act deals with the effect of repeal. The substantive part of the section repealed two Acts which were in force in the State of Bombay. If nothing more had been said, s. 7 of the Bombay General Clauses Act would have applied, and all pending suits and proceedings would have continued under the old law as if the repealing Act had not been passed. The effect of the proviso was to take the matter out of s. 7 of the Bombay General Clauses Act and to provide for a special saving. It cannot be used to decide whether s. 12 of the Act is retrospective. It was observed by Wood, V.C., in Fitzgerald v. Champneys (1861) 70 E.R. 958 that saving clauses are seldom used to construe Acts. These clauses are introduced into Acts which repeal others, to safeguard rights which, but for the savings, would be lost. The proviso here saves pending suits and proceedings, and further enacts that suits and proceedings then pending are to be transferred to the courts designated in the Act and are to continue under the Act and any or all the provisions of the Act are to apply to them. The learned Solicitor-General contends that the savings clause enacted by the proviso, even if treated as substantive law, must be taken to apply only to suits and proceedings pending at the time of the repeal which, but for the proviso, would be governed by the Act repealed. According to the learned Attorney-General, the effect of the savings is much wider, and it applies to such cases as come within the words of the proviso, whenever the Act is extended to new areas."

(f) In *S.Sundaram Pillai & Ors. v. V.R. Pattabiraman & Ors.*, (1985) 1 SCC 591, this Court has elaborately considered various decisions with respect to the proviso and has discussed the matter thus :

29. Odgers in Construction of Deeds and Statutes (5th Edn.) while referring to the scope of a proviso mentioned the following ingredients:

"P. 317. Provisos —These are clauses of exception or qualification in an Act, excepting something out of, or qualifying

something in, the enactment which, but for the proviso, would be within it. A

P. 318. Though framed as a proviso, such a clause may exceptionally have the effect of a substantive enactment."

30. Sarathi in Interpretation of Statutes at pages 294-295 has collected the following principles in regard to a proviso: B

(a) When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso.

(b) A proviso must be construed with reference to the preceding parts of the clause to which it is appended. C

(c) Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the latter intention of the makers.

(d) Where the section is doubtful, a proviso may be used as a guide to its interpretation: but when it is clear, a proviso cannot imply the existence of words of which there is no trace in the section. D

(e) The proviso is subordinate to the main section.

(f) A proviso does not enlarge an enactment except for compelling reasons. E

(g) Sometimes an unnecessary proviso is inserted by way of abundant caution.

(h) A construction placed upon a proviso which brings it into general harmony with the terms of section should prevail. F

(i) When a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of a later Act directed to be read as supplemental to the earlier one.

(j) A proviso may sometimes contain a substantive provision. G

31. In the case of Local Government Board v. South Stoneham Union, 1909 AC 57, Lord Macnaghten made the following observation:

"I think the proviso is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate." H

A 32. In Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai AIR 1966 SC 459, it was held that the main object of a proviso is merely to qualify the main enactment. In Madras and Southern Mahrata Railway Co. Ltd. v. Bezwada Municipality AIR 1944 PC 71, Lord Macmillan observed thus:

B "The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case."

33. The above case was approved by this Court in CIT v. Indo Mercantile Bank Ltd. AIR 1959 SC 713, where Kapur, J. held
C that the proper function of a proviso was merely to qualify the generality of the main enactment by providing an exception and taking out, as it were, from the main enactment a portion which, but for the proviso, would fall within the main enactment. In Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subbash Chandra Yograj Sinha AIR 1961 SC 1596, Hidayatullah, J., as he
D then was, very aptly and succinctly indicated the parameters of a proviso thus:

"As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule."

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34. In West Derby Union v. Metropolitan Life Assurance Society 1897 AC 647, while guarding against the danger of interpretation of a proviso, Lord Watson observed thus:

"a very dangerous and certainly unusual course to import
F legislation from a proviso wholesale into the body of the statute."

35. A very apt description and extent of a proviso was given by Lord Oreburn in Rhondda Urban District Council v. Taff Vale Railway Co. 1909 AC 253, where it was pointed out that insertion of a proviso by the draftsman is not always strictly adhered to its
G legitimate use and at times a section worded as a proviso may wholly or partly be in substance a fresh enactment adding to and not merely excepting something out of or qualifying what goes before. To the same effect is a later decision of the same Court in Jennings v. Kelly 1940 AC 206, where it was observed thus:

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"We must now come to the proviso, for there is, I think, no doubt that, in the construction of the section, the whole of it must be read, and a consistent meaning, if possible, given to every part of it. The words are:... 'provided that such licence shall be granted only for premises situate in the ward or district electoral division in which such increase in population has taken place...' There seems to be no doubt that the words "such increase in population" refer to the increase of not less than 25 percent of the population mentioned in the opening words of the section." A B

36. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately. C

37. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself. D

38. Apart from the authorities referred to above, this Court has in a long course of decisions explained and adumbrated the various shades, aspects, and elements of a proviso. In State of Rajasthan v. Leela Jain AIR 1965 SC 1296, the following observations were made: E

"So far as a general principle of construction of a proviso is concerned, it has been broadly stated that the function of a proviso is to limit the main part of the section and carve out something which but for the proviso would have been within the operative part." F

39. In the case of STO, Circle-I, Jabalpur v. Hanuman Prasad AIR 1967 SC 565, Bhargava, J. observed thus:

"It is well-recognized that a proviso is added to a principal clause primarily with the object of taking out of the scope of that principal clause what is included in it and what the legislature desires should be excluded." G

40. In Commissioner of Commercial Taxes v. R.S. Jhaver AIR 1968 SC 59, this Court made the following observations: H

A "Generally speaking, it is true that the proviso is an exception to the main part of the section; but it is recognised that in exceptional cases a proviso may be a substantive provision itself."

41. In Dwarka Prasad v. Dwarka Das Saraf (1976) 1 SCC 128, Krishna Iyer, J. speaking for the Court observed thus: (SCC pp. B 136-37, paras 16, 18):

"There is some validity in this submission but if on a fair construction, the principal provision is clean a proviso cannot expand or limit it. Sometimes a proviso is engrafted by an apprehensive draftsman to remove possible doubts, to make C matters plain, to light up ambiguous edges. Here, such is the case.

* * *

If the rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter of the enacting clause, D the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole E section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction."

42. In Hiralal Rattanlal v. State of U.P. (1973) 1 SCC 216, this Court made the following observations: [SCC para 22, p. 224: SCC (Tax) p. 315]

F "Ordinarily a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section. But cases have arisen in which this Court has held that despite the fact that a provision is called proviso, it is really a separate provision and the so-called proviso has substantially altered the main section." G

43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:

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(1) qualifying or excepting certain provisions from the main enactment: A

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable:

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and B

4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision. C

44. These seem to be by and large the main purport and parameters of a proviso."

(g) In Dibyasingh Malana v. State of Orissa & Ors. AIR 1989 SC 1737, this Court considered effect of proviso and observed: D

"7. On a plain reading of the definition of the term "family" in Section 37(b) of the Act we are of the view that the said definition as it stands is neither meaningless nor of doubtful meaning. In this connection, it may be pointed out that keeping in view the agrarian reform which was contemplated by the Act and E particularly the provisions of Chapter IV relating to ceiling and disposal of surplus land which were calculated to distribute the surplus land of big tenure holders among the overwhelming have-nots of the State the Legislature in its wisdom gave an artificial meaning to the term "family". The main provision containing the definition of the term is to be found in the first part of Section F 37(b) namely "family in relating to an individual means the individual, the husband or wife as the case may be of such individual and their children whether major or minor", The later part of Section 37(b) namely "but does not include a major married son who as such had separated by partition or otherwise before G the 26th day of September 1970" does not on the face of it contain a matter which may in substance be treated as a fresh enactment adding something to the main provision but is apparently and unequivocally a proviso containing an exception. This admits of no doubt in view of the words "but does not include". In the

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A Commissioner of Income Tax, Mysore v. The Indo Mercantile Bank Limited (1959) Supp. (2) S.C.R. 256 it was held:

"Ordinarily the effect of an excepting or a qualifying proviso is to carve something out of the preceding enactment or to qualify something enacted therein which but for the proviso would be in
B it and such a proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect."

(Emphasis supplied)"

(h) In Kush Sahgal & Ors. v. M.C. Mitter & Ors., AIR 2000 SC
C 1390, this Court has observed thus :

"32. Under Sub-section (1) of Section 21, a landlord can apply for eviction of a tenant on the ground that the building was bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or
D any member of his family either for residential purposes or for purposes of any profession, trade or calling or on the ground that the building which was in a dilapidated condition was required for purposes of demolition and new construction. The second Proviso to Sub-section (2) however provides that "AN
E APPLICATION UNDER CLAUSE (a) SHALL NOT BE ENTERTAINED IN THE CASE OF ANY RESIDENTIAL BUILDING FOR OCCUPATION FOR BUSINESS PURPOSES." Thus, if an application is made by the landlord for eviction of the tenant on the ground that the building in occupation of that tenant which was used exclusively for
F residential purposes was required for business purposes or for any other commercial activity, it would not be a ground within the meaning of Section 21(1) of the new Act for the eviction of the tenant and the application will not be entertained. This we say because the normal function of a PROVISO is to except
G something out of the enactment or to qualify something enacted therein which but for the PROVISO would be within the purview of the enactment. (See; Kedarnath Jute Manufacturing Co. Ltd. v. Commercial Tax Officer, AIR 1966 SC 12). Since the natural presumption is that but for the PROVISO, the enacting part of the section would have included the subject-matter of the
H PROVISO, the enacting part has to be given such a construction

which would make the exceptions carved out by the PROVISO necessary and a construction which would make the exceptions unnecessary and redundant should be avoided (See: Justice G. P. Singh's "Principles of Statutory Interpretation" Seventh Edition 1999, p-163). This principle has been deduced from the decision of the Privy Council in Govt. of the Province of Bombay v. Hormusji Manekji, AIR 1947 PC 200 as also the decision of this Court in Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories, AIR 1965 SC 980."

(emphasis supplied)

(i) In *Haryana State Cooperative Land Development Bank Ltd. v. Haryana State Cooperative Land Development Banks Employees Union & Anr.*, (2004) 1 SCC 574, this Court has considered normal function of proviso and observed thus :

"9. The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in *Mullins* v. *Treasurer of Surrey (1880) 5QBD 170* (referred to in *Shah Bhojraj Kuverji Oil Mills andGinning Factory* v. *Subhash Chandra Yograj Sinha, AIR 1961 SC 1596* and *Calcutta Tramways Co. Ltd.* v. *Corpn. of Calcutta, AIR 1965 SC 1728*), when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. "If the language of the enacting part of the statute does not contain the provisions which are said to occur in it you cannot derive these provisions by implication from a proviso," said Lord Watson in *West Derby Union* v. *Metropolitan Life Assurance Co., 1987 AC 647*.Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main

A provision to which it has been enacted as a proviso and to no other. [See *A.N. Sehgal* v. *Raje Ram Sheoran*, 1992 SUPP 1 SCC 304, *Tribhovandas Haribhai Tamboli* v. *Gujarat Revenue Tribunal (1991) 3 SCC 442* and *Kerala State Housing Board* v. *Ramapriya Hotels (P) Ltd., (1994) 5 SCC 672*]

B "*This word* (proviso) hath diverse operations. Sometime it worketh a qualification or limitation; sometime a condition; and sometime a covenant." (Coke upon Littleton, 18th Edn., p. 146.)

"If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause,
C the later clause is to be rejected as repugnant, and the earlier clause prevails.... But if the later clause does not destroy but only qualifies the earlier, then the two are to be read together and effect is to be given to the intention of the parties as disclosed by the deed as a whole" (per Lord Wrenbury in Forbes v. Git, (1922) AC 256).

D A statutory proviso "is something engrafted on a preceding enactment" (R. v. Taunton, St. James, (1829) 9 B & C 831 ER p. 311).

"The ordinary and proper function of a proviso coming after a
E general enactment is to limit that general enactment in certain instances" (per Lord Esher in Barker, Re, (1890) 25 QBD 285).

10. .....

11. The above position was noted in Ali M.K. v. State of Kerala, (2003) 11 SCC 632."

F (emphasis supplied)

(j) In *Romesh Kumar Sharma v. Union of India & Ors.*, (2006) 6 SCC 510, this Court has observed that normally proviso does not travel beyond the provisions to which it is proviso. This court held:

G 12. "*10*. The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in *Mullins* v. *Treasurer of Surrey (1880) 5 QBD 170* (referred to in *Shah Bhojraj Kuverji Oil Mills andGinning Factory* v. *Subhash Chandra Yograj Sinha,*
H *AIR 1961* SC *1596* and *Calcutta Tramways Co. Ltd.* v. *Corpn.*

of Calcutta, AIR 1965 SC 1728), when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. "If the language of the enacting part of the statute does not contain the provisions which are said to occur in it you cannot derive these provisions by implication from a proviso....." said Lord Watson in *West Derby Union* v. *Metropolitan Life Assurance Society, 1987 AC 647.* Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. [See *A.N. Sehgal* v. *Raje Ram Sheoran*, 1992 SUPP 1 SCC 304, *Tribhovandas Haribhai Tamboli* v. *Gujarat Revenue Tribunal (1991) 3 SCC 442* and *Kerala State Housing Board* v. *Ramapriya Hotels (P) Ltd., (1994) 5 SCC 672*].

"This word (proviso) hath diverse operations. Sometime it worketh a qualification or limitation; sometime a condition; and sometime a covenant." (Coke upon Littleton, 18th Edn., p. 146.)"

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11. A statutory proviso 'is something engrafted on a preceding enactment' (R. v. Taunton St James, (1829) 9 B&C 831 ER p. 311).

A *'The ordinary and proper function of a proviso coming after a general enactment is to limit that general enactment in certain instances.' (Per Lord Esher in Barker, Re.., (1890) 25 QBD 285).*

12. A proviso to a section cannot be used to import into the B *enacting part something which is not there, but where the enacting part is susceptible to several possible meanings it may be controlled by* the proviso (see Jennings v. Kelly, 1940 AC 206)."

(k) In *Nagar Palika Nigam v. Krishi Upaj Mandi Samiti &* C *Ors.*, AIR 2009 SC 187, this Court has observed thus :

"8. The normal function of a proviso is to except something out of the enactment or to qualify *something* enacted therein which but for the proviso would be within the purview of the enactment. As was stated in Mullins v. Treasurer of Survey 1880 (5) QBD D 170, (referred to in Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha, AIR 1961 SC 1596 and Calcutta Tramways Co. Ltd. v. Corporation of Calcutta, AIR (1965) SC 1728; when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject matter of the E proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general F rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. "If the language of the enacting part of the statute does not contain the provisions which are said to occur in it you cannot derive these provisions by implication from a proviso." Said Lord Watson in West Derby G Union v. Metropolitan Life Assurance Co. 1897 AC 647) (HL). Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (See A.N. Sehgal and Ors. v. Raje Ram Sheoram and Ors., AIR 1991 H SC 1406), Tribhovandas Haribhai Tamboli v. Gujarat Revenue

Tribunal and Ors. (AIR 1991 SC 1538) and Kerala State Housing Board and Ors. v. Ramapriya Hotels (P) Ltd. and Ors. 1994 (5) SCC 672." A

(l) In Shimbhu & Anr. v. State of Haryana, (2014) 13 SCC 318, this Court has observed that fundamental rule of construction is that a proviso must be considered part of the main proviso to which it stands as a proviso. This Court held: B

"13. It is a fundamental rule of construction that a proviso must be considered in relation to the main provision to which it stands as a proviso, particularly, in such penal provisions. Whether there exist any "special and adequate reason" would depend upon a variety of factors and the peculiar facts and circumstances of each case. This Court, in various judgments, has reached the consensus that no hard-and-fast rule can be laid down in that behalf for universal application." C

9. What follows from aforesaid enunciation that effect of a proviso is to except all preceding portion of the enactment. It is only occasionally that proviso is unrelated to subject matter of preceding section, it may have to be interpreted as a substantive provision. Ordinarily, a proviso is not interpreted as stating a general rule. Provisos are often added as saving clauses. A proviso must be construed with reference to the preceding parts of the clause to which it is appended. The proviso is ordinarily subordinate to the main section. A construction placed on proviso which brings general harmony to the terms of the section should prevail. A proviso may sometime contain substantive provision. Ordinarily, proviso to a section is intended to take out a part of the main section for special treatment. Normally, a proviso does not travel beyond the main provision to which it is a proviso. A proviso is not interpreted as stating a general rule, it is an exception to main provision to which it is carved out as a proviso. Proviso can not be construed as enlarging the scope of enactment when it can be fairly and properly constructed without attributing that effect. It is not open to read in the words of enactment which are not to be found there and which would alter its operative effect. D E F G

10. It is apparent from the provisions of Section 24(1), that it contains a *non-obstante* clause with respect to any provision made in the Act of 2013. It is also provided in Section 24(1)(b) that in case any land acquisition proceedings had been initiated under the Act of 1894 and, an Award H

A under Section 11 has been made, such proceedings shall continue under the provisions of the Act of 1894, as if the said Act had not been repealed.

11. An exception is also carved out by a *non-obstante* clause contained in Sub-Section (2) of Section 24; it begins with "notwithstanding anything contained in Sub-Section (1)". Thus, it would supersede provisions
B of section 24(1) also. In case of land acquisition proceedings, initiated under the Act of 1894, wherein an Award has been made within 5 years or more prior to the commencement of the Act of 2013, if physical possession has not been taken or compensation has not been paid, then the said proceedings shall be deemed to have lapsed. The proviso to Sub-Section (2) makes it clear that when the Award has been made and,
C compensation in respect of majority of holdings has not been deposited in the account of beneficiaries the acquisition would not lapse. However, all the beneficiaries shall be entitled to enhanced compensation under the Act of 2013. This proviso is to be necessarily part of Sub-Section (2) of section 24 only. The legislative intention is clear that it is enacted
D as proviso to section 24(2), and otherwise also if read as if it were a proviso to Section 24(1)(b), it would create repugnancy with said provision and the provisions of section 24(1)(b) and proviso to 24(2) would become wholly inconsistent with each other. This is a trite law that the interpretation which creates inconsistency or repugnancy has to be avoided and proviso has to be part of Section 24(2) as enacted. As per
E fundamental rule of its construction, no contrary intention is available in the provisions so as not to read it as part of Section 24(2). As section 24(1)(b) provides, in case award has been passed under Act of 1894, the proceedings shall continue of the said Act as if it has not been replaced whereas Section 24 (2) provides deemed lapse in case award is passed
F 5 years or more before commencement of Act of 2013 and possession has not been taken or compensation has not been paid and as per the proviso with respect to majority of holding compensation has not been deposited in account of land owners. In case award has been passed few days before commencement of the Act of 2013, then deposit of compensation with respect to majority of holding is bound to take time,
G that is why legislature has made difference of consequences based upon time gap in passing of award as requisite steps to be taken are bound to consume some time by providing proceedings to continue under the Act of 1894.

H

12. Section 24(1) begins with non-obstante clause. The Parliament has given overriding effect to this provision over all other provisions of Act of 2013. Section 24(2) also begins with non-obstante clause. This provision has overriding effect over Section 24(1). It is apparent that Sub-Section (2) of Section 24 deals with the lapse of acquisition in case the award had been made five years or more prior to commencement of 2013 Act but the physical possession of the land had not been taken or the compensation had not been paid. The provision of Section 24(2) and its proviso together further clarify that, in case the award has been made and compensation in respect of majority of land holdings has not been deposited in the account of the beneficiaries, then, all the beneficiaries specified in the notification for Acquisition shall be entitled to compensation in accordance with the provisions of Act of 2013. Even if, minority of the claimants are disbursed with the compensation such claimants also would get benefit of compensation under the Act of 2013. Thus it is clear that even if the acquisition does not lapse, all the beneficiaries to whom the compensation is payable would be entitled to compensation under the Act of 2013.

If the proviso to Sub-Section (2) of Section 24 is read as part of Sub-Section (1) of Section 24, the same makes the said provision completely different and inconsistent. When we consider the expression "where an Award under Section 11 has been made" provided under Section 24(1)(b), the proceedings have to continue under the provisions of Act of 1894. If the proviso to Sub-Section (2) of Section 24 read as proviso to Section 24(1), then Section 24(1)(b) will be rendered nugatory and/or becomes otiose. True effect has to be given to the provision contained in Section 24(1)(b) which says that when award under Section 11 has been made, then such proceedings shall continue under the provisions of Land Acquisition Act 1894, as if the said Act has not been repealed.

The three contingencies are provided under Sub-Section (2) of Section 24 i.e. (i) in case if award was passed five years or more prior to the commencement of Act of 2013 and (ii) if compensation has not been paid, or (iii) possession has not been taken. Exception is carved out by adding the proviso to Section 24(2) - wherein the land acquisition would not lapse, in case some of the land losers are paid compensation but land owners of majority of holding are not paid. Thus we are of the

considered opinion that the proviso to Section 24(2) cannot be lifted and made part of Section 24(1)(b).

At the cost of repetition, we observe that reading of Sections 24(1) and 24(2) conjointly & homogenously makes it abundantly clear that they operate in two different fields. Section 24(1)(b) unequivocally indicates that in case the award has been passed under the Act of 1894, all the proceedings shall continue as if the Act of 1894 has not been repealed. Section 24(1)(a) makes the provision of Act of 2013 applicable only in case where the award has not been passed. In other words, it gives a clue that when an award has been passed, obviously further proceedings have to be undertaken under the Act of 1894, to that extent proceedings under the said Act is saved, and the Act of 2013 will not apply. In such cases, there is no necessity of initiation of acquisition proceedings afresh except in cases as provided under Section 24(2). Whereas Section 24(2) would be applicable if the Award under Section 11 of the old Act has been made five years or more prior to commencement of 1894 but physical possession of the land has not been taken or the compensation has not been paid. Proviso to Section 24(2) further makes it clear that in case the compensation in respect of majority of land holdings has not been deposited in the account of the beneficiaries, then, all the beneficiaries, specified in the notification for Acquisition shall be entitled to compensation in accordance with the provisions of Act of 2013. The legislature has provided different consequences in the provisions keeping in mind the time gap as enumerated in Sections 24(1) and 24(2). The legislature has visualized and expected that the things would not happen overnight on passing of an award.

13. We have already clarified supra based on catena of judgments, that a proviso appended to a provision has to be specifically interpreted in the manner so as to enable the field which is covered by the main provision. The proviso is only an exception to main provision to which it has been enacted and no other. The proviso deals with a situation which takes something out of the main enactment to provide a particular course of action, which course of action could not have been adopted in the absence of the proviso.

The proviso appended to Section 24(2) indicates that it carves out an exception for a situation where the land acquisition proceedings shall not be deemed to lapse. Thus, for the applicability of the proviso, a case

has to be covered by Section 24(2) i.e. (1) award has been made five years or more prior to the enforcement of the 2013 Act. A

The proviso to Section 24(2) contemplates a situation where with respect to majority of the holding compensation not deposited event of minority of holding the landowners are paid, meaning thereby that for majority of the landholding in case amount is deposited acquisition is saved by the proviso. The proviso in fact extends the benefit even to those land holders who have received compensation as per the 1894 Act. Thus all land holders are to receive benefit of higher and liberal compensation under 2013 Act. This situation is one where land acquisition proceedings shall not lapse and are saved. The purpose and object of the proviso is to give benefit of computation of compensation to all landholders and to save land acquisition proceedings. Hence, it is evident that the proviso is appropriately be treated as a proviso to Sub-Section (2) of Section 24 and cannot be read as proviso to Section 24(1)(b) of Act of 2013. B C

14. Reliance has been placed on the decision of this Court in *Delhi Development Authority Vs. Sukhbir Singh* (supra). The facts of the said case reflect that Notification under Section 4 was issued on 24.10.1961; Award was passed by the Land Acquisition Collector, New Delhi, on 12.12.1997; and possession was taken on 27.1.2000. It was not a case under Section 24(1)(b). It was clearly a case covered by provisions contained in Section 24(2) of the Act of 2013, as Award had been passed 5 years before the commencement of the Act of 2013. In that context, this Court has discussed the matter and observed as follows: D E

> "11. Section 24(1) begins with a non-obstante clause and covers situations where either no award has been made under the Land Acquisition Act, in which case the more beneficial provisions of the 2013 Act relating to determination of compensation shall apply, or where an award has been made under Section 11, land acquisition proceedings shall continue under the provisions of the Land Acquisition Act as if the said Act had not been repealed. F G
>
> 12. To Section 24(1)(b) an important exception is carved out by Section 24(2). The necessary ingredients of Section 24(2) are as follows:
>
> (a) Section 24(2) begins with a non-obstante clause keeping sub-section (1) out of harm's way; H

A (b) For it to apply, land acquisition proceedings should have been initiated under the Land Acquisition Act;

(c) Also, an award under Section 11 should have been made 5 years or more prior to the commencement of the 2013 Act;

B (d) Physical possession of the land, if not taken, or compensation, if not paid, are fatal to the land acquisition proceeding that had been initiated under the Land Acquisition Act;

(e) The fatality is pronounced by stating that the said proceedings shall be deemed to have lapsed, and the appropriate Government, if it so chooses, shall, in this game of snakes and ladders, start all C over again."

In *Sukhbir Singh* (supra), this Court has observed that Section 24(1) begins with a non-obstante clause, and thereafter, in the aforesaid paragraph 12, it has been observed that in respect of Section 24(1)(b), an important exception is carved out by Section 24(2). This Court D nowhere held in said decision that the proviso to Section 24(2) is to be read as part of Section 24(1)(b), as was tried to be suggested. Through the non obstante clause in the opening part, exception has been carved out in Section 24(2) to section 24(1), proviso remains part of section 24(2) only. There is no dispute with proposition that exception had been E carved out in section 24(2) of the Act of 2013. Whereas, the issue involved in the present case is different. The issue involved in the instant case is, whether the proviso is to be read as a part of Section 24(1)(b) or as a part of Section 24(2) as per settled principles of construction a proviso except out preceding portion of enactment to which it is appended. The same is appended to section 24(2) not to section 24(1)(b) under the Act F of 2013. In our opinion, it was neither question raised in *Sukhbir Singh* (supra), nor has it been answered. Thus, that decision, in our view, is of no value, to assist the cause of the respondents.

15. This Court specifically held in the case of *Delhi Development Authority vs. Sukhbir Singh* (supra), the objective of Section 24(2) is G to punish the State if it has been "tardy in tendering or paying compensation" even after five years have elapsed after passing of the award, specifically this Court held that Section 24(2) is an exception to Section 24(1)(b) and for Section 24(2) to apply the award under Section 11 should have been made five years or more prior to commencement of Act of 2013. H

16. It was urged at the end by Mr. Anil Goel, learned counsel appearing on behalf of some of the landowners that, since the amount has not been deposited with respect to majority of holding in the account of the beneficiaries, the acquisition stands lapsed. We have held that the proviso to Section 24(2) is not applicable in the instant case, same is applicable where the Award had been passed 5 years before. In a case where Award has been passed within 5 years, the said proviso of section 24(2) cannot be said to be applicable. The submission made on the basis of the proviso cannot be said to be sustainable. A B

17. Thus, we are of the considered opinion that the decision of the High Court cannot be said to be sustainable, and the same is hereby set aside. The appeals are allowed. Pending applications stand disposed of. The respondents cannot be said to be entitled to payment of compensation under the Act of 2013. C

Kalpana K. Tripathy Appeals allowed.