HIGH COURT OF MADHYA PRADESH : AT JABALPUR

Writ Petition No. 6563 / 2016

Bhagwanti Bai .... **Petitioner**

- V/s -

State of MP & Others .... **Respondents**

Present : **Hon'ble Shri Justice Hemant Gupta, Chief Justice;**
Hon'ble Shri Justice H.P. Singh;
Hon'ble Shri Justice Vijay Kumar Shukla.

Shri Vivek Dalal and Shri Dildar Singh, Advocate for the petitioner.

Shri Amit Seth, Government Advocate, for respondent/State.

Shri Arpan J. Pawar, Advocate for respondent No.3.

Whether Approved for Reporting : **Yes**

Law Laid down :

- The Madhya Pradesh Bhumigat Pipe Line, Cable Evam Duct (Bhumi Ki Upyokta Ke Adhikaron Ka Arjan) Adhiniyam, 2012" [for short the 'State Act'] is an Act enacted in pursuance of Entry 5, 6 and 17 of List II, of the 7th Schedule, and not in terms of Entry 43 of List III of the 7th Schedule. Therefore, the State Act is not repugnant to the The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short the 'Central Act').
- The State Act deals with 'land' which means a 'portion of earth's surface' whereas right of user of land means right of user for laying underground pipeline, cable and duct for carrying of water, gas, sewage, industrial waste and transmission of electricity and fibre optics. Thus, the right of user in the land is only acquired and not the land itself.
- That, the repugnancy of the State Act with the Central Act will arise only if both enactments derive its source of legislation from the Entry in the Concurrent List. Since the State Act does not derive its legislative competence from any of the Entries from the Concurrent List, therefore, the State Act cannot be deemed to be repugnant to the Central Act.

- The Union Parliament has power to legislate on the subjects enumerated in List I and also in List III. Only the acts enacted by the Union Parliament could find mention in Schedule IV of the Central Act, as the Union Parliament could not touch any statute for which it has no legislative competence to legislate. Therefore, non inclusion of State Act in Fourth Schedule is neither permissible nor will render the State Act repugnant to the Central Act, as both Central and State Act operate in different fields.
- In view of the above, we hold that the order of the Division Bench of this Court in Writ Appeal No. 91/2017 (Narmada Valley Development Authority and others Vs. Shashikant Patel), and other appeals decided on 6.4.2017 is not correct enunciation of law and is thus over-ruled.

Significant Paragraph Nos: Paragraphs 14 to 34

Order Reserved on : 19.04.2018

O R D E R

Passed on **9th day of May, 2018**

Per – Hemant Gupta, Chief Justice:

A Division Bench of this Court on 27.3.2018 expressed its reservation with another Division Bench judgment of this Court passed on 6.4.2017 in bunch of appeals with main appeal bearing Writ Appeal No. 91/2017 (Narmada Valley Development Authority and others Vs. Shashikant Patel) [Indore Bench], and the matter was referred to the Larger Bench on the following questions:-

"*(1) Whether the State Act deals with acquisition of land or only deals with grant of compensation for use of surface of land?*

(2) Whether the Madhya Pradesh Bhumigat Pipeline, Cable Evam Duct (Bhumi Ke Upyokta Ke Adhikaran Ka Arjan) Adhiniyam, 2013 is repugnant to the Central Act for the reason that the same does not find mention in Schedule-IV of the Central Act, therefore, the State Act will not have any force of law?"

2- At the outset learned counsel for the petitioner pointed out that in appeal before the Supreme Court being Diary No.22153/2017 directed against an order passed by this Court in Narmada Valley Development Authority and others Vs. Balu, (for short 'NVDA'), the Hon'ble Supreme Court passed an order of giving liberty to the appellant to file a review application in view of the order passed by the Hon'ble Supreme Court in a judgment reported as **Laljibhai Kadvabhai Savaliya and others Vs. State of Gujarat and others, (2016) 9 SCC 791**. Admittedly no review petition has been filed, therefore, as of now the order passed by the Division Bench in NVDA's case is operative.

3- The State Government enacted "The Madhya Pradesh Bhumigat Pipe Line, Cable Evam Duct (Bhumi Ki Upyokta Ke Adhikaron Ka Arjan) Adhiniyam, 2012" [for short the 'State Act'], providing for acquisition of right or user in land for laying underground pipeline, cable and duct for carrying of water, gas, sewage, industrial waste and transmission of electricity and fibre optics and for the matters connected therewith or incident thereto.

4- The Division Bench in **NVDA's case** held that the State Act does not find mention in Schedule IV of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short the 'Central Act'). Therefore, the State is under obligation to pay compensation as per the Central Act. It was also held that the Central Act will supercede the State Act enacted by the State Legislature.

5- The argument of learned counsel for the petitioner is that Schedule IV of the Central Act has saved thirteen central legislations in terms of Section 105 of the Central Act. Since the State Act is not included in Schedule IV of the Central Act, therefore, the State Act will stand superceded or abrogated by the

Central Act. It is argued that the Supreme Court judgment in **Laljibhai's case** deals with another Central Act namely the Petroleum and Minerals Pipeline (Acquisition of the Right of User in Land) Act, 1962 [for short the 'Petroleum Act']. Therefore, the said judgment will not be relevant for determining the validity of the State Act. It is also pointed out that the Petroleum Act is one of the statutes which are mentioned in Schedule IV of the Central Act.

6- It is argued that the State Legislature is not competent to enact the State Act, as the Act in question derives its power to legislate in terms of Entry 42 of List III, of 7th Schedule of the Constitution, therefore, the State Act could not be enacted by the State Legislature as the Central Act is in force. Learned counsel for the petitioner relies upon Supreme Court judgment reported as **State of Kerala and others Vs. Mar Appraem Kuri Company Limited and another, (2012) 7 SCC 106**, in support of his contention that the State Act is repugnant to the Central Act. The relevant paragraph relied upon by the Petitioner reads as under:-

> "78. To sum up, Articles 246(1), (2) and 254(1) provide that to the extent to which a State law is in conflict with or repugnant to the Central law, which Parliament is competent to make, the Central law shall prevail and the State law shall be void to the extent of its repugnancy. This general rule of repugnancy is subject to Article 254(2) which inter alia provides that if a law made by a State legislature in respect of matters in the Concurrent List is reserved for consideration by the President and receives his/ her assent, then the State law shall prevail in that State over an existing law or a law made by the Parliament, notwithstanding its repugnancy."

7- Learned counsel for the petitioner also referred to **Laljibhai's case** and argued that as per the provisions of the Petroleum Act, after declaration under Section 6 is published, the right of the user in the land so specified vests in the

Central Government or the State Government free from all encumbrances. It was held that what is acquired is the right of the use in the land in question for laying pipeline for the transport of petroleum or any mineral and not the land itself. The right which is taken under the Petroleum Act is to lay pipeline in the sub-soil of the land in question and the restriction imposed by Section 9 of the said Act is in respect of raising of construction on the land under which the pipeline is laid, or raising of any building or any other structure or excavate any lake, reservoir or dam or plant any tree. Such restrictions are to safeguard and secure the pipeline underneath. It is thus argued that the purpose of the State Act and the Central Act is essentially the same. Therefore, if the State Act does not find mention in Schedule IV of the Central Act, the omission of the State Act is glaring which makes the State Act ineffective and invalid.

8- Learned counsel for the petitioner also refers to the judgment reported as **Rustom Gavasjee Cooper Vs. Union of India, 1970 (1) SCC 248**, to contend that the acquisitioning and requisitioning of the property was incorporated in Entry 42 of the Concurrent List after the Constitution (7th Amendment Act). Prior thereto, Entry 33 List I invested the Parliament to enact laws with respect to acquisition or requisitioning for the purpose of Union, whereas Entry 36 of List II conferred powers upon the State Legislature to legislate with regard to acquisitioning or requisitioning for the remaining purposes. Therefore, the acquisition of the land for the purpose of laying underground pipes falls within Entry 42 of the Concurrent List.

9- On the other Shri Amit Seth, learned counsel for the State, relied upon the Constitution Bench judgment in **M/s Girnar Traders Vs. State of Maharashtra and others, (2011) 3 SCC 1**, to contend that the State Act has

been enacted in respect of entries falling in List II such as Entry 5, 6, 17 and 25 and, therefore, the State Act is a valid legislation falling with the legislative competence of the State Legislature. Reliance is placed upon Supreme Court judgment reported as **M. Karunanidhi Vs. Union of India, AIR 1979 SC 898** to contend that there is no inconsistency between the Central Act and the State Act, as the Central Act deprives the owner of the land of its ownership, whereas the State Act only uses sub-soil for laying of pipelines for which compensation is provided for damage to the surface of land at the time of installation of pipes, and compensation for the fact that superstructure are not permitted to be raised over the land on which the pipe is laid. It is also pointed out that the State Act defines 'land' to mean a portion of earth surface [Section 2(c)] whereas the 'right of user in land' in the State Act means right of user in land for laying underground pipeline, cable and duct for carrying of water, gas, sewage, industrial waste and transmission of electricity and fibre optics and its repairing, maintaining, examining, altering and removing. Thus, under the State Act, portion of earth's surface is used for laying of underground pipeline and that after the laying of pipeline, Section 7 prohibits construction of any building or any other structure; construct or excavate any tank, well, reservoir or dam; or, plant any tree on that land. On the other hand, the 'land' as defined in Section 3(p) of the Central Act is to include benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to earth. The meaning assigned to Land under the Central Act is materially different than the 'land' defined under the State Act. Thus, the two Acts operate in altogether different sphere. The State Act falls exclusively within the jurisdiction of the State Legislature and that there is no repugnancy with the

Central Act. The question of repugnancy will arise only after when Parliament and the State Legislature both have legislative competence to enact the law.

10- Before we discuss the respective arguments, certain Constitutional provisions and that of the Central Act and the State Act need to be reproduced for ready reference.

11- Articles 245 and 254 of the Constitution reads as under:-

> "**245**. **Extent of laws made by Parliament and by the Legislatures of States**:-
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> (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State
> (2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra territorial operation.
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> **254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States**:-
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> (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void
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> (2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

SEVENTH SCHEDULE, LIST I:

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31. Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication.

53. Regulation and development of oil fields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.

LIST II – STATE LIST:

5. Local Government, that is to say, the constitution and powers of municipal corporations, improvements trust, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

6. Public health and sanitation; hospitals and dispensaries.

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13. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles.

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17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I.

25. Gas and gas-works.

LIST III - CONCURRENT LIST.

38. Electricity.

42. Acquisition and requisitioning of property”

12- Relevant provisions of *“The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013*” (Central Act) reads as under:-

“**3. Definitions**:

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(p) ‘land’ includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth;

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11. **Publication or preliminary notification and power of officers thereupon**:- (1) Whenever, it appears to the appropriate Government that land in any area is required or likely to be required for any public purpose, a notification (hereinafter referred to as preliminary notification) to that effect along with details of the land to be acquired in rural and urban areas shall be published in the following manner, namely:—

(a) in the Official Gazette; …..

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(4) No person shall make any transaction or cause any transaction of land specified in the preliminary notification or create any encumbrances on such land from the date of publication of such notification till such time as the proceedings under this Chapter are completed:

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19. **Publication of declaration and summary of Rehabilitation and Resettlement.**

(1) When the appropriate Government is satisfied, after considering the report, if any, made under sub-section (2) of section 16, that any particular land is needed for a public purpose, a declaration shall be made to that effect, along with a declaration of an area identified as the “resettlement area” for the purposes of rehabilitation and resettlement of the affected families, under the hand and seal of a Secretary to such Government or of any other officer duly authorised to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same preliminary notification irrespective of whether one report or different reports has or have been made (wherever required).

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(6) The declaration referred to in sub-section (1) shall be conclusive evidence that the land is required for a public purpose and, after making such declaration,

the appropriate Government may acquire the land in such manner as specified under this Act.

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38. Power to take possession of Land to be acquired – (1) The Collector shall take possession of land after ensuring that full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within a period of three months for the compensation and a period of six months for the monetary part of rehabilitation and resettlement entitlements listed in the Second Schedule commencing from the date of the award made under Section 30:

Provided that the components of the Rehabilitation and Resettlement Package in the Second and Third Schedules that relate to infrastructural entitlements shall be provided within a period of eighteen months from the date of the award:

Provided further that in case of acquisition of land for irrigation or hydel project, being a public purpose, for rehabilitation and resettlement shall be completed six months prior to submergence of the lands required.

(2) The Collector shall be responsible for ensuring that the rehabilitation and resettlement process is completed in all its aspects before displacing the affected families.

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40. Special powers in case of urgency to acquire land in certain cases –

(1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of thirty days from the publication of the notice mentioned in Section 21, take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances.

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105. **Provisions of this Act not to apply in certain cases or to apply with certain modifications.**

(1) Subject to sub-section (*3*), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.

(2) Subject to sub-section (*2*) of section 107 the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.

(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(4) A copy of every notification proposed to be issued under sub-section (*3*), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament.

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THE FOURTH SCHEDULE

(*See* Section 105)

List of Enactments Regulating Land Acquisition and Rehabilitation and Resettlement

1. The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958).
2. The Atomic Energy Act, 1962 (33 of 1962).
3. The Damodar Valley Corporation Act, 1948 (14 of 1948).
4. The Indian Tramways Act, 1886 (11 of 1886).

5. The Land Acquisition (Mines) Act, 1885 (18 of 1885).

6. The Metro Railways (Construction of Works) Act, 1978 (33 of 1978).

7. The National Highways Act, 1956 (48 of 1956).

8. The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962).

9. The Requisitioning and Acquisition of Immovable Property Act, 1952 (30 of 1952).

10. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (60 of 1948).

11. The Coal Bearing Areas Acquisition and Development Act, 1957 (20 of 1957).

12. The Electricity Act, 2003 (36 of 2003).

13. The Railways Act, 1989 (24 of 1989)."

13- The relevant extracts from the *"The Madhya Pradesh Bhumigat Pipe Line, Cable Evam Duct (Bhumi Ki Upyokta Ke Adhikaron Ka Arjan) Adhiniyam, 2012"* (State Act) are as under:-

"**2**. In this Act, unless the context otherwise requires-

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(c) "land" means a portion of earth's surface;

(e) "right of user in land" means right of user in land for laying underground pipeline, cable and duct for carrying of water, gas, sewage, industrial waste and transmission of electricity and fibre optics and its repairing, maintaining, examining, altering and removing;

(f) "underground pipeline, cable and duct" means a pipeline, cable and duct laid below the surface of the land and subsequently covered.

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4.(1) Where no objections under sub-section (4) of Section 3 have been made to the competent authority within the period specified therein or where the competent authority has passed final order thereafter the competent authority shall, by notification in the official Gazette, declare that the right of the user in the land for laying the pipeline, cable and duct should be acquired.

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7.(1) The owner or occupier of the land with respect to which a declaration has been made under sub-section (1) of Section 4, shall be entitled to use the land for the purpose for which such land was put to use immediately before the date of the notification under sub-section (1) of Section 3:

Provided that, such owner or occupier shall not, after the declaration under sub-section (1) of Section 4 –

(i) Construct any building or any other structure;

(ii) Construct or excavate any tank, well, reservoir, or dam; or

(iii) Plant any tree,

On that land.

8.(1) Where in the exercise of the powers conferred by Section 5, Section 6 or Section 9, any damage, loss or injury is sustained to any person interested in the land, the State Government or the corporation, shall be liable to pay compensation to such person for such damage, loss or injury, the amount of which shall be determined by the competent authority in the first instance. While determining such compensation, he shall have due regard to the damage or loss sustained by reason of,-

(i) the removal of trees or standing crops, if any, on the land;

(ii) the temporary severance of the land under which the underground pipeline, cable and duct has been laid from other lands belonging to, or in the occupation of, such person; or

(iii) any injury, to any other property, whether movable or immovable, or the earnings of such persons caused in any other manner.

(2) Where the right of user of any land has vested in the State Government or the corporation, the State Government or the corporation, as the case may be, shall be liable to pay, in addition to the compensation under sub-section (1), if any, compensation calculated at prescribed percentage of the market value of that land on the date of publication of the declaration under sub-section (1) of Section 4.

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10. After laying of underground pipelines, cable and duct whenever it is necessary for the State Government or the Corporation or their authorized officers to re-enter the site for repair or maintenance of the pipeline, cable and

duct they shall liable to pay such compensation to the owner or occupier due to loss caused to the standing crops etc which may be determined by the competent authority."

14- The entries in 7th Schedule are not to confer powers but to merely demarcate the legislative heads or fields of legislation and the area over which the appropriate legislature can operate. In **Girnar Trader's case** (supra), the Court held as under:-

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179. The Court has to keep in mind that function of these constitutional lists is not to confer power, but to merely demarcate the legislative heads or fields of legislation and the area over which the appropriate legislatures can operate. These Entries have always been construed liberally as they define fields of power which spring from the constitutional mandate contained in various clauses of Article 246. The possibility of overlapping cannot be ruled out and by advancement of law this has resulted in formulation of, amongst others, two principal doctrines, i.e. doctrine of pith and substance and doctrine of incidental encroachment. The implication of these doctrines is, primarily, to protect the legislation and to construe both the laws harmoniously and to achieve the object or the legislative intent of each Act. In the ancient case of *Subramanyam Chettiar Vs. Muthuswami Goundan* [1940 FCR 188], Sir Maurice Gwyer, CJ supported the principle laid down by the Judicial Committee as a guideline, i.e. pith and substance to be the true nature and character of the legislation, for the purpose of determining as to which list the legislation belongs to".

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181. The primary object of applying these principles is not limited to determining the reference of legislation to an Entry in either of the lists, but there is a greater legal requirement to be satisfied in this interpretative process. A statute should be construed so as to make it effective and operative on the principle expressed in the maxim *ut res magis valeat quam pereat*. Once it is found that in pith and substance, an Act is a law on a permitted field then any incidental encroachment, even on a forbidden field, does not affect the competence of the legislature to enact that law [State of Bombay v. Narottamdas Jethabhai, AIR 1951 SC 69].

> **182**. To examine the true application of these principles, the scheme of the Act, its object and purpose, the pith and substance of the legislation are required to be focused at, to determine its true nature and character. The State Act is intended only to ensure planned development as a statutory function of the various authorities constituted under the Act and within a very limited compass. An incidental cause cannot override the primary cause. When both the Acts can be implemented without conflict, then need for construing them harmoniously arises."

15- In a judgment reported as **Security Association of India and Another Vs. Union of India and others, (2014) 12 SCC 65**, the argument that Parliament has a blanket power to legislate on entries mentioned in List II as well, was rejected. It was held that the question of repugnancy arises only in connection with the subjects enumerated in concurrent list (List III). The relevant extracts from the judgment reads as under:

> "45. Article 246 of the Constitution does not provide for the competence of Parliament or the State Legislatures as commonly perceived but merely provides for their respective fields. Article 246 only empowers the Parliament to legislate on the entries mentioned in List-I and List-III of the Seventh Schedule and that in case of a conflict between a State Law and a Parliamentary Law under the entries mentioned in List-III, the Parliamentary law will prevail. It does not follow that the Parliament has a blanket power to legislate on entries mentioned in List-II as well. Thus, the argument of the appellants that the Parliament has supreme right to legislate over any area as per Article 246(1) is misplaced. Furthermore, this Court in Welfare Association, ARP, Maharashtra & Anr vs. Ranjit P. Gohil & Ors [(2003) 9 SCC 358] also held that:
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> > "The fountain source of legislative power exercised by Parliament or the State Legislatures is not Schedule 7; the fountain source is Article 246 and other provisions of the Constitution. The function of the three lists in the Seventh Schedule is merely to demarcate legislative fields between Parliament and States and not to confer any legislative power."

> 46. It has become a well-established principle that there is a presumption towards the constitutionality of a statute and the courts should proceed to construe a statute with a view to uphold its constitutionality. (See: State of Andhra Pradesh vs. K. Purushottam Reddy & Ors[(2003) 9 SCC 564], State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamat & Ors (2005) 8 SCC 534, (paras 20 and 70), State of MP vs. Rakesh Kohli & Anr.[(2012) 6 SCC 312])
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> 47. In light of the above, we will answer the question of repugnancy of the State Act with respect to the Central Act. The question of repugnancy arises only in connection with the subjects enumerated in the Concurrent List (List – III), on which both the Union and the State Legislatures have concurrent powers to legislate on the same subject i.e. when a Stale Law and Central Law pertain to the same entry in the Concurrent List. Article 254(1) provides that if a State law relating to a concurrent subject is 'repugnant' to a Union law then irrespective of the Union law being enacted prior to or later in time, the Union law will prevail over the State law. Thus, prior to determining whether there is any repugnancy or not, it has to be determined that the State Act and the Central Act both relate to the same entry in List-III and there is a 'direct' and irreconcilable' conflict between the two. i.e. both the provisions cannot stand together."

16- In a judgment reported as **State Bank of India Vs. Santosh Gupta and another, (2017) 2 SCC 538**, the Supreme Court was examining the applicability of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the 'Sarfaesi Act') to the State of Jammu and Kashmir. The High Court of Jammu and Kashmir has held that various key provisions of the said Act were outside the legislative competence of the Parliament as they would collide with Section 140 of the Transfer of Property Act of J&K, 1920. The Supreme Court held that the Parliament has exclusive power to make laws with respect to banking in terms of Entries 45 and 95 of List I and that Section 5 of the J&K Constitution will only operate in the area in which Parliament has no power to make laws for the

State. Thus it was held that Section 13 cannot be held to be beyond the legislative competence of the Parliament. Relevant extract reads as under:-

> "43. It is thus clear on a reading of these judgments that SARFAESI as a whole would be referable to Entries 45 and 95 of List I. We must remember the admonition given by this Court in *A.S. Krishna and others v. State of Madras*, AIR 1957 SC 297, that it is not correct to first dissect an Act into various parts and then refer those parts to different Entries in the legislative Lists. It is clear therefore that the entire Act, including Sections 17A and 18B, would in pith and substance be referable to Entries 45 and 95 of List I, and that therefore the Act as a whole would necessarily operate in the State of Jammu & Kashmir."

17- In another judgment reported as **UCO Bank and Another Vs. Dipak Debbarma and others, (2017) 2 SCC 585**, the Supreme Court was examining the question as to whether the sale notification issued by the Bank under the Sarfaesi Act was in infraction of the Tripura Land Revenue and Land Reforms Act, 1960. The argument was that the Tripura Act being included in 9th Schedule of the Constitution and enjoying the protection of Article 31-B of the Constitution, would prevail over the Sarfaesi Act. The Sarfaesi Act was enacted in pursuance of Entry 45 of List I, whereas the State Act relates to Entries 40 and 45 of List II. The Court held that the constitutional scheme visualized a federal structure giving full autonomy to the Parliament and State Legislature in their respective demarcated field of legislation. The problem may, however, become a little more complex than what may seemingly appear as the two legislations may very well be within the respective domains of the concerned legislatures and, yet, there may be intrusion into areas that fall beyond the assigned fields of legislation. In such a situation it will be plain duty of the Constitutional Court to see if the conflict can be resolved by

acknowledging the mutual existence of the two legislations. If that is not possible, then by virtue of the provisions of Article 246(1), the Parliamentary legislation would prevail and the State legislation will have to give way notwithstanding the fact that the State legislation is within the demarcated field (List II). This is the principle of federal supremacy which Article 246 of the Constitution embodies. The said principle will, however, prevail provided the pre-condition exists, namely, the Parliamentary legislation is the dominant legislation and the State legislation, though within its own field, has the effect of encroaching on a vital sphere of the subject or entry to which the dominant legislation is referable. The relevant extract reads as under:

> "18. The 2002 Act is relatable to the Entry of banking which is included in List I of the Seventh Schedule. Sale of mortgaged property by a bank is an inseparable and integral part of the business of banking. The object of the State Act, as already noted, is an attempt to consolidate the land revenue law in the State and also to provide measures of agrarian reforms. The field of encroachment made by the State legislature is in the area of banking. So long there did not exist any parallel Central Act dealing with sale of secured assets and referable to Entry 45 of List I, the State Act, including Section 187, operated validly. However, the moment Parliament stepped in by enacting such a law traceable to Entry 45 and dealing exclusively with activities relating to sale of secured assets, the State law, to the extent that it is inconsistent with the Act of 2002, must give way. The dominant legislation being the Parliamentary legislation, the provisions of the Tripura Act of 1960, pro tanto, (Section 187) would be invalid. It is the provisions of the Act of 2002, which do not contain any embargo on the category of persons to whom mortgaged property can be sold by the bank for realisation of its dues that will prevail over the provisions contained in Section 187 of the Tripura Act of 1960.
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> 19. The decision of this Court in Central Bank of India vs. State of Kerala and Ors.[(2009) 4 SCC 94], holding that the provisions of the Bombay Sales Tax Act, 1959 and the Kerala General Sales Tax Act, 1963 providing for a first charge on the property of the person liable to pay sales tax, in favour of the

State, is not inconsistent with the provisions contained in the Recovery of Debts Due to Banks and Financial Institutions, Act 1993 (for short the "DRT Act") and also the Act of 2002 must be understood by noticing the absence of any specific provision in either of the Central enactments containing a similar/parallel provision of a first charge in favour of the bank. The judgment of this Court holding the State enactments to be valid and the Central enactments not to have any overriding effect, proceeds on the said basis i.e. absence of any provision creating a first charge in favour of the bank in either of the Central enactments. "

18- The question as to when laws made by Parliament and the legislature of the State can be said to be repugnant has also been examined by the Supreme Court in a recent judgment reported as **Innoventive Industries Limited Vs. ICICI Bank and Another, (2018) 1 SCC 407**. The question examined was whether Maharashtra Relief Undertakings (Special Provisions) Act, 1958 is repugnant to the Insolvency and Bankruptcy Code, 2016. The Court concluded as under:-

"51. The case law referred to above, therefore, yields the following propositions:

51.1 Repugnancy under Article 254 arises only if both the Parliamentary (or existing law) and the State law are referable to List III in the 7th Schedule to the Constitution of India.

51.2 In order to determine whether the Parliamentary (or existing law) is referable to the Concurrent List and whether the State law is also referable to the Concurrent List, the doctrine of pith and substance must be applied in order to find out as to where in pith and substance the competing statutes as a whole fall. It is only if both fall, as a whole, within the Concurrent List, that repugnancy can be applied to determine as to whether one particular statute or part thereof has to give way to the other.

51.3 The question is what is the subject matter of the statutes in question and not as to which entry in List III the competing statutes are traceable, as the entries in List III are only fields of legislation; also, the language of Article 254

speaks of repugnancy not merely of a statute as a whole but also "any provision" thereof.

51.4 Since there is a presumption in favour of the validity of statutes generally, the onus of showing that a statute is repugnant to another has to be on the party attacking its validity. It must not be forgotten that that every effort should be made to reconcile the competing statutes and construe them both so as to avoid repugnancy – care should be taken to see whether the two do not really operate in different fields qua different subject matters.

51.5 Repugnancy must exist in fact and not depend upon a mere possibility.

51.6 Repugnancy may be direct in the sense that there is inconsistency in the actual terms of the competing statutes and there is, therefore, a direct conflict between two or more provisions of the competing statutes. In this sense, the inconsistency must be clear and direct and be of such a nature as to bring the two Acts or parts thereof into direct collision with each other, reaching a situation where it is impossible to obey the one without disobeying the other. This happens when two enactments produce different legal results when applied to the same facts.

51.7 Though there may be no direct conflict, a State law may be inoperative because the Parliamentary law is intended to be a complete, exhaustive or exclusive code. In such a case, the State law is inconsistent and repugnant, even though obedience to both laws is possible, because so long as the State law is referable to the same subject matter as the Parliamentary law to any extent, it must give way. One test of seeing whether the subject matter of the Parliamentary law is encroached upon is to find out whether the Parliamentary statute has adopted a plan or scheme which will be hindered and/or obstructed by giving effect to the State law. It can then be said that the State law trenches upon the Parliamentary statute. Negatively put, where Parliamentary legislation does not purport to be exhaustive or unqualified, but itself permits or recognises other laws restricting or qualifying the general provisions made in it, there can be said to be no repugnancy.

51.8 A conflict may arise when Parliamentary law and State law seek to exercise their powers over the same subject matter. This need not be in the form of a direct conflict, where one says "do" and the other says "don't". Laws under

this head are repugnant even if the rule of conduct prescribed by both laws is identical. The test that has been applied in such cases is based on the principle on which the rule of implied repeal rests, namely, that if the subject matter of the State legislation or part thereof is identical with that of the Parliamentary legislation, so that they cannot both stand together, then the State legislation will be said to be repugnant to the Parliamentary legislation. However, if the State legislation or part thereof deals not with the matters which formed the subject matter of Parliamentary legislation but with other and distinct matters though of a cognate and allied nature, there is no repugnancy.

51.9 Repugnant legislation by the State is void only to the extent of the repugnancy. In other words, only that portion of the State's statute which is found to be repugnant is to be declared void.

51.10 The only exception to the above is when it is found that a State legislation is repugnant to Parliamentary legislation or an existing law if the case falls within Article 254(2), and Presidential assent is received for State legislation, in which case State legislation prevails over Parliamentary legislation or an existing law within that State. Here again, the State law must give way to any subsequent Parliamentary law which adds to, amends, varies or repeals the law made by the legislature of the State, by virtue of the operation of Article 254(2) proviso."

19- The Supreme Court's judgment in **Mar Appraem Kuri Company Limited's** case (supra) was examining the question whether Kerala Chitties Act, 1975 is repugnant to the Central Chit Funds Act, 1982. The State Act and the Central Act derive their legislative competence on the basis of Entry 7 in List III of 7th Schedule, dealing with the subject of contracts, including special contracts. The question examined was whether the repugnancy of the State Act will come into effect on the making of the Central Act or as to when the Central Act is brought into force in the State of Kerala. The Court held as under:-

> "39. One more aspect needs to be highlighted. Article 246(1) begins with a non-obstante clause "Notwithstanding anything in clauses (2) and (3)". These words indicate the principle of federal supremacy, namely, in case of inevitable conflict between the Union and State powers, the Union powers, as enumerated in List I, shall prevail over the State powers, as enumerated in Lists II and III, and in case of overlapping between Lists III and II, the former shall prevail. [See: Indu Bhusan Bose versus Rama Sundari Devi & Anr. – (1970) 1 SCR 443 at 454].
>
> 40. However, the principle of federal supremacy in Article 246(1) cannot be resorted to unless there is an "irreconcilable" conflict between the entries in Union and State Lists. The said conflict has to be a "real" conflict. The non-obstante clause in Article 246(1) operates only if reconciliation is impossible. As stated, Parliamentary Legislation has supremacy as provided in Article 246(1) and (2). This is of relevance when the field of legislation is in the Concurrent List. The Union and the State Legislatures have concurrent power with respect to the subjects enumerated in List III. [See: Article 246(2)]. Hence, the State Legislature has full power to legislate regarding subjects in the Concurrent List, subject to Article 254(2), i.e., provided the provisions of the State Act do not come in conflict with those of the Central Act on the subject. [See: Amalgamated Electricity Co. (Belgaum) Ltd. versus Municipal Committee, Ajmer – (1969) 1 SCR 430]. Thus, the expression "subject to" in clauses (2) and (3) of Article 246 denotes supremacy of Parliament."

20- In **M. Karunanidhi's case** (supra), Constitutional Bench held that the scheme of the Constitution is a scientific and equitable distribution of legislative powers between Parliament and the State Legislatures. First, regarding the matters contained in List I, i.e. the Union List to the Seventh Schedule, Parliament alone is empowered to legislate and the State Legislatures have no authority to make any law in respect of the Entries contained in List I. Secondly, so far as the Concurrent List is concerned, both Parliament and the State Legislatures are entitled to legislate in regard to any of the Entries appearing therein, but that is subject to the condition laid down by Article 254(1). Thirdly, so far as the matters in List II, i.e., the State List are

concerned, the State Legislatures alone are competent to legislate on them. It is only when both the State and Parliament occupy the field contemplated by the Concurrent List, then the Act passed by Parliament being prior in point of time will prevail and consequently the State Act will have to yield to the Central Act. The Court held as under:-

> "8. It would be seen that so far as clause (1) of Article 254 is concerned it clearly lays down that where there is a direct collision between a provision of a law made by the State and that made by Parliament with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the State law would be void to the extent of the repugnancy. This naturally means that where both the State and Parliament occupy the field contemplated by the Concurrent List then the Act passed by Parliament being prior in point of time will prevail and consequently the State Act will have to yield to the Central Act. In fact, the scheme of the Constitution is a scientific and equitable distribution of legislative powers between Parliament and the State Legislatures. First, regarding the matters contained in List I, i.e. the Union List to the Seventh Schedule, Parliament alone is empowered to legislate and the State Legislatures have no authority to make any law in respect of the Entries contained in List I. Secondly, so far as the Concurrent List is concerned, both Parliament and the State Legislatures are entitled to legislate in regard to any of the Entries appearing therein, but that is subject to the condition laid down by Article 254(1) discussed above. Thirdly, so far as the matters in List II, i.e., the State List are concerned, the State Legislatures alone are competent to legislate on them and only under certain conditions Parliament can do so. It is, therefore, obvious that in such matters repugnancy may result from the following circumstances:-
>
> 1. Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy.
> 2. Where however a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would

become void provided the State Act has been passed in accordance with clause (2) of Article 254.

3. Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List an entrenchment, if any, is purely incidental or inconsequential.

4. Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254.

So far as the present State Act is concerned we are called upon to consider the various shades of the constitutional validity of the same under Article 254(2) of the Constitution.

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35. On a careful consideration, therefore, of the authorities referred to above, the following propositions emerge:-

1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.

2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

> 3. That where the two statutes occupy a particular field, there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.
> 4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field."

21- The argument of the petitioner that the State Act is deriving its legislative power in Entry 42 of List III, 7th Schedule i.e. 'Acquisition and requisitioning of property', is now required to be examined. The State Act defines 'land' to mean a *'portion of earth's surface'*. The right of user in the land is meant as laying of underground pipeline, cable and duct for carrying of water, gas, sewage, industrial waste and transmission of electricity, fibre optics etc. The said purposes are neither acquisition nor requisition of the property, as the owner is not deprived of his ownership rights in terms of the Central Act, under which Act the compensation is paid for the acquisition of land. In terms of the State Act, compensation is paid for depriving the land owner of restricted use of surface of land when only right of user of surface of land is permitted to be used. Therefore, the State Act is not deriving its legislative competence from Entry 42 of the concurrent list, but it derives its legislative competence in respect of water, sewage, industrial waste from Entry 5, 6 and 17 of List II, of the 7th Schedule. Entry 6 is 'public health and sanitation, hospitals and dispensaries', therefore, sewage and industrial waste is part of 'public health and sanitation', whereas pipes for water includes water supplies, irrigation and canals falls within Entry 17 of List II.

22. Section 164 of the Electricity Act, 2003 (for short the 'Electricity Act') empowers the appropriate government to resort to the provisions of the Indian Telegraph Act, 1885 (for short the 'Telegraph Act') with respect to the placing of telephone lines and post for the purposes of laying of overhead transmission lines. The transmission of electricity is a subject falling in Entry 38 of the Concurrent List. Relevant extracts of Sections 68 and 69 of the Electricity Act, read as under:-

> "**68. Overhead lines: ----** (1) An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).
> (2) The provisions contained in sub-section (1) shall not apply-
> (a) in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;
> (b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or
> (c) in such other cases, as may be prescribed. .....
>
> **69. Notice to telegraph authority: -** (1) A licensee shall, before laying down or placing, within ten meters of any telegraph line, electric line, electrical plant or other works, not being either service lines, or electric lines or electrical plant, for the repair, renewal or amendment of existing works of which the character or position is not to be altered,-
> (a) submit a proposal in case of a new installation to an authority to be designated by the Central Government and such authority shall take a decision on the proposal within thirty days;
> (b) give not less than ten days' notice in writing to the telegraph authority in case of repair, renewal or amendment or existing works , specifying-
> (i) the course of the works or alterations proposed ;
> (ii) the manner in which the works are to be utilised ;
> (iii) the amount and nature of the electricity to be transmitted;
> (iv) the extent to, and the manner in which (if at all), earth returns are to be used,

> and the licensee shall conform to such reasonable requirements, either general or special, as may be laid down by the telegraph authority within that period for preventing any telegraph line from being injuriously affected by such works or alterations:
>
> Provided that in case of emergency (which shall be stated by the licensee in writing to the telegraph authority) arising from defects in any of the electric lines or electrical plant or other works of the licensee, the licensee shall be required to give only such notice as may be possible after the necessity for the proposed new works or alterations has arisen.
>
> (2) Where the works of the laying or placing of any service line is to be executed the licensee shall, not less than forty-eight hours before commencing the work, serve upon the telegraph authority a notice in writing of his intention to execute such works."

23- The Electricity Act or the Telegraph Act does not provide for any underground laying of electricity cable, which is provided under the State Act only. Therefore, even in view of the judgment referred to by learned counsel for the petitioner, the State Act and the Central Act operate in separate spheres and there is no overlapping of any of the scope of the State Act with the Central Act, therefore, State Act cannot be said to be repugnant to any central statute.

24- In **Laljibhai's case**, the Supreme Court was examining the question whether the provisions of the Petroleum Act is in exercise of powers conferred under Entry 42 of List III of 7th Schedule. The argument was that the Petroleum Act is a legislation to bypass the due process of law contemplated under Land Acquisition Act, 1894 and that the Petroleum Act is nothing but acquisition of the entire interest of the owner of occupier in respect of such land. While examining the said argument, the Court held as under:-

> "18. Under the provisions of the PMP Act, what is taken over or acquired is the right of user to lay and maintain pipelines in the sub-soil of the land in

question. The provisions of the PMP Act get attracted upon the requisite Notification having been made under Section 3. If it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum or any minerals any pipeline be made and for the purposes of laying such pipelines it is necessary to acquire the right of user in any land, it may by Notification issued in exercise of power under Section 3 declare its intention to acquire such right of user. The Act then provides for making of objections by those interested in land, which objections are thereafter to be dealt with by the Competent Authority. The report made by the Competent Authority is then placed before the Central Government for appropriate decision and after considering such report and the relevant material on record, if the Central Government is satisfied that such land is required for laying any pipeline for the transport of petroleum or any other mineral, it may declare by Notification in the official gazette that the right of user in the land for laying the pipeline be acquired. Upon the publication of such declaration under Section 6 the right of user in the land so specified vests absolutely in the Central Government or in the State Government or in the Corporation free from all encumbrances. Thus what stands acquired is the right of user in the land in question for laying pipeline for the transport of petroleum or any mineral and not the land itself.

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21. Section 7 stipulates that no pipeline be laid under any land which, immediately before the date of Notification under Section 3(1) was used for residential purposes, or any land on which there is permanent structure in existence or any land which is appurtenant to a dwelling house. It is clear that only such lands are to be considered for acquisition of right of user therein which are either lying fallow or are being put to agricultural use. It is obvious that care is taken to cause least possible damage to the holdings of the concerned land-owners. According to Section 9, after the pipelines are laid, the owner/occupier could use the land for the purpose for which it was being used before the Notification under Section 3(1) was issued. Section 9 certainly, imposes some restrictions in the sense that such owner/occupier cannot thereafter construct any building or any other structure or construct or excavate any lake, reservoir or dam or plant any tree on such land. Barring such restrictions, the owner/occupier is within his rights to use the land for the same purpose for which the land was earlier being used. The point is clear that neither the ownership in respect of the land itself nor the right to occupy or possess that land is taken over permanently and those rights continue to remain with the owner/occupier. What is taken over is only the right of user namely to lay

pipelines in the sub-soil of the land in question and the restrictions imposed by Section 9 are designed to safeguard and secure the pipelines underneath.

22. As laid down by this Court in *Jilubhai Nanbhai Khachar and others Vs. State of Gujarat, 1995 Supp (1) SCC 596*, the term property in legal sense means an aggregate of rights which are guaranteed and protected by law and would extend to entirety or group of rights inhering in a person. It was observed by this Court as under:

> "42. Property in legal sense means an aggregate of rights which are guaranteed and protected by law. It extends to every species of valuable right and interest, more particularly, ownership and exclusive right to a thing, the right to dispose of the thing in every legal way, to possess it, to use it, and to exclude everyone else from interfering with it. The dominion or indefinite right of use or disposition which one may lawfully exercise over particular things or subjects is called property. The exclusive right of possessing, enjoying, and disposing of a thing is property in legal parameters. Therefore, the word 'property' connotes everything which is subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value or which goes to make up wealth or estate or status. Property, therefore, within the constitutional protection, denotes group of rights inhering citizen's relation to physical thing, as right to possess, use and dispose of it in accordance with law. In Ramanatha Aiyar's *The Law Lexicon*, Reprint Edn, 1987, at p.1031, it is stated that the property is the most comprehensive of all terms which can be used, inasmuch as it is indicative and descriptive of every possible interest which the party can have. The term property has a most extensive signification, and, according to its legal definition, consists in free use, enjoyment, and disposition by a person of all his acquisitions, without any control or diminution, save only by the laws of the land."

23. We therefore proceed on the premise that the right of user sought to be taken over under the provisions of the PMP Act amounts to acquisition of one of the facets of property rights which inhere in the owner/occupier. For the acquisition of such right of user, the compensation is prescribed in terms of Section 10 of the PMP Act. There are two elements of compensation under

Section 10. The first part deals with any damage, loss or injury sustained by any owner/occupier as a result of exercise of powers conferred by Sections 4,7 and 8 of the PMP Act that is to say the actual damage, loss or injury sustained because of entry upon and/or digging or marking levels and survey of land under Section 4 or while actual laying of the pipeline including digging of trenches and carrying of requisite material for such operations under Section 7 or at any stage of maintenance, examinations, repairing and altering or removing of pipeline in terms of Section 8 of the PMP Act… …….The damage/loss or injury to the property is separately dealt with under first part of Section 10 and has to be compensated in toto. Theoretically, it is possible that in a barren piece of land as a result of exercise of powers under Sections 4, 6 and 7 there may not be any damage/loss or injury. However compensation under sub-section (4) for acquisition of right of user would still be independently payable. The expression "in addition to the compensation, if any, payable under sub-section (1)" clearly shows the intent that the compensation for acquisition of right of user shall be in addition to the actual damage/loss or injury under first part of Section 10. This part will also be clear from Para 3(iii) of Statement of Objects and Reasons extracted above (in para 2).

24. The provisions of PMP Act do specify the principles and the manner in which the compensation is to be determined. Not only the actual damage, loss or injury suffered as a result of exercise of various activities in terms of Sections 4, 6 and 7 are compensated in toto but additionally compensation linked to the market value of land is also to be given for acquisition of right of user in respect of such land. *What is taken over is mere right of user to lay the pipeline in the sub-soil of land in question, leaving the title to the land as well as the right to possess that land intact in the hands of the land owner/occupier. It is no doubt that the enjoyment thereof after the pipelines are laid is impaired to a certain extent, in that the owner/occupier cannot raise any permanent construction or cause any excavation or plant any trees. Barring such restrictions, the enjoyment and the right of possession remains unaltered.* The lands under which the pipeline would be laid are primarily, going by the mandate of Section 7, agricultural or fallow and there would normally be no occasion for any rendering of the holding completely unfit for any operations. Even in such cases where the holding is rendered unfit, sub- section 3(iii) of Section 10 could be relied upon and any diminution in market value as permanent impairment could sustain a claim for compensation. The principles of compensation as detailed in the PMP Act are thus reasonable and cannot in any way be termed as illusory.

The principle laid down in *H.D. Vora v. State of Maharashtra, (1984) 2 SCC 337* has no application at all.”

(Emphasis supplied)

25- The provisions of the State Act are substantially the same as the Petroleum Act. The only difference is that the Petroleum Act is a central statute falling in Entry 53 of List I of the 7th Schedule, whereas the State Act is in terms of Entries 5, 6 and 17 of List II, of the 7th Schedule of the Constitution. In **Laljibhai’s case** (supra), the Supreme Court held that laying of pipeline is not acquisition of land covered by the Land Acquisition Act, 1894. The Petroleum Act takes over mere right of user to lay pipeline in the sub-soil of the land in question, leaving the title to the land as well as the right to possess that land intact in the hands of the land owner. For impairment of the right to use land as construction cannot be raised, the enjoyment and right of possession remains unaltered. Therefore, in the light of judgment in **Laljibhai’s case**, the State Act does not deal with acquisition of land falling in Entry 42 of List III, of the Concurrent List of the 7th Schedule. Since the State Act in respect of water, gas, sewage, industrial waste are clearly relatable to the powers conferred on the State Legislature in terms of Entries 5, 6 and 17, therefore, in view of the judgments referred to above, the question of repugnancy does not arise.

26- The said State Act does not even remotely overlap any statute, including the Central Act, therefore, even the doctrine of pith and substance would not be applicable as the Central Act and the State Act operate in different fields and there is no overlapping of the two statutes. The State Act permits laying of underground pipeline, cable and duct for electricity and Fibre optics. Though

Electricity (Entry 38) is part of Concurrent List, but the State Act does not contravene the provisions of the Electricity Act or the Indian Telegraph Act, as such Act permits laying of overhead lines whereas the State Act permits laying of lines on the sub-soil. We further find that such State Act permitting laying of underground pipeline, cable and duct is not in conflict with any Central Statute, as none of the Statute provide for laying of underground electricity or fibre optic cable, atleast none was brought to our notice. The 'land' in the State Act means portion of 'earth's surface'. It is only surface of earth over which right of user is exercised by the State Act as against the Central Act, which takes all benefits to arise out of land and things attached to earth. Therefore, the State Act only exercises the right of user to lay underground pipeline, cable and duct in the subsoil of land in question. By such laying of underground pipeline, cable and duct, the title to the land as well as the right to possess that land is intact in the hands of the land owner. The land owner is compensated on account of damage to the surface of the land and also provided compensation for not raising construction of any building or any other structure; construct or excavate any tank, well, reservoir, or dam; or plant any tree. Therefore, for limited and restricted use of surface of land, the land owner is compensated and that the land owner is neither deprived of the title nor possession thereof. Thus, the State Act is not repugnant to any of the provisions of any Central Statute.

27- Reliance of the petitioner on **Rustom Gavasjee Cooper's case** (supra) is not relevant for the present case, as nationalization of the Bank was found to be an Act for acquisition of property falling within Entry 42 of List III of the 7th Schedule. The laying of underground pipeline, cable and duct is not

acquisition of property falling in Entry 42 of List III of the 7th Schedule. Therefore, no help can be taken by the learned counsel for the petitioner from the said judgment.

28- In view of the above, the answer to Question No. (i) is that the State Act deals with a 'portion of earth's surface' as defined in Section 2(c) of the Act that mere right of user to lay underground pipeline, cable and duct in the subsoil of the land in question does not deprive the landowner of the title or the right to possess that land.

29- The another argument raised that the State Act does not find mention in Schedule IV, therefore, the State is under an obligation to pay compensation as per the Central Act and that State Act is not saved by the rigour of Central Act is again not tenable.

30- As discussed above, Parliament has the power to legislate on the subjects which finds mention in List I or on the subjects which find mention in concurrent list. The State Act is in respect of water, sewage, industrial waste which falls within the competence of the State being in List II of Seventh Schedule of the Constitution. Therefore, it is a legislation which is not within the competence of the Parliament. The Parliament has no power to touch a field which is reserved for the State in List II of the 7th Schedule.

31- Schedule IV of the Central Act contains all Central Statute. It is for the reason that the Union Parliament has the power to legislate on the subjects enumerated in List I and also on List II. Therefore, the Statute mentioned in Schedule IV enacted by the Union Parliament alone could have find mention in the Schedule, as the Union Parliament could not touch any statute for which it has no legislative competence to legislate. Therefore, the Union Parliament

could not include any State Act in Fourth Schedule, as it does not have the legislative competence to do so. The non inclusion of State Act in Fourth Schedule is neither permissible nor will render the State Act repugnant to the Central Act, as both Central and State Act operate in different fields.

32- We find that the finding of the Division Bench is the case of NVDA'case that the landowners would be entitled to compensation under the Central Act is again not tenable as the Central Act is not applicable in respect of limited use of land under the State Act.

33- It was pointed out by Shri Shreyas Dharmadhikari, Advocate that certain writ petition bearing **W.P. No.7581/2014 [Aviral Agrawal Vs. State of MP and others]** and some other petitions are pending before this Court wherein challenge is to the acquisition of land in respect of laying of gas pipes under the State Act. The respondent No.4 in the said writ petition, the Oil Company, has filed Transfer Petition No.814/2015 and other cases before the Supreme Court, therefore, this Court should not proceed with the decision of the writ petition. Whether the State could make law in respect of "gas" is not being dealt with in the present petition.

34- Therefore, in respect of Question No. (ii), we find that the State Act is not repugnant to the Central Act as both operate in different fields. Union Parliament does not have any legislative competence to enact any law in respect of matter which falls in List II of the 7th Schedule. Therefore, the fact that The Madhya Pradesh Bhumigat Pipe Line, Cable Evam Duct (Bhumi Ki Upyokta Ke Adhikaron Ka Arjan) Adhiniyam, 2012 is not found in List IV of the Central Act is of no effect.

35- In view of the above, we hold that the order of the Division Bench of this Court in Writ Appeal No. 91/2017 (Narmada Valley Development Authority and others Vs. Shashikant Patel), and other appeals decided on 6.4.2017 is not correct enunciation of law and is thus over-ruled.

36- Having given opinion on the question of law framed, the Writ Petition be placed before the Appropriate Bench as per Roster.

(HEMANT GUPTA)	(H.P. SINGH)	(VIJAY KUMAR SHUKLA)
CHIEF JUSTICE	**JUDGE**	**JUDGE**

Aks/-