

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S. B. Civil Writ Petition No. 2804/1992
CNR: RJHC020003241995 | URN: CW / 8874U / 1992

Krishan Mohan Rathod (Teli) son of Shri Kanhaiya Lal Rathod
aged about 42 years, resident of Jagannath Kanhaiya Lal, Timber
Merchants, Hospital Road, Baran, District Baran, Rajasthan.

----Petitioner

Versus

1. State of Rajasthan through District Collector, Baran.
2. Land Acquisition Officer-cum-Sub Diviisonal Officer, Baran.
3. RIICO through its Chairman-cum-Managing Director, Udyog
Bhawan, Jaipur.

----Respondents

For Petitioner	:	Mr. S.C. Gupta Advocate.
For Respondents	:	Mr. S.N. Kumawat Advocate with Mr. Naval Kishore Saini Advocate. Mr. V.D. Gathala, Additional Government Counsel with Ms. Vijay Laxmi Advocate.

HON'BLE MR. JUSTICE ANAND SHARMA

Judgment

Date of conclusion of arguments	::	22.07.2026
Date on which judgment was reserved	::	22.07.2026
Whether the full judgment or only the operative part is pronounced	::	Full Judgment
Date of pronouncement	::	31.07.2026

1. Feeling aggrieved by acquisition proceedings initiated
by the State Government, the petitioner has filed present writ
petition with following prayers:

*"It is, therefore, prayed that this Hon'ble Would be pleased
to accept this writ petition and further be pleased to issue a
writ, order or direction to the following effects:-*

*i. to quash the notification (Annexure-4) published in
Rajathan Patrika dated 6.6.91 with regard to the land
acquisition proceedings of the land in question.*

*ii. To further direct the respondent not to acquire the land
bearing Khasra No. 44 measuring 0.65 hectare, situated in
Village Rajiyali, of which the petitioner is khatedar tenant*

and is in possession, and the respondent be further directed to not dispossess the petitioner from the land in question.

iii. It may be held that the land acquisition proceedings initiated vide Notification (Ann-4) stand lapsed on account of non compliance of the provisions of Sec. 6 and 11-A of the Act.

iv. The draft award (Ann-R3/1) dated nil may be quashed and set aside and respondents may be restrained from acquiring the land of the petitioner and dispossessing him from the same.

v. That the respondents may be directed to allow the petitioner to carry on business of Araha Machine by installing of the same thereupon to the petitioner.

vii) Any other order or direction which this Hon'ble Court deems fit may also be passed in the facts and circumstances of the case and in favour of the humble petitioner.

vii) To hold and declare that the land acquisition proceedings in question stand lapsed."

2. Facts stated in the writ petition are that the petitioner along with Ram Narain and Ram Ratan were Khatedars-tenants of the land bearing Khasra No. 44 measuring 0.65 hectares situated in Village Rajiyali, Tehsil Baran, District Baran (the said land hereinafter to be referred as 'the land in question'). It is stated that the petitioner has purchased the share of other co-khatedars also. Pursuant to the sale deed, name of the petitioner was also entered in the revenue records as Khatedar of the land in question.

3. However, State Government issued a notification dated 26.04.1991 under Section 4 of the Land Acquisition Act, 1894 (hereinafter to be referred as 'the Act of 1894'), whereby, the land in question was sought to be acquired for the purpose of industrial development by the Rajasthan State Industrial Development and Investment Corporation Limited (hereinafter to be referred as 'RIICO'). It is submitted that although name of the petitioner was already entered in the revenue records, yet while issuing

notification dated 26.04.1991, instead of petitioner's name, erstwhile khatedars were shown in the notification. It is submitted that thereafter, no declaration under Section 6 of the Act of 1894 was issued or published by the State Government and without resorting to the provisions of Section 6 of the Act of 1894, directly notice under Section 9 of the Act of 1894 was issued by the Land Acquisition Officer concerned which was also not in the name of the petitioner and rather addressed to the erstwhile khatedars.

4. It is the case of the petitioner that upon having knowledge of the acquisition proceedings, the petitioner although submitted objections to the District Collector concerned and sought hearing over his objections, yet the Land Acquisition Officer refused to hear the objections and threatened to dispossess the petitioner from the land in question.

5. It is also submitted that no award as per law was passed in the instant case and only a draft award, without due approval of the State Government, is being considered to be an award in the land acquisition proceedings.

6. The petitioner has also come out with a case that while passing draft award also, limitation period prescribed under Section 11A of the Act of 1894 has not been followed and, therefore, proceedings have lapsed by virtue of the provisions of Section 11A of the Act of 1894.

7. It has also been stated that compensation pursuant to land acquisition award has neither been paid to the petitioner, nor has been deposited with the competent authority. As regards possession, it was submitted that even the draft award states that

on account of stay granted by this Court, possession could not be taken. Therefore, in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter to be referred as 'the Act of 2013'), acquisition proceedings have lapsed. Thus, on account of lapsing of operation of law, the respondents are under an obligation to release the land in question and not to interfere in the title and possession of the petitioner over the land in dispute.

8. Reply to writ petition has been filed by the respondents categorically denying that there is any flaw, illegality or infirmity in the land acquisition proceedings undertaken by the respondents. It is stated that though notification under Section 4 of the Act of 1894 was issued on 26.04.1991, it was published in newspapers namely, Dainik Navjyoti and Rajasthan Patrika on 31.05.1991 and 06.06.1991 respectively, after publishing the same in the official gazette. The purpose of acquisition as reflected in the notification is for expansion of industrial area for the purpose of RIICO, which undoubtedly is a public purpose. It is stated that public notice of notification under Section 4 of the Act of 1894 was also given in the locality and thereafter, the objections received from the khatedars and interested persons were duly considered by the Land Acquisition Officer concerned and report under Section 5A of the Act of 1894 was submitted by the Land Acquisition Officer concerned to the appropriate Government.

9. It is further submitted in the reply that within one year from the date of last publication of notification under Section 4 of the Act of 1894, declaration under Section 6 of the Act of 1894 was issued on 18.01.1992 followed by its publication in official gazette as well as two newspapers namely Rajasthan Patrika and Dainik Navjyoti dated 06.02.1992 and 05.02.1992 respectively.

10. It is further averred that issuance of declaration under Section 6 of the Act of 1894 was followed by notice under Section 9 of the Act of 1894 for inviting claims for compensation against the acquisition of the land. After assessment of the compensation on the basis of the claims so received, draft award (Annexure-R3/1) was prepared by the Land Acquisition Officer concerned, which was sent to the State Government for approval vide letter dated 03.09.1992. Draft award was approved by the State Government vide approval letter dated 03.10.1992.

11. It is further submitted that in view of above, award has been passed within limitation prescribed under Section 11 of the Act of 1894 and provisions of Section 11A of the Act of 1894 have got no application whatsoever.

12. It is also stated in the reply to the writ petition that since at the relevant time, there was stay operating in the present case, therefore, possession of the land in question was not taken, yet on 07.05.2007, present writ petition was dismissed in default. Consequently, stay order earlier granted by this Court was not in operation and, therefore, possession of the land in question was taken on 18.01.2008 by preparing one '*Dakhalanama*', which was

signed by concerned *patwari*, Assistant Regional Manager of RIICO as well as one independent witness Deepak Nayak.

13. So far as payment of compensation is concerned, by way of filing reply to the amended writ petition, it is stated by the respondents that after following the due procedure, compensation to the tune of Rs. 61,45,511/- were sanctioned in the award for making payment to persons interested and order dated 02.02.1993 was issued by the Advisor (Infra), RIICO for making payment of the award to the khatedars. It is stated that a joint Cheque No. 093387 dated 06.12.2007 was prepared for Rs. 65,975/- in favour of Kishanmohan Rathore son of Kanhaiya Lal, Ramnarain son of Sariya and Ramratan son of Bhooriya. However, the above cheque was returned back by the khatedars with a request to prepare separate and independent cheques. As per letter dated 16.09.2016, the khatedars never turned up for getting the cheque again.

14. Learned counsel for the petitioner, while reiterating the contents of writ petition, submitted that the Act of 2013 came into force on 01.01.2014. As per the provisions of Section 24(2) of the Act of 2013, in case, in any land acquisition proceedings initiated under the erstwhile Land Acquisition Act, 1894, more than five years have expired from the date of passing of the award and pursuant to such award, neither compensation has been paid to the khatedar concerned, nor possession of the land in question has been taken, then the proceedings shall stand lapsed. In the instant case, although the respondents have tried to make out a case that compensation was offered to the khatedars, yet the

documents on record would reveal that cheque for making payment of compensation was not issued individually and separately in favour of respective khatedar. A joint cheque no. 093387 issued in the name of so many khatedars could not have been encashed by any bank for want of joint account in the bank and such issuance of cheque was nothing, but an empty formality. Therefore, the petitioners returned the said cheque to the competent authority on the same day, i.e. 06.12.2007. Learned counsel submits that letter dated 16.09.2019 (Annexure-R/6) would make it clear that after returning back of the aforesaid cheque on 06.12.2007, no separate cheques were ever issued, nor is there anything on record to show that the compensation amount, which admittedly not disbursed to the petitioners, was ever deposited with the competent authority by the respondents. Hence, in view of above and on the basis of material on record, it is clear that the compensation has neither been paid, nor deposited with the competent authority.

15. Learned counsel for the petitioner submitted that stay was granted by this Court vide order dated 21.04.1992 restraining the respondents from dispossessing the petitioner and the stay order was in operation till the writ petition was dismissed in default on 07.05.2007. Application for restoration of the writ petition was filed by the petitioner on 12.12.2007 and on 21.01.2008, writ petition was restored to its original number. Consequently, stay order, earlier passed vide order dated 21.04.1992, stood revived. Learned counsel for the petitioner submits that in quite malicious manner and to take benefit of

intervening period when the writ petition remained under dismissal due to default, one forged document dated 18.01.2008 with the title, '*Dakhalanama*' has been prepared so as to show that the possession of the land in question was taken from the petitioner on 18.01.2008. Learned counsel submits that '*Dakhalanama*' refers to letter dated 10.12.2007 allegedly issued by the Land Acquisition Officer concerned. Bare perusal of letter dated 10.12.2007 would reveal that the said letter attempted to give an inference as if compensation against acquisition has already been paid to the petitioner vide cheque dated 06.12.2007 (which was admittedly returned back on the same day itself on account of same being not prepared and issued in correct and proper manner). The aforesaid letter further states that possession of the land in question be also taken from khatedars Krishanmohan, Ramnarain and Ramratan and thereafter, the same be handed over to the Assistant Manager, RIICO. Learned counsel submits that alleged '*Dakhalanama*' dated 18.01.2008 nowhere reveals as to on which date possession was taken by the *patwari* or any other revenue official or even by the Land Acquisition Officer concerned from the petitioner. It merely attempts to show as if the possession of the land had been handed over to RIICO in presence of one independent witness Deepak Nayak. However, when there is no memo of possession or any proof on record for taking possession of the land in question from the petitioner, without firstly taking possession of the land from the petitioner, no question of handing over the same to the respondent-RIICO arises. Even otherwise on '*Dakhalanama*' dated

18.01.2008, although signatures of one Deepak Nayak have been shown to prove presence of an independent witness at the time of taking possession, yet the petitioner has filed affidavit of Deepak Nayak denying the said fact, in which it has been categorically stated by Deepak Nayak that he does not know the concerned *patwari*, nor the Assistant Regional Manager and he has not put any signatures over '*Dakhalanama*' dated 18.01.2008. He further stated in the affidavit that possession of the land in question was never taken in his presence, nor has he ever put any signatures on any of the documents with regard to taking/handing over possession. Learned counsel submits that as such, signatures of Deepak Nayak over the said '*Dakhalanama*' are forged and fabricated. Thus, when the legitimate mode of taking possession has been laid down by the Hon'ble Supreme Court in the cases of **Raghubir Singh Sehrawat vs. State of Harayana & Others, (2012) 1 SCC 792** and **Banda Development Authority, Banda vs Moti Lal Agrawal & Others, (2011) 5 SCC 394**, it cannot be said that the possession of the land in question has ever been taken by the respondents and the same is with the petitioner. Learned counsel submits that in view of above, all the conditions as enumerated in Section 24(2) of the Act of 2013 are fulfilled and, therefore, acquisition proceedings in the instant matter have lapsed.

16. Learned counsel for the petitioner further submitted that even if draft award prepared by the Land Acquisition Officer concerned is taken to be final award as per the averments in the reply to writ petition, even then, it is clear that such alleged award

was passed on 03.10.1992. The Act of 2013 came into force on 01.01.2014 wherein standalone and transitional provision with regard to lapsing has been provided in Section 24(2) of the Act of 2013 and first requirement of such provision is that in respect of the land acquisition proceedings initiated under the Act of 1894, award has been passed more than five years back, than the date of enforcement of the Act of 2013. Instant case fulfills the first criteria of Section 24(2) of the Act of 2013. Learned counsel for the petitioner further added that the petitioner has successfully demonstrated that he has neither been paid compensation, nor possession of the land in question has been taken from the petitioner, therefore, the provisions of Section 24(2) of the Act of 2013 would come into effect and consequently, the impugned land acquisition proceedings have lapsed.

17. Per contra, learned counsel for the respondents opposed the writ petition and submitted that the land acquisition proceedings have been conducted strictly as per the provisions of the Act of 1894 and since all the proceedings concluded much before enforcement of the Act of 2013, therefore, there is no question of applicability of Section 24(2) of the Act of 2013.

18. Learned counsel for the respondents emphasised over the provisions of Section 16 of the Act of 1894 in order to state that the land in question, on account of the fact that the possession had already been taken, has vested with the respondents free from all encumbrances and it is settled proposition of law that the land once vested with the Government cannot be divested thereafter.

19. While controverting the contention of the petitioner that the compensation has not been paid to the petitioner, learned counsel for the respondents submitted that payment of actual compensation to the khatedars/persons interested is not the relevant factor and the requirement is that the acquiring authority must have tendered the compensation to the khatedars/persons interested. In the instant case, admittedly cheque was issued by the RIICO on 06.12.2007, therefore, such issuance of cheque falls within the category of legitimate tender of compensation.

20. Learned counsel for the respondents further submitted that in a writ petition under Article 226 of the Constitution of India, disputed questions of facts can neither be raised, nor be adjudicated. The petitioner, in order to unsuccessfully claim benefits of the Act of 2013, is raising factual disputes without there being any foundational facts for raising such disputes.

21. Learned counsel for the respondents submitted that contention of the petitioner that in land acquisition proceedings, the respondents are required to take actual physical possession of the land under acquisition, is totally baseless. It was submitted that mere preparation of the memo of possession is sufficient to establish legitimate possession so as to attract provisions of Section 16 of the Act of 1894. By raising unwarranted controversies, the petitioner is trying to dispute the factum of possession. It is settled proposition of law that every official act is presumed to have been carried out in accordance with law and nothing has been placed on record by the petitioner to validly controvert the specific statements supported by memo of

possession ('*Dakhalanama*') that possession of the land in question has not been taken. Learned counsel for the respondents submitted that in the light of judgment of the Hon'ble Supreme Court in the case of **Indore Development Authority vs. Manoharlal & Others, (2020) 8 SCC 129**, wherein it has been made clear that for the purpose of claiming lapse under Section 24(2) of the Act of 2013, the land owner is required to satisfy both the conditions simultaneously that in respect of an award passed prior to five years of enforcement of the Act of 2013, neither possession of the land under acquisition has been taken by the authority, nor compensation has been paid or deposited with the competent authority. In the present case, the petitioner has utterly failed to satisfy both the conditions and, therefore, provisions of Section 24(2) of the Act of 2013 have no applicability whatsoever.

22. Learned counsel for the respondents further submitted that averments contrary to the records have been made in the writ petition that notification under Section 6 of the Act of 1894 was never issued which is patently incorrect statement on the part of the petitioner. As mentioned in the reply to writ petition, declaration under Section 6 of the Act of 1894 after its issuance was published in official gazette as well as in two daily newspapers, which is sufficient proof of issuance of notification under Section 6 of the Act of 1894.

23. Learned counsel for the respondents further submitted that the petitioner has utterly failed to prove that there was gap of more than two years in publication of declaration under Section 6

of the Act of 1894 and passing of award, therefore, provisions of Section 11A of the Act of 1894 also do not apply.

24. Learned counsel for the respondents further submitted that the land in question is required for public purpose and it is settled proposition of law that wherever there is clash between private and public interest, the public interest shall prevail. Therefore, even if there was some irregularity in the proceedings undertaken by the respondents, such irregularities do not relate to jurisdictional infirmity. Hence, on such hyper technical grounds taken by the petitioner, interference may not be made while exercising jurisdiction under Article 226 of the Constitution of India.

25. Learned counsel for the respondents also raised question of limitation of judicial review under Article 226 of the Constitution of India and submitted that this Court cannot act as an appellate court to examine each and every aspect of the matter and in the instant case, where the petitioner has utterly failed to point out any material irregularity or illegality which goes to the root of the matter, writ petition filed by the petitioner is not maintainable and liable to be rejected.

26. Having heard rival submissions advanced by learned counsel for the parties and perused the material on record, pivotal question which arises for consideration of this Court is as to whether land acquisition proceedings have been conducted by the respondents strictly in accordance with the provisions of the Act of 1894 and whether on enforcement of the Act of 2013, by virtue of

Section 24(2) of the Act of 2013, the acquisition proceedings have lapsed or not?

27. It is settled proposition of law that land acquisition laws lay down exculpatory provisions hence, the same are required to be construed strictly and deviance therefrom can be considered to be in violation of Article 300A of the Constitution of India. As regards question of alleged omission on the part of the respondents in issuance of declaration under Section 6 of the Act of 1894, this Court finds that a categorical statement has been given in reply to the writ petition by giving all the details of publication of declaration under Section 6 of the Act of 1894 in daily newspapers as well as in official Gazette. Such statements given in the reply have not been controverted by the petitioner, therefore, the ground raised by the petitioner to assail the land acquisition proceedings by stating that at no point of time, declaration under Section 6 of the Act of 1894 was issued by the respondents, deserves rejection at the threshold.

28. Another point raised by the petitioner is with regard to lapsing of land acquisition proceedings on account of not issuing the award within a period of two years as prescribed under Section 11A of the Act of 1894. This Court finds that declaration under Section 6 of the Act of 1894 was published in newspapers on 05.02.1992 and 06.02.1992 whereas the draft award was prepared on 03.09.1992 and was approved on 03.10.1992. Thus, it is clear that the award has been published within the limitation as prescribed under Section 11 of the Act of 1894. Hence, the

acquisition proceedings cannot be said to have been lapsed in view of Section 11A of the Act of 1894.

29. As regards ground of lapsing in view of Section 24(2) of the Act of 2013, as heavily pressed by learned counsel for the petitioner, before examining the factual controversy, it would be appropriate to refer that the Constitution Bench of the Hon'ble Supreme Court in **Indore Development Authority (supra)**, authoritatively settled the scope and ambit of Section 24(2) of the Act of 2013. The Constitution Bench held that the word "or" occurring in Section 24(2) of the Act of 2013 has to be read as "nor" and, therefore, acquisition proceedings lapse only where both the conditions coexist, namely, (i) physical possession has not been taken; and (ii) compensation has not been paid in accordance with law. The Constitution Bench further explained that mere non-deposit of compensation in Court would not by itself result in lapse if compensation had been duly tendered to the landowner. Likewise, where possession has been taken in accordance with law, acquisition would not lapse merely because compensation remained unpaid. At the same time, the Constitution Bench unequivocally held that where both the essential conditions coexist on the date of commencement of the Act of 2013, the acquisition would lapse by operation of law. Thus, the present case has to be examined strictly in the light of the principles laid down in the aforesaid Constitution Bench judgment.

30. The respondents have submitted that issuance of cheque dated 06.12.2007 was a valid tender of compensation.

Such statement in the reply to writ petition is not in accordance with the requirement of law. It is an admitted fact that cheque No. 093387 dated 06.12.2007 was prepared as joint cheque in the name of so many khatedars/persons interested. Nothing has been placed on record by the respondents to show that they were having any material on record which may demonstrate that khatedars/persons interested in favour of whom joint cheque was prepared and issued by the RIICO were maintaining joint bank account. In absence of any such material, issuance of joint cheque is nothing, but following an empty ritual so as to show fake compliance of payment of compensation. It is also an admitted fact between the parties that the above cheque dated 06.12.2007 was immediately returned by the petitioner on the same day with the request to issue separate cheques in favour of different khatedars/persons interested. The respondents have utterly failed to show that thereafter, at any point of time, they made any effort either to tender or make payment of compensation to the khatedars by issuing separate cheques or even by depositing compensation with a civil court or Government treasury or any other competent authority. Letter dated 16.09.2016 issued by the Land Acquisition Officer, Baran makes it abundantly clear that after returning the aforesaid wrong cheque dated 06.12.2007, no efforts whatsoever were made by the respondents thereafter and even the amount of compensation has never been deposited either in the civil court or with the competent authority. Thus, this Court finds that the petitioner has succeeded in proving that compensation as per the award has neither been paid, nor

deposited with the competent authority, nor has it been tendered in a legal and valid manner at any point of time.

31. The second requirement under Section 24(2) of the Act of 2013 is that the petitioner is required to show that possession of the land in question has not been validly taken. In the instant case, admittedly, when writ petition was filed, interim order to the extent of not dispossessing the petitioner was passed by this Court in the year 1992, which continued till writ petition was dismissed in default on 07.05.2007. The respondents have come with a case that after dismissal of the writ petition in default, letter dated 10.12.2007 was issued by the Land Acquisition Officer directing Tehsildar, Baran to take possession of the land in question and to hand over the same to the Manager, RIICO.

32. Careful examination of letter dated 10.12.2007 would make it clear that the aforesaid letter has been written by the Land Acquisition Officer directing the Tehsildar concerned to disburse the compensation to the khatedars vide above cheque no. 093387 dated 06.12.2007 whereas much prior to the issuance of letter dated 10.12.2007, the aforesaid cheque was already returned back by the khatedars pointing out irregularities in issuance of the cheque which was issued jointly in favour of so many khatedars. Aforesaid letter dated 10.12.2007 also reveals that copy of the same was although marked to the khatedars, yet no document whatsoever has been placed on record to demonstrate that letter dated 10.12.2007 was ever served upon the khatedars. Even otherwise, in letter dated 10.12.2007, nothing has been mentioned with regard to date or time on which

the possession was proposed to be taken by the Land Acquisition Officer through the Tehsildar concerned. No other document has been brought on record by the respondents so as to prove that notice before taking alleged possession was ever served upon the petitioner-khatedar.

33. The respondents have also placed on record one '*Dakhalanama*' dated 18.01.2008 which is in the form of memo of entry or memo of possession and bearing signatures of Patwari of Panchayat Circle Gajanpura as well as of Assistant Regional Manager, RIICO. It has been mentioned in '*Dakhalanama*' dated 18.01.2008 that khatedars were not present at the spot. Therefore, signatures of other persons present at the site were taken. On the said '*Dakhalanama*' (memo of possession), signatures of Deepak Nayak as independent witness have been reflected. No details of Deepak Nayak have been given under his signatures over '*Dakhalanama*'. The petitioner has filed affidavit of Deepak Nayak son of Surajmal Nayak, in which it has been stated that on the date of preparation of alleged memo of possession dated 18.01.2008, he was aged only 16 years and studying in Class VII. His parents and elder brothers are illiterate. He further stated that neither Patwari or the Assistant Regional Manager, RIICO are known to him, nor has he ever visited land of Khasra No. 44 of Village Rajiyali, Tehsil Baran. He further stated in the affidavit that in his presence, possession of land in question was neither taken by Patwari concerned or any other person, nor has he ever put his signatures over any memo of possession. It was further stated in the affidavit by Deepak Nayak that his alleged

signatures appeared to have been forged by some other person and he further declared that there is no other person with the same name, 'Deepak Nayak' in his village. He also submitted that affidavit is being given only upon showing copy of memo of possession dated 18.01.2008 by the petitioner to him whereupon his forged signatures were alleged to have been reflected. No counter to the affidavit filed by Deepak Nayak has been filed by the respondents. Thus, the facts stated in the affidavit remained uncontroverted.

34. Resultant of aforesaid facts compels this Court to declare that possession of the land in question has never been taken in accordance with legitimate and recognised process of taking possession in land acquisition proceedings, the alleged independent witness has also denied his presence at the site and even otherwise, when he was aged only 16 years on the date of preparation of alleged memo of possession, no sanctity can be attached to '*Dakhalanama*' (memo of possession) dated 18.01.2008.

35. In the case of **Banda Development Authority, Banda (supra)**, the Hon'ble Supreme Court has laid down following legitimate modes for taking possession of the land in acquisition proceedings:

"37. The principles which can be culled out from the abovenoted judgments are:

(i) No hard-and-fast rule can be laid down as to what act would constitute taking of possession of the acquired land.

(ii) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.

(iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

(iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

(v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the court may reasonably presume that possession of the acquired land has been taken."

36. In the case of **Raghubir Singh Sehrawat (supra)**, while considering earlier judgment of the Hon'ble Supreme Court in the case of **Balwant Narayan Bhagde vs. M.D. Bhagwat & Others, 1976 (1) SCC 700**, referring to the provisions of Order 21, Rules 35, 36, 95 and 96 of the Code of Civil Procedure, it has been observed that there can be no question of taking symbolic possession in the sense understood by judicial decisions, nor would possession merely on papers be enough. It was further observed that although presence of owner or occupant of the land is not necessary to effectuate taking of possession, yet it may be desirable, where possible, to give such notice before possession is taken by the authorities as that would eliminate possibility of taking fraudulent or collusive transaction of taking paper possession without the occupant or the owner ever coming to know of it. Thus, in the light of decisions of the Hon'ble Supreme

Court in the cases of **Banda Development Authority, Banda (supra)** and **Raghubir Singh Sehrawat (supra)**, when the case of the petitioner is examined, this Court is of the considered opinion that the respondents have utterly failed to place impeachable evidence on record to show that possession of the land in question was validly taken by the respondents either on 18.01.2008 or even thereafter.

37. In the light of foregoing discussion, it become absolutely clear that the requirements and tests laid down in the case of **Indore Development Authority (supra)** have been fulfilled in the instant case where on the date of enforcement of the Act of 2013, more than five years have expired from the date of passing of award and there is no valid and legitimate proof either of making payment of compensation or legal tender thereof or even of depositing the compensation with the competent authority, nor is there any valid proof of taking possession of the land in question as the memo of possession prepared by the respondents is doubtful in view of the circumstances referred to hereinabove and the same cannot be accepted as legitimate mode of taking possession.

38. Consequently, this Court is of the view that the land acquisition proceedings in the present case have lapsed in view of Section 24(2) of the Act of 2013 and the same are accordingly quashed and set aside. Award dated 03.10.1992 along with notification dated 26.04.1991 issued under Section 4 of the Act of 1894 and declaration dated 18.01.1992 issued under Section 6 of the Act of 1894 are also quashed and set aside. The respondents

are restrained from interfering with the possession of the petitioner over the land in question without acquiring the same strictly in accordance with law.

39. Writ petition is, accordingly, allowed.

40. Pending applications, if any, stand disposed of.

(ANAND SHARMA),J

MANOJ NARWANI