



Chief Justice's Court
AFR

Writ – C No 34893 of 2014

Sunil Kumar & 4 Ors
Vs
State of U P & 4 Ors

With

Public Interest Litigation (PIL) No 3195 of 2018

Dr Suryakant Sharma
Vs
State of U P & 5 Ors

Appearance:

For the petitioners : Mr Shashi Nandan, Senior Advocate, with Mr Shiv Kant Mishra, Advocate (in Writ-C No 34893 of 2014)

: Mr Ashok Nath Tripathi, Advocate (in PIL No 3195 of 2018)

For the respondents : Mr Shivam Yadav, Advocate
Mr Kaushlendra Nath Singh, Advocate

Hon'ble Dilip B Bhosale, Chief Justice
Hon'ble Suneet Kumar, J

(Per Dilip B Bhosale, CJ)

The questions involved and the facts against which they are raised in these petitions, are common and, hence, by consent of counsel for the parties, they are being disposed of by this judgment.

2. Writ petition (Writ-C No. 34893 of 2014) under Article 226 of the Constitution of India has been instituted by the petitioners after 29 years, seeking direction in the nature of mandamus declaring the notifications under Sections 4 (1) and 6 read with Section 17 of the Land Acquisition Act, 1894

(for short, “Act, 1894”) both issued on 07.11.1985, as lapsed in view of the provisions contained in Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, “Act, 2013”). The lands in dispute are Khasra Nos. 312 measuring 0-16-10 bigha, 313 measuring 0-18-0 bigha, 314 measuring 0-11-0 bigha and 315 measuring 0-10-0 bigha, situated at Village Gijhore, Pargana and Tehsil Dadri, District Gautam Budh Nagar (for short, “the lands”).

3. The challenge has been raised solely on the ground that, by virtue of the provisions contained in sub-section (2) of Section 24 of the Act, 2013, the acquisition deemed to have lapsed, since neither possession of the lands had been taken, nor compensation had been paid on completion of the acquisition proceedings in 1985. Petitioners have also challenged a notice issued on 23/25 June 2014 by respondent no.5, whereby they were asked to immediately stop unauthorised constructions on the acquired lands and remove the unauthorised constructions already made within 15 days. By this notice, petitioners were also asked to submit a written reply to the notice within 15 days. The petitioners chose not to submit any reply and filed this petition on 04.07.2014. In the notice, a reference has been made to the lands in dispute only and not to the land-Khasra Nos. 532 and 533, with which the petitioners admittedly do not have any concern, whatsoever.

4. The factual matrix that may be relevant for our purpose for considering the prayers made in these petitions, as disclosed in the pleading, is as under:

4.1 The lands (in dispute) alongwith other lands of a notified Village Gijhore, including Khasra Nos. 532 and 533, except a small portion of Khasra No. 314, were acquired by the State Government by issuing

notifications under Sections 4(1) and 6 read with Section 17 of the Act, 1894 on 07.11.1985 for a planned industrial development through New Okhla Industrial Development Authority (NOIDA). By these notifications, the lands, except one biswa land of Khasra No. 314, had been acquired. After notifications under Sections 4 and 6 of the Act, 1894, award under Section 11 was made on 31.03.1987. Reference to the share of each of the petitioners in the lands is not necessary for our purpose. According to the respondents, the possession of the land was also taken by them. Though the award was passed, according to the petitioners, they did not receive/accept compensation and, as a result thereof, the amount of compensation came to be deposited in the R.D. (Revenue Deposit). Petitioners claim that though acquisition proceedings were concluded in 1987 with the award, their possession was never disturbed and even today they are in possession. They claim that they planted lot of trees and they are having their houses in the said property. In short, petitioners claim that physical possession of the lands in dispute was never taken nor the compensation had been paid to them after the award in 1987. In this backdrop and after the petitioners were served the notice dated 25.06.2014, they filed the instant writ petition challenging the acquisition, contending that it deemed to have lapsed, by virtue of the provisions of sub-section (2) of Section 24 of the Act, 2013 on two grounds, firstly, that physical possession of the lands had not been taken, secondly, compensation had also not been paid or deposited in the Court. They further contend that if the appropriate Government still needs the lands in dispute, they will have to initiate fresh acquisition proceedings in accordance with the provisions of the Act, 2013 and pay compensation under the provisions of this Act.

5. In Public Interest Litigation (PIL) No. 3195 of 2018, the petitioner (for short 'PIL- petitioner') seeks the following prayers:

“I. Issue any writ, direction or order in the nature of writ of *MANDAMUS* commanding the respondents to remove the encroachment of respondent Nos. 5 and 6, from Green Belt Area of Sector-34, Noida, District Guatam Budh Nagar.

II. Issue any writ, direction or order in the nature of writ of *MANDAMUS* commanding the respondents to remove the encroachment of respondent Nos. 5 and 6, from facility Plot Nos. 532 and 533.”

5.1 Respondent nos. 5 and 6 in the PIL are sons of late Deo Dutt Vashisth. Respondent no. 6, alongwith four others, is petitioner no. 1 in Writ – C No. 34893 of 2014. They claim to be co-owners of the lands. It is against the backdrop of the facts, as narrated in the foregoing paragraphs, the PIL-petitioner contends that respondent nos. 5 and 6 some time in 2001 started making encroachment and illegal construction in the green belt area, in particular, Khasra No. 314, on the part of which an old temple exists/stands. The encroachment was also noticed by all concerned, including Assistant Director, Horticulture, NOIDA, Senior Project Engineer, Zone-3, NOIDA, Project Engineer IV, NOIDA, Superintendent of Police (City), NOIDA, Deputy Director, Horticulture, Circle ii, NOIDA etc. A lot of correspondence since then has been exchanged between the PIL-petitioner/residents of Sector-34 and these authorities. Residents of Sector-34 made representations requesting them to take immediate steps for removal of encroachment and stop illegal construction in and around the temple plot. It appears that on 09.10.2012, an FIR was also lodged against encroachers in the green belt area of Sector-34. The Resident Welfare Association also made complaint to concerned authorities on 15.04.2013 against private respondents in PIL and

the petitioners in Writ-C No. 34893 of 2014, hereinafter shall be collectively referred to as “petitioners”, about the encroachment over the green belt area and also setting up of cattle sheds and starting dairy business by them. Several efforts were made by NOIDA authority for removal of encroachment but, for some reason or the other, they did not succeed. On few occasions, police force was not made available and, hence, their encroachment removal drive failed. The petitioner asserts that the encroachment made by private respondents in the green belt area is after construction of compound wall/fence covering the said area and the existing structures, erected by these respondents, are of temporary nature and there doesn't exist a single pacca construction which could be termed as old in the green belt area.

5.2 The petitioners, despite the time was granted on 20.04.2018, have not filed counter affidavit and argued the matter on the basis of averments made in Writ-C No. 34893 of 2014.

6. We have perused the averments made in the PIL, annexures and the photographs. The photographs on record clearly show that the petitioners have occupied/are in possession of the green belt area covered with a compound wall and grills, which are usually erected to protect garden/parks. It is also seen from the photographs and the sanctioned layout that Sector-34, in which the lands (in dispute) situate, has been developed by NOIDA as planned city and lot of wide roads, residential and commercial complexes have come up and they all appear to be quite old developments/constructions. Similarly, photographs also show that the encroachment is in the nature of temporary sheds, including tarpaulin sheds and lot of cattle seen within the compound wall/fence constructed by NOIDA to protect green belt area. A

small temple of about 100-150 sq. ft., is also seen in the same green belt area where the alleged encroachments are made by the petitioners.

7. In this backdrop, we have perused the counter affidavit filed by the Tehsildar-NOIDA. It appears that when the award was passed, the petitioners were given hearing and the objections filed by them were also considered by Acquisition Officer and those were rejected. The assertion of the petitioners' father that they were in possession of the lands, except a small portion of Khasra No. 314, was rejected outright and it clearly finds mention in the award dated 21.03.1987. It has also come on record, as stated in the counter affidavit, that petitioners' lands - Khasra Nos. 312 and 313, according to respondent-Authority (as per Sector-34 layout plan) after developments, are covered by 12 metre wide road alongwith 20 meter wide green belt and so far as Khasra Nos. 314 and 315 are concerned, they have constructed 60 metre wide road along the service road, green belt etc., except a small portion of Khasra No. 314 where the temple exists, is in the green belt, along the 60 metre wide road. It is further stated that Sector-34 is one of the oldest Sector of NOIDA and it is densely populated being one of the prime Sectors and they have developed large number of residential/commercial premises/buildings, open spaces, gardens, parks etc. all over. Thus, according to the respondent Authority, the entire lands in dispute, except small portion of Khasra Nos. 314, were taken possession of in 1985-86 itself and over a period of time it has been developed as planned city and they have denied the claim of petitioners that they never lost possession of the lands.

8. Before we proceed further, it would be necessary to make a reference to an affidavit filed by the petitioners i.e. respondent no.5 in the PIL on 20.04.2018. In paragraph 4 of the said affidavit, the deponent has stated thus:

“4. That it is categorically stated that the deponents have not encroached even an inch of land of Khasra Nos. 532 and 533. The deponents are the law abiding citizens of the country and they cannot dare to encroach any land. **The deponents are in possession of Khasra Nos. 312, 313, 314 and 315 and they have no concern with Khasra Nos. 532 and 533.**”

(emphasis supplied)

9. Having regard to the averments made in the above paragraph and the submissions advanced in support thereof on behalf of the petitioners across the bar, we observe that if there exists any encroachment on Khasra Nos.532 and 533, there is no reason why the respondents Authority should not remove the same forthwith. According to the respondents Authority, there exists an encroachment in the lands and also Khasra Nos. 532 and 533 and it is recent. They further state that the petitioners taking benefit of the order dated 30.07.2014 passed by this Court in Writ-C No. 34893 of 2014 made further encroachment over the entire green belt area along the 60 ft. wide road, 20 ft. wide service road and park in Khasra Nos.532 and 533.

10. Mr. Shashi Nandan, learned Senior Counsel appearing for the petitioners, at the outset, after making submissions on merits, based on the case of the petitioners reflected in the foregoing paragraphs, (to which we would deal with in the subsequent part of the judgment), invited our attention to the provisions of sub-section (2) of Section 24 of the Act, 2013, submitted that these petitions may not be heard, in view of the order of the Supreme Court dated 21.02.2018 passed in SLP (C) CC 8453 of 2017. He

submitted, that since compensation was not either paid to the petitioners or deposited in the Court and possession was not taken, the acquisition deemed to have lapsed and the respondents, if they so desire, will have to initiate the acquisition proceedings afresh, in accordance with the Act, 2013. In support, he invited our attention to the order of the Supreme Court dated 21.02.2018, whereby the Supreme Court has made reference to a larger Bench to reconsider the judgment in **Pune Municipal Corporation & Anr Vs Harkchand Misirimal Solanki & Ors, (2014) 3 SCC 183**, and also to the order dated 18.05.2018, keeping it open to the High Court to decide any issue except the applicability of Section 24(2) of the Act, 2013, which is pending consideration before the Constitution Bench of the Supreme Court in **Indore Development Authority & Ors etc Vs Manoharlal & Ors etc, SLP (C) No 9036-9038 of 2016**. In this backdrop, Mr. Shashi Nandan, after contending that the petitioners never lost possession of the lands and even compensation was not paid or deposited in the Court, alternatively submitted that this Court cannot hear these petitions in view of the specific directions issued by the Supreme Court vide order dated 18.05.2018. The relevant portion of the order dated 21.02.2018, reads thus:

“Special Leave to Appeal (C).....CC 8453/2017 has been filed by the State of Haryana challenging the judgment and order dated 29th June, 2016 passed by the High Court of Punjab and Haryana in M/s. G.D. Goenka Tourism Corporation Limited & Anr. V. State of Haryana and Others.

There are some other similar matters that are listed today on the same subject, that is, with regard to acquisition of the land of the respondents.

It is submitted by learned counsel for the State of Haryana that the matter is covered by the recent decision of a Bench of 3 learned Judges of this Court in the case of

Indore Development Authority Vs. Shailendra (Dead) Through Lrs. And Ors. [(2018) 2 SCALE 1].

During the course of the submissions made by learned counsel for the State of Haryana, some learned senior counsel were present in Court and they requested to be heard in the matter since they had been engaged in some similar matters. They submitted that the decision in Indore Development Authority had unsettled a long standing statement of law and had very serious repercussions on land acquisition cases.

Acceding to their request, we heard some learned senior counsel led by Mr. Mukul Rohatgi, Sr. Adv. and we also heard learned counsel for the State of Haryana.

Mr. P.S. Patwalia, learned senior counsel who has been engaged to represent the State of Haryana expressed his personal difficulty in appearing in Court today and tomorrow. However, he did appear for a short while and requested that the matter may be taken up on some other day.

Acceding to his request, we list the matter on 7th March, 2018 as part-heard matter.

It was submitted by Mr. Mukul Rohatgi, learned senior counsel and by other learned senior counsel that when a Bench of 3 learned Judges does not agree with the decision rendered by another Bench of 3 learned Judges, the appropriate course of action would be to refer the matter to a larger Bench. He submitted that one of the learned Judges in Indore Development Authority (supra) has expressed that view.

It was also submitted by Mr. Rohatgi that a Bench of 3 learned Judges cannot hold another decision rendered by a Bench of 3 learned Judges as per incuriam. He referred to some decisions but we need not go into them at the present moment.

Hearing is not concluded on the issue whether the matter should at all be referred to a larger Bench or not. However, we were informed by Mr. Rohatgi that some cases have already been decided on the basis of the judgment rendered in the case of Indore Development Authority (supra), without the matter being referred to a larger Bench.

We have also been informed by learned counsel appearing on both the sides that some similar matters are listed tomorrow as well and it is possible that in the next couple of days similar matters may be listed before various High Courts.

Taking all this into consideration, we are of the opinion that it would be appropriate if in the interim

and pending a final decision on making a reference (if at all) to a larger Bench, the High Courts be requested not to deal with any cases relating to the interpretation of or concerning Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The Secretary General will urgently communicate this order to the Registrar General of every High Court so that our request is complied with.

Insofar as cases pending in this Court are concerned, we request the concerned Benches dealing with similar matters to defer the hearing until a decision is rendered one way or the other on the issue whether the matter should be referred to larger Bench or not. Apart from anything else, deferring the consideration would avoid inconvenience to the litigating parties, whether it is the State or individuals.

Delay condoned in SLPs.

Issue notice on SLPs returnable on 7th March, 2018. Dasti.”

(emphasis supplied)

10.1 The order dated 18.05.2018 passed in Petitions for Special Leave to Appeal (C) No(s) 12295 of 2018, reads thus:

“Heard.

We do not find any ground to interfere with the impugned order.

The special leave petition is accordingly dismissed.

However, it is made clear that it is open to the High Court to decide any issue except the applicability of Section 24(2) of the Land Acquisition Act which is pending consideration before the Constitution Bench of this Court in Indore Development Authority and Ors. Etc. v. Manoharlal and Ors. Etc., in SLP (C) No. 9036-9038 of 2016 and connected matters.

Pending applications, if any, shall also stand disposed of.”

(emphasis supplied)

10.2 In **Pune Municipal Corporation** (supra) the Supreme Court considered the arguments advanced on behalf of the landowners that in view of Section 24 (2) of the Act, 2013, which has come into force on 1 January 2014, the subject land acquisition proceedings initiated under the Act, 1894

have lapsed. The question for decision, before the Supreme Court, related to true meaning of the expression “compensation has not been paid” occurring in Section 24 (2) of the Act, 2013. After dealing with the relevant provisions of both the Acts and, in particular, Section 24 (2) of the Act, 2013 in depth, the Supreme Court in paragraphs 19 and 20 observed thus:

“19. Now, this is admitted position that award was made on 31.01.2008. Notices were issued to the landowners to receive the compensation and since they did not receive the compensation, the amount (Rs.27 crores) was deposited in the government treasury. **Can it be said that deposit of the amount of compensation in the government treasury is equivalent to the amount of compensation paid to the landowners/persons interested?** We do not think so. In a comparatively recent decision, this Court in Ivo Agnelo Santimano Fernandes and Others v. State of Goa and Another, 2011 11 SCC 506] relying upon the earlier decision in Prem Nath Kapur v. National Fertilizers Corpn. of India Ltd., 1996 2 SCC 71, has held that the deposit of the amount of the compensation in the state's revenue account is of no avail and the liability of the state to pay interest subsists till the amount has not been deposited in the court.

20. From the above, it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the Act, 2013. It is also admitted position that compensation so awarded has neither been paid to the landowners/persons interested nor deposited in the court. **The deposit of compensation amount in the government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested. We have, therefore, no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed under Section 24 (2) of the Act, 2013.”**

(emphasis supplied)

10.3 In short, the Supreme Court in **Pune Municipal Corporation** (supra) held that, if the compensation so awarded has neither been paid to the

landowners/persons interested nor deposited in the court, the acquisition proceedings will have to be declared as lapse.

10.4 It would be advantageous to have a glance at the conclusions arrived at by the majority in **Indore Development Authority** judgment to understand why the third Judge on the Bench, while concurring with the view expressed by the majority, recorded independent conclusions in paragraph 216. The conclusions in paragraph 153 recorded by the majority, while answering the questions, observed thus:

“**153.** Our answers to the questions are as follows:

Q. No. I :- The word ‘paid’ in - section 24 of the Act of 2013 has the same meaning as ‘tender of payment’ in Section 31(1) of the Act of 1894. They carry the same meaning and the expression ‘deposited’ in Section 31(2) is not included in the expressions ‘paid’ in section 24 of the Act of 2013 or in ‘tender of payment’ used in section 31(1) of the Act of 1894. The words ‘paid/tender’ and ‘deposited’ are different expressions and carry different meanings within their fold.

In section 24(2) of the Act of 2013 in the expression ‘paid’, it is not necessary that the amount should be deposited in court as provided in section 31(2) of the Act of 1894. Non-deposit of compensation in court under section 31(2) of the Act of 1894 does not result in a lapse of acquisition under section 24(2) of the Act of 2013. Due to the failure of deposit in court, the only consequence at the most in appropriate cases may be of a higher rate of interest on compensation as envisaged under section 34 of the Act of 1894 and not lapse of acquisition.

Once the amount of compensation has been unconditionally tendered and it is refused, that would amount to payment and the obligation under section 31(1) stands discharged and that amounts to discharge of obligation of payment under section 24(2) of the Act of 2013 also and it is not open to the person who has refused to accept compensation, to urge that since it has not been deposited in court, acquisition has lapsed. Claimants/landowners after refusal, cannot take

advantage of their own wrong and seek protection under the provisions of section 24(2).

Q. No. II :- The normal mode of taking physical possession under the land acquisition cases is drawing of Panchnama as held in Banda Development Authority (supra).

Q. No. III :- The provisions of section 24 of the Act of 2013, do not revive barred or stale claims such claims cannot be entertained.

Q. No. IV :- Provisions of section 24(2) do not intend to cover the period spent during litigation and when the authorities have been disabled to act under section 24(2) due to the final or interim order of a court or otherwise, such period has to be excluded from the period of five years as provided in section 24(2) of the Act of 2013. There is no conscious omission in section 24(2) for the exclusion of a period of the interim order. There was no necessity to insert such a provision. The omission does not make any substantial difference as to legal position.

Q. No. V :- The principle of actus curiae neminem gravabit is applicable including the other common law principles for determining the questions under section 24 of the Act of 2013. The period covered by the final/ interim order by which the authorities have been deprived of taking possession has to be excluded. Section 24(2) has no application where Court has quashed acquisition.

The questions referred to are answered accordingly.”

(emphasis supplied)

10.5 In this backdrop, in **Indore Development Authority (supra)**, the third Judge, insofar as Section 24 (2) is concerned, held thus:

“**216.** The questions posed by the references stand answered by me as follows:

I. QUESTION NO. 1: The acquisition proceedings do not lapse if the amount is deposited in the Treasury and such fact is made known to the claimants by the competent authority as required in law. Only interest is attracted, in case if the deposit is not made in Court. Consequently, I am unable to persuade myself to agree with the outcome of Pune Municipal

Corporation (AIR 2014 SC 982) (supra). However, according to me the judgment in Pune Municipal Corporation (supra) is not rendered in per incuriam.

In view of the above, the judgment in **Pune Municipal Corporation (supra) may have to be reconsidered by a larger bench, inasmuch as Pune Municipal Corporation (supra) was decided by a bench of three judges.** The Registry is directed to place the papers before the Hon'ble Chief Justice of India for appropriate orders.

II. QUESTION NO. 2 AND QUESTION NO. 3:

For the aforementioned reasons, I am unable to persuade myself to agree with Sree Balaji (supra), and the same stands overruled. Question No. 2 and Question No. 3 posed by the reference stand answered as follows:

i. The conscious omission referred to in paragraph 11 of the judgment in Sree Balaji (supra) does not make any substantial difference to the legal position with regard to the exclusion or inclusion of the period covered by an interim order of the Court for the purpose of determination of the applicability of Section 24(2) of the 2013 Act. In fact, excluding such periods of interim stay from the calculation of the time period of five years under S. 24(2) makes a reading of the Act more consistent.

ii. The principle of “actus curiae neminem gravabit”, or that the act of the court should not prejudice any parties, would be applicable in the present case to exclude the period covered by an interim order for the purpose of determining the question with regard to taking of possession as contemplated in Section 24(2) of the 2013 Act.”

(emphasis supplied)

11. In this backdrop, it would be advantageous to have a look at Section 24 of the Act, 2013, which reads thus:

“24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases. –

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

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions

of this Act relating to the determination of compensation shall apply; or

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

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

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

11.1 Section 24 (2) of the Act, 2013 begins with *non obstante* clause. The provision has overriding effect over sub-section (1). Section 24 (2) provides that in relation to the land acquisition proceedings initiated under the Act, 1894, where an award has been made five years or more prior to the commencement of the Act, 2013 and either of the two contingencies is satisfied, viz; (i) physical possession of the land has not been taken, or (ii) the compensation has not been paid, such acquisition proceedings shall be deemed to have lapsed. In **Pune Municipal Corporation** (supra), the Supreme Court observed that on the lapse of such acquisition proceedings, if the appropriate government still chooses to acquire such land, then, it has to initiate the proceedings afresh under the Act, 2013.

12. Before we proceed further, we make it clear that we are not dealing with or interpreting or considering applicability of the provisions contained in Section 24 of the Act, 2013. The challenge raised to the acquisition proceedings (notifications under Sections 4 and 6 read with Section 17 of the Act, 1894) is on two grounds, firstly, the compensation has not been paid or deposited in the Court, and secondly, the physical possession of the land had not been taken at any point of time and, thereafter, it deemed to have lapsed under Section 24 (2) of the Act, 2013. Insofar as petitioners' case that the acquisition deemed to have lapsed under Section 24 (2) of the Act, 2013 on the ground that the compensation has not been paid or deposited in the Court as held by the Supreme Court in **Pune Municipal Corporation (supra)** is concerned, we leave it open to either seek declaration that acquisition proceedings deemed to have lapsed or to claim compensation under the Act, 2013 after the Supreme Court answer the reference (upholding the view expressed in Pune Municipal Corporation). In other words, it would be open to the petitioners, even if they do not succeed in establishing their case that the physical possession was not taken after the award under Section 11 of the Act, 1894 was made, to seek direction to the appropriate government to initiate fresh acquisition proceedings or to seek compensation under the Act, 2013 if the reference is answered and the view expressed in **Pune Municipal Corporation** is upheld or the view expressed in **Indore Development Authority** is overruled. We, thus, proceed to consider the petitioners' case whether possession was taken after the award under Section 11 had been made or they continued to be in possession of the lands even after the

acquisition proceedings was concluded in 1985-86 and, therefore, the acquisition proceedings initiated under the Act, 1894 have lapsed.

13. We have carefully perused the Sector-34 layout plan, which is admittedly, a public document alongwith the photographs placed on record. It clearly shows that Khasra Nos. 312, 313, 315 and part of Khasra No. 314 are used for construction/development of 60 metre, 12 metre wide roads and 20 metre green belt. Khasra Nos. 532 and 533 are also clearly seen in the layout plan where, according to the respondent authorities, the petitioners have encroached upon after the Act, 2013 came into force and the order of status quo was granted by this Court in the instant writ petition. In view of specific stand taken by the petitioners on affidavit and the submission advanced in support thereof, we are not examining the case of encroachment over Khasra Nos.532 and 533, and at the cost of repetition, observe that, if there is any encroachment over these Khasra numbers, the respondent-Authority may remove the same forthwith. Having due regard to the Sector-34 layout plan coupled with the photographs placed on the record, it is clear to us that Khasra Nos. 312, 313, 315 and part of Khasra No. 314, i.e. lands in dispute, are already developed as roads, green belt, service road etc. Only a small portion of the land which was left out from the acquisition of Khasra No. 314 is a part of the green belt where a temple, constructed long before the acquisition, exists. This small portion (one biswa in Khasra 314) seems to be in possession of the petitioners. According to the respondent-Authority, the petitioners taking advantage of their possession over the small portion of land (one Biswa), it is alleged, that they are encroaching other portion of the green belt by making construction of sheds. The entire green belt area, including

temple, according to the respondent Authority, has already been covered with fence/compound wall upto two and half feet with the metal (grills) railing which is usually constructed to protect park/garden. Petitioners do not dispute that this wall was constructed by the respondent Authority and the alleged encroachment is within the four walls of the park/garden. If the petitioners' case was true, why did they allow construction of the wall covering the green belt area. We see from the photographs, which are not in dispute, temporary sheds are erected by petitioners and large number of cattle all over the area within the walls. Even if it is assumed, as stated by petitioners, that the portion of land where they are presently residing, is having abadi, the fact remains that the entire lands in dispute, except small portion of Khasra No. 314, was acquired in 1985-86 itself and possession was taken to develop it as a part of planned city. It is clearly reflected in the award-1987, in which petitioners' father's statement was recorded. In any case, having regard to the nature of sheds/structures erected by petitioners, which are temporary in nature, it cannot be stated that they are old structure, existing for the last 30-40 years, as claimed by them. Counsel for the petitioners could not point out either on the basis of photographs or otherwise, any pacca construction on the lands, in particular the green belt area, either new or old, except the temple in Khasra No. 314. We are satisfied that the petitioners were dispossessed in 1985-86 itself. Thereafter, they allowed developments, as referred to above, in their lands, kept quite for long time and suddenly in 2001, started making encroachment taking advantage of their possession over one biswa land in Khasra No.314. The petitioners cannot succeed in seeking declaration that the acquisition deemed to have lapsed on the ground that the physical

possession of the lands had not been taken and they continued to be in possession even after the award was made.

14. A planned city has come up with wide roads, service roads, green belts, parks, gardens, residential as well as commercial complexes in Sector-34, including the lands in dispute, over a period of time. The petitioners' lands are used for the development. In view thereof, even if it is ultimately held that the entire acquisition proceedings deemed to have lapsed on the ground that compensation has not been paid or deposited in Court, it would be open to the respondent authorities to either issue fresh notification, acquire the said lands under the Act, 2013 and, in which case, they would be at the most entitled for compensation as prescribed under the said Act. In our opinion, the claim of the petitioners that they were never dispossessed, is dishonest.

15. Insofar as the question whether the acquisition deemed to have lapsed on the ground that the compensation has not been paid or deposited in Court is concerned, will have to be considered only after the reference is answered by a larger Bench in **Indore Development Authority**.

16. In this backdrop, we would also like to consider whether delay in challenging the notifications is fatal and the writ petition is liable to be dismissed on the ground of laches. While dealing with this question, we are conscious of the fact that if the Supreme Court, while dealing with the reference, ultimately holds that non-payment of compensation or depositing the same in Court would have the effect of acquisition being lapsed, then the petitioners would be entitled to seek appropriate relief by either seeking revival of these petitions or by filing another petitions and perhaps the respondent authorities will have to issue fresh notification for acquisition of

the lands in dispute under the provisions of the Act, 2013 and/or to pay compensation under the said Act. We are of the considered opinion that the case tried to be made out, insofar as possession of the lands in dispute is concerned, apart from it being afterthought/dishonest, is made out either to take benefit of the provisions contained in sub-section (2) of Section 24 of the Act, 2013 or to perpetuate their possession by way of encroachment. We have already recorded our findings that petitioners had lost possession over the lands in dispute and started to encroach in 2001 and asserting their right over the lands only after the Act, 2013 came into force.

17. In this connection, we would like to have glance at few judgments of the Supreme Court. This question will have to be examined in the backdrop of the finding of facts recorded by us in the foregoing paragraph that the possession of the lands was taken and were developed for the purpose for which they were acquired.

17.1 In **State of Mysore Vs V K Kangan, AIR 1975 SC 2190**, the Supreme Court observed that the claimant was not entitled to challenge the validity of a Section 4 notification after an unreasonable lapse of time. In other words, challenge to the validity of a Section 4 notification can be made and also entertained, if it is made within a reasonable time of the publication of the notification. In **State of Tamil Nadu Vs L Krishnan, AIR 1996 SC 497**, the Supreme Court observed that the delay in challenging the notification was fatal and the writ petitions were liable to be dismissed on the ground of laches only and exercise of power under Article 226 after the award was made, was held to be unjustified. Similarly, in **State of Maharashtra Vs Digambar, AIR 1995 SC 1991**, the Supreme Court held that if the land

acquisition proceedings stood finalised, interference by the writ Court, quashing the notification and declaration under Sections 4 and 6, was unwarranted and uncalled for. Exercise of jurisdiction in such a case cannot be said to be judicious and reasonable. [Also see **Girdharan Prasad Missir Vs State of Bihar, (1980) 2 SCC 83**, and **H D Vora Vs State of Maharashtra, AIR 1984 SC 866**].

17.2 In **State of Rajasthan Vs D R Laxmi, (1996) 6 SCC 445**, the Supreme Court observed that even void proceedings need not be set at naught if the parties have not approached the Court within reasonable time, as judicial review is not permissible at a belated stage. The relevant observations in paragraph 9 read thus:

"9. Recently, another Bench of this Court in *Municipal Corpn. of Greater Bombay v. Industrial Development & Investment Co. (P) Ltd.*¹, re-examined the entire case law and had held that once the land was vested in the State, the Court was not justified in interfering with the notification published under appropriate provisions of the Act. Delay in challenging the notification was fatal and writ petition entails with dismissal on grounds of laches. It is thus, well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loathe to quash the notifications. **The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226.** The fact that no third party rights were created in the case, is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned single Judge dismissing the writ

¹ C.A. No. 286 of 1989, decided on 6-9-96 (see infra)

petition on the ground of laches. Reliance was placed by Shri Sachar on *M.P. Housing Board v. Mohd. Shafi*², in particular para 8, wherein it was held that compliance of the requirements is mandatory and non-compliance thereof renders all subsequent proceedings connected therewith unexceptionably illegal; but the question is what will be its effect. That was not the question in that case, since no award had come to be passed. In *Nutakki Sesharatanam v. Sub-Collector, Land Acquisition*³, a two-Judge Bench of this Court had held that if the requirements of Section 4 are not complied with, all proceedings had become invalid and possession was directed to be re-delivered to the appellant. We are of the view that the ratio therein is not correctly laid down. The question whether violation of the mandatory provisions renders the result of the action as void or voidable has been succinctly considered in *Administrative Law* by H.W.R. Wade (7th Edn.) at pp. 342-43 thus:

"The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another; and that it may be void against one person but valid against another. A common case where an order, however void, becomes valid is where a statutory time-limit expires after which its validity cannot be questioned. The statute does not say that the void order shall be valid; but by cutting off legal remedies it produces that result."

(emphasis supplied)

17.2.1 The Supreme Court, in the facts of that case, also considered the question whether Section 4(1) notification and Section 6 declaration were

² (1992) 2 SCC 168

³ (1992) 1 SCC 114

required to be quashed and, while dealing with this question, observed that the Court has to consider the conduct of the parties and the effect thereof. Under the scheme of the Act, after the possession of the land was taken either under Section 17 (2) or Section 16, the land stands vested in the State free from all encumbrances. Thereafter, there is no provision under the Act to divest the State of title which validly came to vest in it. Under Section 48 (1), before the possession is taken, the State Government is empowered to withdraw from the acquisition by its publication in the Gazette and not thereafter.

17.3 We would also like to refer to the observations made by the Supreme Court in **Senjeevanagar Medical & Health Employees' Cooperative Housing Society Vs Mohd Abdul Wahab, (1996) 3 SCC 600**, which are relevant for our purpose. The relevant observation reads thus:

"That apart, as facts disclose, the award was made on 24-11-1980 and the writ petition was filed on 9-8-1982. It is not in dispute that compensation was deposited in the Court of the Subordinate Judge. It is asserted by the appellant Society that possession of the land was delivered to it and the land had been divided and allotted to its members for construction of houses and that construction of some houses had been commenced by the date the writ petition was filed. It would be obvious that the question of division of the properties among its members and allotment of the respective plots to them would arise only after the Land Acquisition Officer had taken possession of the acquired land and handed it over to appellant Society. By operation of Section 16 the land stood vested in the State free from all encumbrances. In *Satendra Prasad Jain v. State of U.P.*⁴, the question arose: whether notification under Section 4(1) and the declaration under Section 6 get lapsed if the award is not made within two years as envisaged under Section 11-A? **A Bench of three Judges had held that once possession was taken and the land vested in the Government, title to the land so vested in the State is subject only to**

4 (1993) 4 SCC 369

determination of compensation and to pay the same to owner. Divesting the title to the land statutorily vested in the Government and reverting the same to the owner is not contemplated under the Act. Only Section 48 (1) gives power to withdraw from acquisition that too before possession is taken. That question did not arise in this case. The property under acquisition having been vested in the appellants, in the absence of any power under the act to have the title of the appellants divested except by exercise of the power under Section 48(1), valid title cannot be defeated. **The exercise of the power to quash the notification under Section 4 (1) and the declaration under Section 6 would lead to incongruity. Therefore, the High Court under those circumstances should not have interfered with the acquisition and quashed the notification and declaration under Sections 4 and 6 respectively. Considered from either perspective, we are of the view that the High Court was wrong in allowing the writ petition."**

(emphasis supplied)

16.4 The Supreme Court in **Smt Sudama Devi Vs Commissioner & Ors, 1983 (2) SCC 1**, observed that there is no period of limitation prescribed by any law for filing writ petition under Article 226 of the Constitution. While so observing, the Supreme Court further observed that no such period of limitation can be laid down either under the Rules made by the High Court or by practice. For every case, it would have to be decided on the facts and circumstances whether the petitioner is guilty of laches and that would have to be done without taking into account any specific period as period of limitation. In **Hari Singh & Ors Vs State of U P & Ors, AIR 1984 SC 1020**, the Supreme Court was dealing with a matter where a writ petition was filed before the High Court challenging the notifications under Section 4 and Section 17(4) o the Act, 1894 after two and a half years. In this case, the

Supreme Court observed that the writ petition filed after a delay of nearly two and a half years is liable to be dismissed on the ground of laches only.

17.5 In **State of Orissa Vs Dhobei Sethi & Anr, (1995) 5 SCC 583**, the Supreme Court while dealing with the SLP arising from the provisions of the Act, 1894, after noticing inordinate delay of seven years in challenging the notifications under Section 4(1) read with Section 17(4) and Section 6, observed that the writ petition having been filed after seven years, the High Court ought to have dismissed the writ petition on the ground of laches. Similarly, in **State of Karnataka & Ors Vs S M Kotrayaya & Ors, (1996) 6 SCC 267**, the Supreme Court rejected the contention urged on behalf of the petitioners that a petition should be considered ignoring the delay and laches on the ground that it was filed just after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. The Supreme Court observed that such a plea is wholly unjustified and cannot furnish any ground for ignoring delay and laches.

17.6 The Supreme Court in **State of Tamil Nadu Vs L Krishnan, AIR 1996 SC 497**, while dealing with a civil appeal arising from the judgment of the Madras High Court allowing a batch of writ petitions and quashing three notifications issued under Section 4(1) of the Act 1894, held that the delay in challenging the notification was fatal and the writ petitions were liable to be dismissed on the ground of laches only and exercise of power under Article 226, after the award had been made, was held unjustified. The observations made by the Supreme Court in **Municipal Corporation of Greater Bombay Vs Industrial Development Investment Co Pvt Ltd & Ors, AIR 1997 SC 482**, are also relevant for our purpose. The Supreme Court while dealing with

an appeal arising from the judgment and order of the Bombay High Court reversing the judgment of the learned Single Judge and quashing the award under Section 11 of the Act, 1894 and the notification dated 06.09.1972 issued under Section 6 read with Section 126(2) of the Maharashtra Regional Town Planning Act as invalid, held in paragraphs 19 and 29 as under:

"19...If the interested person allows the grass to grow under his feet by allowing the acquisition proceedings to go on and reach its terminus in the award and possession is taken in furtherance thereof and vested in the State free from all encumbrances, the slumbering interested person would be told off the gates of the Court that his grievance should not be entertained. ...

29...when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loathe to quash the notifications. The High Court has, no doubt, discretionary power under Article 226 of the Constitution to quash the notification under Section 4 (1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not exercise its power to quash the award which is a material factor to be taken in to consideration before exercising the power under Article 226. The fact that no third party rights were created in the case, is hardly a ground for interference."

(emphasis supplied)

17.7 In Northern Indian Glass Industries Vs Jaswant Singh & Ors, AIR 2003 SC 234, the Supreme Court while dealing with a case arising from the provisions of the Act, 1894, in paragraph 9, observed thus:

"...There is no explanation whatsoever for the inordinate delay in filing the writ petitions. Merely because full enhanced compensation amount was not paid to the respondents, that itself was not a ground to condone the delay and laches, in filing the writ petition. In our view, the High Court was also not right in ordering

restoration of land to the respondents on the ground that the land acquired was not used for which it had been acquired. **It is well-settled position in law that after passing the award and taking possession under Section 16 of the Act, the acquired land vests with the Government free from all encumbrances. Even if the land is not used for the purpose for which it is acquired, the land owner does not get any right to ask for revesting the land in him and to ask for restitution of the possession.**”

(emphasis supplied)

17.8 In May George Vs Special Tahsildar & Ors, (2010) 13 SCC 98, the Supreme Court in paragraphs 28, observed thus:

“**28.** In fact, the land vests in the State free from all encumbrances when possession is taken under Section 16 of the Act. **Once land is vested in the State, it cannot be divested even if there has been some irregularity in the acquisition proceedings.** In spite of the fact that Section 9 notice had not been served upon the person interested, he could still claim the compensation and ask for making the reference under Section 18 of the Act. There is nothing in the Act to show that non-compliance therewith will be fatal or visit any penalty.

(emphasis supplied)

17.9 In Leelawanti & Ors Vs State of Haryana & Ors, (2012) 1 SCC 66, the Supreme Court in paragraphs 13 and 21, observed thus:

“**13.** We have considered the respective submissions and examined the records. In our view, the High Court did not commit any error by not entertaining the appellants' challenge to the acquisition of land because they did not offer any explanation for the long time gap of more than three decades between the issue of notifications under Sections 4 and 6 i.e. 1976 and filing of the writ petition i.e. 2007.

21. ... That apart, the factual matrix of the present case shows that the acquired land was used for construction of feeder and return channel for thermal plant and after the public purpose as specified in the acquisition notification was fulfilled, the land was transferred to HSEB and now it is with Respondent 2 i.e. Haryana Power Generation Corporation. This being the position, the High Court cannot be said to have committed

any error by declining the appellants' prayer for issue of a mandamus to the respondents to return the acquired land.”

(emphasis supplied)

17.10 In V Chandrasekaran & Anr Vs Administrative Officer & Ors, (2012) 12 SCC 133, the Supreme Court in paragraphs 25, 26 and 31, observed thus:

“25. It is a settled legal proposition, that once the land is vested in the State, free from all encumbrances, it cannot be divested and proceedings under the Act would not lapse, even if an award is not made within the statutorily stipulated period. [Vide *Awadh Bihari Yadav v. State of Bihar*⁵, *U.P. Jal Nigam v. Kalra Properties (P) Ltd.*⁶, *Allahabad Development Authority v. Nasiruzzaman*⁷, *M. Ramalinga Thevar v. State of T.N.*⁸ and *Govt. of A.P. v. Syed Akbar*⁹.]

26. The said land, once acquired, cannot be restored to the tenure holders/persons interested, even if it is not used for the purpose for which it was so acquired, or for any other purpose either. The proceedings cannot be withdrawn/abandoned under the provisions of Section 48 of the Act, or under Section 21 of the General Clauses Act, once the possession of the land has been taken and the land vests in the State, free from all encumbrances. (Vide *State of M.P. v. Vishnu Prasad Sharma*¹⁰, *Lt. Governor of H.P. v. Avinash Sharma*¹¹, *Satendra Prasad Jain v. State of U.P.*¹², *Rajasthan Housing Board v. Shri Kishan*¹³ and *Dedicated Freight Corridor Corpn. of India v. Subodh Singh*¹⁴.)

31. In view of the above, the law can be crystallized to mean, that once the land is acquired and it vests in the State, free from all encumbrances, it is not the concern of the landowner, whether the land is being used for the purpose for which it was acquired or for any other purpose. **He becomes *persona non grata* once the land vests in the State. He has a right to only receive compensation for the same, unless the acquisition proceeding is itself challenged.** The State neither has the requisite power to reconvey the land to the person interested nor can such person claim any right of restitution on

5 (1995) 6 SCC 31

6 (1996) 3 SCC 124

7 (1996) 6 SCC 424

8 (2000) 4 SCC 322

9 (2005) 1 SCC 558 : AIR 2005 SC 492

10 AIR 1966 SC 1593

11 (1970) 2 SCC 149 : AIR 1970 SC 1576

12 (1993) 4 SCC 369 : AIR 1993 SC 2517

13 (1993) 2 SCC 84

14 (2011) 11 SCC 100 : (2011) 3 SCC (Civ) 604

any ground, whatsoever, unless there is some statutory amendment to this effect.”

(emphasis supplied)

17.11 In **P Chinnanna & Ors Vs State of A P & Ors, (1994) 5 SCC 486,**

the Supreme Court in paragraph 11, observed thus:

“**11.** ... In fact, in relation to acquisition proceeding involving acquisition of land for public purposes, **the court concerned must be averse to entertain writ petitions involving the challenge to such acquisition where there is avoidable delay or laches since such acquisition, if set aside, would not only involve enormous loss of public money but also cause undue delay in carrying out projects meant for general public good. ...**”

(emphasis supplied)

17.12 In **Tamil Nadu Housing Board, Chennai Vs M Meiyappan & Ors,**

(2010) 14 SCC 309, the Supreme Court in paragraph 21 observed thus:

“**21.** In the present case, as already stated, the respondents did not furnish any explanation as to why it took them 16 years to challenge the acquisition of their lands, when admittedly they were aware of the acquisition of their lands and had in fact participated in these proceedings before the Land Acquisition Collector. We have no hesitation in holding that the High Court ought not to have entertained the writ petition of the respondents after 16 years of the passing of the award. The High Court should have dismissed the writ petition at the threshold on the ground of delay and laches on the part of Respondents 1 to 17, notwithstanding its earlier decision in WP No. 2244 of 1991, which decision, according to the appellant, was otherwise distinguishable.”

18. Thus, it is well settled that challenge to the validity of Section 4 and/or 6 notifications can be made and also entertained, if it is made within a reasonable time of publication of the notifications. In other words, the delay in challenging the notifications is fatal and the writ petition entails with dismissal on the ground of laches. Where the award has been passed and the possession has also been taken, it is well settled that the Court should not

exercise its power to quash the acquisition proceedings once possession was taken and the land vested in the Government, title to the land so vested in the State is subject only to determination of compensation and to pay the same to owner. Divesting the title to the land statutorily vested in the Government and reverting the same to the owner, in our opinion, is not contemplated either under the Act, 1894 or the Act, 2013.

19. If the interested person allows the acquisition proceedings to go on and reach its terminus in the award and possession is taken in furtherance thereof and vested in the State free from all encumbrances, a litigant, as observed by the Supreme Court in **Municipal Corporation of Greater Bombay** (supra), would be told off the gates of the Court that his grievance should not be entertained. If the challenge as raised in the petition is entertained and allowed, that would cause enormous loss to the public money.

20. In the present case, the petitioners not only allowed the respondents to complete the acquisition proceedings in 1985-86 but also allowed the development of a planned city and then suddenly started asserting their rights once again, more particularly, after introduction of the Act, 2013. Such a litigant, under any circumstances, cannot be allowed to encroach the acquired land or to remain in possession thereof. The very purpose of acquisition of the lands and its development as a planned city would stand frustrated, if the claim of the petitioners is either entertained or allowed. While so observing, we also, at the cost of repetition, observe that the petitioners are entitled for compensation only or to seek fresh acquisition under the Act, 2013, if reference is answered by the Supreme Court upholding the view in **Pune Municipal Corporation** (supra) and nothing further.

21. Thus, looking at the case from any angle, the petition challenging the acquisition after 29 years on the ground that possession was not taken must fail. In other words, on the facts and in the circumstances of the case, challenge to the acquisition on the ground that the possession of the lands was not taken or they were never dispossessed and, hence, the acquisition deemed to have lapsed under Section 24(2) of the Act, 2013, is not sustainable in law. If the larger Bench of the Supreme Court, however, ultimately uphold the view/opinion expressed in **Pune Municipal Corporation**, the petitioners would, at the most, be entitled for compensation under the provisions of the Act, 2013.

22. In the result, Writ-C No 34893 of 2014 is dismissed. Public Interest Litigation (PIL) No. 3195 of 2018 is allowed in terms of prayers made in the petition, with liberty to the petitioners to seek direction to the appropriate Government to initiate fresh acquisition proceedings or to seek compensation under the provisions of the Act, 2013, in the event Supreme Court answers the reference and upholds the view expressed in **Pune Municipal Corporation's** case. We direct the respondent-Authority to remove the encroachment from the lands, except one Biswa land in Khasra No.314, where temple exists, and from Khasra Nos.532 and 533 forthwith, and if necessary, with the police aid.

23.05.2018
AHA

(Dilip B Bhosale, CJ)

(Suneet Kumar, J)