2025:AHC:166896-DB

AFR

Judgment reserved on 27.08.2025
Judgment delivered on 18.09.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT – C No. - 21150 of 2014

Rishi Kumar Jain & Anr. .....Petitioners(s)

Versus

State of U.P. & Ors. .....Respondents(s)

Counsel for Petitioners(s)	:	Ram Prakash Srivastava
Counsel for Respondent(s)	:	Standing Counsel, Ravi Anand Agarwal

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Court No. - 29

HON'BLE MAHESH CHANDRA TRIPATHI, J.
HON'BLE ANISH KUMAR GUPTA, J.

(Per Hon. Mahesh Chandra Tripathi, J.)

1. Heard Shri Pramod Jain, learned Senior Counsel assisted by Shri Ram Prakash Srivastava, learned counsel for the petitioners; Shri Suresh Singh, learned Addl. Chief Standing Counsel and Shri Fuzail Ahmad Ansari, learned Standing Counsel for State respondents and Shri Ravi Anand Agarwal, learned counsel for U.P. Awas Evam Vikas Parishad[1].

2. The instant writ petition has been preferred for following reliefs:-

> *"(i) to issue a writ, order or direction in the nature of certiorari quashing the order dated 6.2.2012 by the respondent no.1 (Annexure-15);*
>
> *(ii) to issue a writ, order or direction in the nature of certiorari quashing the entire acquisition proceeding initiated by Notification dated 4.4.1970 and 28.6.1980 issued under Section 28 and 32 of the U.P. Avas Evam Vikas Parishad Adhiniyam insofar as it relates to the*

1 Parishad

land of the petitioners comprised in Khasra Plot No.898, 899, 901, 902, 905, 906 and 909 situated at Kakretha, Tehsil and District Agra, within the Section No.10 of the Yojana;

(iii) to issue a writ, order or direction declaring the acquisition proceedings against the petitioners' land as described above in prayer (ii) deemed to have lapsed;

(iv) to issue a writ, order or direction in the nature of mandamus commanding the respondents to give vacant and peaceful possession of the land described above to the petitioners;

(v) to issue a writ, order or direction in the nature of mandamus commanding the respondents to settle/ adjust the land of the petitioners in their favour as per Government Order dated 11.3.2003;

(vi) to issue a writ, order or direction in the nature of mandamus commanding the respondents to pay compensation of the land acquired by virtue of the aforesaid notification at the current market value and in accordance with the Act 30 of 2013;…."

A. ARGUMENTS ON BEHALF OF THE PETITIONERS

3. It is contended that the petitioners' father Late Raj Narain Jain was the bhumidhar in possession of the lands comprised in Khasra Plot No.898, 899, 901, 902, 905, 906 and 909 situated at Kakretha, Tehsil and Distt. Agra. After his death, the petitioners have inherited the same as legal heirs of their deceased father.

4. The Parishad proposed to acquire the aforesaid land along with other lands for its "Sikandra Grah Sthan and Sarak Yojana at Agra"[2] and published a notification under Section 28 dated 04.04.1970 and declaration under Section 32 dated 28.06.1080 of the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965[3]. As there was an urgency, a notification dated 23.01.1981 was issued under Section 17 of the Land Acquisition Act, 1894[4] notifying the lands of the petitioners. The petitioners' land falls within Sector 10 of the Scheme in question and they submitted their objection against the aforesaid notification on 04.04.1970.

5. The petitioners' father challenged the said notifications published under Section 28 and 32 of the Adhiniyam, 1965 before the Hon'ble Supreme Court by means of Writ Petition No.2136-2137 of 1982, which

2 Scheme in question
3 Adhiniyam, 1965
4 Act, 1894

was dismissed on 07.04.1993 and the Hon'ble Supreme Court upheld the validity of the aforesaid two notifications.

6. At the dismissal of the aforesaid writ petition, Shri Raj Narain Jain filed O.S. No.892 of 1993 for permanent injunction against Parishad seeking an order restraining them from interfering in his peaceful possession. In the said suit, initially temporary injunction was accorded on 23.03.1994. However, eventually the said injunction was set aside vide order dated 12.02.1998. During pendency of said suit, Shri Raj Narain died leaving behind his eight legal heirs including the petitioners. Eventually the said suit was dismissed on 8.3.2000. Thereafter, out of said eight heirs/ legal representatives of late Raj Narain Jain, only the petitioners had filed Original Suit No.973 of 1999 in the Court of Civil Judge (SD), Agra against the State of U.P. seeking permanent injunction restraining the defendants from interfering in their peaceful possession. Ultimately, the said suit was also dismissed on 18.02.2000.

7. In the meantime, possession of the plots in question was transferred by the State Government to Parishad on 28.12.1999 and it was published in Dainik Jagran dated 29.12.1999. Meanwhile, an area of 20,037 sq. mtrs. of land out of the area of the Scheme in question was allotted to Dr. Virendra Swarup Memorial Trust, Kanpur Nagar[5], which is duly registered, and the plots in question are part of the said allotted land. This was done by the Parishad on 29.1.1999 and 24.06.1999. Thereafter, the Parishad executed a lease agreement in favour of the Trust on 30.12.2000 and possession of the plot was handed over to the Trust on 30.12.2000 itself. Thereafter, the Trust submitted the building plan to the Parishad and paid the fee to sanction the same. Then the school building was constructed by Trust and even the name of the school was also recorded in khasra of the village.

8. The petitioners had also filed Original Suit No.5 of 2001 against the Trust seeking permanent injunction restraining the defendant therein from interfering in their possession. In the said suit, initially interim injunction was accorded on 03.01.2001, which subsequently got vacated

5 Trust

on 26.05.2001. Aggrieved by the said order, the petitioners filed Misc. Appeal No.113 of 2001 before the District Judge, Agra on 29.05.2001, in which no interim order was accorded and the said appeal is also stated to be pending consideration. Aggrieved by the order of the District Judge refusing to grant temporary injunction, the petitioners filed Writ Petition No.25558 of 2001, which too was dismissed on 16.07.2001. On 8.6.2001, the petitioners had also moved an application before the City Magistrate, Agra and obtained exparte order dated 9.6.2001 to maintain the status quo with respect to land in question. However, the same was vacated by the City Magistrate on 13.06.2001.

9. In addition to filing Original Suit No.973 of 1999, the petitioners had also preferred Writ Petition No.407 of 2000 challenging the proceeding undertaken by the Parishad. In the said writ petition, interim order was accorded on 10.01.2000 to the effect that no final award would be made in the proceeding and that the petitioners shall not be dispossessed, if not already dispossessed. During the pendency of the above-mentioned writ petition, the petitioners also approached the State Government for de-notification/ adjustment of the lands after charging development fees. The State Government passed an order dated 11.03.2003 for adjusting the land in question after taking development charges. Aggrieved with the same, the Parishad moved a recall application before the State Government. The State Government after considering the recall application cancelled the order dated 11.03.2003 vide order dated 24.06.2005. The order dated 24.06.2005 passed by the State Government became subject matter of challenge in Writ Petition No.60335 of 2005. The said writ petition was disposed of on 21.07.2011 and while quashing the order dated 24.06.2005, the matter was remanded to the State Government for fresh consideration. Consequently, after considering the reply filed by the petitioners/ other interested persons, the State Government, by the order impugned, rejected the application for adjustment of the land of the petitioners and also cancelled the G.O. dated 11.3.2003, which was earlier issued by the State Government. Hence, this writ petition has been filed with aforequoted prayers.

B. <u>ARGUMENTS ON BEHALF OF THE RESPONDENT-PARISHAD</u>

10. Learned counsel for the Parishad has vehemently opposed the writ petition. He states that the petitioner's father Raj Narain Jain has challenged the notifications of the acquisition of the plots in dispute before the Hon'ble Apex Court in Writ Petition (C) Nos.2136-2137 of 1982. Hon'ble the Supreme Court had affirmed the notifications of the acquisition under Section 28 and 32 (1) of the Adhiniyam, 1965. The petitioners had been challenging the acquisition of the plots in dispute on one ground or the other before the civil court and this Court. In most of the proceedings, the petitioners had initially obtained the interim orders arresting the proceedings of the acquisition. However, eventually almost all the interim orders had been vacated and the claim of the petitioners had been rejected. The delay in taking possession and declaring the award of the plots in dispute have occurred due to frivolous litigations initiated by the petitioners in a planned manner. The amount of compensation of the land in dispute have already been deposited by the Parishad to the account of the Special Land Acquisition Officer[6] on 21.07.1999.

11. The possession of the land of the plots in dispute including the other land was delivered to the Parishad on 28.12.1999 and thereafter the allotment of some area of land was made to the Trust. The possession of land allotted to the Trust was delivered on 30.12.2000. Over the said land, school building had already been constructed and the Trust is imparting education to the students upto 12th standard. The allotment of land in favour of Trust was made only for educational purposes. The allotment was made only when the land had been vested with the Parishad. The allotment order was made as per the policy of the scheme.

12. The SLAO vide notice dated 22.12.1999 sent an intimation for receiving the amount of compensation and the said notice had been

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6 SLAO

received by the family members of the land owner-Raj Narayan. Instead of accepting the compensation, the petitioners have raised flimsy technical objections. The petitioners and his father themselves are responsible for the delay in the matter as they involved the respondents in frivolous litigations. The petitioners started raising claim with respect of applicability of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013[7] for the computation of compensation/ award before various authorities. It is contended that actually the petitioners were never interested in accepting the award. It is also stated that even Section 24 of the Act, 2013 is not applicable in the present case. The Parishad deposited the amount before the SLAO way back in the year 1997 and hence the liability of non-preparation of award cannot be fastened upon the Parishad.

13. Learned counsel for the Parishad has contended that the provisions of Section 24 (2) of the Act, 2013 would not apply to the acquisition made under the provisions of Adhiniyam, 1965. The said issue is no longer res integra in view of the Division Bench judgment of this Court in **Atul Sharma & Ors. v. State of U.P. &** Ors[8]**.,** and **Jagbeer Singh & Ors. v. State of U.P. & Ors**[9]. Learned counsel for the Parishad has also placed reliance on the averments contained in the counter affidavit filed on behalf of Parishad, wherein, a categorical stand has been taken that regarding land in dispute the respondents had taken physical possession way back. He has submitted that the award of the entire scheme has been made by the SLAO and the adequate compensation had also been deposited in the account of the SLAO. It was also contended that inspite of information to the concerned land owners, the reason best known to the petitioners, they did not lift their compensation, therefore, at this belated stage it cannot be claimed that neither the possession has been taken nor the award has been made. The entire compensation has been deposited, therefore, present writ petition is liable to be dismissed on the ground of delay and laches. Lastly it has

7 Act, 2013
8. L. A. No. 159 of 2014
9. 2018 (2) AWC 1639

been contended that challenge to the acquisition at this stage cannot sustain in view of the order passed by Hon'ble Apex Court in earlier round of litigation and, therefore, the writ petition is liable to be dismissed with heavy cost.

C. ARGUMENTS ON BEHALF OF STATE RESPONDENTS

14. Shri Suresh Singh, learned Addl. Chief Standing Counsel along with Shri Fuzail Ahmad Ansari, learned Standing Counsel, supporting the arguments of learned counsel for the Parishad, vehemently submitted that the petitioners are themselves responsible for the non-payment of compensation as they have chosen multiple forums and instituted several cases, which resulted in delay of the proceedings. Infact, since the Supreme Court had already upheld the proceedings of acquisition, the same cannot be challenged before this Hon'ble Court in the garb of the present proceeding by giving a different complexion. The impugned order is legal and just, and does not call for any interference.

15. Heard rival submissions and perused the record.

D. ANALYSIS BY THE COURT

16. In the instant matter, what we find that successive litigations were made. Initially the father of the petitioners namely Raj Narain Jain (bhumidhar of plots in question) had straightaway approached to Hon'ble Apex Court in Writ-C No.2136-2137 of 1982 under Section 32 of the Constitution of India challenging the validity of the acquisition proceeding in which initially an interim order was accorded not to dispossess the petitioner. However, eventually the said writ petition was dismissed on 7.4.1993. We are surprised that even though the matter was already decided pertaining to acquisition and no such injunction could be accorded by the competent civil court but reason best known to him, Shri Raj Narain Jain had preferred O.S. No.892 of 1993 in which temporary injunction was, however, accorded on 23.3.1994. Against the same, Misc. Appeal No.224 of 1994 had been filed, which was allowed only on the premise that the disputed site had already been developed and the Parishad had also proceeded to allot the same to public by charging

premium from them. During pendency of said suit proceeding, said Raj Narain Jain died leaving behind his legal representatives including the petitioners. Later on the petitioners were impleaded in the said proceeding and eventually the said suit was also dismissed on 8.3.2000.

17. Even though aforesaid suit was dismissed, another suit was instituted by the petitioners being Suit No.973 of 1999 asking for injunction against the State. In the said suit proceeding, initially injunction was accorded but later on the same was dismissed on 18.02.2000. Once there was no legal impediment, State had issued notice under Section 9 of the Act, 1894 and consequently the State Government had taken over the possession on 27.12.1999. Later on the same was transferred to Parishad on 28.12.1999. Thereafter, some portion of the acquired land including the land of the petitioners had been transferred to the Trust.

18. It is also reflected from the record that as the Trust was established for running the institution, the Parishad has approved the building plan of school and the name of the school was also duly recorded in the Khasra of the village. The petitioners had again instituted another suit being Suit No.5 of 2011 before the Civil Judge, JD, Agra for injunction restraining the defendants from interfering in their possession. Even in that suit proceeding initially exparte injunction was obtained on 3.1.2001 but later on the same was vacated on 26.5.2001. Aggrieved with the same, the petitioners had preferred Misc. Appeal No.113 of 2001 before the District Judge, Agra on 29.05.2001 but no injunction was accorded in the said appeal. Consequently, the petitioners had preferred Writ Petition No.25558 of 2001 that too was dismissed on 16.07.2001. Multiple forums had been availed by the petitioner with an object to get injunction, concealing the previous litigation. It also appears from the record that they had also moved an application to the City Magistrate, Agra in the year 2001 concealing the previous orders passed by the Hon’ble Apex Court and competent civil court and had succeeded to obtain exparte order on 8.6.2001 to maintain status quo regarding the disputed land. No doubt the said order was also vacated by the City

Magistrate on 13.06.2001. Thereafter, the petitioners had also preferred suit against each other under Section 176 of UPZA & LR Act impleading the Trust also as opposite party. In the said proceedings, initially exparte status quo order was obtained on 15.6.2001 but later on the same was vacated on 20.06.2001. Eventually the said suit was dismissed on 15.5.2002.

19. We find that inspite of aforesaid successive orders passed by the competent courts, reason best known to him, an application was moved by the petitioners to the State Government, which was initially entertained on 11.03.2003. Later on the Trust had made detailed objections in the proceeding, which was pending before the State Government. In the objection, the Trust had taken a categorical stand that Parishad had made allotment of the said land and lease deed had also been made in favour of Trust for school purpose. The Trust had also paid huge amount towards lease agreement to the Parishad. The Trust had also taken an objection that prior to passing the order dated 11.3.2003 no opportunity was accorded to the trust. Precise objection had also been taken in the said proceeding before the State Government that the order dated 11.03.2003 had been obtained by willful and deliberate concealment of fact without noticing the fact that the said plot had already been allotted and transferred to Trust and the construction of residential school had been completed. As such there was no occasion to accept the ground of the petitioners before the State Government that no such possession was taken. Not only possession was taken much prior by the State Government but later on the same had been transferred to the Trust in the month of December, 2000.

20. We are surprised to note that petitioners' father Raj Narain Jain had approached to the Hon'ble Apex Court. Initially he had obtained stay order but later on the same was dismissed and the acquisition proceeding had never been touched. Successive suit proceedings were drawn against the respondents in which initially exparte order had been obtained. Successive litigations demonstrate that on account of various interim injunctions, the actual award could not be made.

21. We find that while challenging the acquisition proceeding in Writ Petition No.407 of 2000 initially the petitioners had taken a stand that if the period of litigation in the Hon'ble Supreme Court is excluded, more than six years are lapsed, therefore, bar of two years created through Section 11A of the Act, 1894 shall have to be adhered to. In the said proceeding, the Court had accorded interim order dated 10.01.2000 to the extent that the petitioners will participate in the award proceeding, the proceeding shall go on but no final award shall be signed or pronounced. Nowhere it had been brought into notice of the Hon'ble Court in the said writ proceeding that after dismissal of the writ petition by Hon'ble Apex Court on 7.4.1993, Raj Narain Jain had filed suit for permanent injunction being O.S. No.892 of 1993 in which temporary injunction was accorded on 23.03.1994. Even though Misc. Appeal No.224 of 1994 had been preferred, which was allowed and the injunction was vacated. Eventually, the suit was dismissed on 8.3.2000. Even prior to it, another suit being Suit No.973 of 1999 had been preferred by the petitioners against the respondents for permanent injunction restraining them from interfering in peaceful possession, which was dismissed on 18.02.2000. The possession was taken by the State Government on 27.12.1999 and later on the same was transferred to Parishad on 28.12.1999.

22. We find that once the land had been acquired under the Adhiniyam, 1965 and the urgency clause under Section 17 (1) of the Act, 1894 was also invoked, consequently, the land stood vested in the State free from all encumbrances. It is no more res integra that under the Adhiniyam, 1965 the proceeding would not lapse. It is also reflected from the record that relying upon the order dated 11.3.2003, another Writ Petition No.60355 of 2005 was also instituted by the petitioners, even though they were fully conscious to the fact that earlier they failed to succeed before Hon'ble Apex Court or before High Court and various suits were dismissed. In the said writ petition, the Division Bench has considered the only point involved whether a beneficial proceeding that has been initiated by the Government can be revoked or withdrawn

without hearing the beneficiary. In the said writ petition, the matter was relegated to the State Government vide order dated 21.7.2011. In response thereof, the order impugned had been passed.

23. It is not in dispute that in the instant matter the urgency clause under Section 17 (1) of the Act, 1894 had been invoked, possession was taken over by the State Government and later on it was transferred to Parishad on 28.12.1999. Admittedly the allotment also took place in favour of the Trust and consequently lease deed was also executed in favour of the Trust by the Parishad. The map of the Trust was also approved by the Parishad.

24. It is also reflected from the record that notice under Section 9 for taking possession had also been issued by the competent authority on 22.12.1999. While passing the order impugned, the State Government has also taken specific objection that on account of various litigation, which were thrusted upon the respondents, the award could not be made within reasonable time. However, eventually the Parishad had deposited the amount towards compensation in the office of concerned SLAO on 21.07.1999. As such the main plank of argument that the possession was not taken in accordance with law and the notice had been served upon dead person for taking possession is not acceptable under the present facts and circumstances, as at the time of initiation of acquisition proceeding late Raj Narain Jain was alive and he had preferred initial writ before Hon'ble Apex Court, which was later on dismissed. Notice of taking possession was duly served upon the daughter-in-law of late Raj Narain Jain, who is wife of second petitioner.

25. In view of the successive proceeding, which were taken either by the petitioners or their father, it is crystal clear that the petitioners were well conversant with the acquisition proceeding. For either one reason or the other, multiple proceeding had been drawn by the petitioners but so far as possession and deposit of amount, the same cannot be denied. Admittedly, the possession was taken over in the year 1999 and only, thereafter, the Parishad, under the scheme, had not only executed the

lease deed but the map was also sanctioned in favour of the Trust for running an institution, which has been established in the year 2000.

26. It is admitted by the parties that the proceedings for acquisition of land were initiated by notification under Section 28 of the Adhiniyam, 1965 on 04.04.1970. This was followed by declaration made under Section 32 of the Adhiniyam, 1965 on 28.06.1980. The award was also made. The possession of the plot was also handed over to Trust on 30.12.2000. The entire claim has been set up on the pretext that since neither the possession has been taken well within time nor compensation has been paid, therefore, the acquisition proceeding would lapse in view of Section 24 (2) of the Act, 2013. In this backdrop, it is necessary to examine the following questions:-

(i) Whether the provisions of Section 24 (2) of the Act, 2013 would apply to the acquisition made under the Adhiniyam, 1965?

(ii) Whether under the facts and circumstances, the benefit under Section 24 (2) of the Act, 2013 would be applicable?

(iii) Whether the proceeding is barred by delay and laches?

E. CONSIDERATION OF QUESTION NO.(i)

(i) Whether the provisions of Section 24 (2) of the Act, 2013 would apply to the acquisition made under the Adhiniyam, 1965?

27. The said issue is no longer res integra. The authoritative pronouncement in this regard has been made by the Division Bench of this Court in **Atul Sharma & Ors.** (Supra) and **Jagbeer Singh & Ors.** (Supra). The operative portion of the judgment in Atul Sharma & Ors. (Supra) is quoted as under:-

> *".....The aforesaid observations have been later on reproduced, considered and explained by the Apex Court in at least three decisions which deserve mention, the leading being Ch. Tika Ramji and Ors etc. vs. The State of Uttar Pradesh and Ors. (AIR 1956 Supreme Court 676), paragraphs 30 to 39. The second decision is in the case of the State of T.N. and Anr. vs. Adhiyaman Educational & Research Institute and Ors,(1995 (4) SCC 104) paragraphs 15 to 18 and the third decision is in the case of Thirumuruga Kirupananda Variyarthavathiru Sundara Swamigalme vs. Stae of Tamil Nadu and Ors. (1996 Vol. 3 SCC 15) paragraphs 19, 20, 23 to 26.*

There are many more decisions to the same effect and it is not necessary for us to burden this judgment with anything further.

The basic principle that can be culled out from a perusal of these judgments is that the test of repugnancy is whether the law made by Parliament and that by the State Legislature occupy the same field and whether the Parliament intended to lay down a exhaustive code in respect of the subject matter replacing the act of the State Legislature.

The non-inclusion of the 1965 Act in the 4th Schedule to the 2013 Act in terms of section 105 thereof does not necessarily mean that the 2013 Act was extended to be applied in acquisitions under the 1965 Act. The intent of the 2013 Act was to eclipse the anomalies and improve the conditions of payment of compensation to acquisitions made under the Land Acquisition Act, 1894 only. Since the 1894 Act has been repealed, and the 1965 Act continues to exist without any amendment there does not arise any issue of repugnancy or inconsistency. *This has to be viewed from another angle. The benefit of deemed lapse is by a fiction under a specific statute. A provision of fiction has to be strictly construed and it cannot be impliedly treated to be incorporated unless the 1965 Act also contemplates any such fiction. It is for this reason that an amendment will have to be expressly brought about in the 1965 Act if the provisions of 2013 Act have to be applied and not otherwise in relation to the procedure of acquisition. A provision of deemed lapse cannot be read into by way of interpretation into 1965 Act without specific amendment therein.*

The other question is can this be construed the other way around by presuming an implied applicability of the 2013 Act merely because section 55 of the 1965 Act incorporates the procedure of acquisition under the 1894 Act. We may put on record that the issue of lapse of an acquisition proceeding under section 11-A of the 1894 Act was specifically held to be not applicable in acquisitions under the 1965 Act in Jainul Islam's case. The same situation exists here where the issue of deemed lapse under section 24(2) is sought to be introduced and read into the 1965 Act. We cannot accept this proposition inasmuch as section 55 of the 1965 Act has not been amended so as to include any provision relating to the acquisition resulting in any lapse as contained in the 2013 Act. Thus, such applicability cannot be implied when it has not been incorporated in the 1965 Act.

There is yet another reason namely the provisions of 2013 Act as contained in section 24(2) are not inconsistent with any provision of the State Act that exists from before. Conversely the State Act also does not include any provision that may said to be inconsistent or in conflict with 2013 Act. The non-inclusion of the benefit of the clause of deemed lapse does not make the enactment inconsistent, conflicting or repugnant.

To understand this recourse can be had to the provisions quoted herein above in the 2013 Act that clearly provide that the 2013 Act and its provisions are in addition and not in derogation of any law for the time being in force. Consequently the States have been left to enact any law that may provide for any better facilities relating to acquisition over and above that has been provided for in the 2013 Act. This, therefore, also removes the elements of discrimination or arbitrariness. It is open to the State to provide better facility or benefit in matters of acquisition by bringing about any amendment in the 1965 Act.

Coming to the last limb of this argument namely the resultant discrimination in relation to acquisitions having been made prior to 01.01.2014, we may point out that when there is a legislation by incorporation then it is only that part of legislation which stands incorporated and continues to exist and not a new legislation which refers to the proceedings under the old legislation. The reason is what can be incorporated is that which exists. It is for this reason that section 55 of the 1965 Act incorporated the then existing provisions of 1894 Act. The 1894 Act

has now been repealed and is not in existence. Thus, it is only the provisions of 1894 Act that have been incorporated in section 55 of the 1965 Act that will continue to exist for that purpose only to that limited extent. The same does not within its fold draw the elements of the 2013 Act which has never been intended to be incorporated or included in the 1965 Act or vice-versa. Thus, these are two sets of acquisitions under the different Acts and the question of applying Article 14 to invoke discrimination does not arise.

However, there is another shade of this discrimination which has to be avoided keeping in view the ratio of the Jainul Islam's case. To that extent we hold that if any acquisition is made by the authority under the 1965 Act after 01.01.2014 then it's actions or the assessment of compensation cannot be less than what has been contemplated in 2013 Act. The determination of the quantum of compensation, therefore, on principles will have to be applied in relation to acquisitions made by the Awas Vikas Parishad under the 1965 Act after 01.01.2014 as per the 2013 Act.

Consequently for all the reasons aforesaid the relief claimed in the writ petition with regard to the lapse of the proceedings cannot be availed of and the petition is accordingly dismissed."

(Emphasis Supplied)

28. For ready reference, the operative portion of the judgment in **Jagbeer Singh & Ors.,** (Supra) is quoted as under:-

".....The Fourth Schedule contained in the 2013 Act makes reference to 13 Acts but does not make reference to the Parishad Act.

This issue was also considered by a Division Bench of this Court in Atul Sharma. It was sought to be contended that Section 24(2) of the 2013 Act would apply to acquisitions made under the Parishad Act. This contention was repelled by the Division Bench holding that the absence of exclusion of the applicability of the 2013 Act would not necessarily mean that the 2013 Act would apply to the acquisitions made under the Parishad Act. The observations of the Division Bench are as follows:

"The non-inclusion of the 1965 Act in the 4th Schedule to the 2013 Act in terms of section 105 thereof does not necessarily mean that the 2013 Act was extended to be applied in acquisitions under the 1965 Act. The intent of the 2013 Act was to eclipse the anomalies and improve the conditions of payment of compensation to acquisitions made under the Land Acquisition Act, 1894 only. Since the 1894 Act has been repealed, and the 1965 Act continues to exist without any amendment there does not arise any issue of repugnancy or inconsistency. This has to be viewed from another angle. The benefit of deemed lapse is by a fiction under a specific statute. A provision of fiction has to be strictly construed and it cannot be impliedly treated to be incorporated unless the 1965 Act also contemplates any such fiction. It is for this reason that an amendment will have to be expressly brought about in the 1965 Act if the provisions of 2013 Act have to be applied and not otherwise in relation to the procedure of acquisition. A provision of deemed lapse cannot be read into by way of interpretation into 1965 Act without specific amendment therein.

(emphasis supplied)

In this connection, the Division Bench also observed that since Section 11-A of the Acquisition Act was held not to be applicable to acquisitions made under the Parishad Act, the same position would exist in regard to Section 24(2) of the 2013 Act and the observations are:

"The other question is can this be construed the other way around by presuming an implied applicability of the 2013 Act merely because section 55 of the 1965 Act incorporates the procedure of acquisition under the 1894 Act. We may put on record that the issue of lapse of an acquisition proceeding under section 11-A of the 1894 Act was specifically held to be not applicable in acquisitions under the 1965 Act in Jainul Islam's case. The same situation exists here where the issue of deemed

lapse under section 24(2) is sought to be introduced and read into the 1965 Act. We cannot accept this proposition inasmuch as section 55 of the 1965 Act has not been amended so as to include any provision relating to the acquisition resulting in any lapse as contained in the 2013 Act. Thus, such applicability cannot be implied when it has not been incorporated in the 1965 Act."

(emphasis supplied)

The decisions referred to by the learned counsel for the petitioners relating to lapsing of acquisition under Section 24(2) of the 2013 Act when land was acquired under the provisions of the Acquisition Act would, therefore, not come to the aid of the petitioners.

Thus, for all the reasons stated above, it is not possible to accept the contention of the learned counsel for the petitioners that Section 24(2) of the 2013 Act would be applicable to the acquisitions made under the Parishad Act.

In the end, learned counsel for the petitioners submitted that though the award was made way back on 30 December 2013, compensation has not been paid to the petitioners who are the subsequent purchaser of the land that was acquired. It is for the petitioners to file an application before the Special Land Acquisition Officer for payment of the compensation and the Court has no reason to doubt that in case such an application is filed, it shall be decided in accordance with law after hearing the parties concerned.

The writ petition is, accordingly, dismissed with the aforesaid observations."

29. Hon'ble the Division Bench while considering the case of **Atul Sharma & Ors.** (Supra) has observed that the non-inclusion of the Adhiniyam, 1965 in the Fourth Schedule to the Act, 2013 in terms of Section 105 thereof does not necessarily mean that the Act, 2013 was extended to be applied in acquisitions under the Adhiniyam, 1965. The intent of the 2013 Act was to eclipse the anomalies and improve the conditions of payment of compensation to acquisitions made under the Act, 1894 only. It was also observed that since the Act, 1894 has been repealed, and the Adhiniyam, 1965 continues to exist without any amendment there does not arise any issue of repugnancy or inconsistency. The benefit of deemed lapse is by a fiction under a specific statute. A provision of fiction has to be strictly construed and it cannot be impliedly treated to be incorporated unless the Adhiniyam, 1965 also contemplates any such fiction. It is for this reason that an amendment will have to be expressly brought about in the Adhiniyam, 1965 if the provisions of Act, 2013 have to be applied and not otherwise in relation to the procedure of acquisition. It was opined *"a provision of deemed lapse cannot be read into by way of interpretation into 1965 Act without specific amendment therein."*

30. The contention of learned counsel for the petitioners relating to lapsing of acquisition under Section 24 (2) of the Act, 2013 when the land was acquired under the provisions of the Act, 1894 would, therefore, not come to the aid of the petitioner.

31. In view of above, it is not possible to accept the contention of learned counsel for the petitioner that Section 24 (2) of the Act, 2013 would be applicable to the acquisitions made under the Adhiniyam, 1965.

F. CONSIDERATION OF QUESTION NO.(ii)

(ii) Whether under the facts and circumstances, the benefit under Section 24 (2) of the Act, 2013 would be applicable?

32. A Constitution Bench of Hon'ble Apex Court in **Indore Development Authority v. Manoharlal & Ors**[10] has observed that Section 24 cannot be used to revive dead and stale claims and concluded cases. They cannot be inquired into within the purview of Section 24 of the Act, 2013. In the said case, the Apex Court has considered the correct interpretation of Section 24 of the Act, 2013 and finally answered as under:-

> *"359. We are of the considered opinion that Section 24 cannot be used to revive dead and stale claims and concluded cases. They cannot be inquired into within the purview of Section 24 of the Act of 2013. The provisions of Section 24 do not invalidate the judgments and orders of the Court, where rights and claims have been lost and negatived. There is no revival of the barred claims by operation of law. Thus, stale and dead claims cannot be permitted to be canvassed on the pretext of enactment of Section 24. In exceptional cases, when in fact, the payment has not been made, but possession has been taken, the remedy lies elsewhere if the case is not covered by the proviso. It is the Court to consider it independently not under section 24(2) of the Act of 2013.*
>
> *360. It was submitted that Section 101 provides for return of unutilized land under the Act of 2013.Section 101 provides that in case land is not utilized for five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government. Section 101 reads as under:*
>
> *"101. Return of unutilized land.-- When any land, acquired under this Act remains unutilized for a period of five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government.*
>
> *Explanation.-- For the purpose of this section, "Land Bank" means a governmental entity that focuses on the conversion of Government-owned vacant, abandoned, unutilized acquired lands and tax-delinquent properties into productive use."*

10. SLP (C) Nos. 9036 – 9038 of 2016 dt. 6.3.2020

361. Section 24 deals with lapse of acquisition. Section 101 deals with the return of unutilized land.Section 101 cannot be said to be applicable to an acquisition made under the Act of 1894. The provision of lapse has to be considered on its own strength and not by virtue of Section 101 though the spirit is to give back the land to the original owner or owners or the legal heirs or to the Land Bank. Return of lands is with respect to all lands acquired under the Act of 2013 as the expression used in the opening part is "When any land, acquired under this Act remains unutilized". Lapse, on the other hand, occurs when the State does not take steps in terms of Section 24(2). The provisions of Section 101cannot be applied to the acquisitions made under the Act of 1894. Thus, no such sustenance can be drawn from the provisions contained in Section 101 of the Act of 2013. Five years' logic has been carried into effect for the purpose of lapse and not for the purpose of returning the land remaining unutilized under Section 24(2).

362. Resultantly, the decision rendered in Pune Municipal Corporation & Anr. (supra) is hereby overruled and all other decisions in which Pune Municipal Corporation (supra) has been followed, are also overruled. The decision in Shree Balaji Nagar Residential Association (supra) cannot be said to be laying down good law, is overruled and other decisions following the same are also overruled. In Indore Development Authority v. Shailendra (Dead) through L.Rs. and Ors., (supra), the aspect with respect to the proviso to Section 24(2) and whether 'or' has to be read as 'nor' or as 'and' was not placed for consideration. Therefore, that decision too cannot prevail, in the light of the discussion in the present judgment.

363. In view of the aforesaid discussion, we answer the questions as under:

1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.

2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.

3. The word 'or' used in Section 24(2) between possession and compensation has to be read as 'nor' or as 'and'. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

4. The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the Act of 1894.

5. In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2)of the Act of 2013.

6. The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part ofSection 24(1)(b).

7. The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) is by drawing of inquest report/ memorandum. Once award has been passed on taking possession underSection 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2)of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).

8. The provisions of Section 24(2) providing for ***a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession*** *and pay compensation for five years or more before the Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority as on 1.1.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.*

9. Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. ***It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.***

Let the matters be placed before appropriate Bench for consideration on merits."

(Emphasis supplied)

33. In the present matter admittedly the proceeding had been challenged in different forums and initially interim injunction was also obtained but it is apparent that the acquisition had been upheld upto Supreme Court. In the circumstances, once the award has been made, it was not open for the petitioner to challenge the notification under Section 28 of the Adhiniyam, 1965. In such circumstances, so far as challenge to the acquisition and lapsing of the proceeding under the Adhiniyam, 1965 would be impermissible under law.

G. <u>CONSIDERATION OF QUESTION NO.(iii)</u>

(iii) Whether the proceeding is barred by delay and laches?

34. In **Urban Development Trust, Udaipur v. Bheru Lal & Ors**[11]., the Hon'ble Supreme Court has considered the maintainability of the writ petition against the land acquisition proceeding since the petition had been preferred challenging the land acquisition proceeding after two years of publication under Section 6 (1) of the Act, 1894 and it was held that the same would not be maintainable on the ground of delay and laches. The relevant portion of the judgment is quoted as under:-

11. 2003 (1) AWC 73 (SC)

".....It is apparent that the Notification under Section 4 was first published in the official gazette in June 1992. Thereafter substance was published in November 1992 at the conspicuous places and subsequently it was published in the local newspapers. Considering this sequence of publication, even if there is some delay, it would not mean that on this ground the land acquisition proceedings under Section 4 require to be set aside. Similar view is expressed by this Court in State of Haryana and another v. Raghubir Dayal and others [(1995) 1 SCC 133 para 7].

Further, learned counsel for the appellant rightly submitted that on the ground of delay and laches in filing the writ petitions, the Court ought to have dismissed the same. In the present case, as stated above, the Notification under section 6 was published in the Official Gazette on 24.5.1994. The writ petitions are virtually filed after two years. In a case where land is needed for a public purpose, that too for a scheme framed under the Urban Development Act, the Court ought to have taken care in not entertaining the same on the ground of delay as it is likely to cause serious prejudice to the persons for whose benefit the Housing Scheme is framed under the Urban Development Act and also in having planned development of the area. The law on this point is well settled. [Re. Reliance Petroleum Ltd. v. Zaver Chand Popatlal Sumaria and others [(1996) 4 SCC 579] and Hari Singh and others v. State of U.P. and others [(1984) 3 SCR 417].

In the result, the appeals filed by the Urban Improvement Trust are allowed. The impugned judgment and order passed by the High Court in D.B. Civil Special Appeal Nos.270-277/97 etc. allowing the appeals and quashing the land acquisition proceedings is set aside. The judgment and order passed by the learned Single Judge is restored.

Civil Appeal No.5263/2001 filed by J.K. Udaipur Udyog Ltd. is also dismissed.

There shall be no order as to costs."

35. In **State of U.P. v. Smt. Pista Devi & Ors**[12]**.**, Hon'ble the Apex Court has also observed that where large tracts of land is acquired, few cannot challenge the acquisition proceeding. The operative portion of the judgment is quoted as under:-

".....It is no doubt true that in the notification issued under section 4 of the Act while exempting the application of section 5-A of the Act to the proceedings, the State Government had stated that the land in question was arable land and it had not specifically referred to sub section (1-A) of section 17 of the Act under which it could take possession of land other than waste and arable land by applying the urgency clause. The mere omission to refer expressly section 17(1-A) of the Act in the notification cannot be considered to be fatal in this case as long as the Government had the power in that sub-section to take lands other than waste and arable lands also by invoking the urgency clause. Whenever power under section 17(1) is invoked the Government automatically becomes entitled to take possession of land other than waste and arable lands by virtue of sub-section (1-A) of section 17without further declaration where the acquisition is for sanitary improvement or planned development. In the present case the acquisition is for planned development. We do not, therefore find any substance in the above contention.

It is, however, argued by the learned counsel for the respondents that many of the persons from whom lands have been acquired are also persons without houses or shop sites and if they are to be thrown out of their land they would be exposed to serious prejudice. Since the land is being acquired for providing residential accommodation to the people of Meerut those who are being expropriated on account of the acquisition proceedings would also be eligible for some relief at the hands of the Meerut Development Authority. We may at this stage refer to the provision contained in section 21(2) of the Delhi Development Act, 1957 which reads as follows:

"21(2). The powers of the Authority or, as the case may be, the local authority concerned with respect to the disposal of land under sub-section (1) shall be so exercised as to secure, so far as practicable, that persons who are living or carrying on business or other activities on the land shall, if they desire to obtain

12. AIR 1986 SC 2025

accommodation on land belonging to the Authority or the local authority concerned and are willing to comply with any requirements of the Authority or the local authority concerned as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them:

Provided that where the Authority or the local authority concerned proposes to dispose of by sale any land without any development having been undertaken or carried out thereon, it shall offer the land in the first instance to the persons from whom it was acquired, if they desire to purchase it subject to such requirements as to its develop- ment and use as the Authority or the local authority concerned may think fit to impose."

Although the said section is not in terms applicable to the pre sent acquisition proceedings, we are of the view that the above provision in the Delhi Development Act contains a wholesome principle which should be followed by all Development Authorities throughout the country when they acquire large tracts of land for the purposes of land development in urban areas. We hope and trust that the Meerut Development Authority, for whose benefit the land in question has been acquired, will as far as practicable provide a house site or shop site of reasonable size on reasonable terms to each of the expropriated persons who have no houses or shop buildings in the urban area in question.

Having regard to what we have stated above, we are of the view that the judgment of the High Court cannot be sustained and it is liable to be set aside. We accordingly allow these appeals, set aside the judgment of the High Court and dismiss the Writ Petitions filed by the respondents in the High Court. There is no order as to costs."

36. In **State of Rajasthan & Ors. v. D.R. Laxmi & Ors**[13]**.,** it has been held that even a void proceeding need not be set at naught in all events. If parties has not approached the Court well within reasonable time, judicial review is not permissible at belated stage. For ready reference, the operative portion of the judgment is quoted as under:-

".....The order or action, if ultra vires the power, it becomes void and it does not confer any right. But the action need not necessarily set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances. It is seen that the acquisition has become final and not only possession had already been taken but reference was also sought for ; the award of the Court under Section 26 enhancing the compensation was accepted. The order of the appellate court had also become final. The order of the appellate court had also become final. Under those circumstances, the acquisition proceedings having become final and the compensation determined also having become final, the High Court was highly unjustified in interfering with and in quashing the notification under Section 4 [1] and declaration under Section 6.

It is true that the respondent had offered to accept the compensation by shifting the date of the notification by 4 to 5 years from the date of the notification under Section 4(1). For this view, reliance was placed by Shri Sachar on the judgment of this Court in Ujjain Vikas Pradhikaran v. Raj Kumar Johri & Ors. [(1992) 1 SCC 328] where this Court had allowed the shifting of the date for the determination of the compensation. In that case since the award had not been passed, this Court had given the direction but in this case award determining the compensation has attained finality. It is not a case to shift the date for the determination of the compensation. Thus considered, we are of the view that the High Court was not justified in interfering with the notification and declaration under Section 4(1) and 6.

13. (1996) 6 SCC 445

The appeal is accordingly allowed. The judgment of the High Court stands set aside. The writ petition stands dismissed but, in the circumstances, without costs."

37. It is well settled legal proposition that scope of judicial review is limited to the decision making procedure and not against the decision of the authority. The Court may review to correct errors of law or fundamental procedural requirements, which may lead to manifest injustice and can interfere with the impugned order in exceptional circumstances. The power of judicial review of the writ court is limited, but it has competence to examine as to whether there was material to form such opinion as required by law or the finding recorded by the authority concerned are perverse. It is settled law that non consideration of relevant material renders an order perverse. A finding is said to be perverse when the same is not supported by evidence brought on record or they are against the law where they suffer from vice of procedural irregularities.

38. In view of the aforesaid legal proposition, it emerges that land can be acquired for public purpose, the expression "public purpose" cannot be defined by giving a special definition as the same cannot be fitted in a straight jacket formula. The facts and circumstances of each case have to be examined to find whether the acquisition is for public purpose. It is also seen that in most of the matters, delay makes the problem more and more acute and increase urgency of necessity for acquisition.

39. In **Ramniklal N. Bhutta vs. State of Maharashtra**[14]**,** it is observed in paragraph No. 10 as under:-

"10. Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all-round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with china economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g., South Korea, Taiwan and Singapore. It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenge the acquisition proceedings in courts. These challenges are generally in shape of writ petitions filed on High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power or grant in

14. (1997) 1 SCC 134

stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 - indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lumpsum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings."

40. There cannot be any dispute to the proposition that in land acquisition proceeding tenure holders cannot be allowed to challenge the land acquisition proceeding after lapse of reasonable time. Generally the Court will not interfere with the land acquisition when the challenge is made with delay and subsequent to taking of possession and publication of award. In the present case admittedly the challenge to the acquisition proceeding was made in the earlier round of litigation before Hon'ble Supreme Court, which was eventually dismissed. As per the details brought before us through the record, the possession was taken by the Parishad on 28.12.1999 and the award was also made. Our view is strengthened by the proposition of law held by Hon'ble Apex Court in **Swaika Properties Pvt. Ltd. & Anr. v. State of Rajasthan & Ors**[15].

41. A Full Bench of this Court in **Gajraj & Ors. v. State of U.P. & Ors**[16]**.,** has observed that substantial delay in challenging the acquisition may be relevant factor while determining the relief to be granted to the petitioner.

42. In **Satendra Prasad Jain v. State of U.P. & Ors**[17]**.,** Hon'ble the Apex Court has considered in detail the urgency clause under Section 17 (1) and 17 (3-A) of the Act, 1894 and held that ordinarily government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made under Section 11. Upon considering the urgency clause, it has been held that upon

15. (2008) 4 SCC 695
16. 2011 (11) ADJ 1 (FB)
17. AIR 1993 SC 2517

taking of possession, the land vests in the State Government that is to say, the owner of the land loses to the Government the title to it. It is held that once land vested in the State, the same is free from all encumbrances, it cannot be divested or revested to the tenure holders. For ready reference, the relevant portion of the judgment is quoted as under:-

> *".....Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made under Section 11. Upon the taking of possession the land vests in the Government that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11-A are intended to benefit the land owner and ensure that the award is made within a period of two years from the date of Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration under Section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisition under Section 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner.*
>
> *Further, Section 17(3-A) postulates that the owner will be offered an amount equivalent to 80 per cent of the estimated compensation for the land before the Government takes possession of it underSection 17(1). Section 11-A cannot be so construed as to leave the Government holding title to the land without the obligation to determine compensation, make an award and pay to the owner the difference between the amount of the award and the amount of 80 per cent of the estimated compensation.*
>
> *In the instant case, even that 80 per cent of the estimated compensation was not paid to the appellants although Section 17(3-A) required that it should have been paid before possession of the said land was taken but that does not mean that the possession was taken illegally or that the said land did not thereupon vest in the Ist respondent. It is, at any rate, not open to the third respondent, who, as the letter of the Special Land Acquisition Officer dated 27th June, 1990 shows, failed to make the necessary monies available and who has been in occupation of the said land ever since its possession was taken, to urge that the possession was taken illegally and that, therefore, the said land has not vested in the first respondent and the first respondent is under no obligation to make an award.*
>
> *There is no merit whatsoever in the submission that compensation can be awarded to the appellants under Section 5. Section 5 postulates payment of compensation for damage done to land during the course of surveying it and doing all other acts necessary to ascertain whether it is capable of being adapted for a public purpose. Section 5 has no applicable to the instance case.*
>
> *In the result, the appeal is allowed. The judgment and order under appeal is set aside. The Rule is made absolute and the first and second respondents are directed by a writ of mandamus to make and publish an award in respect of the said land within twelve weeks from today.*
>
> *20. The third respondent shall pay to the appellants the costs of the appeal quantified in the sum of Rs. 10,000."*

43. Hon'ble the Apex Court in **Aflatoon & Ors. v. Lt. Governor of Delhi & Ors**[18]**.** had considered in detail planned development of Delhi

18. (1975) 4 SCC 285

under the Act before the Master Plan was ready and also considered the delay and laches. In the said case, it has been observed as under:-

> *".....The planned development of Delhi had been decided upon by the Government before 1959, viz., even before the Delhi Development Act came into force. It is true that there could be no planned development of Delhi except in accordance with the provisions of Delhi Development Act after that Act came into force, but there was no inhibition in acquiring land for planned development of Delhi under the Act before the Master Plan was ready (see the decision in Patna Improvement Trust v. Smt. Lakshmi Devi and Others(1). In other words, the fact that actual development is permissible in an area other than a development area with the approval or sanction of the local authority did not preclude the Central Government from acquiring the land for planned development under the Act. Section 12 is concerned only with the planned development. It has nothing to do with acquisition of property; acquisition generally precedes development. For planned development in an area other than a development area it is only necessary to obtain the sanction or approval of the local authority as provided in S. 12(3). The Central Government could acquire any property under the Act and develop it after obtaining the approval of the local authority. We do not think it necessary to go into the question whether the power to acquire the land under s. 15 was delegated by the Central Government to the Chief Commissioner of Delhi.* ***We have already held that the appellants and the writ petitioners cannot be allowed to challenge the validity of the notification under s. 4 on the ground of laches and acquiescence.*** *The plea that the Chief Commissioner of Delhi had no authority to initiate the proceeding for acquisition by issuing the notification under s. 4 of the Act as s. 15 of the Delhi Development Act gives that-power only to the Central Government relates primarily to the validity of the notification. Even assuming that the Chief Commissioner of Delhi was not authorized by the Central Government to issue the notification under s. 4 of the Land Acquisition Act, since the appellants and the writ petitioners are precluded by their laches and acquiescence from questioning the notification, the contention must, in any event, be negatived and we do so.*
>
> *It was contended by Dr. Singhvi that the acquisition was really for the cooperative housing societies which are companies within the definition of the word company' in s. 3(e) of the Act, and, therefore, the provisions of Part VII of the Act should have been complied with. Both the learned Single Judge and the Division Bench of the High Court were of the view that the acquisition was not for company. We see no reason to differ from their view. The mere fact that after the acquisition the Government proposed to hand over, or, in fact, handed over, a portion of the property acquired for development to the cooperative housing societies would not make the acquisition one for company'. Nor are we satisfied that there is any merit in the contention that compensation to be paid for the acquisition came from the consideration paid by the cooperative societies. In the light of the averments in the counter affidavit filed in the writ petitions here, it is difficult to hold that it was cooperatives which provided the fund for the acquisition. Merely because the Government allotted a part of the property to cooperative societies for development, it would not follow that the acquisition was for cooperative societies, and therefore, Part VII of the Act was attracted. It may be noted that the validity of the notification under s. 4 and the declaration under s. 6 was in issue in Udai Ram Sharma and Others v. Union of India(1) and this Court upheld their validity.*
>
> *We see no merit in the appeals and the writ petitions. They are, therefore, dismissed with costs.*
>
> *Petitions dismissed."*

44. Hon'ble the Apex Court has also considered the similar view in **Kendriya Karamchari Evam Mitra Sahkari Avas Samiti Ltd. and Anr. v. State of U.P. and Anr**[19]**.**

19. 1988 UPLBEC 645

45. Hon'ble the Apex Court in **V. Chandrasekaran & Anr. v. The Administrative Officer & Ors**[20]**.,** has observed 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. The 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. It has been observed in paragraph 16, 17, 18, 21 and 22 as under:-

> *"16. 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: Avadh Behari Yadav v. State of Bihar and. Ors. MANU/SC/002/1996: (1995) 6 SCC 31; U.P. Jal Nigam v. Kalra Properties (P) Ltd. (Supra); Allahabad Development Authority v. Nasiruzzaman and Ors. MANU/SC/1269/1996: (1996) 6 SCC 424, M. Ramalinga Thevar v. State of Tamil Nadu and Ors. MANU/SC/0291/2000: (2000) 4 SCC 322; and Government of Andhra Pradesh v. Syed Akbar and Ors. MANU/SC/0987/2004: AIR 2005 SC 492).*
>
> *17. 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 Madhya Pradesh v. V.P. Sharma MANU/SC/0200/1966: AIR 1966 SC 1593; Lt. Governor of Himachal Pradesh and Anr. v. Shri Avinash Sharma MANU/SC/0417/1970: AIR 1970 SC 1576; Satendra Prasad Jain v. State of U.P. and Ors. MANU/SC/0392/1993 AIR 1993 SC 2517; Rajasthan Housing Board and Ors. v. Shri Kishan and Ors. MANU/SC/0466/1993: (1993) 2 SCC 84 and Dedicated Freight Corridor Corporation of India v. Subodh Singh and Ors. MANU/SC/0268/2011: (2011) 11 SCC 100).*
>
> *18. The meaning of the word 'vesting', has been considered by this Court time and again. In Fruit and Vegetable Merchants Union v. The Delhi Improvement Trust MANU/SC/0082/1956: AIR 1957 SC 344, this Court held that the meaning of word 'vesting' varies as per the context of the Statute, under which the property vests. So far as the vesting Under Sections 16 and 17 of the Act is concerned, the Court held as under.-*
>
> *In the cases contemplated by Sections 16 and 17, the property acquired becomes the property of Government without any condition or; limitations either as to title or possession. The legislature has made it clear that vesting of the property is not for any limited purpose or limited duration.*

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20. CIVIL APPEAL No. 6342 – 6343 of 2012 decided on 18.9.2012

21. In Government of Andhra Pradesh and Anr. v. Syed Akbar (Supra), this Court considered this very issue and held that, once the land has vested in the State, it can neither be divested, by virtue of Section 48 of the Act, nor can it be reconveyed to the persons-interested/tenure holders, and that therefore, the question of restitution of possession to the tenure holder, does not arise. (See also: Pratap v. State of Rajasthan MANU/SC/1101/1996: AIR 1996 SC 1296; Chandragaudaj Ramgonda Patil v. State of Maharashtra MANU/SC/1264/1996: (1996) 6 SCC 405; State of Kerala and Ors. v. M. Bhaskaran Pillai and Anr. MANU/SC/0731/1997: AIR 1997 SC 2703; Printers (Mysore). Ltd. v. M.A. Rasheed and Ors. MANU/SC/0307/2004: (2004) 4 SCC 460; Bangalore Development Authority v. R. Hanumaiah MANU/SC/0988/2005: (2005) 12 SCC 508; and Delhi Airtech Services (P) Ltd. and Anr. v. State of U.P. and Anr. MANU/SC/0956/2011: (2011) 9 SCC 354).

22.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 land owner, 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 any ground, whatsoever, unless there is some statutory amendment to this effect."

H. CONCLUSION

46. Considering the facts and circumstances of the case, we find that against the acquisition the petitioners' father had already approached to the Supreme Court but the same had been negated by the Supreme Court and the acquisition was upheld. The petitioners' father as well as the petitioners had also knocked the doors of various authorities/ courts but eventually they failed to get any relief from anywhere. The possession of the land had been taken by the authorities and the same had been transferred to the Trust. On the said land institution had also been built, which is also imparting education to students. We find that once the land vested in the State, the same is free from all encumbrances, it cannot be divested or revested.

47. We are also of the considered opinion that at this belated stage we cannot permit the petitioner to revive the dead and stale claims. The stale and dead claims cannot be permitted to be canvassed on the pretext of enactment of Section 24. In view of the law laid down by this Court in **Atul Sharma & Ors.** (Supra) and **Jagbeer Singh & Ors.** (Supra)

Section 24 of the Act, 2013 would not be attracted in the present matter. Even otherwise as per the parameters of the Constitution Bench mandate in **Indore Development Authority** (Supra) as averred in detail, the claim of the petitioner does not fall under Section 24 of the Act, 2013.

48. In the facts and circumstances, so far as the determination of quantum of compensation is concerned, the same would be governed as per the principles applied in relation to acquisition made by Parishad under the Adhiniyam, 1965. However, it is always open to the petitioner to move appropriate application to get the compensation in accordance with law.

49. Consequently, for all the reasons aforesaid, the reliefs claimed in the writ petition with regard to lapse of acquisition proceeding cannot be accorded to the petitioner.

50. The writ petition stands **dismissed** accordingly.

(Anish Kumar Gupta, J.) (Mahesh Chandra Tripathi, J.)

September 18, 2025
SP/

Digitally signed by :-
SURYA PRAKASH
High Court of Judicature at Allahabad