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TABLE OF CASES REPORTED
(Note : An asterisk (*) denotes Note number)

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(Note : An asterisk (*) denotes Note number)

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(viii). Comprehensive plan be prepared and implemented for preservation and maintenance of Chandranageshwar Temple.

(ix). CBRI Roorkee and Ujjain Smart City Ltd were issued direction to submit report regarding structural stability of the temple.

(x). Modern additions shall be removed. Original work in the temple to be restored.

[Sarika Vs. Administrator, Mahakaleshwar Mandir Committee, Ujjain (M.P.)] (SC)…2419

संविधान – अनुच्छेद 142 – महाकालेश्वर मंदिर – शिवलिंगम का क्षरण – परिरक्षण – विशेषज्ञ समिति द्वारा प्रस्तुत प्रतिवेदन के आधार पर निम्नलिखित निदेश जारी किये गये:–

(i) कोई भक्त/आगंतुक शिवलिंगम को मलेगा नहीं। मंदिर की ओर से संपादित पारंपरिक पूजा अर्चना के दौरान छोड़कर किसी के द्वारा मला नहीं जाये। यदि किसी भक्त द्वारा किया जाता है, साथी पुजारी/पुरोहित उत्तरदायी होगा। समिति, **pH** मान बनाएं रखने के लिए कोटी तीर्थ कुण्ड से छाना हुआ और शुद्ध किया हुआ पानी उपलब्ध कराये।

(ii) भस्म आरती के दौरान भस्म का **pH** मान सुधारा जाए।

(iii) यांत्रिक घर्षण से परिरक्षण के लिए मुण्ड माला एवं सर्पकर्णहास का वजन घटाया जाए। समिति यह पता लगाये कि क्या धातु की मुण्ड माला का उपयोग आवश्यक है अथवा शिवलिंग को छुए बिना मुण्ड माला एवं सर्पकर्णहास के उपयोग का कोई अन्य मार्ग है।

(iv) भक्तों द्वारा दही, घी, शहद मलना भी क्षरण का एक कारण है। किसी भक्त द्वारा पंचामृत उड़ेला नहीं जाए। केवल शुद्ध दूध की सीमित मात्रा उड़ेलने की मंजूरी है जबकि मंदिर की ओर से संपादित पारंपरिक पूजा के दौरान सभी शुद्ध सामग्रियों का उपयोग किया जा सकता है।

(v) गर्भ गृह में पूजा अर्चना की संपूर्ण कार्यवाहियों की 24 घंटे वीडियो रिकार्डिंग होगी और कम से कम 6 महीनों तक सुरक्षित रखी जाए।

(vi) असंख्य धार्मिक अनुष्ठानों एवं विधियों को नियमित रूप से संपादित करना होता है, परंतु इसे विशेषज्ञ/रूढ़ीगत पुजारियों एवं पुरोहितों द्वारा किया जाए।

(vii) आवश्यक मरम्मत एवं अनुरक्षण अविलम्ब रूप से पूरा किया जाए। कलेक्टर एवं एस.पी., उज्जैन को मंदिर परिसर से 500 मीटर के भीतर के अतिक्रमण हटाने के लिए निदेशित किया गया।

(viii) चंद्रनागेश्वर मंदिर के परिरक्षण एवं अनुरक्षण हेतु व्यापक योजना तैयार एवं कार्यान्वित की जाए।

(ix) सी.बी.आर.आई. रूरकी एवं उज्जैन स्मार्ट सीटी लि. को भी मंदिर की संरचनात्मक स्थिरता के संबंध में प्रतिवेदन प्रस्तुत करने के लिए निदेश जारी किये गये थे।

(x) आधुनिक परिवर्धन हटाये जाएं। मंदिर में मूल रूप बहाल किया जाए।

(सारिका वि. एडमिनिस्ट्रेटर, महाकालेश्वर मंदिर कमेटी, उज्जैन (म.प्र.))
(SC)…2419

Constitution – Article 226 – Custody of Minor Child – Habeas Corpus – Maintainability of Petition **– Held – Writ petition for issuance of a writ in nature of Habeas Corpus under Article 226 in peculiar facts and circumstances of case is certainly maintainable. [Madhavi Rathore (Smt.) Vs. State of M.P.] …2453**

संविधान – अनुच्छेद 226 – अवयस्क बालक की अभिरक्षा – बंदी प्रत्यक्षीकरण – याचिका की पोषणीयता – अभिनिर्धारित – प्रकरण के विशेष तथ्यों एवं परिस्थितियों में अनुच्छेद 226 के अंतर्गत, बंदी प्रत्यक्षीकरण के स्वरूप की एक रिट जारी किये जाने हेतु रिट याचिका निश्चित रूप से पोषणीय है। (माधवी राठौर (श्रीमती) वि. म.प्र. राज्य) **…2453**

Constitution – Article 226 – Habeas Corpus – Custody of Minor Child **– Held – Child is 15 months of age and mother who nurtured the child for 9 months in womb is certainly entitled for custody of child – Welfare of child is of paramount importance – Mother is well educated – Nothing on record to show that parents of petitioner/mother with whom she is living are not capable to maintain petitioner and her child – Respondents directed to handover custody of child to petitioner/mother – Petition allowed. [Madhavi Rathore (Smt.) Vs. State of M.P.] …2453**

संविधान – अनुच्छेद 226 – बंदी प्रत्यक्षीकरण – अवयस्क बालक की अभिरक्षा – अभिनिर्धारित – बालक 15 माह की उम्र का है और माता जिसने 9 माह तक बालक को गर्भ में पाला है, निश्चित रूप से बालक की अभिरक्षा के लिए हकदार है – बालक का कल्याण सर्वोपरि महत्वपूर्ण है – माता भली भांति शिक्षित है – अभिलेख पर यह दर्शाने के लिए कुछ नहीं कि याची/माता के माता–पिता जिनके साथ वह रह रही है वे याची एवं उसके बालक का भरणपोषण करने के लिए समर्थ नहीं हैं – प्रत्यर्थीगण को बालक की अभिरक्षा याची/माता को सौंपने के लिए निदेशित किया गया – याचिका मंजूर। (माधवी राठौर (श्रीमती) वि. म.प्र. राज्य) **…2453**

Constitution – Article 226 – Scope **– Held – In exercise of power under Article 226, Court can merely consider the decision making process. [Fishermen Sahakari Sangh Matsodyog Sahakari Sanstha Maryadit, Gwalior Vs. State of M.P.] …2432**

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द्वारा मुख्य न्यायाधिपति को यह प्रार्थना करते हुए लिखा गया है कि मामले को '**X**' न्यायमूर्ति की न्यायपीठ से भिन्न किसी अन्य न्यायपीठ के समक्ष (लिस्ट) सूचीबद्ध किया जाए – प्रत्यर्थी द्वारा यह निवेदित है कि याची ने स्वयं उसके कूटरचित हस्ताक्षर के साथ अभिकथित पत्र लिखा था – अभिनिर्धारित – याची इस आशंका में था कि याचिका का विनिश्चय उसके पक्ष में नहीं होगा, अतः उसके पास न्यायाधीश के संबंधी अधिवक्ता का वकालतनामा प्रस्तुत करने का अथवा प्रत्यर्थी के नाम से कूटरचित पत्र प्रस्तुत करने का कारण था – मामला संदेहास्पद होने के कारण, प्रिंसिपल रजिस्ट्रार (न्यायिक) को अभिकथित पत्र के लेखक का पता लगाने हेतु जांच संचालित करने तथा जांच प्रतिवेदन प्रस्तुत करने हेतु निदेशित किया गया – आवेदन मंजूर। (विनोद रघुवंशी वि. म.प्र. राज्य)
...2476

***Criminal Procedure Code, 1973 (2 of 1974), Section 195 & 340 – Preliminary Inquiry* – Held – Preliminary enquiry is not mandatory but if circumstances required, then before filing complaint, preliminary enquiry can be made. [Vinod Raghuvanshi Vs. State of M.P.] ...2476**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 195 व 340 – प्रारंभिक जांच – अभिनिर्धारित – प्रारंभिक जांच आज्ञापक नहीं है लेकिन यदि परिस्थितियों की आवश्यकता है, तब परिवाद प्रस्तुत करने के पहले, प्रारंभिक जांच की जा सकती है। (विनोद रघुवंशी वि. म.प्र. राज्य) **...2476**

***Criminal Procedure Code, 1973 (2 of 1974), Section 195(1)(b)(ii) – Scope & Applicability* – Held – Apex Court concluded that Section 195(1)(b)(ii) Cr.P.C. would be attracted only when offence enumerated in said provision have been committed with respect to a document, after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when document was in *custodia legis*. [Vinod Raghuvanshi Vs. State of M.P.] ...2476**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 195(1)(b)(ii) – विस्तार व प्रयोज्यता – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि दं.प्र.सं. की धारा 195(1)(b)(ii) केवल तब आकर्षित होगी जब कथित उपबंध में प्रगणित अपराध किसी न्यायालय की कार्यवाही में साक्ष्य के रूप में प्रस्तुत किये गये अथवा दिये गये दस्तावेज के संबंध में अर्थात् उस दस्तावेज के विधि अभिरक्षा में रहने के दौरान, कारित किया गया हो। (विनोद रघुवंशी वि. म.प्र. राज्य) **...2476**

***Criminal Procedure Code, 1973 (2 of 1974), Section 340 – Preliminary Inquiry – Scope & Applicability* – Discussed & Summarized. [Vinod Raghuvanshi Vs. State of M.P.] ...2476**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 340 – प्रारंभिक जांच – विस्तार व प्रयोज्यता – विवेचित व संक्षिप्त में प्रस्तुत किया गया। (विनोद रघुवंशी वि. म.प्र. राज्य)
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compensation as per Act of 2013 – In case obligation u/S 31 of old Act has not been fulfilled, interest u/S 34 can be granted – Non-deposit of compensation in Court does not result in lapse of proceedings – In case of non-deposit for majority of holdings for 5 years or more, compensation under Act of 2013 has to be paid to landowners as on date of notification for acquisition u/S 4 of Old Act. [Indore Development Authority Vs. Manoharlal] (SC)…2179

भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, (2013 का 30), धारा 24(2), परंतुक एवं भूमि अर्जन अधिनियम (1894 का 1), धाराएँ 4, 31 व 34 – प्रतिकर का अवधारण – अभिव्यक्ति ''भुगतान'' – अभिनिर्धारित – धारा 24(2) के मुख्य भाग में अभिव्यक्ति ''भुगतान'' के अंतर्गत न्यायालय में प्रतिकर का जमा किया जाना शामिल नहीं है – भुगतान न किये जाने का परिणाम धारा 24(2) के परंतुक में उपबंधित किया गया है, यदि अधिकांश धारित भूमि के लिए भुगतान नहीं किया गया, तब सभी हिताधिकारी (भूमि स्वामी) पुराने अधिनियम की धारा 4 के अंतर्गत अधिसूचना की तिथि को 2013 के अधिनियम के अनुसार प्रतिकर के हकदार होंगे – यदि पूर्व अधिनियम की धारा 31 के अंतर्गत दायित्व का निर्वहन नहीं किया गया, धारा 34 के अंतर्गत ब्याज प्रदान किया जा सकता है – न्यायालय में प्रतिकर का भुगतान न किये जाने के फलस्वरूप कार्यवाहियां व्यपगत नहीं होती – पांच वर्ष या उससे अधिक के लिए अधिकांश भूमि के गैर–भुगतान के मामले में, पूर्व अधिनियम की धारा 4 के अंतर्गत अर्जन की अधिसूचना की तिथि को भूमिस्वामियों को 2013 के अधिनियम के अंतर्गत प्रतिकर का भुगतान किया जाना चाहिए। (इंदौर डव्हेलपमेन्ट अथॉरिटी वि. मनोहरलाल) **(SC)…2179**

***Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013), Section 24(2), proviso and Land Acquisition Act (1 of 1894), Section 31(1) – Non-Deposit of Compensation – Lapse of Proceedings* – Held – In case a person has been tendered compensation u/S 31(1) of old Act, it is not open for him to claim that acquisition has lapsed u/S 24(2) due to non-payment or non-deposit of compensation in Court – Obligation to pay is complete by tendering the amount – Landowners who refused to accept compensation or who sought reference for higher compensation, cannot claim the proceedings to be lapsed u/S 24(2) of Act of 2013. [Indore Development Authority Vs. Manoharlal] (SC)…2179**

भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, (2013 का 30), धारा 24(2), परंतुक एवं भूमि अर्जन अधिनियम (1894 का 1), धारा 31(1) – प्रतिकर का जमा न किया जाना – कार्यवाहियों का व्यपगत होना – अभिनिर्धारित – यदि एक व्यक्ति को पूर्व अधिनियम की धारा 31(1) के अंतर्गत प्रतिकर प्रस्तुत किया जाता है, तो वह यह दावा नहीं कर सकता कि न्यायालय में प्रतिकर के भुगतान न किये जाने अथवा जमा न किये जाने के कारण धारा 24(2) के अंतर्गत अर्जन व्यपगत हो जाता है – राशि प्रस्तुत करते ही भुगतान का दायित्व पूर्ण हो जाता है – भूमि स्वामी जिन्होंने प्रतिकर स्वीकार करने से इंकार कर दिया है तथा जिन्होंने उच्चतर प्रतिकर

गया है तब उसे सुसंगत नियमों के अंतर्गत, निलंबन के अधीन बिल्कुल रखा जा सकता है। (विजय मांझी वि. म.प्र. राज्य) **...*22**

***Stamp Act, Indian (2 of 1899), Schedule 1-A, Article 5(3)(i) – Stamp Duty – Calculation – Question of Possession* – Held – Although agreement to sell was termed as "without possession" but clause of agreement shows that there was a clear intention of parties to terminate landlord-tenant relationship – Since possession of Respondent-1 (tenant) was altered from that of tenant to that of transferee under contract, agreement to sell would be a conveyance and is chargeable under Article 5(3)(i) of Schedule 1-A – Document was not sufficiently stamped – Impugned order set aside – Petition allowed. [Rajendra Kumar Agrawal Vs. Anil Kumar] ...2462**

स्टाम्प अधिनियम, भारतीय (1899 का 2), अनुसूची 1–A, अनुच्छेद 5(3)(i) – स्टाम्प शुल्क – गणना – कब्जे का प्रश्न – अभिनिर्धारित – यद्यपि विक्रय के करार को ''बिना कब्जे'' के रूप में परिभाषित किया गया था लेकिन करार का खंड यह दर्शाता है कि पक्षकारों का भू–स्वामी–किराएदार के संबंध को समाप्त करने का एक स्पष्ट आशय था – चूंकि प्रत्यर्थी क्र. 1 (किराएदार) के कब्जे को संविदा के अंतर्गत किराएदार से अंतरिती में परिवर्तित किया गया था, विक्रय का करार एक हस्तांतरण होगा तथा अनुसूची 1–A के अनुच्छेद 5(3)(i) के अंतर्गत प्रभार्य है – दस्तावेज पर्याप्त रूप से स्टाम्पित नहीं था – आक्षेपित आदेश अपास्त – याचिका मंजूर। (राजेन्द्र कुमार अग्रवाल वि. अनिल कुमार) **...2462**

***Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P. 2005 (14 of 2006), Section 2(1) and Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 39(4) – Writ Appeal – Maintainability* – Held – Division Bench of this Court has earlier, in case of *Balu Singh* has opined that as per Section 39(4) of 1993 Adhiniyam, once office bearer is placed under suspension, such person shall also be disqualified for being elected during suspension period – Since consequences of such order is of final nature, writ appeal is maintainable. [Dhara Singh Patel Vs. State of M.P.] (DB)...2426**

उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, म.प्र., 2005 (2006 का 14), धारा 2 (1) एवं पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 39(4) – रिट अपील – पोषणीयता – अभिनिर्धारित – इस न्यायालय की खंडपीठ ने पूर्व में बालू सिंह के प्रकरण में यह मत दिया था कि 1993 के अधिनियम की धारा 39 (4) के अनुसार, एक बार पदाधिकारी को निलंबित कर दिया जाता है, तो ऐसे व्यक्ति को निलंबन अवधि के दौरान निर्वाचित होने के लिए भी अयोग्य घोषित किया जाएगा – चूंकि उक्त आदेश के परिणाम अंतिम स्वरूप के हैं, रिट अपील पोषणीय है। (धारा सिंह पटेल वि. म.प्र. राज्य) **(DB)...2426**

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THE INDIAN LAW REPORTS M.P. SERIES, 2020
(Vol.-4)
JOURNAL SECTION

FAREWELL

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
CHIEF JUSTICE

Born on September 30, 1958 in Chandigarh. Did B.Com. (Hons.) from Sri Ram College of Commerce, Delhi University in the year 1977 and completed LL.B. from Faculty of Law, Delhi University in the year 1980. Enrolled as an Advocate with Bar Council of Punjab and Haryana in the same year and started practice in the High Court of Punjab and Haryana in July, 1980. Practised in Civil Law, Revenue Law, Writ side in all branches of law including Constitutional Law, Service Law, Company Law, Tax Laws i.e. Income-Tax, Wealth Tax, Sales Tax, Excise and Customs laws. Worked for the Department of Income Tax in the Punjab and Haryana High Court from the year 1982 and continued as such up to the year 1991. Elevated as Judge of the High Court of Punjab and Haryana on January 09, 2004. Functioned as Acting Chief Justice of the High Court of Punjab and Haryana between May 04, 2018 and June 02, 2018. Also functioned as Executive Chairman of the Haryana State Legal Services Authority for more than three years. Appointed as Chief Justice of the High Court of Meghalaya on May 28, 2019. Sworn in as the 25th Chief Justice of the Madhya Pradesh High Court on November 03, 2019 and demitted Office on September 29, 2020.

We, on behalf of The Indian Law Reports (M.P. Series) wish His Lordship a healthy, happy and prosperous life.

FAREWELL OVATION TO HON'BLE MR. JUSTICE AJAY KUMAR MITTAL, CHIEF JUSTICE, GIVEN ON 29.09.2020 THROUGH VIDEO CONFERENCING, IN THE CONFERENCE HALL OF SOUTH BLOCK, HIGH COURT OF MADHYA PRADESH AT JABALPUR.

Hon'ble Mr. Justice, Sanjay Yadav, Administrative Judge, bids farewell to the demitting Judge :-

We have assembled here, through this virtual mode, to bid a warm and affectionate adieu to Hon'ble Shri Justice Ajay Kumar Mittal, on the eve of His Lordship demitting the office as Chief Justice.

His Lordship has been with us for over Eleven months.

i am privileged being associated with him.

Being gifted with great knowledge and wisdom, His Lordship has been our friend, philosopher and guide.

Goodness, it is said, spreads in all directions. In these Eleven months, we not only witnessed but have benefitted manifold.

His Lordship's judicial acumen is writ large in the judicial pronouncements in all fields of law wherein complex legal issues are answered with ease.

His Lordship's unique combination of cool head and warm heart, epitomizing Socratic qualities of good Judge who hear courteously, answer wisely, consider soberly and decide impartially, makes him exceptional and has won admiration and appreciation not only from the recipients of justice but also the legal fraternity.

While welcoming His Lordship as Chief Justice of our High Court, we reposed confidence that under your able and dynamic leadership, our High Court will march to glorious future.

Attainments of past months, as we heralded since March, 2020 and marched through this pandemic with the extensive aid of modern technology, for dispensation of justice, causing effective Court hearings and Lok Adalats through virtual mode, now acknowledged as new reality and new normal, thus bringing solace to grieved populace, has put our High Court in the front-line in dispensation and administration of justice. This is all because of able leadership of His Lordship.

i, on behalf of my Peers, on behalf of High Court of Madhya Pradesh and on my own behalf, wish His Lordship and Respected Mrs. Mittal, happiness, peace and good health.

"May the nourishment of the earth be yours,

May the clarity of light be yours,

May the fluency of the ocean be yours,

May the protection of the ancestors be yours."

(Extracted from Beannacht by John O'Donohue, an Irish Poet)

Thank you

Jai Hind

Shri Purushaindra Kaurav, Advocate General and representative of M.P. State Bar Council, bids farewell:-

Bidding farewell to anyone is always difficult. It is even more difficult to do so for a person who is not only warm and compassionate, but became one of our own during his tenure here. Today, I have been bestowed with this difficult task to bid farewell to our beloved Hon'ble Chief Justice.

Your Lordship was born on 30th of September, 1958 at Chandigarh and after graduating in B.Com. (Hons.) from the prestigious Sri Ram College of Commerce, New Delhi and completing LL.B. from Faculty of Law, Delhi University, Your Lordship commenced practice in the High Court of Punjab and Haryana at Chandigarh. Your Lordship has a rich experience in civil, revenue, writ, service, tax, excise and custom laws. Your Lordship hails from a family of distinguished lawyers. It is because of sheer hard work, dedication and perseverance Your Lordship was elevated to the bench on 9th of January, 2004. Your Lordship's commitment to the cause of justice has ensured that the grievance of the litigants before Your Lordship has been redressed. Due to Your Lordship's immense contribution, after serving as the Acting Chief Justice of Punjab and Haryana High Court from 4th of May 2018 to 2nd of June 2018, Your Lordship was sworn in as Hon'ble The Chief Justice of High Court of Meghalaya on 28th of May 2019 and as the Chief Justice of this Court on 3rd of November 2019.

It has been aptly said that when the going gets tough, the tough get going. It is in these difficult times that, we look to our leaders for inspiration, guidance and strength, and thus, it appears that the All-mighty knowing the challenges ahead decided to send Your Lordship to guide us during this difficult time. We are indeed blessed to be led by Hon'ble the Chief Justice through this unforeseen pandemic.

The functioning of the courts was deeply impacted due to the outbreak of Covid-19 pandemic and its protocol. Despite all odds, our Hon'ble Courts under

the guidance of the Hon'ble Chief Justice took up all possible measures to ensure that the wheels of the chariot of justice are not stalled. Even during the most strict phase of the lockdown, Your Lordship took up urgent matters including in the nature of public interest litigations wherein directions were passed by Your Lordship to ease the hardship of the affected parties such as testing and treatment of Covid-19 patients, cleanliness of all public premises of the State, patients receiving care on account of the Bhopal Gas Tragedy, the migrant labourers and many other important issues.

Moreover, only due to Your Lordship's intervention, the issue of welfare of advocates was taken up promptly by the State of Madhya Pradesh and perhaps it was the first State to promulgate a statutory mechanism whereby till date financial assistance of Rs. 1,22,35,000/- (Rupees One Crore Twenty-Two Lakhs and Thirty-Five Thousand) was directly transferred to the bank accounts of 2447 needy lawyers registered with 222 Bar Associations under the State Bar Council of Madhya Pradesh and the process continues.

Despite the severe constraints of virtual hearing, Your Lordship took up complicated and bulky issues such as matters pertaining to the Excise Policy of the State of Madhya Pradesh where large number of lawyers were representing respective parties, the Full Bench matter pertaining to interpretation of Minor Mineral Rules. More importantly, such cases were decided without leaving remotest scope for anyone to think that they were not given adequate opportunity of hearing.

It can be seen that from 3rd of November, 2019 to the first week of March, 2020, My Lord only had about 4 months effective working period before the era of Covid-19. Even in this short period of time various administrative decisions were taken and a large part of the State was visited by My Lord so as to understand the problem at a grass-root level of the judicial system, and wherever necessary, new plans were approved. During Your Lordship's tenure, a book titled *"Judicial History and Courts of Madhya Pradesh"* has been published by the Hon'ble High Court of Madhya Pradesh documenting the rich heritage and cultural history of the courts of Madhya Pradesh.

Your Lordship has played a significant role in laying the foundation stone of the Dharmashastra National Law University, Jabalpur and the M.P. State Judicial Academy in Jabalpur which will be shining stars in the future of Jabalpur. It is only due to Your Lordship's keen interest in educating young minds that this could have become possible.

Before the outbreak of Covid-19 pandemic, I had a few occasions to represent private parties before the court of My Lord during normal physical functioning and after taking over as the Advocate General of the State of Madhya

Pradesh I had been regularly assisting My Lord through virtual hearings. During this period, I also had the privilege of personally interacting with Your Lordship and I found two diverse virtues of Your Lordship. On one hand, during court proceedings My Lord is extremely quick to grasp the main issue and adjudicate within the four corners of law and strictly and firmly uphold the rule of law which at times was challenging for the State. On the other hand, during personal interactions, Your Lordship is extremely warm, kind, helpful, humble and always cheerful and it has always been a pleasure to interact with Your Lordship. Perhaps, Your Lordship's values and upbringing coupled with the rich experience of more than 40 years, both at the bar and the bench are the reasons for these virtues.

This being said I am sure that Your Lordship is very much looking forward to the next phase of life by spending more time with Your Lordship's family and friends and we pray to the almighty to shower his blessings on your Lordship future endeavors.

I would also like to extend my best wishes to Your Lordship's better half, respected Mrs. Indu Mittal, who I am sure has been a pillar of immense support to Your Lordship.

In the end, I would only like to quote the following couplet of Faiz Ahmed Faiz which I think is apt for today's event:

"अब अपना इख़्तियार है चाहे जहाँ चलें,
रहबर में अपनी राह जुदा कर चुके हैं, हम"

I, on behalf of the State of Madhya Pradesh, its Law Officers, the Bar Council of the State of Madhya Pradesh which represents about 90,000 lawyers, its Members and officers and on my own behalf wish Your Lordship a long peaceful and healthy life and all happiness.

Shri Raman Patel, President, M.P. High Court Bar Association, bids farewell:-

हजारों बरस नरगिस रोती है
अपनी बेनूरी पर
तब कहीं मुश्किल से होता हैं दीदायवर पैदा

आप मृदुभाषी, मिलनसार प्रतिभा के धनी व्यक्ति हैं। मेघालय में भी आपने यश कमाया और यहां भी इस न्यायालय की नगरी जिसे संत विनोबा भावे ने संस्कारधानी नाम दिया, में आपको सम्मानित करते हुए, आपकी मां चाहे यहां हो या जहां कहीं भी हो को प्रणाम करता हूं, जिसने आप जैसे पुत्र को जन्म देकर यशस्वी बनाया।

मित्तल साहेब आपसे कम सानिध्य मिला पर इस कम समय में ही बार ने आपको अपनापन दिया और हमें आपसे मिला भी।

आपने अच्छे निर्णय दिये, अजय–विजय की जोड़ी, इस डी0बी0 को बार और संस्कारधानी की जनता याद रखेगी।

मैं सम्पूर्ण अधिवक्ता जगत, सभी उच्च न्यायालय, जिला न्यायालयों, तहसील अधिवक्ता संघों की ओर से आपको साधुवाद देता हूं। साथ ही एक ममत्व देने वाले व्यक्ति की विदाई पर हम गमगीन होकर आपको हमसे सदैव मिलने की उम्मीद लेकर इंकलाबी सलाम करता हूं।

Shri Manoj Sharma, President, High Court Advocates' Bar Association, bids farewell:-

We have assembled here to bid a fond farewell to Hon'ble Shri Justice Ajay Kumar Mittal, The Chief Justice, Madhya Pradesh High Court, as His Lordship is demitting office today on 29th of September 2020.

My Lord the Chief Justice was born on 30th of September 1958 at Chandigarh into great legal traditions, in a family of distinguished lawyers. My Lord's grandfather Shri Shamair Chand, an eminent jurist of his times was Barrister-at-Law at Lahore and later Chandigarh.

My Lord the Chief Justice Shri Ajay Kumar Mittal after graduating from Commerce and Law, enrolled himself as an Advocate and started practice in the High Court of Punjab and Haryana in the year 1980. In a short span of time, My Lord built a formidable reputation in Taxation, Civil, Revenue and Constitutional sides. As an Advocate, My Lord was a leading name in Corporate & Tax Laws and Service matters. My Lord represented the Department of Income Tax in Punjab & Haryana High Court for a long period from 1982 to 1991.

My Lord The Chief Justice Shri Ajay Kumar Mittal was elevated as Judge of Punjab & Haryana High Court on 9th of January 2004 and continued as such till his elevation as The Chief Justice of High Court of Meghalaya in May 2019.

My Lord, during his long tenure as Judge, Punjab & Haryana High Court performed the duties of Executive Chairman of the Haryana State Legal Services Authority for three years as also functioned as The Acting Chief Justice from 4th of May 2018 to 2nd of June 2018.

My Lord was appointed as Chief Justice of the High Court of Madhya Pradesh on 3rd of November 2019.

My Lord The Chief Justice Shri Ajay Kumar Mittal is keen on physical fitness and loves travelling and is a voracious reader. His Lordship is an avid gardener and loves nature.

My Lord The Chief Justice Shri Ajay Kumar Mittal, has endeared himself to the members of the Bar, because of his jovial nature and good qualities of head and heart.

Unfortunately the global pandemic since last six months has disrupted the normal functioning of courts and other institutions throughout the country. However under the able leadership and guidance of My Lord The Chief Justice, we have been able to make some progress by virtual functioning of the Courts. Though lot is desired to improve this system, at least we were able to have some mechanism in place, and I am hopeful of it's constant improvement.

To Quote Kiran Mazumdar-Shaw -

"Ultimately, the greatest lesson that Covid-19 can teach humanity is that we are all in this together."

Oh How I wish that today's farewell Ovation was like in the normal times; although the personal warmth of gathering to bid adieu to My Lord stands curtailed, but I'm sure the same transcends through virtual media.

My Lord The Chief Justice, farewell is a solemn occasion, but may I take liberty to quote from an unknown author, to express our feelings -

"Goodbyes are not forever, Goodbyes are not the end.

They simply mean We'll miss you, Until we meet again".

On behalf of High Court Advocates' Bar Association and on my own behalf I wish God speed to Hon'ble Shri Justice Ajay Kumar Mittal, The Chief Justice, in all his future endeavours.

I wish Hon'ble Shri Justice Ajay Kumar Mittal, The Chief Justice, Mrs. Indu Mittal and all his family members happiness, peace and good health.

God Bless us all and protect us in these difficult times.

Thank You.

Shri Jinendra Kumar Jain, Assistant Solicitor General, bids farewell :-

4 नवम्बर 2019 को श्री अजय कुमार मित्तल का म0 प्र0 उच्च न्यायालय के मुख्य न्यायाधिपति के पद पर पदासीन होने के अवसर पर हुये स्वागत समारोह में बहुत आशा और विश्वास के साथ प्रदेश की समस्याओं और चुनौतियों की ओर ध्यान आकर्षित किया था और समाज के आखिरी छोर तक न्याय की संकल्पना को साकार करने की चुनौती की न्यायिक जगत के मुखिया से अपेक्षा की थी।

समय के पंख होते हैं, लगभग 11 माह का अल्पकाल, उसमें भी मार्च 2020 से कोरोना 19 के कारण न्यायिक कार्य में व्यवधान, इन परिस्थितियों के साथ संघर्ष करते हुये जो उल्लेखनीय कार्य लेखनी के माध्यम से किये गये हैं उनसे इस प्रदेश और संस्कारधानी के प्रति आपका समर्पण, लगाव एवं समस्याओं के निराकरण के लिये पहल करना प्रतिबिंबित होता है, संस्कारधानी उसे कभी भुला नहीं सकती। जबलपुर संस्कारधानी के नाम को सार्थक करने के लिये आपके द्वारा किये गये कार्य, सफाई सीवर के काम की निगरानी के लिये बनाई समिति, नर्मदा तट के किनारे प्रतिबंधित क्षेत्र में किये गये अवैध निर्माण हटाने, डुमना एयरपोर्ट को अंतरराष्ट्रीय स्तर का एयरपोर्ट बनाने के लिये प्रयत्न आदि जनहित के अनेक मामलों में यथोचित आदेश पारित करना। राज्य स्तरीय जनहित के मुद्दों पर भी आपके द्वारा अनेक महत्वपूर्ण आदेश पारित किये गये हैं। कोरोना काल में प्रबंधन एवं स्वास्थ्य के प्रति सजगता आपके द्वारा पारित आदेशों में स्पष्ट झलकती है।

श्री अजय कुमार मित्तल म0प्र0 उच्च न्यायालय के पहले ऐसे मुख्य न्यायाधिपति हैं जिन्होंने शहर के दर्द को न केवल समझा बल्कि उसे महसूस करने के लिये न्यायालय की आसंदी छोड़कर मौके पर निरीक्षण करने भी गये। 15 फरवरी 2020 का दिन हाईकोर्ट के इतिहास के पन्नों में हमेशा के लिये दर्ज हो गया जब आपने शहर में चल रहे विकास कार्यो का मौके पर जाकर निरीक्षण किया।

स्वभाव में अति सादगी एवं मिलनसारिता, कार्यक्रमों के अवसर पर पहलकर खुद जाकर सभी के हालचाल जानना यह एक ऐसा गुण है जो आपके व्यक्तित्व को शिखर की ऊँचाई पर ले जाता है।

मैं आज विदाई के इस अवसर पर आपका अभिनन्दन करता हूँ, और आशा करता हूँ कि आप पद से सेवानिवृत्त हो रहे हैं, कार्यों से नहीं, आगे आने वाले समय में सीमाओं का बंधन नहीं होगा, अंबर और धरती के बीच सारा जहां कार्य के लिये उपलब्ध रहेगा। भारतवर्ष में अनेक व्यक्तियों ने पद पर ना रहते हुये अनेक ऐतिहासिक कार्य किये हैं।

इसी आशा और विश्वास के साथ मैं अपनी ओर से, भारत सरकार की ओर से, सभी केन्द्रीय विधि अधिकारियों की ओर से पुनः आपका स्वागत वंदन करते हुये आपके उज्ज्वल भविष्य की कामना करता हूँ एवं यह भी आशा करता हूं कि जबलपुर से विदा लेने के पश्चात् भी संस्कारधानी एवं संस्कारधानी के लोगों से आपका लगाव कम नही होगा। मैं आपके दीर्घायु होने की कामना करता हूँ एवं आपके जन्मदिन की भी आज बधाई देता हूँ।

धन्यवाद

' जय भारत '

Shri Aditya Adhikari, General Secretary, Senior Advocates' Council, bids farewell :-

My Lord, we have assembled here today to bid farewell and wish well for the future to Hon'ble Chief Justice who will soon demit this high office. My Lord was sworn as a Judge of Punjab & Haryana High Court on 9th of January 2004. My Lord has a tenure of more than 16 glorious years as a Judge and now the time has come when he is demitting this office. My Lord has a very pleasing personality

and is liked by one and all. He treated the lawyers with utmost politeness and is also very kind hearted.

It is trite to say that retirement from active service is not a retirement forever. My Lord has accumulated a vast amount of knowledge and experience in the legal field which would stand in good stead for the next assignment. I hope that My Lord would keep on guiding the members of the bar as and when required.

Hon'ble Sir, as one glorious chapter ends, another magnificent chapter begins. Enjoy your new chapter in life. You will always be remembered for your accomplishments. Thanks for your years of hard work and dedication to the institution. On behalf of the Senior Advocates' Council and on my behalf, I wish Your Lordship good health, happiness and grand success in the next chapter of life.

Farewell Speech delivered by Hon'ble Mr. Justice Ajay Kumar Mittal, Chief Justice :-

I am very much overwhelmed by the sentiments expressed by you on the occasion of my farewell. Many thanks for your affectionate and kind words. I must say with complete certitude that I am extremely touched by the manner the Bar, a devoted, erudite and tolerant, because of impeccable tradition and decorum, had treated me. I express my deepest gratitude with humility and solemn sincerity.

I took oath as Chief Justice of the Madhya Pradesh High Court on 3rd of November 2019. While joining as Chief Justice of the Madhya Pradesh High Court, I had a homely feeling. During my short tenure in Madhya Pradesh High Court, I got complete co-operation from brother and sister Judges, Members of the Bar, Officers of the Registry, Members of Subordinate Judiciary and staff members.

As we all know that due to the pandemic of COVID-19, lockdown was imposed in the country. After withdrawal of lockdown, it was a challenge to start functioning of courts looking to increasing number of patients. To impart justice to the needy litigants, with all precautions, it was decided to hear the cases through video conferencing following the guidelines and instructions issued by the Government of India as well as the Apex Court. This was unique experience to all. Though there were challenges but due to full co-operation of brother and sister Judges, learned members of the Bar, officers of the Registry and the staff, it became possible to function the courts smoothly.

During this pandemic period, we created a history by our maiden attempt of e-inauguration for judicial infrastructure. With blessings and best wishes of

Hon'ble the Chief Justice of India, Hon'ble Mr. Justice Arun Mishra, Hon'ble Mr. Justice A.M. Khanwilkar and Hon'ble Mr. Justice Hemant Gupta, I had the occasion to organize e-foundation stone laying ceremony of new Court buildings proposed to be constructed at Neemuch, Singrauli, Baxwaha (District-Chhatarpur), Ghuwara again in district Chhatarpur, Malthon (District-Sagar) and Majholi (District-Sidhi) in the State of Madhya Pradesh. Apart from this, e-inauguration of New Child Friendly Court Complex at Hoshangabad, New Civil Court Building at Mandhata (Omkareshwar), ADR Centre at Singrauli and Mediation Centers at Jobat (Alirajpur), Seoni-Malwa (Hoshangabad), Chachoda (Guna), Raghogarh (Guna), Aron (Guna), Ashta (Sehore) and Anjad, Rajpur and Khetia (of Barwani District) were also performed. Moreover, I had an occasion to organize e-ceremony for distribution of ISO award/certificates for Civil Court Building Anjad, Rajpur and Sendhwa of District Barwani. District Barwani becomes the first District probably in India having all Civil Courts in its jurisdiction ISO certified. New Regional Training Center, M.P. State Judicial Academy, Gwalior, Condominium for High Court Judges, Jabalpur and Sessions House, Gwalior were also e-inaugurated. During pandemic period, in all 41 e-inaugurations of new Court buildings/Mediation Centers/ADR Centers and 7 e-foundation stone laying ceremonies were organized. I also got opportunity to physically inaugurate M.P. Domestic & International Arbitration Center at Jabalpur and Sessions House, Pachmarhi, District Hoshangabad.

Madhya Pradesh State Judicial Academy was first in the country to conduct induction training course for Civil Judges (Entry Level) online. Several other online training programmes have been organized and the pandemic has been converted into an opportunity.

The release of the book titled “Judicial History and Courts of Madhya Pradesh” was scheduled on 21st of March 2020 by Hon'ble the Chief Justice of India in presence of other dignitaries. However, due to the outbreak of pandemic COVID-19, the said programme was postponed and the book could not be released. Hon'ble the Chief Justice of India was kind enough to bless us by online releasing the book on 27th of August 2020 in august presence of Hon'ble Mr. Justice Arun Mishra, Hon'ble Mr. Justice A.M. Khanwilkar and Hon'ble Mr. Justice Hemant Gupta.

I must pleasantly state that I am extremely thankful to my learned brothers and sisters who have fondly treated me and extended immense cooperation whenever I needed in my judicial as well as administrative functioning.

The Bar and the Bench are equal partners in the endeavour to provide easy access to justice, in particular, to the poor, needy, socially and economically backward groups. The real power of the courts lies in the trust and confidence of the public in Judiciary. The Bar and the Bench have to ensure that such trust and

confidence earned by the Judiciary is not eroded. That can be done only by providing speedy, inexpensive and uniform justice to the citizens. High Court Bars of Madhya Pradesh are one of the learned and efficient Bars in the country. I am sure that with the continued co-operation of the Bar the pendency of cases in Madhya Pradesh High Court can be brought down.

I take leave of the brother and sister Judges of Jabalpur, Indore and Gwalior. Such untiring capable and conscientious Judges are an ornament to the judiciary of the country and I acknowledge their courtesy and goodness to me. I also take leave of all the members of the Bar Associations and thank them for their co-operation and support to me.

At this stage, I should express my heartfelt appreciation for the assistance rendered in a most non-reluctant manner by the members of the Registry, the Officers and the staff of Madhya Pradesh State Legal Services Authority, Madhya Pradesh State Judicial Academy and my personal staff who were attached to me throughout the span of time I had spent here. I request all to visit Chandigarh once and give me opportunity to welcome you all.

Ordinarily, in a farewell address, people seek for forgiveness on the ground that they might have knowingly or unknowingly hurt someone, but I refrain from asking for forgiveness, for I am indubitable the same shall be given to me without asking for the same. It is because you have the largest heart and it would not be a matter of exaggeration to say that the hearts that you possess have the height of Mount Everest and the depth of the Pacific Ocean.

Lastly, I express my gratitude to my wife Mrs. Indu Mittal, son Alok Mittal and daughter Priya Debuka for their unflinching support, encouragement and assistance given to me.

Thanking you.

Jai Hind.

NOTES OF CASES SECTION

Short Note
****(21)***
Before Mr. Justice Shailendra Shukla
M.Cr.C. No. 23883/2020 (Indore) decided on 22 September, 2020

ALKA SHRIVASTAVA ...Applicant

Vs.

STATE OF M.P. …Non-applicant

***Securities and Exchange Board of India Act (15 of 1992), Section 26 – Cognizance of Offence by Court – Bar* – Held – Case relates to breach of provisions of SEBI Act, 1992 and SEBI Regulations, 2013 – Only Special Court empowered to take cognizance on basis of complaint filed by SEBI Board – Police not authorized to register FIR in such cases because there is a statutory bar in such matters – FIR and subsequent proceedings quashed – Application allowed.**

भारतीय प्रतिभूति और विनिमय बोर्ड अधिनियम (1992 का 15), धारा 26 – न्यायालय द्वारा अपराध का संज्ञान – वर्जन – अभिनिर्धारित – प्रकरण, भारतीय प्रतिभूति और विनिमय बोर्ड अधिनियम, 1992 एवं भारतीय प्रतिभूति और विनिमय बोर्ड विनियम, 2013 के उपबंधों के भंग से संबंधित है – भारतीय प्रतिभूति और विनिमय बोर्ड द्वारा प्रस्तुत परिवाद के आधार पर संज्ञान लेने के लिए केवल विशेष न्यायालय सशक्त है – ऐसे प्रकरणों में पुलिस प्रथम सूचना प्रतिवेदन पंजीबद्ध करने के लिए प्राधिकृत नहीं है क्योंकि ऐसे मामलों में कानूनी वर्जन है – प्रथम सूचना प्रतिवेदन एवं पश्चात्वर्ती कार्यवाहियां अभिखंडित – आवेदन मंजूर।

Cases referred:

M.Cr.C. No. 1869/2012 decided on 26.11.2014 (DB), 2006 (1) Crimes 229 S.C., 2006 (SAR) Criminal 934, Special Criminal Application No. 1841/2018 order passed on 12.03.2018 (Gujarat High Court), Civil W.P. No. 2488/2002 order passed on 08.10.2002 (Calcutta High Court), (2018) 5 SCC 718, Cr.A. No. 349/2019 order passed on 05.03.2019 (Supreme Court), 1992 Suppl. (1) SCC 335.

Manish Gupta, for the applicant.
Bhaskar Agrawal, P.P. for the State.

NOTES OF CASES SECTION

Short Note
****(22)***
Before Mr. Justice G.S. Ahluwalia
W.P. No. 22488/2019 (Gwalior) decided on 14 February, 2020

VIJAY MANJHI …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

***A. Service Law – Fundamental Rules, 54 & 54-A – Suspension – Arrears of Pay – Petitioner was facing trial u/S 354 IPC and later secured acquitted on basis of compromise* – Held – Full Bench of this Court concluded that acquittal on basis of compromise cannot be held to be honourable acquittal – No fault found, if department refused to pay arrears of salary for period of suspension – Petition dismissed.**

क. सेवा विधि – मूलभूत नियम, 54 व 54A– निलंबन – वेतन का बकाया – याची, धारा 354, भा.दं.सं. के अंतर्गत विचारण का सामना कर रहा था और बाद में समझौते के आधार पर दोषमुक्ति प्राप्त की – अभिनिर्धारित – इस न्यायालय की पूर्ण न्यायपीठ ने निष्कर्षित किया कि समझौते के आधार पर दोषमुक्ति को सम्मानपूर्वक दोषमुक्ति नहीं ठहरायी जा सकता – कोई दोष नहीं पाया गया, यदि विभाग ने निलंबन अवधि के वेतन के बकाया का भुगतान करने से मना कर दिया – याचिका खारिज।

***B. Service Law – Suspension & Termination* – Held – There is no distinction between termination on conviction and suspension during pendency of criminal case – If a person chargesheeted in a case involving moral turpitude then he can always be placed under suspension under relevant rules.**

ख. सेवा विधि – निलंबन व सेवा समाप्ति – अभिनिर्धारित – दोषसिद्धि पर सेवा समाप्ति एवं दाण्डिक प्रकरण के लंबित रहने के दौरान निलंबन में कोई विभेद नहीं है – यदि एक व्यक्ति को नैतिक अधमता के समावेश वाले किसी प्रकरण में दोषारोपित किया गया है तब उसे सुसंगत नियमों के अंतर्गत, निलंबन के अधीन बिल्कुल रखा जा सकता है।

Cases referred:

(2004) 1 SCC 129, 2018 (2) MPJR 178.

Prakhar Dhengula, for the petitioner.
S.N. Seth, G.A. for the State.

I.L.R. [2020] M.P. 2179 (SC)
SUPREME COURT OF INDIA

Before Mr. Justice Arun Mishra, Ms. Justice Indira Banerjee, Mr. Justice Vineet Saran, Mr. Justice M.R. Shah & Mr. Justice S. Ravindra Bhat

S.L.P. (C) Nos. 9036-9038/2016 decided on 6 March, 2020

INDORE DEVELOPMENT AUTHORITY …Petitioner

Vs.

MANOHARLAL & ors. …Respondents

(Alongwith S.L.P. (C) Nos. 9798-9799/2016, 17088-17089/2016, 37375/2016, 37372/2016, 16573-16605/2016, 15967/2016, 34752-34753/2016, 15890/2017, 33022/2017, 33127/2017, 33114/2017, 16051/2019, 30452/2018, 30577-30580/2015, C.A. Nos. 19356/2017, 19362/2017, 19361/2017, 19358/2017, 19357/2017, 19360/2017, 19359/2017, 19363/2017, 19364/2017, 19412/2017, 4835/2015, M.A. Nos. 1423/2017 in C.A. No. 12247/2016, 1787/2017 in C.A. No. 10210/2016, 1786/2017 in C.A. No. 10207/2016, 45/2018 in C.A. No. 6239/2017 & Diary No. 23842/2018)

***A. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013), Section 24(2) – Lapse of Proceedings – Word "or" & "and" – Conjunctive/Disjunctive* – Held – Collation of words "or" can be meant in conjunctive sense where the disjunctive use of the word leads to repugnance or absurdity – Word "or" used in Section 24(2) between possession and compensation has to be read as "nor" or as "and" – Collation of words used on Section 24(2), two negative conditions are prescribed, thus if one condition is satisfied, there is no lapse of proceedings. (Paras 98 to 111 & 363(3))**

क. भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, (2013 का 30), धारा 24(2) – कार्यवाहियों का व्यपगत होना – शब्द ''या'' व ''और'' – संयोजक/वियोजक – अभिनिर्धारित – ''या'' शब्द के समाकलन का अर्थ संयोजक के रूप में लिया जा सकता है जहां शब्द के वियोजक प्रयोग से प्रतिकूलता या अर्थहीनता उत्पन्न होती है – धारा 24(2) में कब्जा तथा प्रतिकर के मध्य प्रयोग किये गये शब्द ''या'' को ''न तो'' या ''और'' के रूप में पढ़ा जाना चाहिए – धारा 24(2) में प्रयोग किये गये शब्दों का समाकलन, दो नकारात्मक शर्तें विहित की गई हैं, अतः यदि एक शर्त पूरी होती है, कार्यवाहियां व्यपगत नहीं होती हैं।

***B. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013), Section 24(2) – Deemed Lapse of Proceedings* – Held – Deemed lapse u/S 24(2) takes place where due to inaction of authorities for five years or more prior to commencement to said Act, possession of land has not been taken nor**

compensation has been paid – In case possession has been taken and compensation has not been paid, then there is no lapse – Similarly, if compensation paid and possession not taken then also there is no lapse of proceedings. (Paras 101, 113 & 363(3))

ख. भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, (2013 का 30), धारा 24(2) – कार्यवाहियों का व्यपगत होना समझा जाना – अभिनिर्धारित – धारा 24(2) के अंतर्गत व्यपगत होना तब समझा जाता है जहां उक्त अधिनियम के प्रारंभ होने के, पांच वर्ष या उससे अधिक पूर्व से प्राधिकारियों की निष्क्रियता के कारण, भूमि का कब्जा नहीं लिया गया है, न ही प्रतिकर का भुगतान किया गया है – यदि कब्जा ले लिया गया है तथा प्रतिकर का भुगतान नहीं किया गया है, तब कोई व्यपगत नहीं हुआ है – उसी प्रकार से, यदि प्रतिकर का भुगतान किया गया और कब्जा नहीं लिया गया तब भी कार्यवाहियां व्यपगत नहीं होती।

***C. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013), Section 24(1)(a) – Award & Compensation* – Held – U/S 24(1)(a), in case award is not made as on 01.01.2014, i.e. the date of commencement of Act of 2013, there is no lapse of proceedings – Compensation has to be determined under provisions of Act of 2013. (Para 173 & 363(1))**

ग. भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, (2013 का 30), धारा 24(1)(a) – अधिनिर्णय व प्रतिकर – अभिनिर्धारित – धारा 24(1)(a) के अंतर्गत, यदि दिनांक 01.01.2014 अर्थात् 2013 के अधिनियम के आरंभ होने की तिथि को अधिनिर्णय नहीं हुआ है, तो कार्यवाहियां व्यपगत नहीं होती – प्रतिकर का निर्धारण, 2013 के अधिनियम के उपबंधों के अंतर्गत किया जाना चाहिए।

***D. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013), Section 24(1)(b) – Interim Order of Court – Effect* – Held – In case award has been passed within window period of 5 years excluding the period covered by an interim order of Court, then proceedings shall continue as per Section 24(1)(b) under the Act of 1894 as if it has not been repealed. (Paras 173, 182 & 363(2))**

घ. भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, (2013 का 30), धारा 24(1)(b) – न्यायालय का अंतरिम आदेश – प्रभाव – अभिनिर्धारित – यदि, न्यायालय के अंतरिम आदेश द्वारा आच्छादित अवधि को अपवर्जित करते हुए पांच वर्ष की निर्धारित अवधि के भीतर अधिनिर्णय पारित किया गया है, तब कार्यवाहियां 1894 के अधिनियम की धारा 24(1)(b) के अनुसार जारी रहेंगी जैसे कि वह निरसित न किया गया हो।

E. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013), Section 24(2)

and Land Acquisition Act (1 of 1894), Section 17(1) – Possession under Urgency – Lapse of Proceedings **– Held – Where no award is passed and possession has been taken in urgency u/S 17(1) of old Act of 1894, there is no lapse of entire proceedings but only higher compensation would follow u/S 24(1)(a) of Act of 2013 even if payment has not been made or tendered under the old Act – Provision of lapse u/S 24 only available when award is made but possession not taken within five years nor compensation paid.**

(Para 122 & 123)

ङ. भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, (2013 का 30), धारा 24(2) एवं भूमि अर्जन अधिनियम (1894 का 1), धारा 17(1) – अत्यावश्यकता के अधीन कब्जा – कार्यवाहियों का व्यपगत होना – अभिनिर्धारित – जहां कोई अधिनिर्णय पारित नहीं किया गया है तथा 1894 के पुराने अधिनियम की धारा 17(1) के अंतर्गत अत्यावश्यकता में कब्जा लिया गया है, संपूर्ण कार्यवाहियां व्यपगत नहीं होती है परंतु 2013 के अधिनियम की धारा 24(1)(a) के अंतर्गत केवल उच्चतर प्रतिकर दिया जाएगा भले ही पुराने अधिनियम के अंतर्गत भुगतान नहीं किया गया हो न प्रस्तुत किया गया हो – धारा 24 के अंतर्गत व्यपगत का उपबंध केवल तब उपलब्ध है जब अधिनिर्णय किया गया है लेकिन पांच वर्षों के भीतर कब्जा नहीं लिया गया हो न ही प्रतिकर का भुगतान किया गया हो।

F. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013), Section 24(2), proviso and Land Acquisition Act (1 of 1894), Sections 4, 31 & 34 – Determination of Compensation – Expression "Paid" **– Held – Expression "paid" in main part of Section 24(2) does not include a deposit of compensation in Court – Consequence of non-deposit is provided in proviso to Section 24(2) in case not deposited for majority of land holdings, then all beneficiaries (landowners) as on date of notification u/S 4 of old Act shall be entitled to compensation as per Act of 2013 – In case obligation u/S 31 of old Act has not been fulfilled, interest u/S 34 can be granted – Non-deposit of compensation in Court does not result in lapse of proceedings – In case of non-deposit for majority of holdings for 5 years or more, compensation under Act of 2013 has to be paid to landowners as on date of notification for acquisition u/S 4 of Old Act. (Paras 198 to 224 & 363(4))**

च. भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, (2013 का 30), धारा 24(2), परंतुक एवं भूमि अर्जन अधिनियम (1894 का 1), धाराएँ 4, 31 व 34 – प्रतिकर का अवधारण – अभिव्यक्ति ''भुगतान'' – अभिनिर्धारित – धारा 24(2) के मुख्य भाग में अभिव्यक्ति ''भुगतान'' के अंतर्गत न्यायालय में प्रतिकर का जमा किया जाना शामिल नहीं है – भुगतान न किये जाने का परिणाम धारा 24(2) के परंतुक में उपबंधित किया गया है, यदि अधिकांश धारित भूमि के लिए भुगतान नहीं किया गया, तब सभी हिताधिकारी (भूमि स्वामी) पुराने अधिनियम की धारा 4 के अंतर्गत अधिसूचना की तिथि को 2013 के अधिनियम के अनुसार प्रतिकर के

हकदार होंगे – यदि पूर्व अधिनियम की धारा 31 के अंतर्गत दायित्व का निर्वहन नहीं किया गया, धारा 34 के अंतर्गत ब्याज प्रदान किया जा सकता है – न्यायालय में प्रतिकर का भुगतान न किये जाने के फलस्वरूप कार्यवाहियां व्यपगत नहीं होती – पांच वर्ष या उससे अधिक के लिए अधिकांश भूमि के गैर–भुगतान के मामले में, पूर्व अधिनियम की धारा 4 के अंतर्गत अर्जन की अधिसूचना की तिथि को भूमिस्वामियों को 2013 के अधिनियम के अंतर्गत प्रतिकर का भुगतान किया जाना चाहिए।

G. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013), Section 24(2), proviso and Land Acquisition Act (1 of 1894), Section 31(1) – Non-Deposit of Compensation – Lapse of Proceedings **– Held – In case a person has been tendered compensation u/S 31(1) of old Act, it is not open for him to claim that acquisition has lapsed u/S 24(2) due to non-payment or non-deposit of compensation in Court – Obligation to pay is complete by tendering the amount – Landowners who refused to accept compensation or who sought reference for higher compensation, cannot claim the proceedings to be lapsed u/S 24(2) of Act of 2013. (Para 363(5))**

छ. भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, (2013 का 30), धारा 24(2), परंतुक एवं भूमि अर्जन अधिनियम (1894 का 1), धारा 31(1) – प्रतिकर का जमा न किया जाना – कार्यवाहियों का व्यपगत होना – अभिनिर्धारित – यदि एक व्यक्ति को पूर्व अधिनियम की धारा 31(1) के अंतर्गत प्रतिकर प्रस्तुत किया जाता है, तो वह यह दावा नहीं कर सकता कि न्यायालय में प्रतिकर के भुगतान न किये जाने अथवा जमा न किये जाने के कारण धारा 24(2) के अंतर्गत अर्जन व्यपगत हो जाता है – राशि प्रस्तुत करते ही भुगतान का दायित्व पूर्ण हो जाता है – भूमि स्वामी जिन्होंने प्रतिकर स्वीकार करने से इंकार कर दिया है तथा जिन्होंने उच्चतर प्रतिकर के लिए निर्देश चाहा है, वे 2013 के अधिनियम की धारा 24(2) के अंतर्गत कार्यवाहियां व्यपगत हो जाने का दावा नहीं कर सकते।

H. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013), Section 24(1)(b) & 24(2), proviso – Applicability of Proviso **– Held – Proviso to Section 24(2) is to be treated as part of Section 24(2) and not a part of 24(1)(b). (Para 363(6))**

ज. भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, (2013 का 30), धारा 24(1)(b) व 24(2), परंतुक – परंतुक की प्रयोज्यता – अभिनिर्धारित – धारा 24(2) के परंतुक को धारा 24(2) का भाग समझा जाना चाहिए तथा न कि धारा 24(1)(b) का भाग ।

I. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013), Section 24(2) and Land Acquisition Act (1 of 1894), Section 16 – Vesting of land – Mode of Taking Possession **– Held – Mode of taking possession under old Act and as contemplated u/S 24(2) is by drawing of inquest report/memorandum –**

Once award is passed on taking possession u/S 16 of old Act, land vests in State, there is no divesting provided u/S 24(2) of Act of 2013, as once possession has been taken, there is no lapse u/S 24(2).

(Paras 244 to 277 & 363(7))

झ. भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, (2013 का 30), धारा 24(2) एवं भूमि अर्जन अधिनियम (1894 का 1), धारा 16 – भूमि निहित किया जाना – कब्जा लेने का ढंग – अभिनिर्धारित – पुराने अधिनियम के अंतर्गत तथा धारा 24(2) में अनुध्यात अनुसार जांच प्रतिवेदन/मेमो तैयार कर कब्जा लिया जा सकता है – एक बार पुराने अधिनियम की धारा 16 के अंतर्गत कब्जा लेने पर अधिनिर्णय पारित हो जाने पर, भूमि राज्य को निहित हो जाती है, 2013 के अधिनियम की धारा 24(2) के अंतर्गत कोई निर्निहितीकरण उपबंधित नहीं है, चूंकि एक बार कब्जा ले लिया गया है, धारा 24(2) के अंतर्गत कोई व्यपगत नहीं है।

J. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013), Section 24(2) – Deemed Lapse of Proceedings – Computation of Period **– Held – Provisions of Section 24(2) providing for deemed lapse are applicable in case authorities, due to their inaction failed to take possession and pay compensation for 5 years or more before the Act of 2013 came into force, in a pending proceedings as on 01.01.2014 – Period of subsistence of interim orders passed by Court has to be excluded in computation of 5 years. (Para 363(8))**

ञ. भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, (2013 का 30), धारा 24(2) – कार्यवाहियों का व्यपगत होना समझा जाना – अवधि की संगणना – अभिनिर्धारित – व्यपगत हुआ समझा जाना, के लिए उपबंधित करने वाली धारा 24(2) के उपबंध उस मामले में प्रयोज्य होते हैं जहाँ दिनांक 01.01.2014 को लंबित कार्यवाहियों में प्राधिकारीगण की निष्क्रियता के कारण, 2013 के अधिनियम के प्रवर्तन में आने से 5 वर्ष या उससे अधिक पूर्व तक कब्जा लेने तथा प्रतिकर का भुगतान करने में विफल रहे हों – न्यायालय द्वारा पारित किये गये अंतरिम आदेशों के अस्तित्व की अवधि को 5 वर्षों की संगणना में से अपवर्जित किया जाना चाहिए।

K. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013), Section 24(2) – Applicability – Cause of Action **– Held – Section 24(2) does not give rise to a new cause of action to question legality of concluded proceedings – Section 24 applies to a proceeding pending on date of enforcement of Act of 2013 – It does not revive stale and time-barred claims and does not re-open concluded proceedings nor allow landowners to question legality of mode of taking possession to re-open proceedings or mode of deposit of compensation in treasury instead of Court to invalidate acquisition. (Para 356 & 363(9))**

ट. भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, (2013 का 30), धारा 24(2) – प्रयोज्यता – वाद हेतुक

– अभिनिर्धारित – धारा 24(2) समापन की कार्यवाहियों की वैधता पर प्रश्न करने हेतु एक नया वाद हेतुक उत्पन्न नहीं करता – धारा 24, 2013 के अधिनियम की प्रवर्तन की तिथि को लंबित कार्यवाही पर लागू होती है – यह पुराने तथा समय द्वारा वर्जित दावों को पुनः प्रवर्तित नहीं करती तथा न समाप्त कार्यवाहियों को पुनः आरंभ करती है, न ही भूमिस्वामियों को कार्यवाहियों को पुनः आरंभ करने के लिए कब्जा लेने के ढंग अथवा अर्जन को अविधिमान्य करने हेतु न्यायालय के बजाय कोषालय में प्रतिकर जमा करने के ढंग पर प्रश्न उठाने की मंजूरी देती है।

Cases referred:

(2014) 3 SCC 183, (2016) 6 SCC 387, (2015) 3 SCC 353, 2018 SCC Online SC 100, [1991] 2 All ER 712, [1994] 1 A.C. 486, (2004) 8 SCC 01, 2015 (7) SCC 579, 1966 (1) SCR 890, 1964 (1) SCR 897, (2012) 2 SCC 108, (1989) 3 SCC 709, (2003) 3 SCC 57, (2003) 6 SCC 186, (2003) 7 SCC 628, (2008) 3 SCC 279, (2008) 4 SCC 720, (2008) 13 SCC 30, (2009) 7 SCC 1, (2010) 4 SCC 301, (2011) 7 SCC 639, 2015 (3) SCC 353, (2012) 9 SCC 552, (1948) 2 All ER 825 (HL), (2013) 6 SCC 278, AIR 1957 SC 18, (2002) 3 SCC 722, (1969) 2 SCC 316, (1971) 1 SCC 337, (1964) 53 ITR 83 [AIR 1964 SC 1866], 1969 (1) SCR 219, (2018) 1 SCC 353, 1927 All ER 195 (CA), 1961 (3) SCR 718, 1957 (1) SCR 874, 1965 (2) SCR 328, 1971 SCR 977, 1987 (3) SCC 308, 1998 (7) SCC 59, 2005 (5) SCC 420, 1953 SCR 1, 2005 (2) SCC 591, (1955) 2 SCR 603, 1954 SCR 11, (2015) 16 SCC 542, (2003) 1 SCC 335, (1976) 1 SCC 800, (2009) 10 SCC 501, (1996) 6 SCC 405, (2011) 5 SCC 394, (1996) 8 SCC 259, (1976) 1 SCC 700, (1996) 7 SCC 269, (2010) 13 SCC 158, 1988 Suppl. (1) SCR 01, 2014 (2) SCC 62, 1959 Supp (1) SCR 639, 2003 SCC 648, 2012 (3) SCC 522, (2011) 4 SCC 769, (2011) 5 SCC 553, 2012 (12) SCC 675, 1971 (1) SCC 85, (1996) 4 SCC 76, (2014) 6 SCC 586, (2014) 6 SCC 583, (2014) 6 SCC 564, 2014 (15) SCC 410, (2015) 3 SCC 597, (2015) 4 SCC 347, 2015 (4) SCC 325, (2015) 3 SCC 206, (2015) 3 SCC 541, AIR 2015 SC 3186, AIR 2015 SC 2683, 2014 (5) SCC 738, 2016 (13) SCC 380, (2016) 16 SCC 258, (2011) 11 SCC 506, (2005) 3 SCC 551, (1969) 3 SCC 95, (1987) 4 SCC 203, 1953 SCR 325, (1979) 4 SCC 274, (1995) 5 SCC 238, (1976) 2 SCC 152, (2015) 6 SCC 222, (2002) 3 SCC 533, (2007) 14 SCC 339, (1975) 4 SCC 22, (1972) 3 SCC 717, (2006) 7 SCC 1, (1998) 2 SCC 109, 1984 (2) SCC 183, 1981 (1) SCC 315, 2003 (10) SCC 765, (2011) 4 SCC 266, 1966 (1) SCR 543, 1950 SCR 435, 2000 (2) SCC 69, 1997 (6) SCC 71, 1997 (8) SCC 72, (2005) 8 SCC 89, (1955) 1 SCR 893, 1987 Supp SCC 350, (2011) 9 SCC 97, (1972) 4 SCC 174, 1969 (3) SCR 65, 2016 (4) SCC 216, AIR 1970 SC 1559:(1970) 3 SCC 864, (1971) 2 SCC 540, (1927) All ER Rep 195 (CA), AIR 1965 SC 1457, 1971 (2) SCC 540, 1974 (1) WLR 505, AIR 1961 SC 935, (2005) 5 SCC 420, (1987) 3 SCC 308, (1928) 1 KB 561, AIR 1963 SC 1638, 1965 (2) SCR 853, 1975 (2) SCC 671, (1980) 1 SCC 158, (1992) 4 SCC 54, LR (AC) Vol. XIII 1888 595, (1931) 2 Ch. 333, (1881) VIII QBD 445, 1958 SCR 1156, (2004) 8 SCC

387, 1994 (5) SCC 593, 2004 (7) SCC 288, (1997) 2 SCC 627, (2012) 1 SCC 66, (1993) 4 SCC 369, (2009) 10 SCC 689, (1996) 3 SCC 1, (1995) 6 SCC 31, (1994) 5 SCC 486, (2010) 13 SCC 98, AIR 1952 SC 181, AIR 1961 SC 751, AIR 1965 SC 895, AIR 1975 SC 2190, AIR 1980 SC 303, (2003) 3 SCC 433, AIR 2003 SC 511, AIR 2004 SC 2036, AIR 1989 SC 1160, (2000) 7 SCC 679, (1995) 1 SCC 133, (2009) 1 SCC 714, 1961 (2) SCR 189, 1968 (1) SCR 771, 1996 (7) JT 118, (1996) 11 SCC 698, (1996) 1 SCC 311, (1996) 3 SCC 99, 1957 SCR 01, (2017) 9 SCC 463, (1892) 3 Ch. 402, (1917) 2 K.B. 374, (1916) 2 K.B. 249, (2015) 7 SCC 579, (2013) 3 SCC 1, 2000 (5) SCC 488, 1962 (1) SCR 44, 1955 SCR 1196, 2002 (3) SCC 533, 2013 (10) SCC 765, (2003) 2 SCC 111, (2018) 14 SCC 161, [1981] 3 All ER 8, [1981] AC 124, [1910] AC 337, 2007 (2) All ER 382, [2012] 1 WLR 3524, 102 Me. 401, 67 A.2 (1907), (2006) 6 SCC 530, (2017) 16 SCC 28, (1982) 1 SCC 561, 1965 (1) SCR 276, 1967 (1) SCR 831, AIR (1968) SC 59, (1985) 1 SCC 591, 1966 (1) SCR 367, (2004) 1 SCC 574, (2014) 13 SCC 318, 1965 (3) SCR 626, AIR 1961 SC 1596, 1976 (1) SCC 128, 1959 (Supp 2) SCR 256, (2006) 6 SCC 510, (1985) 2 SCC 279, 1988 (4) SCC 644, AIR (34) 1947 PC 94, 1962 (Supp 3) SCR 318, 1965 (1) SCR 998, (1968) 1 PLJR 94, (1846) 6 Moore PC 1, 1955 (2) SCR 842, (1989) 1 SCC 760, (1999) 9 SCC 700, (2003) 4 SCC 305, (2003) 5 SCC 622, (1969) 3 SCC 392, (1980) 3 SCC 304, (1998) 6 SCC 554, (1996) 3 W.L.R. 1008, (2009) 6 SCC 735, (2003) 6 SCC 401, 1990 Supp SCC 806, (1995) 6 SCC 240, (1997) 10 SCC 77, AIR 1949 Pat 146, (1912) 1 Ch 527, (2004) 3 SCC 684, 1959 (Suppl 2) SCR 798, (2012) 12 SCC 133, 2011 (12) SCC 695, 2001 (8) SCC 143, (1996) 4 SCC 212, (2005) 12 SCC 489, (2015) 17 SCC 1, 2017 (13) SCC 474, (2018) 12 SCC 400, 1976 (2) SCC 134, 1979 (3) SCC 106, (1979) 4 SCC 27, (1988) Supp. SCC 488, (1998) 4 SCC 387, (2012) 1 SCC 792, AIR 1958 SC 434, 2012 (5) SCC 370, 2009 (8) SCC 339, (2009) 2 SCC 121, (1949) 2 K.B. 481, (1961) 2 SCR 295, (1988) 2 SCC 513, (1999) 6 SCC 459, (1986) 4 SCC 66, (1979) 3 SCC 229, (2001) 4 SCC 713, (1997) 5 SCC 421, (2010) 4 SCC 17, (1990) 1 SCC 593, (2001) 8 SCC 24, 2014 (6) SCC 564, 1989 (3) SCC 411, (1996) 10 SCC 619, 2013 (10) SCC 746, 1999 (5) SCC 209, 1999 (8) SCC 266, 2000 (4) SCC 342, 2002 (5) SCC 54, (2005) 1 SCC 191, ILR (1899) 22 Mad 179, (1974) 2 SCC 33, (2005) 4 SCC 530, AIR 1961 SC 1353, (1998) 3 SCC 376, (2005) 8 SCC 423, (1992) 2 SCC 620, (1980) 2 SCC 191, (1995) 3 SCC 33, (2010) 1 SCC 417, (2004) 2 SCC 783, (1976) 1 SCC 766, (2017) 14 SCC 136, (1889) 21 QBD 52, (1972) 2 SCC 560, (1977) 4 SCC 608, (2003) 8 SCC 648, (2012) 3 SCC 522, (2012) 6 SCC 430, (2011) 8 SCC 161, (1999) 2 SCC 325, (2010) 9 SCC 437, (2006) 3 SCC 286, 2019 (13) SCALE 698, (2018) 3 SCC 588, (2015) 5 SCC 321, AIR 1984 SC 1020, (1996) 1 SCC 250, (1996) 11 SCC 501, (2008) 3 SCC 462, (2005) 6 SCC 493, (2017) 6 SCC 787, (2008) 4 SCC 695, (2003) 12 SCC 538, (2002) 7 SCC 712, (1990) 2 SCC 268, (2006) 11 SCC 464, (1970) 1 SCC 84, (2007) 9 SCC 109, (2005) 8 SCC 709, (2012) 6 SCC 613, (1994) 2 SCC 647, (1974) AC 765, (1970) 1 SCC 613, (2018) 16 SCC 228, (2012) 12 SCC 443, (1994) 1 SCC 4.

J U D G M E N T

The Judgment of the Court was delivered by :

ARUN MISHRA, J. :- The correct interpretation of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the Act of 2013'), is the subject matter of reference to this five Judge Bench of this Court.

2. A three Judge Bench of this Court in *Pune Municipal Corporation & Anr v Harakchand Misrimal Solanki & Ors*[1], interpreted Section 24 of the Act of 2013. The order reported as *Yogesh Neema & Ors v State of Madhya Pradesh*[2], a two-judge Bench, however doubted the decision in *Sree Balaji Nagar Residents Association v State of Tamil Nadu*[3] (which had followed *Pune Municipal Corporation* (supra) and also held that Section 24 (2) of the Act of 2013 does not exclude any period during which the land acquisition proceeding might have remained stayed on account of stay or injunction granted by any court) and referred the issue to a larger Bench. Later, in another appeal (arising out of S.L.P. (C) No.2131 of 2016 *(Indore Development Authority v Shailendra (dead) through Lrs. & Ors.*[4]*)* the matter was referred to a larger Bench on 7.12.2017; the Court noticed that:

> *"cases which have been concluded are being revived. In spite of not accepting the compensation deliberately and statement are made in the Court that they do not want to receive the compensation at any cost, and they are agitating the matter time and again after having lost the matters and when proceedings are kept pending by interim orders by filing successive petitions, the provisions of section 24 cannot be invoked by such landowners."*

3. The Court noticed that the reference to a larger Bench was pending, and had been made in *Yogesh Neema* (supra). The Court also felt that several other issues arose which it outlined, but were not considered in *Pune Municipal Corporation* (supra). The Court therefore, stated that the matter should be considered by a larger Bench and referred the case to Hon'ble the Chief Justice of India for appropriate orders. *Indore Development Authority v Shailendra* (hereafter, *"IDA v Shailendra")* a Bench of three Judges was of the view that the judgment in *Pune Municipal Corporation* (supra) did not consider several aspects relating to the interpretation of Section 24 of the Act of 2013. Since *Pune Municipal Corporation* (supra) was a judgment by a Bench of coordinate

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[1](2014) 3 SCC 183
[2](2016) 6 SCC 387
[3](2015) 3 SCC 353
[4]2018 SCC Online SC 100

strength, two learned judges in *IDA v Shailendra* opined *prima facie* that decision appeared to be *per incuriam.*

4. Later, in *Indore Development Authority v Shyam Verma & Ors* (SLP No. 9798 of 2016) considered it appropriate to refer the matter to Hon'ble the Chief Justice of India to refer the issues to be resolved by a larger Bench at the earliest. Yet again in *State of Haryana v Maharana Pratap Charitable Trust (Regd) & Anr* (CA No.4835 of 2015) referred the matter to Hon'ble the Chief Justice of India to constitute an appropriate Bench for consideration of the larger issue. These batch appeals were referred to a five Judge Bench, which after hearing counsel, framed the following questions, which arise for consideration:

> *"1. What is the meaning of the expression paid'/tender' in Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act of 2013,) and Section 31 of the Land Acquisition Act, LA (Act of 1894')? Whether non-deposit of compensation in court under section 31(2) of the Act of 1894 results into lapse of acquisition under section 24(2) of the Act of 2013. What are the consequences of non-deposit in Court especially when compensation has been tendered and refused under section 31(1) of the Act of 1894 and section 24(2) of the Act of 2013? Whether such persons after refusal can take advantage of their wrong/conduct?*
>
> *2. Whether the word or' should be read as conjunctive or disjunctive in Section 24(2) of the Act of 2013?*
>
> *3. What is the true effect of the proviso, does it form part of sub-Section (2) or main Section 24 of the Act of 2013?*
>
> *4. What is mode of taking possession under the Land Acquisition Act and true meaning of expression the physical possession of the land has not been taken occurring in Section 24(2) of the Act of 2013?*
>
> *5. Whether the period covered by an interim order of a Court concerning land acquisition proceedings ought to be excluded for the purpose of applicability of Section 24(2) of the Act of 2013 ?*
>
> *6. Whether Section 24 of the Act of 2013 revives barred and stale claims? In addition, question of per incuriam and other incidental questions also to be gone into."*

5. Question nos.1 to 3 are interconnected and concern the correct interpretation of Section 24(2) of the Act of 2013. Following questions are

required to be gone into to interpret the provisions of Section 24(2) of the Act of 2013:

(i) Whether the word "or" in Section 24(2) of the Act of 2013 used in between possession has not been taken or compensation has not been paid to be read as "and"?

(ii) Whether proviso to Section 24(2) of the Act of 2013 has to be construed as part thereof or proviso to Section 24(1)(b)?

(iii) What meaning is to be given to the word "paid" used in Section 24(2) and "deposited" used in the proviso to Section 24(2)?

(iv) What are the consequences of payment not made?

(v) What are the consequences of the amount not deposited?

(vi) What is the effect of a person refusing to accept the compensation?

6. The Act of 2013 repeals and replaces the Land Acquisition Act, 1894, a general law for acquisition of land of public purposes, which had been in force for almost 120 years, with a view to address certain inadequacies and/ or shortcomings in the said Act.

7. The Act of 2013 is prospective and saves proceedings already initiated under the Land Acquisition Act, 1894 before its repeal, subject to provisions of Section 24 of the Act of 2013, which begins with a *non-obstante* clause and overrides all other provisions of the Act of 2013.

8. On behalf of the Union, the States and various acquiring bodies and development authorities, Mr. Tushar Mehta, learned Solicitor General (who led the arguments, hereafter "SG"), Ms. Pinky Anand, learned Additional Solicitor General (hereafter "ASG"), Mr. Anoop Chaudhary and Mr. Jayant Muthuraj, learned Senior Counsel, Ms. Shashi Kiran, Ms. Rachna Srivastava, Mr. R.M. Bhangade and Mr. Rajesh Mahale, learned counsel, made their submissions.

9. The learned SG, arguing that this Court should overrule the *ratio* in *Pune Municipal Corporation* (supra) and other judgments which followed it, contended that the Court did not consider the various interpretations of Section 31 of the (repealed) Land Acquisition Act, ("LA Act" hereafter). He urged that the provisions of the Act of 2013, vis-a-vis the timelines and consequences that would ensue if the acquisition proceeding prolongs, were not examined. He highlighted that Section 24 is a transitional provision and such provisions should be given an interpretation which accords with legislative intent, rather than so as to impose hitherto absent standards, upon past proceedings, or proceedings initiated under the previous *regime,* but which have not worked themselves out. He urged that there is a presumption in favour of restricted retrospective applicability of any

provision in an enactment unless a contrary intention appears. It is submitted that designedly, it is the stage of passing of award under Section 11 of the LA Act, that represents the *determinative factor* in the segregation for the applicability of the provisions of the Act of 2013 or the LA Act. It is urged that the opening part of the provision in Section 24(1) is a *non-obstante clause* providing for a limited overriding effect of the Land Acquisition Act, in case of the contingencies mentioned in Section 24 (1) (a) and (b) of the Act of 2013.

10. Section 24 (1) (a) contemplates that where no award under Section 11 of the LA Act has been made, but proceedings had been initiated under said Act, provisions of the Act of 2013 would apply limited to the determination of compensation. In other words, the entire exercise *de novo,* under the Act of 2013, will not be required to be undertaken. Therefore, Section 24 (1) (a) contemplates a limited applicability of the Act of 2013. Section 24 (1) (b) stipulates that where an award under Section 11 of the LA Act has been made, the entire proceedings would continue under that law and the provisions of the Act of 2013 would be inapplicable. Section 24 (1) (b) is the larger umbrella clause under Section 24, which protects the vested rights of the parties under the LA Act if the stage of passing of award has been crossed. It is argued that the umbrella clause Section 24 (1) (b), is followed by Section 24(2) -which provides for the exclusionary clause. Section 24 (2), the learned SG highlighted, *is the only lapsing clause under the provision which brings in the rigours of the Act of 2013 in totality* by mandating the land acquisition to be initiated *de novo.*

11. It is urged that Section 24 (2) opens with a *non obstante* clause carving out an exception only from Section 24 (1). It visualizes that land acquisition proceedings which had been initiated under the LA Act, an award under Section 11 of the LA Act had been made. Consequently, Section 24 (2) has no relation to Section 24 (1) (a) as it does not contemplate an award under Section 11 of the LA Act at all. It is, therefore, a limited exception to Section 24 (1) (b). Section 24 (2) consequently is umbilically related to Section 24 (1) (b) as an exception, wherein land acquisition proceedings would lapse in certain contingencies even when an award under Section 11 of the LA Act had been made.

12. It is submitted that the contingencies for lapsing in Section 24(2), are subject to an award under Section 11 of the LA Act being made five years prior to the commencement of the Act of 2013 (which is 1. 1.2014). If the award is so made, two contingencies result in complete lapse -: (a) Physical possession of the land has not been taken; or (b) compensation has not been "paid". The provision for lapse, *per* Section 24(2) is, by its nature, a vital provision, inviting serious consequences, in case those contingencies arise. It is the interpretation of these "contingencies" that requires further consideration. The "contingencies" ought to be interpreted in a manner which saves the past transactions to the extent they can

be saved as it is clearly not the intention of the Act of 2013 to tide over all past transactions.

13. The learned SG argued that the proviso to Section 24(2) further carves out an exception to Section 24(2) viz, in case the award has been made and compensation in respect of *majority of landholdings* has not been deposited in the account of the beneficiaries, no lapsing will take place, but all the beneficiaries specified in the notification for acquisition shall be entitled to compensation in accordance with the provisions of the Act of 2013.

14. Therefore, if only a minority of the claimants are disbursed with the compensation, such claimants would get benefit of compensation under the Act of 2013 to a limited extent without lapsing. Thus, it is clear that even if the acquisition does not lapse, all the beneficiaries to whom the compensation is payable would be entitled to compensation under the Act of 2013.

15. It is submitted that Section 24(1)(a) and Section 24(2) are balancing provisions controlling the extent of retrospectivity and curtailing the effacement of rights. Such balance of protecting acquisitions under the LA Act in some defined circumstances whilst providing the enhanced compensation provisions under the Act of 2013 under some defined circumstances is the "middle path" that Parliament adopted. It is contended that Section 24(2) is, therefore, controlled by the proviso mandating again a further middle path consciously chosen by Parliament.

16. It is argued that while providing for a transitory provision or situations resulting into "lapsing" of all the steps already taken under the Act under repeal, the legislature always envisages several contingencies which emerge out of its day-to-day experience. The manner in which section 24[2] and the proviso attached therewith are drafted clearly discloses that Parliament intended certain inevitable contingencies which frequently arose in land acquisition proceedings. It was urged illustratively, that often, land acquired belongs to *benami* owners, who cannot put forward title, or claim compensation or identify themselves. In such situations, it may not be possible for an acquiring authority to "pay" [which, as plain language indicates, would mean setting apart for being taken by the entitled persons as explained hereafter] to *"all"* land holders/ entitled persons. However, as is clear from the proviso to Section 24[2], if it can be shown that the amount is *deposited* for majority of share-holding, the acquisition would be saved and cannot lapse; the only consequence would be the determination of benefits under the Act of 2013. Parliamentary intent in the proviso clearly appears to be to ascertain the stage up to which the land acquisition proceedings under LA Act have reached. If nobody is paid the compensation or compensation is not taken by everyone though tendered and/or kept ready, the legislature contemplates such a situation to be a reversible one and, therefore, provides for lapsing of all previous

stages prior to "non-payment". However, if it can be demonstrated that though - (1) compensation was tendered to all; (2) some of them [for whatever reason] did not take the compensation; and (3) compensation is deposited in case of majority of the land holdings [viz. setting apart the share of such persons and making it available for them to take it], then, neither proceedings would lapse nor the compensation will be required to be determined under the Act of 2013. In substance, therefore, the legal situation would be akin to the one contemplated under Section 24[1][b] for all practical purposes.

17. It is submitted that during the drafting of the Bill, the legislative intent and the apprehensions of the stakeholders in the acquisition process is clearly depicted in 31st Report of the 'Standing Committee on Rural Development' while discussing the 'The Land Acquisition, Rehabilitation and Resettlement Bill, 2011' which was the precursor to the Act of 2013. The learned SG relied on extracts of the Standing Committee Reports, the draft Bill, various comments from government and public agencies and departments and other stakeholders, the stage(s) during which amendments were proposed to the draft provisions (of Section 24) and its culmination into the present form and structure.

18. The learned SG argued that the amendments proposed by the Minister while introducing the Bill - to incorporate an explanation, as to what constitutes "deposit" was not accepted in the legislative wisdom of the Lok Sabha and the Bill so passed consciously did not incorporate the Explanation (in the form of Proviso to Section 24(2)) providing for an extensive and artificial meaning of the word *paid.* Further, reference to *"bank"* account was also consciously not incorporated thereby leaving the expression *"to pay"* and *"to deposit"* with its natural meaning and leaving it to the discretion of the acquiring authorities to deposit the compensation amount even in the treasury. It is possible that the legislature may have considered the reality of 2012-13 where crores of people did not have bank accounts. It was also urged that the rejection of the amendment is in consonance with the apprehensions expressed by other stakeholders and ministries at the said time. After the said Bill was passed in the Lok Sabha, amendments were proposed and accepted by the Rajya Sabha, giving the provision its final form. Further, it is clear that the effort at the time was towards the drafting of a balancing provision which protects the acquisitions from lapsing and at the same time provides enhanced compensation under the new Act depending upon the stage up to which the acquisition has progressed. This was the genesis behind Section 24(1)(a) and proviso to Section 24(2) which protect acquisitions from lapsing whilst providing for higher compensation under the Act of 2013 to the land owners under limited defined circumstances. It is submitted that it is necessary to read the proviso to Section 24(2) along with the same provision and not Section 24(1)(b) as the former would be in accord with Parliamentary intent.

19. It was submitted that Section 24(2) intended a limited retrospective operation: yet such retrospectivity operated and has to be construed narrowly considering the nature and width of Section 24(2) and the drastic consequences flowing from it. It is submitted that the field of retrospectivity to be given under Section 24 needs to be considered in the context of legislative intention manifested from Section 114 of the Act of 2013 and Section 6 of the General Clauses Act, 1897. Both Section 114 (of the Act of 2013) and Section 6 of the 1897 Act clearly point to a narrow interpretation of Section 24 with the object of saving on-going acquisition proceedings as far as possible. The learned SG referred to the provisions of UK's Interpretation Act, 1978; he also relied on Bennion's Statutory Interpretation Bennion's Fifth Edition, (2012) Indian Reprint, which reads as under:

> *"Where, on a weighing of the factors, it seems that some retrospective effect was intended, the general presumption against retrospectively indicates that this should be kept to as narrow a compass as will accord with the legislative intention"*

20. Reliance was placed on *Secretary of State for Social Security v Tunnicliffe*[5], to the effect that:

> *"Parliament is presumed not to have intended to alter the law applicable to past events and transactions in a manner which is unfair to those concerned in them, unless a contrary intention appears".*

The learned SG also referred to the later judgment of the House of Lords which dealt with the said question. It is submitted that sitting in a combination of eight judges, in *Yamashita-Shinnihon Steamship Co. Ltd.v L'office Chefifien Des Phosphates & Anr*[6], where it was held that retrospective application of a statute can be made only when it does not visit anyone with unfairness. The learned SG

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[5] [1991] 2 All ER 712

[6] [1994] 1 A.C. 486, where it was held that:

> *"The rule that a person should not be held liable or punished for conduct not criminal when committed is fundamental and of long standing. It is reflected in the maxim nullum crimen nulla poena sine lege. It is protected by article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1953) (Cmd. 8969).* ***The rule also applies, but with less force, outside the criminal sphere.*** *It is again expressed in maxims, lex prospicit non respicit and omnis nova constitutio futuris temporibus formam imponere debet non praeteritis. The French Civil Code provides that "La loi ne dispose que pour l'avenir; elle n'a point d'effet retroactif:"*
>
> ...
>
> *But both these passages draw attention to an important point, that the exception only applies where application of it would not cause unfairness or injustice. This is consistent with the general rule or presumption which is itself based on considerations of fairness and justice, as shown by the passage in Maxwell quoted, ante, p. 494C-E, and recently emphasised by Staughton L.J in Secretary of State for Social Security v. Tunnicliffe [1991] 2 All E.R 712, 724.."*

referred to *Zile Singh v. State of Haryana*[7] where a three-judge Bench held that retrospectivity should not be presumed to have been given to a provision, unless it says so clearly, or through necessary implication. The guidance was given to construe provisions for determining whether such intention is expressed, in a given case.

21. It was urged that this Court, after assessing the unintended and absurd results that an amendment may result in, purposefully interpreted the provisions to be prospective in operation. It was also emphasized that Section 24(2) is retrospective in nature and cannot be held to be prospective; nevertheless, the extent of retrospectivity ought to be narrowly construed while interpreting, given the harsh consequences that it results in particularly against projects of public interest. Reliance was placed on *CIT v. Sarkar Builders*[8].

22. It is submitted that apart from the above, this Court has consistently ruled on principles guiding the retrospective operation of statutes. Though there is no bar against retrospective operation yet this Court considered the practical realities before analysing the extent of retrospective operation of the statutes. Reliance in this regard is placed on *Jawaharmal* v. *State of Rajasthan*[9] and *Rai Ramkrishna* v. *State of Bihar*[10].

23. The learned SG next submitted that a spate of decisions of this Court had followed the *ratio* in *Pune Municipal Corporation* (supra). Emphasizing that the overall interpretation of Section 24 of the Act of 2013 has to accord with its scheme, it was stated that the object of that provision was not only to declare that certain acquisitions lapsed. Learned counsel, in this context, highlighted that Section 24 (1) (a) in fact saves acquisition proceedings, where awards were not made before the advent of the Act of 2013, by declaring that the award would be made under that Act and compensation payable, in accordance with its provisions. Section 24 (1) (b) on the other hand contemplates making of award, under the old (LA) Act, but significantly states that all further "proceedings" *after the award* would be taken under the new Act. It was highlighted here, that Parliament clearly intended that the compensation determined under the old Act had to be paid in terms of the new Act, which is under Section 77. The learned SG submitted that given these aspects, which are expressed in Section 24 (1), the *non obstante* clause and the following provisions of Section 24 (2) have to be interpreted contextually, and in a purposive manner. It was submitted that Parliament did not intend that settled matters should be undone, and whatever had attained finality, in

[7](2004) 8 SCC 01
[8]2015 (7) SCC 579
[9]1966 (1) SCR 890
[10]1964 (1) SCR 897

acquisition matters, should not be re-opened. He cited the decisions of this Court reported as *Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill*[11]*; Tinsukhia Electric Supply Company Ltd v. State Of Assam & Ors*[12]*; Commissioner of Income Tax v. Hindustan Bulk Carriers*[13]*; D. Saibaba v. Bar Council of India & Ors*[14]*; Balram Kamanat v. Union of India*[15]*; New India Assurance Co. v. Nulli Nivelle*[16]*; Government of Andhra Pradesh & Ors v. Smt. P. Laxmi Devi*[17]*; Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd.*[18]*; N. Kannadasan v. Ajoy Khose & Ors*[19]*; H.S Vankani v. State of Gujarat,*[20]*; State of Madhya Pradesh v. Narmada Bachao Andolan & Ors.*[21]

24. It was submitted that hitherto, in accord with *Pune Municipal Corporation* (supra) and *Balaji Nagar Residential Assn. v. State of Tamil Nadu*[22] most decisions had accepted that the expression "or"- (occurring in Section 24 (2)), where an award has been made under the old Act, 5 years before the commencement of the Act of 2013 *"but the physical possession of the land has not been taken or the compensation has not been paid"* - is to be read disjunctively, i.e., that if either condition is satisfied, the acquisition would lapse. However, submitted the learned SG, the true and correct interpretation of the term "or" would be that it ought to be construed as a conjunctive word.

25. Learned counsel next submitted that the expression "paid" should be construed reasonably and not in a literal manner, as was done in *Pune Municipal Corporation* (supra). Before the Act of 2013 was brought into force, the modes of payment recognized by the law were: tendering payment, payment into court in the event no one entitled to alienate the property received it and payment into court upon disputes about the entitlement to receive payment. These three situations were visualized in Section 31 (2) of the old Act. It was emphasized that the consequence of lapse of acquisition was never contemplated, in the event of refusal to accept payment, or absence of anyone entitled to receive it, or in the contingency of a dispute regarding entitlement to receive the amount. This clearly

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[11] (2012) 2 SCC 108
[12] (1989) 3 SCC 709 @ para 118-121
[13] (2003) 3 SCC 57 @ para 14-21
[14] (2003) 6 SCC 186 para 16-18

[15] (2003) 7 SCC 628 para 24
[16] (2008) 3 SCC 279 @ para 51-54

[17] (2008) 4 SCC 720 para 41 & 42
[18] (2008)13 SCC 30 para 132-137
[19] (2009)7 SCC 1 para 54-67
[20] (2010)4 SCC 301 para 43-48
[21] (2011)7 SCC 639 para 78-85
[22] 2015 (3) SCC 353

meant that while payment of compensation was essential and mandatory, the mode of payment was not mandatory. If, for instance, the amount was tendered and not received, but instead, the landowner refused it, the appropriate government could well deposit it in the treasury, in accordance with prevailing financial rules, to facilitate disbursement, as and when the landowner or the one entitled to receive it, came forward and established entitlement. In such event, the only consequence of non-deposit (in court, under Section 31) meant that higher interest as mandated by Section 34 was to be paid.

26. The context of Section 24, learned counsel urged, is to provide for a transitory provision viz. to take care of the pending land acquisition proceedings which are ongoing under the LA Act when the Act of 2013 is brought into force w.e.f. 1.1.2014. The purpose and object of making this provision is to balance the competing rights of public projects vis-a-vis holders of the land. The object and purpose was to ensure that where acquisition proceedings under LA Act have reached an advanced stage and investment of public money had already been made, firstly, the lapsing of such ongoing projects should be avoided and secondly as far as possible, the land owners also can, without disturbing the process of acquisition, be given the compensation under the Act of 2013.

27. It was reiterated that the legislature knows about the ground realities faced in land acquisition proceedings. There are very few cases where one or two land parcels are acquired in isolation. Mostly, acquisitions take place of bigger tracts of land involving more than one parcel of land and more than one person "entitled to compensation". When Parliament provided for a transitory provision in relation to acquisitions under the old Act, it did not contemplate the possibility of the entire payment procedure to all being not processed given the practical situations arising in all such proceedings. Parliament is also presumed to be aware of the fact that in almost all cases of acquisition, the proceedings are stiffly opposed and in most of the cases, the tender of compensation is also opposed under a wrong and misplaced notion that the acceptance of the tender may be treated as acquiescence with the quantum being tendered.

28. The learned counsel argued that Parliament did not expect the acquiring authority to perform an impossible task of forcing payment to the land owners unwilling, for any reason to accept it. The legislature, therefore, does not use the expression of the land owners having "accepted" the payment. It merely uses the expression "paid". The legislature clearly tries to balance the rights of land owners only in one contingency viz. in a post award scenario and the award having been made five years prior to 1.1.2014, when the amount is not "deposited" in the accounts of the majority of the beneficiaries.

29. It was urged that on a true construction and taking the literal, natural and grammatical meaning of the provisions in the context referred above and keeping

in mind the object it can safely be concluded that the words "paid" and "deposit" are expressions of the same act namely making the amount available (i.e. tendering) for being taken by those entitled to it. It was urged that if this interpretation is not given then the refusal by few persons or few persons being untraceable in the acquisition of a vast tract of land would result in the drastic consequence of lapsing of the acquisition proceedings.

30. It was urged by the learned ASG and Mr. Muthuraj, learned senior counsel that the legislature cannot be presumed to intend such an anomalous situation. The only way in which the object behind section 24 can be achieved is to give natural meaning to the words and expressions used keeping the object in mind and treating the words "paid" and "deposit" as connoting expression of the very same Act depending upon the fact situation in each case. Learned counsel submitted that by using the terms "paid" and "deposit", Parliament consciously left a leeway to save the drastic consequence of lapsing by dealing with a particular situation in light of fact situation emerging in each case. Not treating "paid" and "deposit" as synonymous or the "deposit" so as to keep it available being the next step after "pay", would lead to disastrous situations as the acquiring authority may have acquired vast tract of land and may have put substantial portion from it to public use by constructing infrastructural projects. Such a disastrous situation /consequence would never have been anticipated or envisaged by the legislature. Learned counsel also referred to various Standing Orders, framed as part of the financial code of several States, which provided for procedure to deposit money in the treasury, when landowners refused to accept compensation, or were untraceable, at the time the amount was to be tendered.

31. It is submitted by the learned ASG that this Court should not assume any omission or add or amend words to the statute. It is submitted that plain and unambiguous construction has to be given without addition and substitution of the words. It is submitted that when a literal reading produces an intelligible result it is not open to read words or add words to statute. In support of this proposition, reliance was placed on some decisions[23]. It was therefore submitted that the word "paid" does not and cannot mean actual *de-facto* payment as it would amount to adding words which do not exist in the provision. Similarly, the word "deposit" cannot mean "deposit in the Court" as that was never the legislative intent nor can it be deduced from any accepted interpretive process.

32. It was submitted that this Court, whilst interpreting Section 24 of the Act of 2013, for the first time in *Pune Municipal Corporation* [supra] and subsequent judgments, presumed that the word "paid" occurring in Section 24(2) of the Act of

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[23] *BALCO* v. *Kaiser Aluminium Technical Services Inc.,* (2012) 9 SCC 552; *Howard de Walden (Lord)* v. *IRC,* (1948) 2 All ER 825 (HL); *V.L.S. Finance Ltd. v. Union of India,* (2013) 6 SCC 278; and *Ram Narain v. State of U.P.,* AIR 1957 SC 18.

2013 would have to be interpreted as per Section 31 of the LA Act. It is submitted that the said presumption neither has any justification nor any such justification is examined in the said judgments. It is submitted that the said presumption has resulted in grave consequences without ascertaining the conscious omissions on the part of the Legislature. The learned SG illustrated how the terms "paid" and "deposit" have been used in different senses under the LA Act and in the Act of 2013.

33. Learned counsel submit that firstly, Section 31 of the LA Act is *pari materia* to Section 77 of the Act of 2013. There is neither any justification nor any requirement of interpreting Section 24 of the Act of 2013 in the shadow of Section 31 of the LA Act. It is submitted that if as an alternative argument it is assumed that the expressions "paid"/ "tender" and the expression "deposited" have both been used consciously in Section 31, as is the reason of drafting Section 24(2), an anomalous situation occurs. In the proviso to Section 24(2) of the Act of 2013, expression used is compensation has not been *"deposited" "in the account of the beneficiaries",* which is separate from the *"deposit in Court"* envisaged under Section 31 (2) of the LA Act. It is submitted that the expression "bank account" has not been used in Section 31 of the LA Act at all and the expression "in the Court" has not been used in Section 24(2) of the Act of 2013 at all. The said omissions carry weight and cannot be ignored.

34. It is urged that if Section 24 of the Act of 2013 intended to attract the rigours and technicalities of Section 31 of the LA Act, it would have used the requisite phrase. It is submitted that the term *Section 31 of the LA Act* is conspicuous by its absence in Section 24 of the Act of 2013. Parliament intentionally used the phrases "paid" and "deposit" not in terms of their meanings under Section 31 so as to avoid the rigours of the said provision and to keep the practical exigencies of land acquisition in mind, more particularly when Section 24 of the Act of 2013 is merely a transitory provision. It was argued that it is a settled canon of interpretation that when the Legislature uses two different phrases, the meaning they carry would be different. *Harbhajan Singh v. Press Council of India,*[24] is relied on.

35. It is submitted that Section 24(1) begins with a *non-obstante* clause, providing for a limited overriding effect of the LA Act in case of the contingencies mentioned in Section 24 (a) and (b). Section 24 (1) (a) contemplates that where land acquisition proceedings were initiated under the LA Act but no award was passed till the date the new Act came into force viz. 1.1.2014, acquisition proceedings could continue, however compensation will have to be determined under the Act of 2013. Section 24 (1) (b) provides that where an award under Section 11 of the LA Act has been made, the entire proceedings would continue

[24] (2002) 3 SCC 722

under the Act of 1894, as if it were not repealed. Section 24(2) provides for an exclusionary clause which mandates the land acquisition proceedings to be lapsed and initiated *de novo.*

36. It was submitted that the requirements for lapsing (of acquisition) in Section 24(2), are subject to an award under Section 11 of the LA Act being made five years prior to the commencement of the Act of 2013 viz. 1.1.2014. If the award is made and the following two situations occurred, the proceedings will lapse; one, physical possession has not been taken or (to be read as "and") and two, compensation has not been paid.

37. Elaborating on the expressions "paid"/"tender" it was urged by learned counsel that the meaning of expression "tender" is that when a person has tendered the amount and made it unconditionally available and the landowner has refused to receive it, the person who has tendered the amount cannot be saddled with the liability, which is to be visited for non-payment of the amount. Reliance is placed on the meaning of the term in *Black's Law Dictionary.*

38. It is apparent from aforesaid that "tender" may save the tendering party from the penalty for non-payment or non-performance if another party is unjustifiably refusing the tender. The expression "paid" would mean in Section 31(1) of the LA Act and Section 24(2) of the Act of 2013 as soon as it is offered and made unconditionally available. Merely, if a landowner refuses to accept it, it cannot be said that it has not been paid. Once amount has been tendered that would amount to payment. Thus, the term *"paid"* does not mean actual payment to be made but whatever is possible for an incumbent to make the payment is only contemplated. *"Paid"* does not mean receipt or deposited in court. There may be refusal to receive an amount in spite of its tender. Thus, in view of the decisions of this Court in *Benares State Bank Ltd.v.CIT,*[25] *Collector of Central Excise v. Elphinstone Spg.&Wvg.Mills Co.Ltd.*[26] and *J.Dalmia v Commissioner of Income Tax*[27]*,* the provisions of Section 24(2) should be construed as tender of the amount.

39. It is submitted that the three Judge Bench in judgment in *Pune Municipal Corporation* (supra), while deciding the expression *"compensation has not been paid",* held that for the purposes of Section 24(2), the compensation shall be regarded as "paid":

> *"if the compensation has been offered to the person interested and such compensation has been deposited in the court where reference under Section 18 can be made on happening of any of*

[25](1969) 2 SCC 316

[26](1971)1 SCC 337

[27] (1964) 53 ITR 83 [AIR 1964 SC 1866]

> *the contingencies contemplated under Section 31(2) of the Land Acquisition Act. In other words,the compensation may be said to have been"paid"within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33."*

40. It was argued that the conclusion in *Pune Municipal Corporation* (supra) that deposit of the amount of compensation in the Government treasury cannot amount to the said sum (amount of compensation) *"paid"* to the landowners or persons interested. This view was taken without dwelling on the legal connotation of the expression "paid" in Section 24(2). In the process, it has also not taken into account the binding law as held in *Dalmia's* case and *Benares State Bank's* case. Though Section 34 of the LA Act was mentioned in passing para 16, however it has not at all been considered. It is a very crucial provision, which deals with the consequences of compensation not having been deposited. Further, submit counsel, the matter relates to payment of compensation from out of Government funds. Handling of Government funds has to be strictly in accordance with the Standing Orders issued by the States. The effect of those Standing Orders has also not been considered in the judgment in *Pune Municipal Corporation* (supra). The said judgment, therefore, having been rendered without taking into consideration the aforesaid judgments, Section 34 of the LA Act and the Standing Orders is, in the submission of the counsel, *per incuriam.*

41. It is submitted that another aspect which arises is, whether prejudice or injustice would be caused in case the amount is not deposited in the court and is deposited in the treasury, particularly when the provision contained in Section 31 of the LA Act has to be read conjointly with those in Section 34. By reason of Section 34, (of the LA Act) one could claim interest - at a higher rate in case amounts were not deposited under Section 31(2) if the authorities were at fault.

42. Arguing about whether the expression "or" should be read as conjunctive or disjunctive, it was argued that after the stage of section 11 under the LA Act, there are two possibilities. The requisite authority may take possession of the land in terms of Section 16 of the LA Act or the said authority may proceed to tender payment under Section 31 of the LA Act. The said two possibilities may be conducted simultaneously or one after the other, there is no embargo in the LA Act regarding the same.

43. It is submitted that Section 24(2), while providing for lapsing, uses the two phrases concerning possession of the land and the tendering of payment with the disjunctive word "or" thereby making it mandatory for the acquiring authority

to satisfy both contingencies in order to avoid lapsing. It is submitted that the same would be against the legislative intention of limited lapsing. Further, the said interpretation would be against the purport of the possession and the title "being vested" in the acquiring authority by virtue of the interpretation of section 16 in the LA Act [as dealt with the latter part of the submissions]. It is submitted that the intention of the Legislature could not have been to divest the acquiring authority of the land after the said has been vested *"free from all encumbrances"*. In line with the same, it is submitted that the word "or" may be read as "and" so as to limit the lapsing only in cases where both, payment has not been made (subject to proviso) and possession has not been taken.

44. Reliance is placed on the judgments reported as *Ishwar Singh Bindra v State of UP*[28], where this Court approved and extracted passages from *Maxwell on Interpretation* and *Stroud's Judicial Dictionary* to the effect that generally, the conjunctive "and" is used in a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of "or" and that however, sometimes, even in such a connection, it is, by force of its contents, read as "or". Similarly, Maxwell accepted that *"to carry out the intention of the legislature it is occasionally found necessary to read the conjunctions 'or' and 'and' one for the other"*. Learned counsel also relied on *Mobilox Innovations (P) Ltd v Kirusa Software (P) Ltd*[29] which held that:

> *"38....Even otherwise ,the word "and" occurring in Section 8(2)(a)must be read as "or" keeping in mind the legislative intent and the fact that an anomalous situation would arise if it is not read as "or" if read as "and", disputes would only stave off the bankruptcy process if they are already pending in a suit or arbitration proceedings and not otherwise. This would lead to great hardship; in that a dispute may arise a few days before triggering of the insolvency process, in which case, though a dispute may exist, there is no time to approach either an Arbitral Tribunal or a court... "*

Learned counsel also relied on several other decisions in support of the same proposition (i.e. that the disjunctive "or" has to be read contextually, and if need arises as "and", i.e., as a conjunctive).[30]

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[28] 1969 (1) SCR 219

[29] (2018)1SCC 353

[30] *Brown v Harrison* 1927 All ER 195 @ pp. 203, 204 (CA); *Ranchhodddas Atmaram & Anr v Union of India* 1961 (3) SCR 718; *State of Bombay v R.M.D. Chamarbaugwala* 1957 (1) SCR 874 (hereafter *"RMDC"); Patel Chunibhai Dajibha v Narayanrao,* 1965 (2) SCR 328; *Punjab Produce & Trading Co. v. Commissioner of Income Tax, West Bengal,* 1971 SCR 977; *Ishwar Singh Bindra & Ors v State of UP* 1969 (1) SCR 219; *Joint Director of Mines Safety v Tandur and Nayandgi Stone Quarries (P0 Ltd* 1987 (3) SCC 308; *Samee Khan v Bindu Khan* 1998 (7) SCC 59. *Prof. Yashpal & Ors v State of Chhatisgarh & Ors* 2005 (5) SCC 420

45. Highlighting that the placement of the proviso (following Section 24 (2)) is significant, and not accidental, it was argued that the field of operation of the proviso is immediately preceding provision, i.e. Section 24 (2) and not Section 24 (1) (b). It is submitted that the proviso to Section 24 (2) contemplates a situation where with respect to majority of the holdings, compensation not deposited in the account of landowners (even though there being tendering of payment to all land owners and physical possession being taken), the benefits of the Act of 2013 qua the compensation would follow. It is argued that if the said proviso is not interpreted to be a proviso to Section 24(2), a valuable benefit extended by Parliament would evaporate. Learned counsel contended that the said proviso provides for enhanced benefit even if the twin conditions of Section 24 (2) are met. Therefore, the said proviso saves the land acquisition and furthers the purpose and the object of giving benefit of computation of compensation to all landholders. Therefore, it is evident that the proviso is appropriately treated as a proviso to Section 24 (2) and cannot be read as proviso to Section 24 (1) (b) of the Act of 2013. It was argued that Parliamentary intent is clearly discernible, because of the colon (a punctuation mark) occurring at the end of Section 24 (2), which means that the proviso constitutes an exception to that provision. Reference was made to *Aswini Kumar Ghosh & Anr v Arabinda Bose & Anr*[31] (where it was held that *"...Punctuation is after all a minor element in the construction of a statute and very little attention is paid to it by English Courts. ..... When a statute is carefully punctuated and there is doubt about its meaning, a weight should undoubtedly be given to the punctuation.").* Reliance was also placed on *Jamshed Guzdar v State of Maharastra.*[32]

46. It was argued by Ms. Pinky Anand, learned ASG, that payment of compensation is not a *sine qua non* for vesting in terms of Section 16 of the old LA Act. It is urged, in this context, that the old Act did not provide any time line for depositing compensation; nor even for taking over of possession. Ordinarily, the repeal provision under the Act of 2013 (Section 114) would prevail; however, Section 24 carves out an important, albeit a limited scope from the repeal clause. Section 24 (2) *freshly* introduces the concept of lapsing, *in relation to acquisitions that were initiated under the old Act.* Necessarily, lapsing is to be considered as a narrow concept. Supporting the learned SG's argument that "or" is to be read conjunctively, she highlighted that by reason of Section 16 of the old Act, title vested in the State, upon taking of possession. Divesting under old Act was impermissible. It was urged that were the court to accept an interpretation, that either non-payment of compensation, or taking of possession - under Section 24

[31]1953 SCR 1
[32]2005 (2) SCC 591

(2), would result in lapsing of acquisition, as held in *Pune Municipal Corporation* (supra) and other decisions, land vested in the State, and conveyed to third parties (either as allottees of housing schemes or public sector undertakings, for one development project or another, or for public purposes such as construction of roads, bridges and other public works) would be divested.

47. Under Section 16 of the LA Act once award is made and possession of land is taken, then the land vests absolutely with the Government. Therefore, the word deemed to lapse in Section 24(2) should not be interpreted to mean divesting of land from the Government which is already vested in the Government and moreover in the absence of any provision of divesting in the 1894 Act. In this context, the observations in *Bengal Immunity Co. Ltd. v. State of Bihar*[33] that the legislature is presumed to be acquainted with the construction which the courts have put upon the words, and when legislature repeats the same words. This Court had, in that judgment, quoted with approval the previous decision in *Sri K.C Gajapati Narayan Deo v, State of Orissa*[34] that

> *"Section of the Act empowers the State Government to declare, by notification, that the estate described in the notification has vested in the State free from all encumbrances. ..... The consequences of vesting ether by Issue of notification or as a result of surrender are described in detail in Section 5 of the Act. It would be sufficient for our present purpose to state that the primary consequence is that all lands comprised in the estate including communal lands, non-ryoti lands, waste and trees orchards pasture lands, forests, mines and minerals, quarries, rivers and streams, tanks, water channels, fisheries, ferries, hats and bazars, and buildings or structures together with the land on which they stand shall, subject to the other provisions of the Act, vest absolutely in the State Government free from all encumbrances and the intermediary shall cease to have any interest in them."*

Learned counsel also relied on the judgment of this Court in *Jagannath Temple Managing Committee v. Siddha Math*[35], at para 53, that *"it is a settled principle of law that once a property is vested by an Act of legislature, to achieve the laudable object, the same cannot be divested by the enactment of any subsequent general law and vest such property under such law."*

48. It was urged that serious consequences arise when condition nos. (ii) and (iii) are to be read as not conjunctive or disjunctive. The word used to connect these two conditions is "or"; if it is not read conjunctively, disastrous consequence

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[33](1955) 2 SCR 603
[34]1954 SCR 11
[35](2015) 16 SCC 542 @ para 53

leading to absurd result would emanate. Once possession is taken over vesting occurs under Section 16 of the LA Act. Section 24(2) contains no stipulation that such vesting of title of land stands nullified or divested. If the intention of Parliament was to divest the State of its title that had to be stated in plain and clear language. It was emphasized that the conjunctive use of "or" in Section 24 (2) would have not only momentous consequences to the State, but innocent third parties, who would be exposed to the risk of being divested title to the lands and properties, perfected by them, as allottees or subsequent purchasers. Merely because a person who has received compensation clungs on to the possession of the land and the same shall lead to lapsing cannot be the intention of Parliament. Similarly, one who received compensation, is not obliged to return the money to the State in the event of lapsing under Section 24(2) of the Act of 2013. It was urged, therefore, that absence of provision to return the compensation received to Government convincingly points to Parliamentary intent that "or" should be read as "and"; thus, only if neither possession is taken (of acquired lands) nor is compensation paid, (i.e., tendered to the party or parties) would the acquisition under the LA Act lapse. Learned counsel also relied on several decisions in this context.[36]

49. It was highlighted by M/s Bhangde, Mr. Rajesh Mahale, and Ms. Shashi Kiran, that the consequence of literally interpreting Section 24 (2) as to mean that the conditions are disjunctive (either that "or" should be read as such) are too drastic and severe. Learned counsel pointed out that as a result of allegations of non-payment of compensation, lands which had been vested in the State and were subsequently made over to the requisitioning agencies, and in respect of which title had passed multiple times to other parties, now are exposed to the threat of divesting of title. Learned counsel submitted that a deeming fiction cannot be taken to this extent; such disastrous consequences could not have been attributed by Parliament, because even if such were the intent, there has to be a mechanism to restitute those likely to be affected. Besides, the legality of such a law, divesting or taking away the title of such innocent third-party purchasers, would be suspect, because there is absolutely no provision for restitution or any form of compensation in their favour.

50. On the question relating to the mode of taking possession, it was argued that when the State is involved in taking possession of the property acquired, it can take possession by drawing a *panchnama.* The normal rule of State possessing the land through some persons would not be applicable in such cases. On open land, possession is deemed to be of the owner. The way the State takes possession of

[36] *Northern Indian Glass Industries v. Jaswant Singh and Ors.,* (2003) 1 SCC 335; *Gulam Mustafa* v. *State of Maharashtra,* (1976) 1 SCC 800; *Sita Ram Bhandar Society, New Delhi v. Lieutenant Governor, Government of NCT, Delhi and Ors.,* (2009) 10 SCC 501 and *Chandragauda Ramgonda Patil and Anr. v. State of Maharashtra and Ors.,* (1996) 6 SCC 405

large chunk of property acquired is by drawing a memorandum of taking possession as State is not going to put other persons in possession or its police force or going to cultivate it or start residing or physically occupy it after displacing who were physically in possession as in the case of certain private persons, in case they re-enter in possession of open land, start cultivation or residing in the house. Lawful possession is deemed to be of the State. A number of decisions that accepted the mode of drawing *panchnama* by the State consistently to be a mode of taking possession were cited. In *Banda Development Authority v. Moti Lal Agarwal*[37] this Court observed that preparing a *panchnama* is sufficient to constitute taking of possession. If acquisition is of a large tract of land, it may not be possible to take physical possession of each and every parcel of the land and it would be sufficient that symbolic possession is taken by preparing an appropriate document in the presence of independent witnesses and getting their signatures. Even subsequent utilisation of a portion of acquired land for public purpose was still sufficient to prove taking possession.

51. It is submitted that when the State acquires land and has drawn memorandum of taking possession that is the way the State takes possession of large tract of land acquired, it ought not necessarily to physically occupy such land after forcefully displacing those physically in possession. Possession in law is deemed to be physical possession for the State. This Court in a number of decisions has accepted the mode of drawing *panchnama* by the State consistently to be a mode of taking possession. It is submitted that this Court in *T.N. Housing Board* v. *A. Viswam*[38] held that recording of memorandum/*panchnama* by the Land Acquisition Officer in the presence of witnesses signed by them would constitute taking possession of land.

Also, reliance is placed on other decisions.[39]

52. Dealing next with the manner by which the period covered by an interim order of Court ought to be excluded for the purpose of applicability of Section 24 (2) of the Act of 2013, it is argued that a settled proposition of law is that an act of a Court should not prejudice any party. In view of the maxim *actus curae neminem gravabit* or even in its absence, any interim order granted by the court cannot prejudice any rights of the parties. It is argued that for a proper working of the justice delivery system, once the court passes an order staying dispossession, the State cannot take possession of the land. If an order of the Court disables a

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[37] (2011)5 SCC 394 (hereafter referred to as *"Banda Development Authority")*

[38] (1996) 8 SCC 259

[39] *Balwant Narayan Bhagde v. M.D. Bhagwat,* (1976) 1 SCC 700; *State of T.N.* v. *Mahalakshmi Ammal,* (1996) 7 SCC 269; *T.N. Housing Board* v. *A. Viswam,* (1996) 8 SCC 259 and *Om Prakash Verma & Ors. v. State of Andhra Pradesh and Ors,* (2010) 13 SCC 158.

person to take any action, the doctrine *nemo tentur ad impossible* would be applicable that is, the law in general excuses a party which is disabled to perform a duty and impossibility of performance of a duty is a good excuse. Further, the Latin maxim *lexnon cogitad impossibilia,* that is, the law does not compel a man to do that which he cannot possibly perform. Since, it becomes impossible for the State to take possession, for the duration a stay or interim order is in operation, the consequence of an interim order cannot be used against the State. Reliance for this legal position is placed on the judgments in *A.R. Antulay vs R.S.Nayak & Ors*[40], *Sarah Mathew v Institute of Cardio Vascular Diseases*[41] and in *Dau Dayal v State of U.P*[42]. In *A.R.Antulay* (supra) it was held that no party is prejudiced by the court's mistake. Therefore, urged counsel, in cases where conduct of acquisition proceedings were held up after the passing of an award, due to the interim order of any court, in the absence of any specific provision to that effect, a party who cannot perform its duties, and but for the order, could have performed its stipulated task, within the time assigned, should not be placed at a disadvantage, as that would amount to granting a premium for one's wrongdoing, or rank speculation. It is urged, therefore, that it is imperative that the period during which the State or the acquiring authority was prohibited/ injuncted by an interim order of the court from taking possession has to be excluded. This principle, submit learned counsel, is based on settled common law principles. These are in fact rules of equity, justice and sound logic. In the absence of their being a prohibition in the law these principles would be attracted. The efficacy and binding nature of such common law principles cannot be diminished or whittled down in the absence of any express prohibition in law. Coupled with the aforesaid principle is also a principle of restitution. An interim order passed by the Court merges into the final decision, goes against the party successful at the interim stage. Unless otherwise ordered by the court, the successful party at the end of the litigation would be justified in being placed in the same place in which it would have been, had the interim order not been passed. Undoing the effect of an interim order by resorting to the principle of restitution is in fact an obligation of the court. The above principles have been culled out and applied by this Court in the judgment in *South Eastern Coal Field Ltd v State of M.P. & Ors.*[43]. Learned counsel argued that general common law rules of equity, justice and sound logic would certainly apply. It is submitted that similarly, the doctrine of restitution has been discussed in several other judgments of this Court including *State of Gujarat v Essar Oil Ltd*[44]. It is, thus, submitted that the mere absence of an express provision under Section 24(2) - to exclude the period during which an interim order operates,

[40] 1988 Suppl (1) SCR 01
[41] 2014 (2) SCC 62
[42] 1959 Supp (1) SCR 639
[43] 2003 SCC 648
[44] 2012 (3) SCC 522

which prevents the making of an award, or taking over of possession of acquired land, would not in law imply that such restitutionary and equitable principles would be inapplicable.

Contentions on behalf of landowners

53. Mr. Shyam Divan, learned senior counsel, led the arguments on behalf of landowners. He urged that the Act of 2013 is a new, transformative and radical measure. The new law is a welfare state law, not a colonial law - unlike the Act of 1894. Mr. Divan submitted that the Act of 1894 resulted in several rounds of repeated litigation on various aspect, such as payment of compensation, lack of legislatively mandated timelines for completion of acquisition proceedings, etc. This also resulted in amendments to the Act of 1894 (notably, the amendments of 1967 and 1984) which, to some extent, sought to grant relief to landowners. However, these too got mired in litigation. Learned counsel relied on the judgments, reported as *Dev Sharan v State of Uttar Pradesh*[45] and *Radhey Shyam v State of UP*[46]. Repeated litigation was the result of an unfair legal regime. It was submitted that such judgments of this Court highlighted that the Act of 1894 was enacted more than 116 years ago to facilitate acquisition of land and immovable properties for construction of roads, canals, railways, etc. This law was frequently used in the post-independence era for different public purposes like laying of roads, construction of bridges, dams and buildings of various public establishments/institutions, planned development of urban areas, providing of houses to different sections of the society and for developing residential colonies/sectors. In the recent years, there is acquisition of large tracts of land in rural parts of the country in the name of development and their transfer to private entrepreneurs, who utilize it to construction of multi-storied complexes, commercial centres and for setting up industrial units. Similarly, large scale acquisitions were made on behalf of companies by invoking the provisions contained in Part VII of the Act. Resultantly, such acquisition led to deprivation of the source of livelihood of land owners, engaged in agricultural operations and other ancillary activities in rural areas. A large number of these people are unaware of, and unable to assert their rights, and secure fair compensation. The unrest and inequity which arose out of these deprivations, impelled the State to enact a modern law, which ensured not only fair compensation, but other rights such as rehabilitation, employment, higher solatium and a guarantee against deprivation of certain kinds of lands. Thus, the Act of 2013 ushered a new regime that starts from a fresh direction. Learned counsel also relied on *Bharat Sewak*

[45](2011) 4 SCC 769
[46](2011) 5 SCC 553

Samaj v. Lieutnant Governor & Ors.,[47] to say that the provisions of the Act of 1894 were outdated and were misused and were oppressive to the interest of the landowners. Hence, the Act of 2013 was enacted and that this Court ought to interpret in the spirit of the new beneficial legislation. Learned counsel urged that the benefits so conferred should not be taken away by this Court by narrowly interpreting its provisions.

54. Mr. Divan relied on the Statement of Objects and Reasons of the Act of 2013 to say that the new law was framed, in recognition of concerns expressed by the property owners of forcible acquisition without following due process and without paying appropriate compensation affecting livelihood of such owners, many times, who are small property owners or persons having small agricultural holdings and having been dependant on the said holdings, the new Act is made. The Act aims to provide just and fair compensation, make adequate provision for rehabilitation and resettlement for the affected persons in the family, determination of compensation package on scientific methods. It was urged that being a welfare legislation, the Act of 2013 constitutes a wholesome rejection of the colonial approach. Learned counsel urged that under the new Act, unlike the Act of 1894, a Social Impact Assessment (SIA) report has to be prepared, under Section 7, as an integral component of acquisition proceedings. If acquisition is not resorted to, in a time frame, the acquisition lapses; likewise, the new Act contemplates the preparation of a rehabilitation scheme, which would note the (a) particulars of lands and immovable properties being acquired of each affected family; (b) livelihoods lost in respect of landless who are primarily dependent on the lands being acquired; (c) a list of public utilities Government buildings, amenities and infrastructural facilities which are affected or likely to be affected, where resettlement of affected families is involved and (d) details of any common property resources being acquired.

55. Learned senior counsel argued that Section 24 constitutes an exception to the general rule, i.e., lapsing of all acquisition proceedings, by reason of repeal of the Act of 1894, and operation of Section 114. Therefore, Section 24 has to be given effect to strictly, given that Parliamentary intent was to ensure that acquisition proceedings did not result in oppression and hardship. It was argued that having regard to this salient feature, the provision (Section 24) should be literally construed. Learned counsel submitted that the objective of new Act must be kept in mind to understand the scope of Sections 11, 11 (A), 12, 31 and 34 of the 1894 Act, on the one hand, and provisions of Section of 24 of the Act of 2013 on the other. Furthermore, it was argued that the *non-obstante* clause must be allowed to operate with full vigour in its own field. It was stressed that such a provision is equivalent to saying that in spite of the provision or Act mentioned in

[47] 2012 (12) SCC 675

the *non-obstante* clause, the enactment following it, will have its full operation of that, the provision indicated in the *non-obstante* clause will not be an impediment for the operation of the enactment. Decisions in this regard were cited by counsel.[48]

56. Mr. Divan relied upon the three stages preceding the Act of 2013 to urge that there was no doubt in the mind of Parliament, that lapsing of acquisition proceedings was intended to ensue, in the event compensation were not paid; or possession were not taken, in respect of awards made five years prior to coming into force of the Act of 2013. It was argued that Section 24 should be given a plain and literal construction, except to the extent that the term "paid" occurring in Section 24(2) would also cover cases where a deposit is made before the Reference Court in situations covered by Section 31(2) of the 1894 Act. Elaborating on this, it is urged that the first decision of this Court, i.e., *Pune Municipal Corporation* (supra) took note of Section 24(2) in the context of a pre-existing law. The Court was alive to the fact that under the Act of 1894, where payment of compensation was tendered and the land owner refused to accept the amount, the State is nevertheless obliged to ensure that at all times, the amount should be made available, in a place or an account, not within its control. It was urged, therefore, that actual tender of the amount of compensation is a *sine qua non* for the act of payment to be completed. It was considered that in that event, the land owner does not accept the amount, it should be deposited with the Court, a neutral and independent authority to whom the land owner or anyone claiming under him can approach and draw the amount. It was submitted that this obligation cannot be brushed aside because aside from the question of acceptance of compensation without prejudice, even at a later stage, the land owner might wish to reconsider the compensation and avail of the amount.

57. Learned counsel submitted that the obligation to deposit the amount in the Reference Court is an independent and absolute one in that it is irrespective of whether the land owner sought a reference for higher compensation to the Court (under the Act of 1894). Learned counsel urged this Court to accept this interpretation, which according to him, would give full effect to the intention of Parliament, i.e., to save intention of Parliament. It was again highlighted that Parliamentary intention was firstly to repeal the previous law to a limited extent and save ongoing acquisition proceedings - in terms of Section 24(1) and usher a new regime, i.e. Section 24(2) whereby indolence on the part of the State agencies either with respect to payment of compensation or with respect to taking over of possession, resulting in the lapse of acquisition proceedings itself. Learned

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[48] *Madhav Rao Scindhia v. Union of India* 1971 (1) SCC 85 (11 Judges); *Smt. Parayankandiyal Eravath v. K. Devi* (1996) 4 SCC 76 (2 Judges).

counsel relied upon the decisions of this Court which followed and applied the law declared in *Pune Municipal Corporation*[49].

58. It was argued that the submissions on behalf of the State and the development authorities that "payment" included deposit with the treasury or some other authority other than the Reference Court, could not have been termed as compliance with the Act of 1894. Here, it was urged that Parliament was acutely alive of the fact that the previous land acquisition regime resulted in injurious and unconscionable delays in payment of compensation. Furthermore, even after awards were made, possession was never taken. This led to a great deal of uncertainty as far as the land owners were concerned because they could not move ahead in their life without compensation nor could they take any steps to acquire new lands or properties. It was precisely to address this mischief, rather a widespread one, that the Parliament wished to enact a "bright line approach" whereby all acquisitions which did not culminate either in payment of compensation or taking over of possession in respect of awards made five or more years prior to 1.1.2014 had to lapse. It was submitted that Section 24(1) provided a limited window in that it saved some acquisitions, i.e., notably where awards had been made but further proceedings had not been taken or where awards had not been made in both cases less than 5 years prior to 1.1.2014. It was only in these two limited instances that acquisition proceedings were allowed to continue or preserved. Thus, Parliamentary intent was that in cases of all awards made five years or more prior to the coming into force of the Act, if compensation was not paid or possession of the acquired land not taken, automatically, as a matter of law there was to be a lapse (of such acquisitions). This legal consequence crystallised and was in consonance with the other provisions of the Act of 2013. Arguing that if one were to take into account this perspective, there can be no doubt that the expression "paid" cannot mean anything other than tendering of compensation and in the event of its refusal, or the three contingencies contemplated under Section 31(2) of the Act of 1894, it is deposited in Court. If these eventualities were not fulfilled and the amounts were merely kept back with the Government by it, any compliance with some norms evolved as part of the treasury or financial

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[49] *Bharat Kumar v State of Haryana* (2014) 6 SCC 586 (hereafter *"Bharat Kumar"); Bimla Devi v State of Haryana* (2014) 6 SCC 583 *@ para 3; Union of India v Shiv Raj* (2014) 6 SCC 564 at para 22; *Sree Balaji Nagar Residential Association* (supra) at para 14; *State of Haryana v Vinod Oil and General Mills* 2014 (15) SCC 410 at para 21 *; Sita Ram v State of Haryana* (2015) 3 SCC 597 at paras 19, 21; *Ram Kishan v State of Haryana* (2015) 4 SCC 347 at paras 8, 9, 12; *Velaxan Kumar v Union of India* 2015 (4) SCC 325 at paras 15, 16, 17 (hereafter *"Velaxan"); Karnail Kaur v State of Punjab* (2015) 3 SCC 206 at paras 17, 18, 23; *Rajive Chowdhrie HUF v State (NCT) of Delhi* (2015) 3 SCC 541 at para 1 *; Competent Automobiles Co. Ltd v Union of India* AIR 2015 SC 3186 *at para 4; Govt of NCT of Delhi v Jagjit Singh* AIR 2015 SC 2683 at para 3; *Karan Singh v State of Haryana* 2014 (5) SCC 738 *at para 5; Shashi Gupta & Ors. v. State of Haryana* 2016 (13) SCC 380 *at para 5; Delhi Development Authority v Sukhbir Singh* (2016) 16 SCC 258 at para 1 (hereafter *"Sukhbir").*

code there could have been no payment or deposit in the eyes of law. Learned counsel submitted that this Court should affirm the decision in *Sukhbir Singh.* It was also submitted that unless Section 31 of the 1894 Act which postulates the performance of a public duty in a particular manner and (through stipulated three eventualities), such duty could be said to be fulfilled only and only if that procedure were followed. Learned counsel relied upon the judgment in *Bharat Kumar,* which noted that Section 24(2) has a beneficial intent and begins with a *non-obstante* clause. Therefore, urged counsel, literal meaning is to be preferred. It was highlighted that Section 24(2) achieved a two-fold purpose, i.e., to preserve acquisition proceedings initiated before the commencement of the Act and secondly, conferring rights upon the land owners and other parties which did not hitherto exist. Since these rights relate to the right to property which is guaranteed by Article 300A of the Constitution, full effect must be given to them rather than the construction which would destroy its very purpose. In support of this argument, learned counsel relied upon *Union of India v. Shivraj*[50].

59. Learned counsel submitted that the decision in *Pune Municipal Corporation* (supra) was itself conscious of Section 31 and the contingencies or eventualities contemplated under Section 31(2). That apart, it also relied upon *Ivo Agnelo Santimano Fernandes v. State of Goa*[51], to say that the State cannot be - in the event of non-acceptance of the compensation by the land owner or its inability to locate the land owner or in the event of a dispute - keep the compensation amount with itself and claim it to be part of same general treasury amount and proceed to utilise it. It was submitted that precisely to deal with this practice, the appeal provided that non-payment of compensation - and in the event of any of the contingencies accruing in Section 31(2) of the 1894 Act, the failure to deposit it with the Reference Court would result in lapse of entire acquisition itself. It was submitted that this interpretation is not only literal but followed the objective and purpose sought to be achieved by the Parliament through the provision. Learned counsel urged this Court that the literal interpretation in this case would also accrue with an equitable interpretation and ensure that the real benefit of the new law would accrue to land owners deprived of their properties and livelihoods for long periods without payment of compensation. Learned counsel, therefore, urged that the beneficial interpretation adopted by this Court in *Velaxan Kumar* (supra) should be accepted. *Rajive Chowdhurie HUF* (supra)[52], it was argued, while interpreting Section 24 of the Act of 2013 Act, the Court should not in the guise of an interpretative exercise don the cap of a legislature. It was submitted as to the State's argument that the disjunctive "or" in Section 24(2) should not be read as conjunctive "and". It was argued in this regard that in all the three drafts that the

[50](2014) 6 SCC 564.
[51](2011) 11 SCC 506
[52] (2015) 3 SCC 541

Bill (which ultimately culminated in the Act of 2013) went through[53], the expression used consistently was "*but the physical possession"*. In the three stages, the intent was to normally ensure that the acquisition proceedings pending for a long time were to lapse. It was emphasised that in the first version, i.e., the Bill introduced on 5.9.2011, all acquisitions were deemed to have lapsed regardless of whether the award was made or not, if possession were not taken and also in those cases where the awards were not made. Therefore, this Court should be cautious in interpreting the disjunctive "or" in any manner other than in the literal sense.

60. The three broad situations covered under Section 24 are (i) cases where the land acquisition process shall be deemed to have lapsed; (ii) cases where the landholders are entitled to compensation in accordance with the provisions of the Act of 2013; and (iii) cases where the land acquisition proceedings continue under the 1894 Act as if it had not been repealed. It was urged that the first set of cases are covered by Section 24(2). The two conditions to be fulfilled as on 1.1.2014 to trigger the deeming provision into operation, according to Mr. Divan, are firstly, there must be an award under section 11 of the 1894 Act which has been made five years or more prior to the commencement of the Act of 2013 (i.e., an award made on or before 1.1.2009); and secondly *either* physical possession of the land has not been taken from the landowner *or* compensation had not been paid as required under the Act of 1894.

61. It was argued that the second set of cases, where enhanced compensation has to be paid, under the Act of 2013, are covered under Section 24(1) and the proviso to Section 24. Section 24(1) provides that where proceedings have not reached the stage of an award under section 11 of the 1894 Act, the provisions to determine compensation under the Act of 2013 apply. Further, the proviso to Section 24 provides for compensation in terms of the Act of 2013 where the following conditions are fulfilled, *firstly* an award has been made under section 11 of the 1894 Act; and *secondly,* compensation in respect of the majority of the land holdings has not been paid to the landowners. It was submitted that the "majority" is required to be reckoned with reference to the award passed under the Act of 1894, and that awards contemplated by the proviso are awards made within the period of five years prior to the commencement of the Act of 2013 i.e., awards made between 1.1.2009 and 31.12.2013.

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[53] Land Acquisition Rehabilitation and Resettlement Bill 2011 - introduced in Lok Sabha on 05.07.2011; Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Bill, 2013 as passed by the Lok Sabha on 29.08.2013 and the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013 (as passed by both Houses of Parliament on 05.09.2013).

62. Learned counsel stated that the third set of cases is where the land owners do not get any benefit under the Act of 2013 and the acquisition proceeds under the provisions of the Act of 1894. It was argued that these cases are covered by section 24(1)(b) and to which neither section 24 (2) nor the proviso applies. This covers situations where though an award has been passed five years prior to the commencement of the Act, neither of the conditions for deemed lapsing are present. Mr. Divan urged that the provisions of the Act of 1894 will continue to apply without any benefit in terms of increased compensation where an award is passed within 5 years of the commencement of the Act of 2013 but the majority of landholders have been paid.

63. Mr. Divan then urged that this understanding of the provisions of Section 24 is based on established rules of interpretation i.e., first, the golden rule of interpretation requiring the Court to interpret statutory provisions literally. Second, the rule of purposive interpretation was to be used, having regard to the object of the enactment, the purpose of the law in seeking to correct historical injustices and the legislative intent to confer the benefit of the Act of 2013 on certain landholders affected by the regime under the Act of 1894. The third rule to be employed, is the rule of harmonious interpretation, such that all words of the provision are given effect and no part of the provision is rendered otiose; fourth, contemporaneous understanding of administrators responsible for implementing a new law. Also an interpretation in such a manner as to avoid inserting words, subtracting words, and avoids anomalies or absurdities was necessary. Lastly it was urged that giving a deeming provision its natural effect, which in this case results in a rule of interpretation that the provisions of a beneficent legislation ought to be interpreted in the case of ambiguity in favour of the citizens.[54]

64. It was submitted that the interpretation of Section 24 outlined above gives the plain and natural meaning to the key expressions used in section 24 - "physical possession", "paid", and "deemed to have lapsed". He further argued that since Section 24 of the Act of 2013 must be read with section 31 of the Act of 1894, the expression "tender" is also relevant and the interpretation he has advanced is consistent with the natural meaning of "tender".

65. Learned counsel for the landowners urged that the words 'paid' and 'deposited in the account of the beneficiaries' are two permissible modes of *making compensation available to landowners.* Mr. Divan contended that these

[54] Counsel cited *Pratap Singh vs. State of Jharkhand* (2005) 3 SCC 551 (5 Judges); *Central Railway Workshop vs. Vishwanath* (1969) 3 SCC 95; and *M/s International Ore and Fertilisers (india) Pvt. Ltd. vs. Employee State Insurance* (1987) 4 SCC 203 in support of the rule of beneficial construction of a welfare and remedial statute.

are two modes of *paying the money to the landowners.* 'Paid', it was urged, means paid. It does not mean a deposit in treasury. He further submitted that 'deposit in the account of the beneficiaries' does not mean a deposit in the treasury. He argued that there was no reason to depart from the rule of literal interpretation, and the manner of payment, as held in *Pune Municipal Corporation* (supra), is to be strictly in terms of Section 31 of the Act of 1894 as it is an expropriatory legislation. It was contended as to the learned Solicitor General's submission that payment in terms of Section 24 is complied with if the amount is tendered to the landowners, overlooks the obligation of payment in terms of Section 24 is only met if the amount is *actually paid to the landowners.* On the occurrence of the contingencies mentioned in Section 31(2) of the Act of 1894, it ought to be deposited in the Reference Court as defined under Section 3(d) of the Act of 1894. He submitted that tendering money is not payment and Section 31(1) of the Act of 1894 uses the words 'tender' and 'paid' to convey different meanings and obligations. Mr. Divan argued that the judgments cited by the learned Solicitor General in this regard essentially deal with labour laws, and are inapplicable as these statutes did not contain a provision such as Section 31 of the Act of 1894, which strictly and precisely prescribes what is to be done in the event when the payment is not accepted.

66. It was argued that no rules under the Act of 1894 contemplate deposit in the treasury. Learned counsel submitted that standing orders, which are merely administrative instructions issued for conducting monetary transactions of the State, have in some cases been confused to be Rules framed under Section 55 of the Act of 1894. The Rules or the Standing Orders have not been produced and no evidence has been furnished of compliance with the requirements of Section 55, such as notification in the Gazette. All learned counsel submitted that in any case, delegated/subordinate legislation cannot be inconsistent with, or in any manner depart from the express and precise language of the parent enactment. Again, it was submitted that the State's argument with respect to deposit of compensation amounts in the treasury, is untenable, for two strong reasons: one, that Section 31 itself directed the compensation to be deposited in the court. In the teeth of this express position, the State cannot be heard to say that it could nevertheless "deposit" the amount in the treasury, which is nothing but keeping the money with itself. It was secondly urged, that even otherwise, the Act of 1894 visualized that in regard to matters not provided expressly, rules could be made (Section 55).

67. Learned counsel submitted that the State's argument regarding the interpretation of 'physical possession' to be possession as per the ratio in *Banda Development Authority* (supra), is incorrect. It was submitted that it is important to take note of the conscious inclusion of the word 'physical' in relation to possession. An important distinction is required to be drawn in respect of *de jure* / constructive / deemed possession and 'physical' possession. Even if it is conceded

that drawing of a *Panchnama* is a valid mode of initially taking possession of vast tracts of vacant land, the intention of the legislature is that over a period of five years, such possession must transform to evident and demonstrable 'physical' possession i.e., the manifestation of actual control and dominion over the subject land(s). Learned counsel relied on several decisions in support of their argument that "physical possession" should be construed as *actual physical possession,* and not constructive, or *de jure* possession, which in most cases is possession on paper.[55]

68. Arguing next regarding the interpretation of the proviso to Section 24, it was stated that the same is to be read as a proviso to Section 24 and not Section 24 (1) (b). Mr. Divan submitted that a proviso may in certain cases operate as an independent provision, and the proviso to Section 24 is a stand-alone provision which operates on its own terms. To the extent it is linked to any provision in Section 24, it is linked to Section 24(1)(b) since it permits enhanced compensation (in a particular contingency of non-payment to majority of the landowners) even if an award may have been passed as contemplated in Section 24(1)(b). Mr. Divan placed reliance on the reasons given in the judgment of *Delhi Development Authority v. Virendra Lal Bahri,* [SLP [C] No.37375/2016].

69. All counsel for landowners submitted that there is no valid reason to exclude from the period of 5 years under section 24(2), the time during which a landowner had the benefit of an interim order of a court. In support of this argument, it was argued firstly, that Parliament did not expressly exclude such a period in Section 24. Second, where in the Act of 2013, the legislature did want to exclude the period of a stay or injunction, it has done so by using express words such as in the proviso to Section 19 and the explanation to Section 69 of the Act of 2013. Third, he submitted that the maxim *"actus curiae neminem gravabit"* which means that "the act of court shall prejudice no one" has no application here, as this is a maxim which is applied generally as a principle of equity in individual cases to ensure that there is no injustice. The maxim rarely, if ever, is applied to interpret a statute. Mr. Divan submitted that this Court has declined to rely on this maxim in at least two reported decisions - *Padma Sundar Rao v. State of Tamil Nadu*[56] and *State of Rajasthan & Ors. v. Khandaka Jain Jewellers*[57]. Mr. Divan further placed reliance on *Snell's Equity* (33rd Edition, 2015), which states that the maxim of equity is not a specific rule of principle of law. It is a statement of a broad theme

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[55] *Seksaria Cotton mills v. State of Bombay* 1953 SCR 325 Para 21; *Superintendent v. Anil Kumar* (1979) 4 SCC 274 (Paras11-16); *B. Gangadhar v. Rajalingam* (1995) 5 SCC 238 (Para 5-6) *Guruchand Singh v. Kamla Singh* (1976) 2 SCC 152 (Paras 21-24).

Mohan Lal v. State of Rajasthan (2015) 6 SCC 222 (2 Judges)

Para 11 to 15 endorsing contextual interpretation of the term

[56](2002) 3 SCC 533

[57](2007) 14 SCC 339

which underlies equitable concepts and principles and as a result, the utility of equitable maxims is limited. It further states that the maxim may provide some limited assistance to court in two broad types of situation:

> *"The first is when there is some uncertainty as to the scope of a particular rule of principle, and a court has to fall back on more basic principles to resolve that uncertainty. The second is when a court is exercising an equitable discretion, and seeks to structure that exercise by referring to broader, underlying principles."*

70. Learned counsel further placed reliance on a three-judge Bench decision of this Court in *The Commissioner of Sales Tax v. Parson Tools and Plants*[58], where it was held that:

> *'If the Legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a casus omissus in a statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity.'*

It was submitted that there is no occasion for excluding time spent on litigation. Parliament could have specified a particular date such as 1.1.2009 as the cut-off point under section 24(2). Had a date been so specified, there would have been no occasion to exclude time. Instead of specifying a particular date, the Legislature in the Act of 2013 prescribed the cut-off point with reference to the commencement of the Act. This method of specifying the cut-off point would not attract the maxim *"actus curiae neminem gravabit"*. It was argued that the occasion for excluding time would arise only where there is a starting point and a statutory period to complete the task. In such provisions, it may be reasonable to provide for the exclusion of time by appropriate language in the section. Here, where a cut-off date is prescribed and as such there is no starting point and period for completion of the task, the notion of excluding time spent in litigations is an alien concept. It was, therefore, submitted that it is not the court's business to stretch the words used by the Legislature to fill in gaps or omit words used in the provisions of an Act, i.e., to fill in an obvious and conscious exclusion of a contingency, or a *casus omissus.* In support of this submission, learned counsel relied on decisions of this Court.[59] It was also argued that this Court should not also exclude any period or periods, spent in litigation, when interim orders were

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[58] (1975) 4 SCC 22

[59] *G. Narayanswami v. G. Pannerselvam* (1972) 3 SCC 717 and *Kuldip Nayar vs Union Of India* (2006) 7 SCC 1- both decisions of Constitution Benches.

operating, because, firstly, in each such instance, the landowners were aggrieved by different kinds of arbitrary behaviour, such as not providing opportunity of mandatory hearing (under an absolutely absurd rejection of objections; failure to take note of actual developmental needs, and taking of lands, unconnected with a public purpose, or obvious instances of expropriation of utilities and amenities such as schools, community assets, etc. These led the courts, on a *prima facie* consideration to assess the merit in the challenge and grant interim orders. Such instances could not be called as frivolous litigation, warranting exclusion of time, to deprive the benefit of lapsing, enjoined by the new law. Secondly, it was argued that repeated attempts were made in Parliament to amend the law, to exclude the time, in the manner sought by the State, by use of the *maxim actus curiae neminem gravabit.* However, such amendment could not pass muster.

71. Learned counsel contended that Parliament's intent is to confer a benefit on landholders who were impacted by the erstwhile unfair regime. Urging that under the old law, landholders, to protect their assets from expropriation of their land at paltry amounts, were compelled to use legitimate systems of securing redress by filing cases in court, counsel urged that the correct approach, is to view litigation as a necessity under an unjust former regime and not exclude the period spent under litigation in such an unfair regime. He further urged that the deeming provision with its clear and verifiable benchmarks on the five-year cut-off period, physical possession and payment is easy to operate. Introducing notions such as exclusion of time due to pending litigation would complicate the working of the statute.

72. Learned counsel urged that Section 24(2) uses the expression "or". The Legislature intended the two conditions separated by the word "or" to be alternative conditions. Four situations arise where the conditions are disjunctive: firstly, when physical possession is with the State and compensation is with the citizen, there is no deemed lapse; secondly, when physical possession is with the citizen and compensation is with the State, there is no need for restitution as the State has retained the compensation amount; thirdly, when physical possession is with the citizen, and the compensation is also with the citizen, in such scenarios, the citizen must return the compensation. It was urged that where the State has paid the money by deposit in the Reference Court and the money was lying with the Court, the State may withdraw the money on deemed lapsing. However, if the State were to decide to acquire the land afresh, the compensation already paid may be adjusted; and further since inherent in the notion of lapsing is the requirement for restitution, the State can recover the compensation, *inter alia* by framing suitable rules. The citizen cannot retain compensation "had and received" since this would amount to unjust enrichment. It was submitted that where the physical possession as well as compensation are with the State, i.e., where the State has

taken possession without paying compensation as required under the Act of 1894, there is *no* absolute vesting free from all encumbrances as contemplated under Section 16. In the absence of vesting, the State is required to restore possession to the citizen.

73. Learned counsel argued that having regard to the unfair working of the Act of 1894, giving effect to the legislative intent by reading the expression "or" as "or" is the correct interpretation with beneficent consequences for the landowner. The learned counsel submitted that reading the expression "or" as "and" not only does violence to the plain language of section 24(2) but it also reduces the deeming provision down to vanishing point. Should a conjunctive reading of the conditions be combined with exclusion of the time spent in litigation or due to a stay, then the whole of section 24(2) will be robbed of content since it will apply to very rare cases. It was further submitted that Section 24 does not lay down any specific conditionality in terms of how far back in time the awards contemplated under section 24(2) could have been made. The deeming provision under Section 24(2) operates w.e.f. 1.1.2014 and its effect would cover all cases that fulfil the conditions provided in the statute. Learned counsel cited decisions in support of the interpretation that "or" should be construed disjunctively, not conjunctively as "and".[60]

74. Learned counsel stressed that there are no vested rights created in the State in any case till compensation has been paid and possession has been taken. The Act of 2013 is a beneficial legislation and a radical departure from the previous unjust and oppressive regime. It intends to confer significant benefits to the landowners and makes the exercise of the power of eminent domain compatible with our constitutional values. It ought to therefore be given an interpretation which favours the landowners. Finally, he argued that the decision in *Indore Development Authority* (supra) erroneously upset a consistent line of decisions which began with *Pune Municipal Corporation* (supra). Subsequent decisions of this Court following *Pune Municipal Corporation* (supra) have also considered a host of arguments/issues and there is no compelling reason to make a departure. He submitted that even a larger Bench of this Court is bound to pay due deference to the principle of *Stare Decisis.*

75. Supplementing the submissions, Mr. Dinesh Dwivedi, learned senior counsel for the landowners, argued that the meaning of the phrase *"compensation has not been paid"* should be considered, given that in Section 24(2) *"paid"* is not used. The phrase *"has not been"* is used in respect of both *"possession"* as well as "paid". Therefore, it must mean the same in both respects. The important factors

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[60] *Naga People's Movement of Human Rights vs. Union of India* (1998) 2 SCC 109 (5 Judges); *R.S. Nayak v A.R. Antulay* 1984 (2) SCC 183; and *Life Insurance Corporation v D. J. Bahadur* 1981 (1) SCC 315.

to be borne in mind - and to distinguish the phrase "paid" from *"deposit",* is whether in the court under Section 31 (2) or in the treasury under Section 31(1). It is urged that an analysis of Sections 17 (3A) & (3B), 31 (1) & (2) and Section 28 read with Section 34 of the Act of 1894 shows that these provisions clearly distinguish between *tender, paid* or *deposit* whether in the court or the treasury.

76. Learned counsel argued that three different words used in the same Act, in various provisions of the Act, cannot mean the same. It follows also from the reading of Section 19(1)(c) and (cc). In both these provisions word *"tender"* is used in contrast to word *"paid"* while word paid is used in contrast to word *"deposit"*. The word *"deposit",* wherever used, is in the context of *"deposit in Court"* only not treasury. The expression *"tender payment"* under Section 17 (3A) and Section 31(1) of the Act of 1894 were followed by the words *"pay it to them"*. Therefore, *tender* cannot mean *"paid"*. It is urged that these terms fall in Part V of the Act, titled as *"Payment"*. The term *"pay it to them"* under Section 31 after *"tender"* must mean an additional action or step. When after "tender" an effort is made *"to pay"* the compensation and the same is accepted by the beneficiary, it becomes *"paid"*. The *"deposit"* under Section 31(2) only comes in when the beneficiary declines payment. This clearly implies that *"tender of payment"* cannot be equated with *"pay it to them"* or *"deposit in Court"* under Section 31(1) and 31 (2). It is argued that what follows is that tender of payment by itself is not enough. The State's interpretation is contested as incorrect because if tender is equal to being paid then why does legislature provide for *"deposit in court"*. The amount is deemed to be paid on tender and the obligation to pay is discharged then the question is why require *"deposit in Court"*. Learned counsel argued that *"Tender"* can never be deemed as *"paid":* This is not only evident from reading of Section 19(c) where the term *"paid or tendered"* is depicted as alternates. Similarly, "paid or deposited" are used alternately. Likewise, Sections 17(3)(b), 19(cc) and 34 use these words alternately. As said above if *"tender"* would amount to "paid" and then the compensation would be deemed to be paid, resulting in discharge of obligation to pay, then why deposit in court under Section 31(2) to make it "*custodia legis*". Section 31(2) would become redundant in most of the cases.

77. Learned counsel conceded that there is no doubt that on a decline of payment by the beneficiary it has to be mandatorily deposited in Court under Section 31(2). The provision uses the phrase *"shall deposit"* and this gives a valuable right to the payee, not only of interest in the event it is not *"deposited in court"* but also a right to seek investment of compensation under Section 33. These statutory rights are adversely affected if *"deposit"* is not in *"court"*. Therefore, it is amply clear that "deposit in treasury is not an option available. It cannot be a substitute for *"deposit in Court"*. Besides Section 31(1) and 31 (2) of

the Act of 1894 present a complete code for payment and there is no gap or uncovered area to permit rules to supplement. Any deposit in treasury was in breach of Section 31 and therefore, impermissible. Also, most of the States had no rules under Section 55. In this context, executive instructions cannot prevail over law. Law can never be interpreted with the aid of subordinate legislation or executive instructions. It was further submitted that Sections 17(3A) and (3B), 28, 31, 33 and 34 of the Act of 1894 are a clear pointer that *"tender"* is not *"paid"* and neither is *"deposit"*. Likewise, these provisions frequently use words "paid or deposited" which shows they are different. Deposit cannot be, therefore, equated with paid as they are more than once separated by word 'or'.

78. It was contended that the scheme of the Act of 1894 was clear and categorical that the amount of compensations when accepted by the beneficiary is deemed to be "paid" for interest to stop running. The running of interest under Section 34 denotes non-discharge of obligation to pay, otherwise why pay interest? The *"deposit in Court"* may stop running of interest and therefore, may for this purpose be taken to be paid, but when it comes to actual meaning in the above provisions, *"paid and deposit"* are invariably separated by the use of word "or" in between them. Therefore, it is submitted that when Section 24(2) of the New Act uses the phrase "compensation has not been paid" it uses the terminology of the proviso to Section 34(proviso) and must have the same meaning "has not been paid" cannot be read as "has not been deposited". If this is the right interpretation than the coverage of Section 24(2) also expands to cover those cases in which the compensation has not been actually paid but has been deposited in the Court. This would also be in keeping with the legislative policy contained in the Preamble, to give just and fair compensation to those whose lands have been acquired as per the Old Act. Coverage of the New Act is co-related to persons whose "land has been acquired". The policy of Section 24 also reflects this expansive liberal approach of *"just and fair compensation"*. Section 24 would therefore have to be seen in the light of this liberal policy intent.

79. It was urged that these States' arguments regarding revival of claims or resulting in impossible situations causing irreparable harm are not very relevant once the legislative policy is clear. The provision has to be interpreted in a manner that it subserves the legislative policy intent of giving just and fair compensation to those whose lands were acquired (possession taken) under the Act of 1894. Once the legislative policy or intent is clear then the objections relating to harsh consequences are not really relevant. It was stated that State may be put into a difficult situation, but the solution too is provided in the last part of Section 24(2) which reflects the words *"if it so chooses",* it can acquire afresh under Section 24. Learned counsel relied on *Padma Sunder Rao* (supra); *Popat Bahiru Govardhane*

v. Land Acquisition Officer[61] and *B. Premanand v. Mohan Koikal*[62]. It was urged that the legislative policy may cause hardship or difficulties to some or the State may be put to an impossible situation; yet cannot take away from Parliamentary intent. Parliament has enough wisdom to know these difficulties, the law prevailing earlier or the ground realities. It would be deemed to be not only aware of the difficulties, but also to have assessed them while framing the liberalised policy. The question is one of intent. The intent has to be seen primarily from the words used in the text. It is only if such intent is not clear that courts have to see them with the aid of the context. The difficulties as well as harsh consequences cannot be utilized to assess the intent embedded in the provision if they are clear, otherwise from the text, or the context. Not only has Parliament not provided any clause creating any kind of exception, or extension of five years in cases of litigating land oustees who may have an interim orders in their favour, stalling the acquisition or payment of compensation. All that the provision says is *"or compensation has not been paid"*. The projected policy intent is broad and unencumbered by any exception. This is a clearest indicator of legislative intent to cover all such cases that may cause hardship to the State or may be due to the fault of Court or the litigious land oustee. The intent is clear and therefore, has to be read apart from difficulties or hardships.

80. It is submitted that the State's contention with regard to a differential approach for possession and compensation is irrational and is against the very grain of Section 24(2) and is also unreasonable and discriminatory. It is unreasonable because there are hardly any cases where compensation may have been paid, yet possession may not have been taken. Most of the cases are under Section 17(1) where possession is invariably taken while compensation remains unpaid as award is not made. By reading word *'or'* as '*and* ', the words *"or the compensation has not been paid"* become otiose or redundant. Parliament could have only said that lapsing would occur only if possession has not been taken, because if possession is taken then there would never be lapsing and there would be no need to consider *"or"* as *"and"*. Therefore, such an interpretation (i.e., reading "or" conjunctively) is contrary to every rule of interpretation and contrary to the Legislative policy indicated in the Preamble of giving just and fair compensation in cases of earlier acquisitions, which includes cases where possession has been taken.

81. Learned counsel urged that Section 24(2) would become discriminatory if "or" is read as "and". For this, it would be necessary to analyse Section 24(1)(a). Section 24(1)(a) applies to a situation where there is no award made till the commencement of the New Act. No award primarily means *"compensation has*

[61]2003 (10) SCC 765
[62](2011) 4 SCC 266

not been paid". Importantly in a case under Section 17 of the Act of 1894, which is most frequently utilised, possession may be taken before award is made or compensation is paid. In other words, Section 24(1)(a) does visualize or cover cases where possession may have been taken but *"compensation has not been paid"*. It, therefore, requires re-determination of compensation under Sections 26-30 of the New Act. The problems of who to pay the enhanced compensation, as referred above, would also arise in this situation. Yet Parliament has ignored these difficulties and provided for redetermination. Section 24(1)(a) may travel back to period of five years or more, or may be 10-15 years as in case of Section 24(2). It would not be reasonable to restrict the retrospectivity of Section 24(1)(a) with the aid of Section 11A of the old Act, to 2 years before commencement. It would be incorrect because then one would be ignoring *Explanation* to Section 11A (proviso). The said Explanation visualises indefinite extension of the period of award from 2 years. It would not be, therefore, reasonable to exclude such cases where though possession may have been taken, but compensation may not have been paid for a very long period of time upto commencement of the new Act. Section 24(1)(a) does not contain any provision like Section 25 (proviso), Section 19(7)(proviso) and Section 69(2)(explanation) and therefore, is wide in its coverage in the absence of exceptions as above.

82. Learned counsel urged that Section 24(2) is a special provision giving higher benefit because in the cases covered by Section 24(2) "compensation has not been paid" despite award. Would it be rational to read Section 24(2) in such a manner that deprives it of its value and worth and makes it ineffective. Section 24(2) would become ineffective as a whole because there would be rarest of the rare cases, where both the conditions would be fulfilled. The experience shows in vast majority of cases of acquisition under the old Act, possession is taken while award & compensation come much later. This is because Sections 9 & 17(6) of the Act of 1894 were used in vast majority of acquisitions and the Legislature was aware of it. The law does not compel doing of an act that is impossible. It is emphasized that the principle does not apply as the new Act is not requiring any such performance. The new Act after recognising the past, is providing new solutions, rights and benefits. Section 24(2) by itself does not compel performance of an impossible act. This principle could have been relevant during earlier Act but is hardly relevant for interpreting the scope of Section 24(2) of the New Act. Section 24 clearly postulates that even though the Act may be impossible of performance, or results in undue advantage to the beneficiary despite his fault in declining, yet benefit of Section 24(2) may be given without creating any exception. There is no constitutional restriction on the Legislature that such cases or situations have to be excluded. The legislature can provide benefit in the same manner to all, difficulties apart. Reliance is placed on certain

decisions in support of this proposition.[63] Therefore, such interpretation which excludes the benefits under Section 24(2) by resorting to such arguments of difficulties is meaningless. The giving of benefit to all by ignoring above circumstance is neither illegal nor unjust. It is neither anomalous nor absurd. It is urged that what the court feels is not important; what is relevant is the view of the legislature, to be culled out from the reading of only the text or the context; not in any other manner. For this rule, reliance was placed on *Mohd. Kavi v. Fatmabal Ibrahim*[64] and other decisions.

83. Other learned senior counsel, i.e M/s Dushyant Dave, Gopal Shankarnarayan, Siddharth Luthra, Nakul Dewan, Manoj Swaroop, Anukul Chandra Pradhan supplemented the submissions of Mr. Divan and Mr. Dwivedi. It was argued by them that this Court should not depart from the rule of literal interpretation, because that would be both beneficial and purposive, given the oppressive nature of the Act of 1894. In this context, it was submitted that the expressions "paid" and "or" should be construed in the manner that Parliament intended, having regard to the overall intent of ensuring the acquisition proceedings, where either compensation was not paid, or possession was not taken, in respect of awards made before 1.1.2009, should lapse. It was submitted that there is no insurmountable difficulty or impossibility, even if possession is taken (but compensation not paid) and even if vesting occurs, Section 24(2) of the new Act expressly provides for lapsing. The remedy in that case, for the appropriate Government is the option of going through the acquisition again using emergency provisions. In that event, the authorities would have to provide for rehabilitation and enhanced compensation. In any case, the court always has the option in such cases where third party rights have ensued to do complete justice, by duly compensating those whose land is acquired, without disturbing the possession of third party who has been given the land.

84. The learned counsel submit that this Court should base itself on the approach to interpret Section 24 of the Act of 2013 is that it is a savings clause with an exclusionary deeming provision. It is urged that the words "physical possession" under Section 24(2) should be read to reflect the actual state of affairs as on the date when the Act of 2013 came into force, i.e., there was actual physical possession of the land. This would also be the case in relation to the term "compensation not paid" under Section 24(2), where compensation would either have had to be paid or deposited in court; and that use of the term "or" signifies

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[63] *Martin Burn Ltd v Corporation of Calcutta* 1966 (1) SCR 543; *Commissioner of Agricultural Income Tax v Keshab Chandra Mandal* 1950 SCR 435; and *State of Maharastra v Nanded Parbhani Sangh* 2000 (2) SCC 69.

[64] 1997 (6) SCC 71 and *M.V. Javali v Mahajan Borewell & Co. Ltd* 1997 (8) SCC 72; and *Nanded Parbhani Sangh* (supra); and *SMS Pharmaceuticals Ltd. v. Neeta Bhalla* (2005) 8 SCC 89.

that the two conditions set out above are disjunctive. It is argued that Section 114 consists of two sections (1) a repeal clause set out in Section 114 (1); and (2) a savings clause set out in Section 114(2). It is contended that there is a distinction in the manner in which a repealing clause is construed as compared to the manner in which a savings clause is construed. While a repealing clause, followed by a new legislation on the same subject-matter would result in a line of enquiry about what rights are obliterated under the old Act by the new Act, a savings clause would be construed in a manner that resurrects a provision, which would otherwise be obliterated on account of the repeal. In relation to a repeal clause, the effect of obliterating the provisions of the previous enactment would be as if it never existed, except for vested rights, which would be protected under Section 6 of the General Clauses Act. Section 6 of the General Clauses Act, thus operated as a savings clause. Learned counsel rely on the judgment of this court in *State of Punjab v. Mohar Singh*[65] that the effect of repealing a statute was said to be to obliterate it as completely from the records of Parliament as if it had never been passed, except for the purpose of those actions, which were commenced, prosecuted and concluded while it was an existing law and that:

> *"A repeal therefore without any saving Clause would destroy any proceeding whether not vet begun or whether pending at the time of the enactment of the Repealing Act and not already prosecuted to a final judgment so as to create a vested right".*

85. Submitting that the effect of Section 6 of the General Clauses Act, is that unless the contrary intention appears, the repeal does not affect the previous operation of the repealed enactment or anything duly done or suffered under it and any investigation, legal proceeding or remedy may be instituted, continued or enforced in respect of any right, liability and penalty under the repealed Act as if the Repealing Act had not been passed. However, in case of the Act of 2013, it is urged that Parliamentary intent was not to simply let Section 6 of the General Clauses Act operate as the savings provision. Apart from Section 6, the intent, evident from Section 114(2), was to set out a specific provision which would save proceedings. It was submitted that those would be provisions that would otherwise not have been saved by the General Clauses Act.

86. It is in this background that Section 24 of the Act of 2013 must be interpreted. While the Respondent accepts that Section 24 could have been more clearly worded to reflect the legislative intent as a savings provision, to fully appreciate the operation of Section 24 (1)(b) as a classical savings provision which saves proceedings under the Act of 1894 if an award had been made under Section 11, in a manner as if the Act of 1894 had not been repealed. Section 24(1)(a) deals with a situation where no award has been made and in providing for

[65](1955) 1 SCR 893

determination of compensation in terms of the Act of 2013 naturally would mean that proceedings under the Act of 1894 would be revived, save and except on the issue of computation of compensation. Having revived proceedings under Section 24(1), Section 24(2) provides for a deemed lapsing through a *non-obstante* provision for an award made five years or prior to the date of the commencement of the Act of 2013. This creates a legal fiction which, as held by this court in *J.K.Cotton Spg. & Wvg.Mils Ltd. v. Union of India,*[66] is:

> *"... an admission of the non-existence of the fact deemed... The legislature is quite competent to enact a deeming provision for the purpose of assuming the existence of a fact which does not really exist."*

Learned counsel also placed reliance on the decision of the Constitution Bench in *Bengal Immunity Co.Ltd. v. State of Bihar*[67] to the following effect:

> *"[l]egal fictions are created only for some definite purpose"and referred to the decision East End Dwellings Co.Ltd.v. Finsbury Borough Council,1952 AC 109 at paragraph 71,which reads as follows:*
>
> > *"if you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."" (Emphasis Supplied)*

87. Other decisions of this Court were also relied on, in this context.[68] Learned counsel stated that given that it is a legal fiction which leads to a deemed lapsing of proceedings under the Act of 1894, Parliamentary intent under Section 24(2) ought to be construed so that *"physical possession"* under Section 24(2) reflects the actual state of affairs as on the date when the Act of 2013 came into force; similarly, too the term compensation not paid under Section 24(2). It was stated, that retaining amounts in the treasury, pursuant to executive rules would not suffice for compliance with the *payment* condition. Learned counsel also urged that this court should interpret "or" as signifying a disjunctive reading of the two conditions. Comparing this legal fiction created under Section 24(2) with the

[66] 1987 Supp SCC 350
[67] (1955)2 SCR 603
[68] *MIG Cricket Club v. AbhinavSahakar Education Society,* (2011) 9 SCC 97

State's obligations under the Act of 1894 would be inconsistent with the decisions of this Court, under which legal fictions are to be read as it is i.e., the state of affairs as plainly set out in the legal fiction. Therefore, the effect of Section 24 (2) is that if either of the situations are not met, the acquisition proceedings under the Act of 1894 lapse and the State can initiate proceedings afresh in accordance with the Act of 2013. This construction, urge learned counsel is also purposive and practical. If the State has not taken physical possession of a property even if compensation has been paid for over 5 years prior to the commencement of the Act of 2013, because it no longer serves the purpose of acquisition, it can drop the proceedings as those would have lapsed. In such an event, the State would naturally be entitled to restitutory recovery. However, if the State has failed to take physical possession, it cannot be benefited by its inactions and must restart proceedings under the Act of 2013. In such a case, the compensation paid can always be re-adjusted against compensation determined under the Act of 2013. *Arguendo,* it is urged that even if Section 114 (2) of the Act of 2013 is construed to keep alive the State's vested rights by virtue of Section 6 of the General Clauses Act, such rights are limited by Section 24(1)(a) and Section 24(2) of the Act of 2013. Thus, while ordinarily the acquisition proceedings that were pending in respect of awards passed under the Act of 1894 would have continued, the legislature by way of a creating a legal fiction, provided for the deemed lapse of these proceedings in respect of which physical possession has not been taken or compensation not paid. Learned counsel placed reliance on some decisions of this Court.[69] *VKNM Vocational Higher Secondary School v. State of Kerala,*[70] where it was held that:

> *"...a vested right can also be taken away by a subsequent enactment if such subsequent enactment specifically provides by express words or by necessary intendment. In other words, in the event of the extinction of any such right by express provision in the subsequent enactment, the same would lose its value."*

88. It was submitted that in order to determine the accrued rights and incurred liabilities that have been saved under the Act of 1894, the line of inquiry is not to enquire if the new enactment has by its new provisions kept alive the rights and liabilities under the repealed law, but whether it has taken away those rights and liabilities.

89. All learned counsel supported the submission that the proviso is not restricted in its operation to Section 24 (2) only and that its placement is not

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[69] *Jayantilal Amrathlal v. Union of* India,(1972) 4 SCC 174, *T.S.Baliah v. Income Tax Officer, Central Circle VI,Madras*,1969 (3) SCR 65

[70] 2016 (4) SCC 216.

determinative. It was emphasized that the proviso does not say that higher compensation would be paid, in the contingency provided by it, *as an option to avoid lapsing*. The absence of any reference to lapsing, or the ingredients of Section 24 (2) clearly meant that the benefit of higher compensation in the event a majority of the landowners were not paid compensation (under the old Act) was to enure to all falling in the same class, i.e., those whose lands were subjected to acquisition, whether five years prior to or less than coming into force of the Act of 2013.

Relevant provisions

90. For appreciating the controversy in the present cases, it is essential to extract certain relevant provisions of the Act of 1894 as well as the Act of 2013. The provisions of the Act of 1894 are reproduced below:

> ***"12 Award of Collector when to be final.***
>
> *(1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and apportionment of the compensation among the persons interested.*
>
> *(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.*
>
> *** ***
>
> ***"17. Special powers in case of urgency. -*** *(1) In cases of urgency, whenever the appropriate Government, so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.*
>
> *[(3A) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3)-*
>
> *(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and*
>
> *(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2),*

and where the Collector is so prevented, the provisions of section 31, sub-section (2) (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.

(4) In the case of any land to which,, in the opinion of the [appropriate Government], the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the date of the publication of the notification under section 4, sub-section (1).]"

***16. Power to take possession.**—When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.*

*** ***

***31. Payment of compensation or deposit of same in Court.** - (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.*

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of the appropriate Government instead of awarding a money compensation in respect of any land,

make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land revenue on other lands held under the same title or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof."

*** ***

34 Payment of interest

When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of[72] [nine per centum] per annum from the time of so taking possession until it shall have been so paid or deposited:

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry."

The relevant provisions of the Act of 2013 are as follows:

"24. Land acquisition process under Act No. 1 of 1984 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, --

(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 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."

*** ***

114. Repeal and saving.*-(1) The Land Acquisition Act, LA (1 of LA), is hereby repealed.*

(2) Save as otherwise provided in this Act the repeal under sub-section (1) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals."

Section 6 of the General Clauses Act, 1897 reads as follows:

"Section 6 - Effect of repeal

Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty,

forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

Salient features of the Act of 2013

91. There can no dispute, no two opinions about the fact that provisions of the Act of 2013, were enacted with the object of providing fair compensation and rehabilitating those displaced from their land. The Introduction and Statement of Objects and Reasons of the Act of 2013 are extracted hereunder:

"INTRODUCTION

The Land Acquisition Act, LA was a general law relating to acquisition of land for public purposes and also for companies and for determining the amount of compensation to be made on account of such acquisition. The provisions of the said Act was found to be inadequate in addressing certain issues related to the exercise of the statutory powers of the State for involuntary acquisition of private land and property. The Act did not address the issues of rehabilitation and resettlement to the affected persons and their families. There had been multiple amendments to the Land Acquisition Act, LA not only by the Central Government but by the State Governments as well. However, there was growing public concern on land acquisition, especially multi-cropped irrigated land. There was no central law to adequately deal with the issues of rehabilitation and resettlement of displaced persons. As land acquisition and rehabilitation and resettlement were two sides of the same coin, a single integrated law to deal with the issues of land acquisition and rehabilitation and resettlement was necessary.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 addresses concerns of farmers and those whose livelihood are dependent on the land being acquired, while at the same time facilitating land acquisition for industrialization, infrastructure and urbanization projects in a timely and transparent manner.

This Act represents a change in the legislative approach to land acquisition. It introduces for the first time provisions for social impact analysis, recognizes non-owners as affected persons, a mode of acquisition requiring consent of the displaced and statutory entitlements for resettlement. In addition, it has restricted the grounds on which land may be acquired under the urgency clause.

STATEMENT OF OBJECTS AND REASONS

The Land Acquisition Act, LA is the general law relating to acquisition of land for public purposes and also for companies and for determining the amount of compensation to be made on account

of such acquisition. The provisions of the said Act have been found to be inadequate in addressing certain issues related to the exercise of the statutory powers of the State for involuntary acquisition of private land and property. The Act does not address the issues of rehabilitation and resettlement to the affected persons and their families.

2. The definition of the expression "public purpose" as given in the Act is very wide. It has, therefore, become necessary to re-define it so as to restrict its scope for acquisition of land for strategic purposes vital to the State, and for infrastructure projects where the benefits accrue to the general public. The provisions of the Act are also used for acquiring private lands for companies. This frequently raises a question mark on the desirability of such State intervention when land could be arranged by the company through private negotiations on a "willing seller-willing buyer" basis, which could be seen to be a more fair arrangement from the point of view of the land owner. In order to streamline the provisions of the Act causing less hardships to the owners of the land and other persons dependent upon such land, it is proposed repeal the Land Acquisition Act, LA and to replace it with adequate provisions for rehabilitation and resettlement for the affected persons and their families.

3. There have been multiple amendments to the Land Acquisition Act, LA not only by the Central Government but by the State Governments as well. Further, there has been heightened public concern on land acquisition, especially multi-cropped irrigated land and there is no central law to adequately deal with the issues of rehabilitation and resettlement of displaced persons. As land acquisition and rehabilitation and resettlement need to be seen as two sides of the same coin, a single integrated law to deal with the issues of land acquisition and rehabilitation and resettlement has become necessary. Hence the proposed legislation proposes to address concerns of farmers and those whose livelihoods are dependent on the land being acquired, while at the same time facilitating land acquisition for industrialization, infrastructure and urbanization projects in a timely and transparent manner.

4. Earlier, the Land Acquisition (Amendment) Bill, 2007 and Rehabilitation and Resettlement Bill, 2007 were introduced in the Lok Sabha on 6th December 2007 and were referred to the Parliamentary Standing Committee on Rural Development for Examination and Report. The Standing Committee presented its reports (the 39th and 40th Reports) to the Lok Sabha on 21st October 2008 and laid the same in the Rajya Sabha on the same day. Based on the recommendations of the Standing Committee and

as a consequence thereof, official amendments to the Bills were proposed. The Bills, along with the official amendments, were passed by the Lok Sabha on 25th February 2009, but the same lapsed with the dissolution of the 14th Lok Sabha.

5. It is now proposed to have a unified legislation dealing with acquisition of land, provide for just and fair compensation and make adequate provisions for rehabilitation and resettlement mechanism for the affected persons and their families. The Bill thus provides for repealing and replacing the Land Acquisition Act, LA with broad provisions for adequate rehabilitation and resettlement mechanism for the project affected persons and their families.

6. Provision of public facilities or infrastructure often requires the exercise of powers by the State for acquisition of private property leading to displacement of people, depriving them of their land, livelihood, and shelter, restricting their access to traditional resource base and uprooting them from their socio-cultural environment. These have traumatic, psychological, and socio-cultural consequences on the affected population, which call for protecting their rights, particularly in case of the weaker sections of the society, including members of the Scheduled Castes (SCs), the Scheduled Tribes (STs), marginal farmers and their families.

7. There is an imperative need to recognise rehabilitation and resettlement issues as intrinsic to the development process formulated with the active participation of affected persons and families. Additional benefits beyond monetary compensation have to be provided to families affected adversely by involuntary displacement. The plight of those who do not have rights over the land on which they are critically dependent for their subsistence is even worse. This calls for a broader concerted effort on the part of the planners to include in the displacement, rehabilitation, and resettlement process framework, not only for those who directly lose their land and other assets but also for all those who are affected by such acquisition. The displacement process often poses problems that make it difficult for the affected persons to continue their traditional livelihood activities after resettlement. This requires a careful assessment of the economic disadvantages and the social impact arising out of displacement. There must also be holistic effort aimed at improving the all-round living standards of the affected persons and families.

8. A National Policy on Resettlement and Rehabilitation for Project Affected Families was formulated in 2003, which came into force with effect from February 2004. Experience gained in implementation of this policy indicates that there are many issues

addressed by the policy which need to be reviewed. There should be a clear perception, through a careful quantification of the costs and benefits that will accrue to society at large, of the desirability and justifiability of each project. The adverse impact on affected families-economic, environmental, social and cultural-must be assessed in participatory and transparent manner. A national rehabilitation and resettlement framework thus needs to apply to all projects where involuntary displacement takes place.

9. The National Rehabilitation and Resettlement Policy, 2007, has been formulated on these lines to replace the National Policy on Resettlement and Rehabilitation for Project Affected Families, 2003. The new policy has been notified in the Official Gazette and has become operative with effect from the 31st October, 2007. Many State Governments have their own Rehabilitation and Resettlement Policies. Many Public Sector Undertakings or agencies also have their own policies in this regard.

10. The law would apply when Government acquires land for its own use, hold and control, or with the ultimate purpose to transfer it for the use of private companies for stated public purpose or for immediate and declared use by private companies for public purpose. Only rehabilitation and resettlement provisions will apply when private companies buy land for a project, more than 100 acres in rural areas, or more than 50 acres in urban areas. The land acquisition provisions would apply to the area to be acquired but the rehabilitation and resettlement provisions will apply to the entire project area even when private company approaches Government for partial acquisition for public purpose.

11. "Public purpose" has been comprehensively defined, so that Government intervention in acquisition is limited to defence, certain development projects only. It has also been ensured that consent of at least 80 per cent of the project affected families is to be obtained through a prior informed process. Acquisition under urgency clause has also been limited for the purposes of national defence, security purposes, and Rehabilitation and Resettlement needs in the event of emergencies or natural calamities only.

12. To ensure food security, multi-crop irrigated land shall be acquired only as a last resort measure. An equivalent area of culturable wasteland shall be developed if multi-crop land is acquired. In districts where net sown area is less than 50 per cent of total geographical area, no more than 10 per cent of the net sown area of the district will be acquired.

13. To ensure comprehensive compensation package for the land owners, a scientific method for calculation of the market value of the land has been proposed. Market value calculated will be multiplied by a factor of two in the rural areas. Solatium will also be increased upto 100 per cent of the total compensation. Where land is acquired for urbanization, 20 per cent of the developed land will be offered to the affected land owners.

14. Comprehensive rehabilitation and resettlement package for land owners including subsistence allowance, jobs, house, one acre of land in cases of irrigation projects, transportation allowance, and resettlement allowance is proposed.

15. Comprehensive rehabilitation and resettlement package for livelihood losers, including subsistence allowance, jobs, house, transportation allowance, and resettlement allowance is proposed.

16. Special provisions for Scheduled Castes and the Scheduled Tribes have been envisaged by providing additional benefits of 2.5 acres of land or extent of land lost to each affected family; one-time financial assistance of Rs. 50,000/-; twenty-five per cent additional rehabilitation and resettlement benefits for the families settled outside the district; free land for community and social gathering and continuation of reservation in the resettlement area, etc.

17. Twenty-five infrastructural amenities are proposed to be provided in the resettlement area including schools and play grounds, health centres, roads, and electric connections, assured sources of safe drinking water, Panchayat Ghars, Anganwadis, places of worship, burial and cremation grounds, village level post offices, fair price shops, and seed-cum-fertilizers storage facilities.

18. The benefits under the new law would be available in all the cases of land acquisition under the Land Acquisition Act, LA, where award has not been made, or possession of land has not been taken.

19. Land that is not used within ten years in accordance with the purposes, for which it was acquired, shall be transferred to the State Government's Land Bank. Upon every transfer of land without development, twenty per cent of the appreciated land value shall be shared with the original land owners.

20. The provisions of the Bill have been made fully compliant with other laws such as the Panchayats (Extension to the Scheduled Areas) Act, 1996; the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Land Transfer Regulations in Fifth Scheduled Areas.

21. Stringent and comprehensive penalties both for the companies and Government in cases of false information, mala fide action, and contravention of the provisions of the propose legislation have been provided.

22. Certain Central Acts dealing with the land acquisition have been enlisted in the Bill. The provisions of the Bill are in addition to and not in derogation of these Acts. The provisions of this Act can be applied to these existing enactments by a notification of the Central Government.

23. The Bill also provides for the basic minimum requirements that all projects leading to displacement must address. It contains a saving clause to enable the State Governments, to continue to provide or put in place greater benefit levels than those prescribed under the Bill.

24. The Bill would provide for the basic minimum that all projects leading to displacement must address. A Social Impact Assessment (SIA) of proposals leading to displacement of people through a participatory, informed and transparent process involving all stake-holders, including the affected persons will be necessary before these are acted upon. The rehabilitation process would augment income levels and enrich quality of life of the displaced persons, covering rebuilding socio-cultural relationships, capacity building, and provision of public health and community services. Adequate safeguards have been proposed for protecting rights of vulnerable sections of the displaced persons.

25. The Bill seeks to achieve the above objects. The notes on clauses explain the various provisions contained in the Bill."

92. Section 2(2) of the Act of 2013, provides that in the event of acquisition for private companies, consent of 80% of the affected families has to be obtained and for the public-private partnerships, consent of 70% of the affected families is required to be taken. In Section 3(c), the term 'affected family' has been widened, which *inter alia* includes members of the Schedule Tribes, forest dwellers, and families whose livelihood is dependent on forests or water bodies. A "Social Impact Assessment" ("SIA") has to be prepared, as provided in Sections 4 to 9. Special provisions to safeguard food security have been made by prohibiting the acquisition of multi-cropped land except in exceptional circumstances as enumerated in Section 10. Section 11 is akin to Section 4 of the Act of 1894 regarding issuance of preliminary notification. The SIA report lapses in case preliminary notification under Section 11 is not issued within a period of 12 months from the date of the report. A Rehabilitation and Resettlement Scheme ("RR Scheme") is provided in Sections 16 to 18. The Collector has to pass the award under Section 23. Section 26 deals with the determination of the market

value by the Collector. Section 30 provides for Solatium at 100%. The RR award has to be passed by the Collector under Section 31, and notice has to be given immediately under Section 37, which is equivalent to Section 12 of the Act of 1894. Section 38 provides that Collector has to take possession after full payment of compensation has been made as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons. Thus, there is a departure from Section 16 Act of 1894 in the provisions contained in Section 38 of the Act of 2013. The Collector has to ensure under Section 38 of Act of 2013 that the rehabilitation and resettlement process is complete before displacing people. Section 40 deals with urgent cases. The Government may acquire land without making award in the case of urgency for the defence of India or national security. In other emergencies arising out of natural calamities or any other emergencies special provisions under Section 40 may be exercised with the approval of the Parliament. In such event, the provisions of the Social Impact Assessment and Rehabilitation and Resettlement Scheme may be exempted. Additional compensation of 75% is payable in such cases. Section 41 contains special provisions for Scheduled Castes and Scheduled Tribes by prohibiting acquisition in scheduled areas as far as possible. Sections 43 to 50 deal with appointment and constitution of the Rehabilitation and Resettlement Authorities and Monitoring Committees at Project as well as National Levels. Sections 51 to 74 deal with the establishment of Land Acquisition, Rehabilitation, and Resettlement Authority. Sections 77 to 80 are *pari materia* to the provisions contained in Sections 31 to 34 of the Act of 1894, relating to payment, deposit, and interest, etc. Section 93 is equivalent to Section 48 of the Land Acquisition Act. The Government shall be at liberty to withdraw from acquisition if possession of land has not been taken. Section 101 provides that land be returned to the original owner or the Land Bank of the appropriate Government if acquired land remains unutilized for a period of five years. Thus, various departures have been made from the old Land Acquisition Act, in the Act of 2013 relating to Social Impact Assessment, Rehabilitation and Resettlement Scheme, etc. It ensures higher compensation than the old Act; the public purpose has been defined; consent provisions have also been made. The interest of Scheduled Castes and Scheduled Tribes have been adequately protected. Various Committees and Authorities have been constituted. The definition of 'affected families' has been widened.

93. Undoubtedly the Act of 2013 has provided safeguards, in the form of higher compensation and provisions for rehabilitation, which are necessary. In that light, the court has to interpret its provisions, to give full and meaningful effect to the legislative intent keeping in mind the language and tenor of the provisions, it is not for the court to legislate. The Court can only iron out creases to clear ambiguity. The intended benefit should not be taken away. At the same time,

since the Act of 2013, envisages lapse of acquisitions notified (and in many cases, completed by the issuance of the award) due to indolence and inaction on the part of the authorities and therefore, intends acquisition at a fast track, the full effect has to be given to the provisions contained in Section 24.

Scope of Section 24

94. Section 24 begins with a *non-obstante* clause, overriding all other provisions of the Act of 2013 including Section 114 of the Act of 2013, dealing with repeal and saving. In terms of Section 114 of the Act of 2013, the general application of Section 6 of the General Clauses Act, 1897, except otherwise provided in the Act, has been saved. Section 6(a) of the General Clauses Act, 1897 provides that unless a different intention appears, the repeal shall not revive anything not in force or existing at the time when the repeal has been made. The effect of the previous operation of any enactment so repealed or anything duly done or suffered thereunder is also saved by the provisions contained in Section 6(b). As per Section 6(c), the repeal shall not affect any right, privilege, obligation or liability acquired, accrued, or incurred.

95. Section 24(1)(a) of the Act of 2013 read with the *non-obstante* clause provides that in case of proceedings initiated under the Act of 1894 the award had not been made under Section 11, then the provisions of the Act of 2013, relating to the determination of compensation would apply. However; the proceedings held earlier do not lapse. In terms of Section 24(1)(b), where award under Section 11 is made, then such proceedings shall continue under the provisions of the Act of 1894. It contemplates that such pending proceedings, as on the date on which the Act of 2013 came into force shall continue, and taken to their logical end. However, the exception to Section 24 (1)(b) is provided in Section 24(2) in case of pending proceedings; in case where the award has been passed five years or more prior to the commencement of the Act of 2013, the physical possession of the land has not been taken, or the compensation has not been paid, the proceedings shall be deemed to have lapsed, and such proceedings cannot continue as per the provisions of Section 24(1)(b) of the Act of 2013.

96. Section 24(2) carves out an exception to Section 24(1)(b), where the award has been passed, and the proceedings are pending, but in such proceedings, physical possession of the land has not been taken, or compensation has not been paid, proceedings shall lapse. There are twin requirements for the lapse; firstly, physical possession has not been taken and, secondly, compensation has not been paid. In case, possession has been taken but compensation has been paid, there is no lapse of the proceedings. The question which is to be decided is whether the conditions are cumulative, i.e both are to be fulfilled, for lapsing of acquisition proceedings, or the conditions are in the alternative ("either/or"). According to the

State and acquiring agencies, in a situation where possession has been taken, and compensation is not paid, there is no lapse: also in case where compensation has been paid, but possession not taken in a proceeding pending as on 1.1.2014, there is no lapse. *Sine qua non* is that proceeding must be pending. They argue that the word "or" used in phrase 'the physical possession of the land has been not taken, or the compensation has not been paid', has to be interpreted as "and" as two negative requirements qualify it. Furthermore, argues the State when two negative conditions are connected by "or," they are construed as cumulative, the word "or" is to be read as "nor" or "and." Naturally, the landowners argue to the contrary, i.e., that lapse of acquisition occurred if compensation were not paid, or possession were not taken, 5 years before the coming into force of the Act of 2013.

97. It would be useful to notice rules of Statutory Interpretation in this regard. *Principles of Statutory Interpretation* (14th Edition) by Justice G.P. Singh, speaks of the following general rule of Statutory Interpretation of positive and negative conditions whenever prescribed by a statute:

> *"...Speaking generally, a distinction may be made between positive and negative conditions prescribed by a statute for acquiring a right or benefit. Positive conditions separated by 'or' are read in the alternative*[71] *but negative conditions connected by 'or' are construed as cumulative and 'or' is read as 'nor' or 'and'*[72].

The above rule of Statutory Interpretation is based upon the decision of this Court in *Patel Chunibhai Dajibha, etc. vs. Narayanrao Khanderao Jambekar and Anr.*[73], in which this court held:

> *"(19) It may be recalled that amendments to S. 32 were made from time to time, and the Bombay Act XXXVIII of 1957 added to sub-s. (1)(b), cl. (iii) and the preceding "or". It is to be noticed that the conditions mentioned in sub-ss. (1)(a) and (1)(b) are mutually exclusive. In spite of the absence of the word "or" between sub-ss. (1)(a) and (1)(b), the two sub-sections lay down alternative conditions. The tenant must be deemed to have purchased the land if he satisfies either of the two conditions. The appellant is not a permanent tenant, and does not satisfy the condition mentioned in sub-s.(1)(a). Though not a permanent*

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[71] *Star Co. Ltd. v. Commr. of Income-tax,* AIR 1970 SC 1559: (1970) 3 SCC 864

[72] *Patel Chunibhai Dajibha v. Narayanrao,* 1965 (2) SCR 328; *Punjab Produce & Trading Co. v. Commissioner of Income Tax, West Bengal,* (1971) 2 SCC 540; *Brown & Co. v. Harrison,* (1927) All ER Rep 195, pp. 203, 204 (CA).

For convenience, the numbers in the extracted portion above have been renumbered.

[73] AIR 1965 SC 1457

tenant, he cultivated the lands leased personally, and, therefore, satisfies the first part of the condition specified in sub-s. (1)(b). The appellant's contention is that sub-ss. (1)(b)(i), (1)(b)(ii) and (1)(b)(iii) lay down alternative conditions, and as he satisfies the condition mentioned in sub-s. (1)(b)(iii), he must be deemed to have purchased the land on April 1, 1957. Colour is lent to this argument by the word "or" appearing between sub-s. (1)(b)(ii) and sub-s.(1)(b)(iii). But, we think that the word "or" between sub-ss. (1)(b)(ii) and (1)(b)(iii) in conjunction with the succeeding negatives is equivalent to and should be read as "nor." In other words, a tenant (other than a permanent tenant) cultivating the lands personally would become the purchaser of the lands on April 1, 1957, if on that date neither an application under S.29 read with S.31 nor an application under S.29 read with S.14 was pending. If an application either under S.29 read with S.31 or under S.29 read with S.14 was pending April 1, 1957, the tenant would become the purchaser on "the postponed date", that is to say, when the application would be finally rejected. But if the application be finally allowed, the tenant would not become the purchaser. The expression "an application" in the proviso means not only an application under S.31 but also an application under S.29 read with S.14. If an application of either type was pending on April 1, 1957, the tenant could not become the purchaser on that elate. Now, on April 1, 1957, the application filed by respondent No.1 under S.29 read with S.31 was pending. Consequently, the appellant could not be deemed to have purchased the lands on April 1, 1957."

The decision of this Court in *The Punjab Produce and Trading Co. Ltd. vs. The C.I.T., West Bengal, Calcutta*[74], was relied upon in the discussion mentioned above, where provisions of Section 23A of the Income Tax Act, 1922 and the Explanation (b)(ii) and (iii) came up for consideration. This Court ruled with respect to "or" and held that it had to be read as "and" construing negative conditions thus:

"7. On behalf of the assessee a good deal of reliance has been placed on decision of this Court in Star Company Ltd. v. The Commissioner of Income-tax (Central) Calcutta, (1970) 3 SCC 864. In that case, sub-clause (b)(ii) came up for consideration, and it was held that the two parts of the Explanation contained in that sub-clause were alternative. In other words, if one part

[74] 1971 (2) SCC 540

was satisfied it was unnecessary to consider whether the second part was also satisfied. Thus the word "or" was treated as having been used disjunctively and not conjunctively. The same reasoning is sought to be invoked with reference to sub-clause (b)(iii).

8. *It is significant that the language of sub-clauses (ii) and (iii) of clause (b) is different. The former relates to a positive state of affairs whereas the latter lays down negative conditions. The word "or" is often used to express an alternative of terms defined or explanation of the same thing in different words. Therefore, if either of the two negative conditions which are to be found in sub-clause (b)(iii) remains unfulfilled, the conditions laid down in the entire clause cannot be said to have been satisfied. The clear import of the opening part of clause (b) with the word "and" appearing there read with the negative or disqualifying conditions in sub-clause (b)(iii) is that the assessee was bound to satisfy apart from the conditions contained in the other sub-clauses that its affairs were at no time during the previous year controlled by less than six persons and shares carrying more than 50 per cent of the total voting power were during the same period not held by less than six persons. We are unable to find any infirmity in the reasoning or the conclusion of the Tribunal and the High Court so far as question 1 is concerned."*

It was observed that if either of the two negative conditions, which are to be found in Sub-clause (b)(iii), remains unfulfilled, the conditions laid down in the entire clause cannot be said to have been satisfied.

98. It would also be useful to note that in *Brown & Co. v. Harrison*[75], the provisions contained in Carriage of Goods by Sea Act, 1924 came up for consideration before the Court of Appeal. The Court held that the word "or" in Article IV, R 2 (q), must be read conjunctively and not disjunctively. It has been observed that quite commonly collation of the words "or" can be meant in conjunctive sense and certainly where the disjunctive use of the word, leads to repugnance or absurdity.

99. In this Court's considered view, as regards the collation of the words used in Section 24(2), two negative conditions have been prescribed. Thus, even if one condition is satisfied, there is no lapse, and this logically flows from the Act of 1894 read with the provisions of Section 24 of the Act of 2013. Any other

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[75] (1927) All ER Rep 195 pp. 203, 204 (CA)

interpretation would entail illogical results. That apart, if the rule of interpretation with respect to two negative conditions qualified by "or" is used, then "or" should be read as "nor" or "and". *Brown & Co. v. Harrison* (supra), ruled thus, about the interpretation of two negative conditions connected by the word "or":

> *".... I think it quite commonly and grammatically can have a conjunctive sense. It is generally disjunctive, but it may be plain from the collation of words that it is meant in a conjunctive sense, and certainly where the use of the word as a disjunctive leads to repugnance or absurdity, it is quite within the ordinary principles of construction adopted by the court to give the word a conjunctive use. Here, it is quite plain that the word leads to an absurdity, because the contention put forward by the shipowners in this matter amounts to this, as my Lord said, that, if a shipowner himself breaks open a case and steals the contents of it, he is exempted from liability under r 2(q) if none of his servants stole the part of the case or broke it open. That seems to me to be a plain absurdity. In addition to that, there is a repugnancy because it is plainly repugnant to the second part of r 2(q). Therefore I say no more about that."*

100. In *Federal Steam Navigation Co. Ltd. v. Department of Trade and Industry*[76], the then House of Lords ruled as follows:

> *"If all these meanings are rejected, there remains the course of treating "or" as expressing a non-exclusionary alternative - in modern logic symbolised by "v." In lawyer's terms, this may be described as the course of substituting "and" for "or," rather the course of redrafting the phrase so as to read: "the owner and the master shall each be guilty," or, if the phrase of convenience were permitted "the owner and/or the master." To substitute "and" for "or" is a strong and exceptional interference with a legislative text, and in a penal statute, one must be even more convinced of its necessity. It is surgery rather than therapeutics. But there are sound precedents for so doing: my noble and learned friend, Lord Morris of Borth-y-Gest, has mentioned some of the best known: they are sufficient illustrations and I need not re-state them. I would add, however, one United States case, a civil case, on an Act concerning seamen of 1915. This contained the words: "Any failure of the master shall render the master or vessel or the owner of the vessel liable in damages." A District Court in Washington D.C. read "or" as "and" saying that there could not have been any purpose or intention on the*

[76] 1974 (1) WLR 505

> *part of Congress to compel the seamen to elect as to which to pursue and thereby exempt the others from liability - The Blakeley, 234 Fed. 959. Although this was a civil, not a criminal case, I find the conclusion and the reasoning reassuring."*

101. In *M/s. Ranchhoddas Atmaram and Anr.* v. *The Union of India and Ors.*[77], a Constitution Bench of this Court observed that if there are two negative conditions, the expression "or" has to be read as conjunctive and conditions of both the clauses must be fulfilled. It was observed:

> *"(13) It is clear that if the words form an affirmative sentence, then the condition of one of the clauses only need be fulfilled. In such a case, "or" really means "either" "or." In the Shorter Oxford Dictionary one of the meanings of the word "or" is given as "A particle co-ordinating two (or more) words, phrases or clauses between which there is an alternative." It is also there stated, "The alternative expressed by "or" is emphasised by prefixing the first member or adding after the last, the associated adv. EITHER." So, even without "either," "or" alone creates an alternative. If, therefore, the sentence before us is an affirmative one, then we get two alternatives, any one of which may be chosen without the other being considered at all. In such a case it must be held that a penalty exceeding Rs. 1,000 can be imposed.*
>
> *(14) If, however, the sentence is a negative one, then the position becomes different. The word "or" between the two clauses would then spread the negative influence over the clause following it. This rule of grammar is not in dispute. In such a case the conditions of both the clauses must be fulfilled and the result would be that the penalty that can be imposed can never exceed Rs. 1,000.*
>
> *(15) The question then really comes to this: Is the sentence before us a negative or an affirmative one? It seems to us that the sentence is an affirmative sentence. The substance of the sentence is that a certain person shall be liable to a penalty. That is a positive concept. The sentence is therefore not negative in its import."*
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> (emphasis supplied)

Thus, for lapse of acquisition proceedings initiated under the old law, under Section 24(2) if both steps have not been taken, i.e., neither physical

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[77] AIR 1961 SC 935

possession is taken, nor compensation is paid, the land acquisition proceedings lapse. Several decisions were cited at Bar to say that "or" has been treated as "and" and *vice versa.* Much depends upon the context. In *Prof. Yashpal & Ors. v. State of Chhattisgarh & Ors.*[78], the expression *"established or incorporated"* was read as *"established and incorporated."* In *R.M.D.C* (supra), to give effect to the clear intention of the Legislature, the word "or" was read as *"and."*

102. In *Ishwar Singh Bindra* (supra) it was observed that:

> *"11. Now if the expression "substances" is to be taken to mean something other than "medicine" as has been held in our previous decision it becomes difficult to understand how the word "and" as used in the definition of drug in S. 3(b)(i) between "medicines" and "substances" could have been intended to have been used conjunctively. It would be much more appropriate in the context to read it disconjunctively. In Stroud's Judicial Dictionary, 3rd Edn. it is stated at page 135 that "and" has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of or. Sometimes, however, even in such a connection, it is, by force of a contexts, read as "or." Similarly, in Maxwell on Interpretation of Statutes, 11th Edn., it has been accepted that "to carry out the intention of the legislature it is occasionally found necessary to read the conjunctions "or" and "and' one for the other."*

103. In *Joint Director of Mines Safety v. Tandur and Nayandgi Stone Quarries (P) Ltd*[79], *"and"* was read disjunctively considering the legislative intent. In *Samee Khan* (supra), the term *"and"* was construed as *"or"* to carry out the legislative intention. In *Mobilox Innovations Private Limited* (supra), similar observations were made. In *Green v. Premier Glynrhonwy State Co. L.R*[80], it has been laid down that sometimes word "or" read as "and" and vice versa, but does not do so unless it becomes necessary because "or" does not generally mean "and" and "and" does not generally mean "or".

104. In *R.M.D.C.* (supra) the definition under Section 2(1)(d) came up for consideration. The qualifying clause consisted of two parts separated from each other by the disjunctive word "or". Both parts of the qualifying clause indicated that each of the five kinds of prize competitions that they qualified were of a gambling nature. The court held considering the apparent intention of the legislature, it has perforce to read the word "or" as "and". In *Tilkayat Shri*

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[78](2005) 5 SCC 420
[79](1987) 3 SCC 308
[80](1928) 1 KB 561

Govindlalji Maharaj etc. v State of Rajasthan & Ors[81], this Court considered the composition of the Board prescribed under Section 5. The expressions used were not belonging to professing the Hindu religion or not belonging to the *Pushti-Margiya Vallabhi Sampradaya.* Two negative conditions were used. This Court has observed that "or" in clause (g) dealing with disqualification must mean *"and"*. The relevant portion of the same is extracted hereunder:

> *"(39) ...The composition of the Board has been prescribed by Section 5; it shall consist of a President, the Collector of Udaipur District, and nine other members. The proviso to the section is important: it says that the Goswami shall be one of such members if he is not otherwise disqualified to be a member and is willing to serve as such. Section 5(2) prescribes the disqualifications specified in clauses (a) to (g) - unsoundness of mind adjudicated upon by competent court, conviction involving moral turpitude; adjudication as an insolvent or the status of an undischarged insolvent; minority, the defect of being deaf-mute or leprosy; holding an office or being a servant of the temple or being in receipt or any emoluments or perquisites from the temple; being interested in a subsisting contract entered into with the temple; and lastly, not professing the Hindu religion or not belonging to the Pushti MargiyaVallabhi Sampradaya. There can be no doubt that "or" in clause (g) must mean "and," for the context clearly indicates that way. There is a proviso to Section 5(2) which lays down that the disqualification as to the holding of an office or an employment under the temple shall not apply to the Goswami and the disqualification about the religion will not apply to the Collector; that is to say, a Collector will be a member of the Board even though he may not be a Hindu and a follower of the denomination. Section 5(3) provides that the President of the Board shall be appointed by the State Government and shall for all purposes be deemed to be a member. Under Section 5(4) the Collector shall be an ex-officio member of the Board. Section 5(5) provides that all the other members specified in sub-clause (1) shall be appointed by the State Government so as to secure representation of the Pushti-Margiya Vaishnavas from all over India. This clearly contemplates that the other members of the Board shall not only be Hindus, but should also belong to the denomination, for it is in that manner alone that their representation can be adequately secured."*
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> (emphasis supplied)

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[81] AIR 1963 SC 1638

105. In *Prof. Yashpal* (supra), the word "or" occurring in the expression *"established or incorporated"* was read as *"and"* so that the State enactment did not come in conflict with the Central legislation and create any hindrance or obstacle in the working of the latter. This court has observed:

> *"**59**. Shri Rakesh Dwivedi has also submitted that insofar as private universities are concerned, the word "or" occurring in the expression "established or incorporated" in Sections 2(f), 22 and 23 of the UGC Act should be read as "and." He has submitted that the normal meaning of the word "established" is to bring into existence. In order to avoid the situation which has been created by the impugned enactment where over 112 universities have come into existence within a short period of one year of which many do not have any kind of infrastructure or teaching facility, it will be in consonance with the constitutional scheme that only after establishment of the basic requisites of a university (classrooms, library, laboratory, offices, and hostel facility, etc.) that it should be incorporated and conferred a juristic personality. The word "or" is normally disjunctive and "and" is normally conjunctive, but at times, they are read vice versa to give effect to the manifest intentions of the legislature, as disclosed from the context. If literal reading of the word produces an unintelligible or absurd result, "and" maybe read for "or" and "or" maybe read for "and." (See Principles of Statutory Interpretation by G.P. Singh,, 7th Edn., p. 339 and also State of Bombay v. R.M.D. Chamarbaugwala, AIR 1957 SC 699, AIR at p. 709 and Mazagaon Dock Ltd. v. CIT, AIR 1958 SC 861) We are of the opinion that having regard to the constitutional scheme and in order to ensure that the enactment made by Parliament, namely, the University Grants Commission Act is able to achieve the objective for which it has been made and UGC is able to perform its duties and responsibilities, and further that the State enactment does not come in conflict with the Central legislation and create any hindrance or obstacle in the working of the latter, it is necessary to read the expression "established or incorporated" as "established and incorporated" insofar as the private universities are concerned."*
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> (emphasis supplied)

106. Reference has also been made to *Pooran Singh v. State of M.P*[82], in which the Court considered the scheme of the M.V. Act. The magistrate was bound to

[82] 1965 (2) SCR 853

issue summons of the nature prescribed by sub-section (1) of Section 130. The Court held that there was nothing in the sub-section which indicated that he must endorse the summons in terms of both the clauses (a) and (b), that he is so commanded would be to convert the conjunction 'or' into 'and'. There is nothing in the language of the legislature which justifies such a conversion and there are adequate reasons which make such an interpretation wholly inconsistent with the scheme of the Act.

107. Reliance has been placed on *Sri Nasiruddin v. State Transport Appellate Tribunal*[83]. The word 'or' was given grammatical meaning. The order states that the High Court shall sit as the new High Court and the Judges and Division Bench thereof shall sit at Allahabad or at such other places in the United Provinces as the Chief Justice may appoint. It was held that the word 'or' cannot be read as 'and'. They should be considered in an ordinary sense. If two different interpretations are possible, the court will adopt that which is just, reasonable and sensible. The Court observed thus:

> *"**27**. The conclusion as well as the reasoning of the High Court that the permanent seat of the High Court is at Allahabad is not quite sound. The order states that the High Court shall sit as the new High Court and the judges and Division Bench thereof shall sit at Allahabad or at such other places in the United Provinces as the Chief Justice may, with the approval of the Governor of the United Provinces, appoint. The word "or" cannot be read as "and". If the precise words used are plain and unambiguous, they are bound to be construed in their ordinary sense. The mere fact that the results of a statute may be unjust does not entitle a court to refuse to give it effect. If there are two different interpretations of the words in an Act, the Court will adopt that which is just, reasonable and sensible rather than that which is none of those things. If the inconvenience is an absurd inconvenience, by reading an enactment in its ordinary sense, whereas if it is read in a manner in which it is capable, though not in an ordinary sense, there would not be any inconvenience at all; there would be reason why one should not read it according to its ordinary grammatical meaning. Where the words are plain, the Court would not make any alteration."*

108. In *Municipal Corporation of Delhi v. Tek Chand Bhatia*[84], for interpretation of 'and' and 'or' in the context of the term 'adulterated' as defined in section 2(i)(f), the Court observed:

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[83] 1975 (2) SCC 671
[84] (1980) 1 SCC 158

"7. We are of the opinion that the High Court was clearly wrong in its interpretation of Section 2(i)(f). On the plain language of the definition section, it is quite apparent that the words "or is otherwise unfit for human consumption" are disjunctive of the rest of the words preceding them. It relates to a distinct and separate class altogether. It seems to us that the last clause "or is otherwise unfit for human consumption" is residuary provision, which would apply to a case not covered by or falling squarely within the clauses preceding it. If the phrase is to be read disjunctively the mere proof of the article of food being "filthy, putrid, rotten, decomposed . . . or insect-infested" would be per se sufficient to bring the case within the purview of the word "adulterated" as defined in sub-clause (f), and it would not be necessary in such a case to prove further that the article of food was unfit for human consumption.

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11. In the definition clause, the collection of words "filthy, putrid, rotten, decomposed and insect-infested," which are adjectives qualifying the term "an article of food," show that it is not of the nature, substance, and quality fit for human consumption. It will be noticed that there is a comma after each of the first three words. It should also be noted that these qualifying adjectives cannot be read into the last portion of the definition i.e., the word' "or is otherwise unfit for human consumption," which is quite separate and distinct from others. The word "otherwise" signifies unfitness for human consumption due to other causes. If the last portion is meant to mean something different, it becomes difficult to understand how the word "or" as used in the definition of "adulterated" in Section 2(i)(f) between "filthy, putrid, rotten, etc." and "otherwise unfit for human consumption" could have been intended to be used conjunctively. It would be more appropriate in the context to read it disjunctively. In Stroud's Judicial Dictionary, 3rd Edn., Vol. 1, it is stated at p. 135:

"And" has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of "or". Sometimes, however, even in such a connection, it is, by force of a context, read as "or".

While dealing with the topic 'OR is read as AND, and vice versa', Stroud says in Vol. 3, at p. 2009:

"You will find it said in some cases that 'or' means 'and'; but 'or' never does mean 'and'.

Similarly, in Maxwell on Interpretation of Statutes, 11th Edn., pp. 229-30, it has been accepted that "to carry out the intention

> *of the legislature, it is occasionally found necessary to read the conjunctions 'or' and 'and' one for the other." The word "or" is normally disjunctive and "and" is normally conjunctive, but at times they are read as vice versa. As Scrutton, L.J. said in Green v. Premier Glynrhonwy State Co., LR (1928) 1 KB 561, 568: "You do sometimes read "or" as "and" in a statute . . . . But you do not do it unless you are obliged, because "or" does not generally mean "and" and "and" does not generally mean "or." As Lord Halsbury L.C. observed in Mersey Docks & Harbour Board v. Henderson, LR (1888) 13 AC 603, the reading of "or" as "and" is not to be resorted to "unless some other part of the same statute or the clear intention of it requires that to be done." The substitution of conjunctions, however, has been sometimes made without sufficient reasons, and it has been doubted whether some of the cases of turning "or" into "and" and vice versa have not gone to the extreme limit of interpretation."*

109. In *State of Punjab v. Ex-Constable Ram Singh*[85], 'or' was read as 'nor' and not as 'and' in the context of Section 2 of the Armed Forces Special Powers Act, 1948. In *Naga People's Movement of Human Rights* (supra), the Court held that the language of section 4(a) does not support the said construction.

110. In *Marsey Docks and Harbour Board v. Coggins and Griffith (Liverpool) Ltd.*[86], the Court observed as follows: (at page 603)

> *"...unless the context makes the necessary meaning of "or" "and," as in some instances it does; but I believe it is wholly unexampled so to read it when doing so will upon one construction entirely alter the meaning of the sentence unless some other part of the same statute or the clear intention of it requires that to be done, ... It may indeed be doubted whether some of the cases of turning "or" into "and" and vice versa have not gone to the extreme limit of interpretation, but I think none of them would cover this case."*

111. In *Re Hayden Pask v. Perry*[87], the expression "or their issue" had been considered, and it was observed that the words "or their issue" must be read as words of limitation and not of substitution. The word "or" was construed to mean "and." The learned SG placed reliance on the Queen's Bench decision in

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[85](1992) 4 SCC 54
[86]LR (AC) Vol.XIII 1888 595
[87](1931) 2 Ch.333

Metropolitan Board of Works v. Street Bros[88] to submit that the issue was whether, in terms of its grammatical meaning, if two things were prohibited, both were permitted and not merely permitted in the alternative. It would have been more strictly grammatical to have written "nor" instead of "or." The following discussion was made in the decision:

> *"Dec.13. GROVE, J. The main question before us turns on the meaning of the word "or," used in 25 & 26 Vict. c. 102, s. 98. Read shortly, s. 98 enacts that no existing road, passage or way, shall be hereafter formed or laid out for carriage traffic unless such road shall be forty feet wide, or for the purposes of foot traffic, unless such road be of the width of twenty feet, or unless such streets respectively shall be open at both ends. The question is whether that word "or" should be read in the disjunctive or conjunctive, or perhaps read as either "and" or "nor:" I think it means "nor;" that is to say, that the two things comprised in the prohibition are both prohibited, and not merely prohibited in the alternative. If the sense which I attribute to the word is right, it would have been more strictly grammatical to have written "nor" instead of "or." But I think that the meaning of the enactment is that the road must be of the width specified, and that no road shall be allowed unless it is of the width specified, nor unless it is open at both ends. That seems to me to be the object of the statute, which was passed for sanitary purposes, and also for the purpose of comfort and traffic.*
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> *It was contended that the object of the provision is sanitary only, and that if a street is forty feet wide, or if however narrow, it is open at both ends, good ventilation is secured. But a very long narrow street would hardly be more salubrious with both ends open than if one end were closed and the street were a cul de sac.*
>
> *Our construction of the Act is according to the ordinary use of language, although it may not be strictly grammatical. We might have referred to authorities by good writers, shewing that where the word "or" is preceded by a negative or prohibitory provision, it frequently has a different sense from that which it has when it is preceded by an affirmative provision. For instance, suppose an order that "you must have your house either drained or ventilated." The word "or" would be clearly used in the alternative. Suppose again, the order was that "you must have your house drained or ventilated," that conveys the*

[88](1881) VIII QBD 445

idea to my mind that you must have your house either drained or ventilated. But supposing the order were that "you must not have your house undrained or unventilated." The second negative words are coupled by the word "or," and the negative in the preceding sentence governs both. In s. 98 there is a negative preceding a sentence; "no existing road" shall be formed as a street for carriage traffic unless such road be widened to forty feet, or for the purposes of foot traffic only unless such road or way be widened to the width of twenty feet, "or" unless such streets shall be open at both ends. Probably, if the word "or" in the sentence, "or for purposes of foot traffic only," had been written "nor," the language there too would have been more clear and more decidedly prohibitory; but with regard to the sentence "or unless such streets shall be open at both ends" I think that by reading the word "or" as "nor" we carry out the intention of the Act, which was to have streets of a proper width and properly opened at both ends, and that there should not be incommodious and unhealthy cross streets which are culs de sac, shut up at one end.

There have been frequently cases on the construction of statutes where the Courts have held "or" to mean "and," taking the rest of the sentence in which the word "or" occurred, the object and intention being prohibition, and the two things prohibited being coupled by the word "or." I think the prohibition in s. 98 relates to both the width and open ending of streets. The street must be both of the width prescribed and also open at both ends."

112. Section 24(2) of the Act of 2013 is, in our opinion, a penal provision - to punish the acquiring authority for its lethargy in not taking physical possession nor paying the compensation after making the award five years or more before the commencement of the Act of 2013 in pending proceedings, providing that they would lapse. The expression *where an award has been made,* then the proceedings shall continue used in Section 24(1)(b) under the provisions of the Act of 1894 means that proceedings were pending *in praesenti* as on the date of enforcement of the Act of 2013 are not concluded proceedings, and in that context, an exception has been carved out in section 24(2).

113. Even if possession has been taken, despite which payment has not been made nor deposited, (for the majority of the land-holdings), then all beneficiaries holding land on the date of notification under Section 4 of the Act of 1894, are to be paid compensation under the provisions of the Act of 2013. Section 24 of the Act of 2013 frowns upon indolence and stupor of the authorities. The expression *"possession of the land has not been taken"* or *"compensation has not been paid"*

indicates a failure on the part of the authorities to take the necessary steps for five years or more in a pending proceeding under Section 24(1)(b). Section 24(2) starts with a *non-obstante* clause overriding what is contained in Section 24(1). Thus, Section 24(2) has to be read as an exception to Section 24(1)(b). Similarly, the proviso has to be read as a proviso to Section 24(2) for the several reasons to be discussed hereafter. Parliament enacted a beneficial provision in case authorities delayed in taking of the possession for more than five years nor paid compensation, meaning thereby acquisition has not been completed. Section 24(2) clearly contemplates inaction on the part of the authorities not as a result of the dilatory tactics and conduct of the landowners or other interested persons.

114. There are other reasons to read the word 'or' in Section 24 as 'and.' When we consider the scheme of the Act of 1894, once the award was made under Section 11, the Collector may, undertake possession of the land which shall thereupon vest absolutely in the Government free from all encumbrances. Section 16 of the Act of 1894 enables the Collector to take possession of acquired land, when an award is made under Section 11 . Section 17(1) of the Act of 1894 confers special powers in cases of urgency. The Collector could, on the expiration of 15 days from the publication of notice under Section 9(1), take possession of any land needed for a public purpose and such land was to thereupon vest absolutely in the Government, free from all encumbrances. Under Section 17(3A) before taking possession, the Collector had to tender payment of 80% of the compensation, as estimated by him and also had to pay the landowners or to persons interested, unless prevented by exigencies mentioned in Section 31(2). It is also provided in sub-section (3B) of Section 17 of the Act of 1894 that the amount paid or deposited under Section 17(3A) shall be taken into account for determining the compensation required to be tendered under Section 31.

115. It is apparent from a plain reading of Section 16 (of the Act of 1894) that the land vests in the Government absolutely when possession is taken after the award is passed. Clearly, there can be lapse of proceedings under the Act of 1894 only when possession is not taken. The provisions in Section 11A of the Act of 1894 states that the Collector shall make an award within a period of two years from the date of the publication of the declaration under Section 6 and if no award is made within two years, the entire proceedings for acquisition of the land shall lapse. The period of two year excludes any period during which interim order granted by the Court was in operation. Once an award is made and possession is taken, by virtue of Section 16, land vests absolutely in the State, free from all encumbrances. Vesting of land is automatic on the happening of the two exigencies of passing award and taking possession, as provided in Section 16. Once possession is taken under Section 16 of the Act of 1894, the owner of the land loses title to it, and the Government becomes the absolute owner of the land.

116. Payment of compensation under the Act of 1894 is provided for by Section 31 of the Act, which is to be after passing of the award under Section 11. The exception, is in case of urgency under Section 17, is where it has to be tendered before taking possession. Once an award has been passed, the Collector is bound to tender the payment of compensation to the persons interested entitled to it, as found in the award and shall pay it to them unless "prevented" by the contingencies mentioned in sub-section (2) of Section 31. Section 31(3) contains a *non-obstante clause* which authorises the Collector with the sanction of the appropriate Government, in the interest of the majority, by the grant of other lands in exchange, the remission of land revenue on other lands or in such other way as may be equitable.

117. Section 31(1) enacts that the Collector has to tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay such amount to a person interested in the land, unless he (the Collector) is prevented from doing so, for any of the three contingencies provided by sub-section (2). Section 31 (2) provides for deposit of compensation in Court in case State is prevented from making payment in the event of (i) refusal to receive it; (ii) if there be no person competent to alienate the land; (iii) if there is any dispute as to the title to receive the compensation; or (iv) if there is dispute as to the apportionment. In such exigencies, the Collector shall deposit the amount of the compensation in the court to which a reference under Section 18 would be submitted.

118. Section 34 deals with a situation where any of the obligations under Section 31 is not fulfilled, i.e., when the amount of compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of 9% per annum from the time of so taking possession until it shall have been so paid or deposited; and after one year from the date on which possession is taken, interest payable shall be at the rate of 15% per annum. The scheme of the Act of 1894 clearly makes it out that when the award is passed under Section 11, thereafter possession is taken as provided under Section 16, land vests in the State Government. Under Section 12(2), a notice of the award has to be issued by the Collector. Taking possession is not dependent upon payment. Payment has to be tendered under Section 31 unless the Collector is "prevented from making payment," as provided under section 31(2). In case of failure under Section 31(1) or 31(3), also Collector is not precluded from making payment, but it carries interest under Section 34 @ 9% for the first year from the date it ought to have been paid or deposited and thereafter @ 15%. Thus, once land has been vested in the State under Section 16, in case of failure to pay the compensation under Section 31(1) to deposit under Section 31(2), compensation has to be paid along with interest, and due to non-compliance of Section 31, there is no lapse of acquisition. The same spirit has

been carried forward in the Act of 2013 by providing in Section 24(2). Once possession has been taken though the payment has not been made, the compensation has to be paid along with interest as envisaged under section 34, and in a case, payment has been made, possession has not been taken, there is no lapse under Section 24(2). In a case where possession has been taken under the Act of 1894 as provided by Section 16 or 17(1) the land vests absolutely in the State, free from all encumbrances, if compensation is not paid, there is no divesting there will be no lapse as compensation carries interest @ 9% or @ 15% as envisaged under Section 34 of the Act of 1894. Proviso to Section 24(2) makes some wholesome provision in case the amount has not been deposited with respect to majority of landholdings, in such an event, not only those persons but all the beneficiaries, though for minority of holding compensation has been paid, shall be entitled to higher compensation in accordance with the provisions of the Act of 2013. The expression used is "all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act", i.e., Act of 1894, means that the persons who are to be paid higher compensation are those who have been recorded as beneficiaries as on the date of notification under Section 4. The proviso gives effect to, and furthers the principle that under the Act of 1894, the purchases made after issuance of notification under Section 4 are void. As such, the benefit of higher compensation under the proviso to Section 24(2) is intended to be given to the beneficiaries mentioned in the notification under Section 4 of the Act of 1894.

119. It is apparent from the Act of 1894 that the payment of compensation is dealt with in Part V, whereas acquisition is dealt with in Part II. Payment of compensation is not made pre-condition for taking possession under Section 16 or under Section 31 read with Section 34. Possession can be taken before tendering the amount except in the case of urgency, and deposit (of the amount) has to follow in case the Collector is prevented from making payment in exigencies as provided in Section 31(3). What follows is that in the event of not fulfilling the obligation to pay or to deposit under Section 31(1) and 31(2), the Act of 1894 did not provide for lapse of land acquisition proceedings, and only increased interest follows with payment of compensation.

120. The terms of object clause No. 18 (of the Statement of Objects and Reasons) to the Act of 2013 reveals that the option of taking possession (of acquired land) upon making of an award the new law would be available in the cases of land acquisition under the Act of 1894 where award has not been made, or possession of land has not been taken. It is apparent that the benefits under the Act of 2013 envisage that where the award had not been made, or award has been made, but possession has not been taken (because once possession is taken, land is vests in the State) there can be lapse of acquisition. No doubt about that payment is also to be made: that issue is taken care of by the provision of payment of interest

under Section 34: also, in case of non-deposit- in respect of majority of holdings in a given award, higher compensation under the Act of 2013 has to be paid to all beneficiaries as on the date of notification under Section 4 issued under the Act of 1894. There is nothing in the Statement of Objects and Reasons making specific reference to non-payment of compensation where an award has been made, and possession has been taken. While interpreting the provisions of an Act, the court to consider the objects and reasons of the legislature, which the legislature had in mind also emphasised that once vesting is complete, there is no divesting as held in *Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate*[89], thus:

> *"(9) A little careful consideration will show, however, that the expression "any person" occurring in the third part of the definition clause cannot mean anybody and everybody in this wide world. First of all, the subject matter of dispute must relate to (i) employment or non-employment or (ii) terms of employment or conditions of labour of any person; these necessarily import a limitation in the sense that a person in respect of whom the employer-employee relation never existed or can never possibly exist cannot be the subject matter of a dispute between employers and workmen. Secondly, the definition clause must be read in the context of the subject matter and scheme of the Act, and consistently with the objects and other provisions of the Act. It is well settled that*
>
> *"the words of a statute, when there is a doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained." (Maxwell, Interpretation of Statutes, 9th Edition, p. 55)."*

121. In *Mukesh K. Tripathi v. Senior Divisional Manager, LIC & Ors.*[90], the decision in *Workmen of Dimakuchi Estate* (supra) was reiterated, on the issue of discerning the object of an enactment.

122. Section 24(2) of the Act of 2013 deals with a situation only where the award has been made 5 years or more before the commencement of the Act, but physical possession of the land has not been taken, nor compensation has been paid. It does not visualize a situation where possession has been taken under the

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[89] 1958 SCR 1156
[90] (2004) 8 SCC 387

urgency provision of Section 17(1), but the award has not been made. In such cases, under Section 24(1)(a) of the Act of 2013, there is no lapse of entire proceedings: but compensation is to be determined in accordance with the provisions of the Act of 2013. In case of urgency, possession is usually taken before the award is passed. Thus, where no award is passed, where urgency provision under Section 17(1) of the Act of 1894 had been invoked, there is no lapse, only higher compensation would follow under Section 24(1)(a) even if payment has not been made or tendered under Section 17(3A) of the Act of 1894.

123. The provision for lapsing under Section 24 is available only when the award has been made, but possession has not been taken within five years, nor compensation has been paid. In case word 'or' is read disjunctively, proceedings shall lapse even after possession has been taken in order to prevent lapse of land acquisition proceedings, once the land has vested in the Government and in most cases, development has already been made. The expressions used in Section 24(2) *"possession of the land has not been taken"* and *"the compensation has not been paid"* are unrelated and carry different consequences under the Act of 1894. As already discussed above, these conditions are merely exclusive conditions and cannot be used as alternative conditions. There is a catena of cases where compensation has been paid, but possession has not been taken due to one reason or the other for no fault of authorities or otherwise, and there are cases where possession is taken, but compensation has not been paid.

124. Section 24 of the Act of 2013 is to be given full effect. Section 24(2) has been carved out as an exception to the otherwise general applicability of the provisions contained in Section 6 of the General Clauses Act and Section 24(1)(a) and (b) apply to the proceedings which are pending. Sub-section (2) is an exception to sub-section (1) which reads: *"Notwithstanding anything contained in sub-section (1)"* where an award has been made, but possession has not been taken nor compensation has been paid, an exception has been carved in Section 24 where an award has been passed, but no steps have been taken to take the possession nor payment of compensation has been made in pending proceedings under Section 24(1). The provision has to be construed in the spirit behind what is saved under Section 6 (of the General Clauses Act) as provided in Section 114 of the Act of 2013 and the *non-obstante* clause in Section 24(2).

125. It was also submitted on behalf of the States that neither a transitory provision nor a repealing law could be interpreted so as to take away, disturb or adversely affect rights created by operation of law. It cannot divest the State Government of the land absolutely vested in it. Reliance has been placed on *K.S. Paripoornan v. State of Kerala & Ors*[91] thus:

[91] 1994 (5) SCC 593

*"**12**. It is further necessary to bear in mind that the amending Act has added, among others, the provisions of Section 23(1-A) and Section 28-A and has amended the provisions of Section 23(2). It has also made independent transitional provision in its Section 30. The relevant provisions of Section 30 read as follows:*

30. Transitional provisions.— (1) The provisions of sub-section (1-A) of Section 23 of the principal Act, as inserted by clause (a) of Section 15 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to,—

(a) every proceeding for the acquisition of any land under the principal Act pending on 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982 in the House of the People], in which no award has been made by the Collector before that date;

(b) every proceeding for the acquisition of any land under the principal Act commenced after that date, whether or not an award has been made by the Collector before the date of commencement of this Act.

(2) The provisions of sub-section (2) of Section 23 and Section 28 of the principal Act, as amended by clause (b) of Section 15 and Section 18 of this Act respectively, shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of the principal Act after the 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People] and before the commencement of this Act.

The date of the introduction of the Bill of the amending Act is 30-4-1982 and the date of its commencement is 24-9-1984.

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***38**. The transitional provision is by its very nature an enabling one and has to be interpreted as such. In the present case, it is made to take care of the period between 30-4-1982 and 24-9-1984, i.e., between the date of the introduction of the Bill of the amending Act and the date of the commencement of the Act. Since some awards might have been made by the Collector and the reference Court during the said interregnum, the legislature did not want to deprive the awardees concerned either of the newly conferred benefit of Section 23(1-A) or of the increased benefit under Sections 23(2) and 28. The second object was to enable the Collector and the Court to give the said*

benefits in the proceedings pending before them where they had not made awards. The only limitation that was placed on the power of the Collector in this behalf was that he should not reopen the awards already made by him in proceedings which were pending before him on 30-4-1982 to give the benefit of Section 23(1-A) to such awardees. This was as stated earlier, for two reasons. If the said awards are pending before the reference Court on the date of the commencement of the amending Act, viz., 24-9-1984, the reference Court would be able to give the said benefit to the awardees. On the other hand, if the awardees in question had accepted the awards, the same having become final, should not be reopened. As regards the increased benefit under Sections 23(2) and 28, the intention of the legislature was to extend it not only to the proceedings pending before the reference Court on 24-9-1984 but also to those where awards were made by the Collector and the reference Courts between 30-4-1982 and 24-9-1984. Hence these awards could not only be reopened but if they were the subject-matter of the appeal before High Courts or the Supreme Court, the appellate orders could also be reopened to extend the said benefits.

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***71**. Section 30 of the amending Act bears the heading "Transitional provisions." Explaining the role of transitional provisions in a statute, Bennion has stated:*

"Where an Act contains substantive, amending or repealing enactments, it commonly also includes transitional provisions which regulate the coming into operation of those enactments and modify their effect during the period of transition. Where an Act fails to include such provisions expressly, the court is required to draw inferences as to the intended transitional arrangements as, in the light of the interpretative criteria, it considers Parliament to have intended."

(Francis Bennion: Statutory Interpretation, 2nd Edn., p. 213) The learned author has further pointed out:

"Transitional provisions in an Act or other instrument are provisions which spell out precisely when and how the operative parts of the instrument are to take effect. It is important for the interpreter to realise, and bear constantly in mind, that what appears to be the plain meaning of a substantive enactment is often modified by transitional provisions located elsewhere in the Act." (p. 213)

Similarly Thornton in his treatise on Legislative Drafting [3rd Edn., 1987, p. 319 quoted in Britnell v. Secretary of State for

Social Security, (1991) 2 All ER 726, 730 Per Lord Keith], has stated: "The function of a transitional provision is to make special provision for the application of legislation to the circumstances which exist at the time when that legislation comes into force."

For the purpose of ascertaining whether and, if so, to what extent the provisions of sub-section (1-A) introduced in Section 23 by the amending Act are applicable to proceedings that were pending on the date of the commencement of the amending Act it is necessary to read Section 23(1-A) along with the transitional provisions contained in sub-section (1) of Section 30 of the amending Act."

(emphasis supplied)

126. For interpretation of repeal and saving clauses, reliance has been placed on *Milkfood Ltd. v. GMC Ice Cream (P) Ltd*[92] thus:

> *"**70**. Section 85 of the 1996 Act repeals the 1940 Act. Sub-section (2) of Section 85 provides for a non-obstante clause. Clause (a) of the said sub-section provides for saving clause stating that the provisions of the said enactments shall apply in relation to arbitral proceedings which commenced before the said Act came into force. Thus, those arbitral proceedings which were commenced before coming into force of the 1996 Act are saved and the provisions of the 1996 Act would apply in relation to arbitral proceedings which commenced on or after the said Act came into force. Even for the said limited purpose, it is necessary to find out as to what is meant by commencement of arbitral proceedings for the purpose of the 1996 Act wherefor also necessity of reference to Section 21 would arise. The court is to interpret the repeal and savings clauses in such a manner so as to give a pragmatic and purposive meaning thereto. It is one thing to say that commencement of arbitration proceedings is dependent upon the facts of each case as that would be subject to the agreement between the parties. It is also another thing to say that the expression "commencement of arbitration proceedings" must be understood having regard to the context in which the same is used; but it would be a totally different thing to say that the arbitration proceedings commence only for the purpose of limitation upon issuance of a notice and for no other purpose. The statute does not say so. Even the case-laws do not suggest the same. On the contrary, the decisions of this*

[92] 2004 (7) SCC 288

Court operating in the field beginning from Shetty's Constructions Co. (P) Ltd. v. Konkan Rly. Construction, (1998) 5 SCC 599 are ad idem to the effect that Section 21 must be taken recourse to for the purpose of interpretation of Section 85(2)(a) of the Act. There is no reason, even if two views are possible, to make a departure from the decisions of this Court as referred to hereinbefore.

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***105**. In the present matter, one is concerned with transitional provision i.e. Section 85(2)(a) which enacts as to how the statute will operate on the facts and circumstances existing on the date it comes into force and, therefore, the construction of such a provision must depend upon its own terms and not on the basis of Section 21 (see Singh, G.P.: Principles of Statutory Interpretation, 8th Edn., p. 188). In Thyssen Stahlunion GMBH v. Steel Authority of India Ltd., (1999) 9 SCC 334 Section 48 of the old Act and Section 85(2)(a) of the 1996 Act came for consideration. It has been held by this Court that there is a material difference between Section 48 of the 1940 Act, which emphasised the concept of "reference" vis-a-vis Section 85(2)(a) of the 1996 Act which emphasises the concept of "commencement"; that there is a material difference in the scheme of the two Acts; that the expression "in relation to" appearing in Section 85(2)(a) refers to different stages of arbitration proceedings under the old Act; and lastly, that Section 85(2)(a) provides for limited repeal of the 1940 Act, therefore, I am of the view that one cannot confine the concept of "commencement" under Section 85(2)(a) only to Section 21 of the 1996 Act which inter alia provides for commencement of arbitral proceedings from the date on which a request to refer a particular dispute is received by the respondent....*

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***109**. To sum up, in this case, the question concerns interpretation of transitional provisions; that Section 85(2)(a) emphasises the concept of "commencement" whereas Section 48 of the 1940 Act emphasised the concept of "reference"; that Section 85(2)(a) provides for implied repeal; that the scheme of the 1940 Act is different from the 1996 Act; that the word "reference" in Section 48 of the old Act had different meanings in different contexts; and for the said reasons, I am of the view that while interpreting Section 85(2)(a) in the context of the question raised in this appeal, one cannot rely only on Section 21 of the 1996 Act."*

(emphasis supplied)

127. Under Section 48 of the Act of 1894, withdrawal of the land acquisition proceedings was permissible only if the possession has not been taken under Section 16 or 17(1). Section 48(1) is extracted hereunder:

> ***"48. Completion of acquisition not compulsory, but compensation to be awarded when not completed. -***
>
> *(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.*
>
> *(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.*
>
> *(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section. "*

In case possession has been taken, there cannot be any withdrawal from the land acquisition proceedings under the Act of 1894.

128. Various decisions were referred on behalf of the State of Haryana that once possession has been taken and land has not been utilised, there cannot be withdrawal from the acquisition of any land. Land cannot be restituted to the owner after the stage of possession is over. Following decisions have been pressed into service:

(a). In *Gulam Mustafa & Ors* (supra), it was observed:

> *"**5**. At this stage Shri Deshpande complained that actually the municipal committee had sold away the excess land marking them out into separate plots for a housing colony. Apart from the fact that a housing colony is a public necessity, once the original acquisition is valid and title has vested in the municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the Section 6(3) declaration."*

Chandragauda Ramgonda Patil & Anr. (supra) when restitution of land was sought, on the basis of some Government resolutions, *after* possession had been taken, this observed thus:

> ***"2...*** *Since he had sought enforcement of the said government resolution, the writ petition could not be dismissed on the ground of constructive res judicata. He also seeks to rely upon certain orders said to have been passed by the High Court in conformity with enforcement of the government resolution. We do not think that this Court would be justified in making direction for restitution of the land to the erstwhile owners when the land was taken way back and vested in the Municipality free from all encumbrances. We are not concerned with the validity of the notification in either of the writ petitions. It is axiomatic that the land acquired for a public purpose would be utilised for any other public purpose, though use of it was intended for the original public purpose. It is not intended that any land which remained unutilised, should be restituted to the erstwhile owner to whom adequate compensation was paid according to the market value as on the date of the notification. Under these circumstances, the High Court was well justified in refusing to grant relief in both the writ petitions."*
>
> (emphasis supplied)

Again, in *C. Padma & Ors. v. Dy. Secretary & Ors*[93], this court stated that:

> ***"4.*** *The admitted position is that pursuant to the notification published under Section 4(1) of the Land Acquisition Act, LA (for short "the Act") in GOR No. 1392 Industries dated 17-10-1962, total extent of 6 acres 41 cents of land in Madhavaram Village, Saidapet Taluk, Chengalpattu District in Tamil Nadu was acquired under Chapter VII of the Act for the manufacture of Synthetic Rasina by Tvl. Reichold Chemicals India Ltd., Madras. The acquisition proceedings had become final and possession of the land was taken on 30-4-1964. Pursuant to the agreement executed by the company, it was handed over to Tvl. Simpson and General Finance Co. which is a subsidiary of Reichold Chemicals India Ltd. It would appear that at a request made by the said company, 66 cents of land out of one acre 37 cents in respect of which the appellants originally had ownership, was transferred in GOMs No. 816 Industries dated 24-3-1971 in favour of another subsidiary company. Shri Rama Vilas Service Ltd., the 5th respondent which is also another subsidiary of the Company had requested for two acres 75 cents of land; the same came to be assigned on leasehold basis by the Government after resumption in terms of the agreement in GOMs No. 439 Industries dated 10-5-1985. In GOMs No. 546*

[93] (1997) 2 SCC 627

Industries dated 30-3-1986, the same came to be approved of. Then the appellants challenged the original GOMs No. 1392 Industries dated 17-10-1962 contending that since the original purpose for which the land was acquired had ceased to be in operation, the appellants are entitled to restitution of the possession taken from them. The learned Single Judge and the Division Bench have held that the acquired land having already vested in the State, after receipt of the compensation by the predecessor-in-title of the appellants, they have no right to challenge the notification. Thus the writ petition and the writ appeal came to be dismissed.

5. *Shri G. Ramaswamy, learned Senior Counsel appearing for the appellants, contends that when by operation of Section 44-B read with Section 40 of the Act, the public purpose ceased to be existing, the acquisition became bad and therefore, the GO was bad in law. We find no force in the contention. It is seen that after the notifcation in GOR 1392 dated 17-10-1962 was published, the acquisition proceeding had become final, the compensation was paid to the appellants' father and thereafter the lands stood vested in the State. In terms of the agreement as contemplated in Chapter VII of the Act, the Company had delivered possession subject to the terms and conditions thereunder. It is seen that one of the conditions was that on cessation of the public purpose, the lands acquired would be surrendered to the Government. In furtherance thereof, the lands came to be surrendered to the Government for resumption. The lands then were allotted to SRVS Ltd., 5th respondent which is also a subsidiary amalgamated company of the original company. Therefore, the public purpose for which acquisition was made was substituted for another public purpose. Moreover, the question stood finally settled 32 years ago and hence the writ petition cannot be entertained after three decades on the ground that either original purpose was not public purpose or the land cannot be used for any other purpose.*

6. *Under these circumstances, we think that the High Court was right in refusing to entertain the writ petition."*

(emphasis supplied)

The decision in *Northern Indian Glass Industries v. Jaswant Singh & Ors*[94] thus:

"9.*..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*

[94] (2003) 1 SCC 335

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 a 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 landowner does not get any right to ask for revesting the land in him and to ask for restitution of the possession. This Court as early as in 1976 in Gulam Mustafa v. State of Maharashtra, (1976) 1 SCC 800 in para 5 has stated thus: (SCC p. 802, para 5)

"5. At this stage Shri Deshpande complained that actually the municipal committee had sold away the excess land marking them out into separate plots for a housing colony. Apart from the fact that a housing colony is a public necessity, once the original acquisition is valid and title has vested in the municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long after the requiring authority diverts it to a public purpose other than the one stated in the Section 6(3) declaration.""

(emphasis supplied)

Sita Ram Bhandar Society, New Delhi (supra)[95] the Court observed that:

***"28.** A cumulative reading of the aforesaid judgments would reveal that while taking possession, symbolic and notional possession is perhaps not envisaged under the Act but the manner in which possession is taken must of necessity depend upon the facts of each case. Keeping this broad principle in mind, this Court in T.N. Housing Board v. A. Viswam, (1996) 8 SCC 259 after considering the judgment in Balwant Narayan Bhagde v. M.D. Bhagwat, (1976) 1 SCC 700, observed that while taking possession of a large area of land (in this case 339 acres) a pragmatic and realistic approach had to be taken. This Court then examined the context under which the judgment in Narayan Bhagde case had been rendered and held as under: (Viswam case, SCC p. 262, para 9)*

"9. It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land

[95] (2009) 10 SCC 501

is recording of a memorandum or panchnama by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not be cooperative in taking possession of the land."

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40. *In Narayan Bhagde case one of the arguments raised by the landowner was that as per the communication of the Commissioner the land was still with the landowner and possession thereof had not been taken. The Bench observed that the letter was based on a misconception as the landowner had re-entered the acquired land immediately after its possession had been taken by the Government ignoring the scenario that he stood divested of the possession, under Section 16 of the Act. This Court observed as under: (Narayan Bhagde case, SCC p. 712, para 29) "*

29. ... This was plainly erroneous view, for the legal position is clear that even if the appellant entered upon the land and resumed possession of it the very next moment after the land was actually taken possession of and became vested in the Government, such act on the part of the appellant did not have the effect of obliterating the consequences of vesting."

To our mind, therefore, even assuming that the appellant had re-entered the land on account of the various interim orders granted by the courts, or even otherwise, it would have no effect for two reasons,

(1) that the suits/petitions were ultimately dismissed and

(2) that the land once having vested in the Government by virtue of Section 16 of the Act, re-entry by the landowner would not obliterate the consequences of vesting."

This court stated, in *Leelawanti & Ors. v. State of Haryana & Ors*[96] thus:

"19. *If Para 493 is read in the manner suggested by the learned counsel for the appellants then in all the cases the acquired land will have to be returned to the owners irrespective of the time gap between the date of acquisition and the date on which the purpose of acquisition specified in Section 4 is achieved and the*

[96] (2012) 1 SCC 66

Government will not be free to use the acquired land for any other public purpose. Such an interpretation would also be contrary to the language of Section 16 of the Act, in terms of which the acquired land vests in the State Government free from all encumbrances and the law laid down by this Court that the lands acquired for a particular public purpose can be utilised for any other public purpose.

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22. *The approach adopted by the High Court is consistent with the law laid down by this Court in State of Kerala v. M. Bhaskaran Pillai, (1997) 5 SCC 432 and Govt. of A.P. v. Syed Akbar, (2005) 1 SCC 558. In the first of these cases, the Court considered the validity of an executive order passed by the Government for assignment of land to the erstwhile owners and observed: (M. Bhaskaran Pillai case, SCC p. 433, para 4)*

"4. In view of the admitted position that the land in question was acquired under the Land Acquisition Act, LA by operation of Section 16 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting a higher value."

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24. *For the reasons stated above, we hold that the appellants have failed to make out a case for issue of a mandamus to the respondents to release the acquired land in their favour. In the result, the appeal is dismissed without any order as to costs."*

(emphasis supplied)

129. Section 31 of the Act of 1894 is in *pari materia* with the provisions Section 77 of the Act of 2013; Section 34 (of the Act of 1894) is *pari materia* with Section 80 of the Act of 2013. Section 77 of the Act of 2013 deals with payment of compensation or deposit of the same in the Authority. Section 77 is reproduced hereunder:

> *"77. Payment of compensation or deposit of same in Authority.- (1) On making an award under section 30, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them by depositing the amount in their bank accounts unless prevented by some one or more of the contingencies mentioned in sub-section (2).*
>
> *(2) If the person entitled to compensation shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Authority to which a reference under section 64 would be submitted:*
>
> *Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:*
>
> *Provided further that no person who has received the amount otherwise than under protest shall be entitled to make any application under sub-section (1) of section 64:*
>
> *Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto."*

130. The Collector has to tender payment under Section 77(1) and to pay the persons interested by depositing the amount in their bank accounts unless prevented under Section 77(2) which are the same contingencies as provided in Section 31(2) mentioned above. Section 80 of the Act of 2013 is *pari materia* to Section 34 of the Act of 1894, is reproduced hereunder:

> *"80. Payment of interest.-When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per cent, per annum from the time of so taking possession until it shall have been so paid or deposited:*
>
> *Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on*

> *which possession is taken, interest at the rate of fifteen per cent, per annum shall be payable from the date or expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry."*

131. The provisions are identical concerning the rate of interest in case there is a failure to make payment of compensation before taking possession of the land. The award amount has to be paid @ 9% per annum for the first year and after that @ 15% per annum.

132. Since the Act of 1894 never provide for the lapse in case the compensation amount was not deposited, non-deposit carried higher interest. The provisions under the new Act are identical: there is no lapse of any acquisition proceeding by non-compliance with Section 77. Interpreting *"or"* under Section 24(2) of the Act of 2013 disjunctively, would result in an anomalous situation - *because, once compensation has been paid to the landowner, there is no provision for its refund.* It was fairly conceded on behalf of the landowners that they must return the compensation in the case of lapse if possession has not been taken. In case possession is with the landowner and compensation has been paid, according to landowners' submission, there is deemed lapse under Section 24(2) by reading the word *"or"* disjunctively. It would then be open to the State Government to withdraw the money deposited in the Reference Court. It was also submitted that it is inherent in the notion of lapse that the State may recover the compensation on the ground of restitution. In our opinion, the submissions cannot be accepted as an anomalous result would occur. In case physical possession is with the landowner; *and compensation has been paid, there is no provision in the Act for disgorging out the benefit of compensation.* In the absence of any provision for refund in the Act of 2013, the State cannot recover compensation paid. The landowner would be unjustly enriched. This could never have been the legislative intent of enacting Section 24(2) of the Act of 2013. The principle of restitution, unless provided in the Act, cannot be resorted to by the authorities on their own. The absence of provision for refund in the Act of 2013 reinforces our conclusion that the word "or" has to be read as conjunctively and has to be read as "and." The landowners' argument about the State's ability to recover such amounts, in the absence of any provision, by relying on the principle of restitution, is without merit, because firstly such principle is without any legal sanction. The State would have to resort to the remedy of a suit, which can potentially result in litigation of enormous proportions; besides, the landowners can well argue that the property (i.e. the amounts) legally belonged to them and that the limitation for claiming it back would have expired. Several other potential defences would be available, each of which would result in multifarious litigation. Therefore, the contention is *ex-facie* untenable and insubstantial.

133. It was submitted that in the case State had taken possession without paying compensation as required under the Act of 1894, there cannot be absolute vesting free from all encumbrances under Section 16. It is clear that vesting under Section 16 of the Act of 1894 does not depend upon payment of compensation. Vesting takes place as soon as possession is taken after the passing of the award. Undoubtedly, compensation has also to be paid. For that, provisions have been made in Sections 31 and 34 of the Act of 1894. Section 31(1) requires tender and payment, which is making the money available to the landowner and in case State is prevented: i.e., in case the landowner does not consent to receive it for three other exigencies provided in Section 31(2), the amount has to be deposited in the court. Deposit in the court absolves the Government of liability to make payment of interest. However, if payment is not tendered under Section 31(1) nor deposited in court as envisaged under Section 31(2) from the date of taking possession, the interest for the first year is 9% and thereafter 15% per annum follows. The effect of vesting, under no circumstance, is taken away due to non-compliance of Section 31(1) or 31(2) as the case may be as the payment is secured along with interest under the provisions of Section 34 read with Section 31. The State cannot be asked to restore possession once taken but in case it fails to make deposit under Section 31(3) or otherwise with respect to majority of the landholdings, in that exigency, all the beneficiaries as on the date of notification under Section 4 shall be entitled to higher compensation under the Act of 2013 and there would be no lapse in that case.

134. The landowners had complained that in some cases, under various schemes, close to 80% of the compensation amount was not handed over to the concerned Collector. It was also submitted that in some of the schemes, 50% beneficiaries, for whose benefit the land had been acquired, had not paid even a single rupee. Since this Court is not deciding individual cases here, what is the effect of the interpretation of the law, in the light of this decision, has to be considered in each and every case. We refrain from commenting on the merits of the said submissions as we are not deciding the cases on merits in the reference made to us. Various aspects may arise on the merits of the case as the schemes were framed at different points of time and the dates of notifications under Section 4 issued thereunder, whether there is one or different notifications and various other attendant circumstances have to be looked into like whether possession has been taken or not, to what extent compensation has been paid and whether proviso to Section 24(2) is attracted for the benefits of those entitled to it. In case there is failure to deposit the compensation with respect to the majority of the holdings, the facts have to be gauged in individual cases and then decided.

In re: Vesting and divesting

135. In *Satendra Prasad Jain & Ors. v. State of U.P & Ors*[97], the concept of vesting under the Act of 1894 had been taken into consideration. The Government cannot withdraw from acquisition under Section 48, once it has taken the possession. This Court has observed that once possession has been taken under Section 17(1), prior to the making of the award, the owner is divested of the title to the land, which is vested in the Government and there is no provision by which land can be reverted to the owner. This Court has observed thus:

> ***"14.*** *There are two judgments of this Court, which we must note. In Rajasthan Housing Board v. Shri Kishan, (1993) 2 SCC 84 it was held that the Government could not withdraw from acquisition under Section 48 once it had taken possession of the land. In Lt. Governor of H.P. v. Avinash Sharma, (1970) 2 SCC 149 it was held that: (SCC p. 152, para 8)*
>
> *"... after possession has been taken pursuant to a notification under Section 17(1) the land is vested in the Government, and the notification cannot be cancelled under Section 21 of the General Clauses Act, nor can the notification be withdrawn in exercise of the powers under Section 48 of the Land Acquisition Act. Any other view would enable the State Government to circumvent the specific provision by relying upon a general power. When possession of the land is taken under Section 17(1), the land vests in the Government. There is no provision by which land statutorily vested in the Government reverts to the original owner by mere cancellation of the notification."*
>
> ***15.*** *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 landowner and ensure that the award is made within a period of two years from the date of the 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.*

[97] (1993) 4 SCC 369

> *Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisitions 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."*
>
> (emphasis supplied)

This Court further observed in *Satendra Prasad Jain* (supra) that even if compensation was not paid to the appellant under Section 17(3-A), it could not be said that possession was taken illegally. Vesting is absolute. This Court has observed thus:

> ***"17.*** *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 first respondent. It is, at any rate, not open to the third respondent, who, as the letter of the Special Land Acquisition Officer dated June 27, 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."*
>
> *(emphasis supplied)*

136. In *Tika Ram and Ors. v. State of Uttar Pradesh & Ors.*[98], the question considered was in case possession is taken, and compensation is not paid, what is the effect? This Court has held that there is no lapse of acquisition and observed thus:

> ***"91.*** *However, the question is as to what happens when such payment is not made and the possession is taken. Can the whole acquisition be set at naught?*
>
> ***92.*** *In our opinion, this contention on the part of the appellants is also incorrect. If we find fault with the whole acquisition process on account of the non-payment of 80% of the compensation, then the further question would be as to whether the estimation of 80% of compensation is correct or not. A further controversy can then be raised by the landlords that what was paid was not 80% and was short of 80% and therefore, the acquisition should be set at naught. Such extreme*

[98] (2009) 10 SCC 689

interpretation cannot be afforded because indeed under Section 17 itself, the basic idea of avoiding the enquiry under Section 5-A is in view of the urgent need on the part of the State Government for the land to be acquired for any eventuality discovered by either sub-section (1) or sub-section (2) of Section 17 of the Act.

93. *The only question that would remain is that of the estimation of the compensation. In our considered view, even if the compensation is not paid or is short of 80%, the acquisition would not suffer. One could imagine the unreasonableness of the situation. Now suppose, there is state of emergency as contemplated in Section 17(2) of the Act and the compensation is not given, could the whole acquisition come to a naught? It would entail serious consequences.*

***

95. *Further, in a judgment of this Court in Pratap v. State of Rajasthan, (1996) 3 SCC 1 a similar view was reported. That was a case under the Rajasthan Urban Improvement Act, 1987, under which the acquisition was made using Section 17 of the Act. The Court took the view that once the possession was taken under Section 17 of the Act, the Government could not withdraw from that position under Section 18 and even the provisions of Section 11-A were not attracted. That was of course a case where the award was not passed under Section 11-A after taking of the possession. A clear-cut observation came to be made in that behalf in para 12, to the effect that the non-compliance with Section 17 of the Act, insofar as, payment of compensation is concerned, did not result in lapsing of the land acquisition proceedings. The law laid down by this Court in Satendra Prasad Jain v. State of U.P., (1993) 4 SCC 369 was approved. The Court also relied on the decision in P. Chinnanna v. State of A.P., (1994) 5 SCC 486 and Awadh Bihari Yadav v. State of Bihar, (1995) 6 SCC 31 where similar view was taken regarding the land acquisition proceedings not getting lapsed. The only result that may follow by the non-payment would be the payment of interest, as contemplated in Section 34 and the proviso added thereto by the 1984 Act. In that view, we do not wish to further refer the matter, as suggested by Shri Trivedi, learned Senior Counsel and Shri Qamar Ahmad, learned counsel for the appellants. Therefore, even on the sixth question, there is no necessity of any reference."*

(emphasis supplied)

It has further been observed that the only result that may follow by the non-payment would be the payment of interest as contemplated in Section 34 of the Act of 1894.

137. In *Pratap & Anr. v. State of Rajasthan & Ors*[99], this Court held that when the possession of land is taken under Section 17(1), the land vests absolutely in the Government free from all encumbrances and the Government cannot withdraw from acquisition under Section 48 and provisions of Section 11-A of passing the award within two years were not attracted. The proceedings would not lapse on failure to make an award within the period prescribed under Section 11-A, once possession had been taken. The part payment of compensation would also not render the possession illegal. This Court observed thus:

> ***"12.*** *The provisions of sub-section (4) of Section 52 are somewhat similar to Section 17 of the Land Acquisition Act, LA. Just as the publication of a notification under Section 52(1) vests the land in the State, free from all encumbrances, as provided by Section 52(4), similarly when possession of land is taken under Section 17(1) the land vests absolutely in the Government free from all encumbrances. A question arose before this Court that if there is a non-compliance with the provisions of Section 5-A and an award is not made in respect to the land so acquired, would the acquisition proceedings lapse. In Satendra Prasad Jain v. State of U.P., (1993) 4 SCC 369 this Court held that once possession had been taken under Section 17(1) and the land vested in the Government then the Government could not withdraw from acquisition under Section 48 and the provisions of Section 11-A were not attracted and, therefore, the acquisition proceedings would not lapse on failure to make an award within the period prescribed therein. It was further held that non-compliance of Section 17(3-A), regarding part payment of compensation before taking possession, would also not render the possession illegal and entitle the Government to withdraw from acquisition. The aforesaid principle has been reiterated by this Court in P. Chinnanna v. State of A.P., (1994) 5 SCC 486 and Awadh Bihari Yadav v. State of Bihar, (1995) 6 SCC 31. In view of the aforesaid ratio it follows that the provisions of Section 11-A are not attracted in the present case and even if it be assumed that the award has not been passed within the stipulated period, the acquisition of land does not come to an end.*
>
> (emphasis supplied)"

138. In *Awadh Bihari Yadav & Ors. v. State of Bihar & Ors*[100], question was raised with respect to the lapse of acquisition proceedings in view of the provisions contained in Section 11-A as award had not been made within 2 years

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[99] (1996) 3 SCC 1
[100] (1995) 6 SCC 31

from the date of commencement of the Land Acquisition Amendment Act, 1984. Possession had been taken by the Government under Section 17(1). It was held that it was not open to the Government to withdraw from the acquisition. Provisions of Section 11-A was not attracted. Following is the relevant portion of the observations made by this Court:

> *"8. ..It was contended that in view of Section 11-A of the Act the entire land acquisition proceedings lapsed as no award under Section 11 had been made within 2 years from the date of commencement of the Land Acquisition Amendment Act, 1984. We are of the view that the above plea has no force. In this case, the Government had taken possession of the land in question under Section 17(1) of the Act. It is not open to the Government to withdraw from the acquisition (Section 48 of the Act). In such a case, Section 11-A of the Act is not attracted and the acquisition proceedings would not lapse, even if it is assumed that no award was made within the period prescribed by Section 11-A of the Act.*

139. In *P. Chinnanna & Ors. v. State of A.P. & Ors.*[101] question again arose with respect to possession taken under Section 17(1) invoking urgency clause, this Court has held that once possession is taken, there is absolute vesting and subsequent proceedings were void. This Court stated as follows:

> ***"10.*** *The said provision enables the appropriate Government to take possession of the land concerned on the expiration of 15 days from the publication of the notice mentioned in Section 9 sub-section (1) notwithstanding the fact that no award has been made in respect of it. When the possession of the land concerned is once taken as provided for thereunder such land is made to vest absolutely in the Government free from all encumbrances. It must be noted here that taking possession of the land concerned and its vesting absolutely in the Government free from all encumbrances does not depend upon an award to be made under Section 11, making of which award alone in the case of ordinary acquisition of land could have empowered the Collector to take possession of the land under Section 16 and the taking of which possession would have made the land vest absolutely in the Government free from all encumbrances. As seen from the judgment dated 23-8-1982 of the High Court in WP No. 3416 of 1978, taking possession of the appellants' land along with land of others by the Collector on 10-7-1978 under Section 17(1) is, in fact, made the basis for its holding that*

[101](1994) 5 SCC 486

invoking of urgency clause to dispense with Section 5-A enquiry was made by the Government mechanically. No doubt, when the High Court took the view that acquisition of the land concerned under Section 17 of the Act was made pursuant to an order of the Government without application of its mind in the matter of making Section 5-A not to apply, it was open to it to set aside or quash the subsequent acquisition proceedings except Section 4(1) notification which had followed and restore the ownership of the land to the appellants' land if it had to order fresh enquiry on the basis of Section 4(1) notification. Such a setting aside or quashing was inevitable because the acquisition proceedings had been completed under Section 17 and the land had vested in the State Government, inasmuch as, without setting aside that vesting of the land in the State Government and restoring the land to the appellant-owners, that land was unavailable for subsequent acquisition by following the procedure under Section 5-A, Section 6, Section 11 and Section 16. Thus in the circumstances of the case in respect of the land of the appellants, when publication of Section 4(1) notification was made on 21-7-1977, when declaration under Section 6 was published on 21-7-1977 and taking possession of that land under Section 17(1) by the Collector was made on 10-7-1978 and the vesting in the State Government of that land had occurred on that day, setting aside by the judgment of the High Court in WP No. 3416 of 1978 of merely the direction given by the Government relating to non-applicability of Section 5-A to the land, given on 7-7-1977, in our view, did not enable to Court to order the starting of fresh proceedings for acquisition of the land concerned under Section 5-A, inasmuch as, that land concerned on Section 4(1) notification had already become the land of the Government. In this state of facts, when the previous acquisition of the land of the appellants made under Section 17 of the Act did never stood affected. Section 5-A enquiry held and subsequent declaration made were superfluous proceedings which were inconsequential. Hence, we feel that there is no need to set aside the impugned declaration inasmuch as the earlier acquisition was complete and had resulted in vesting of the land in the State Government and there was no land available for acquisition in the subsequent proceedings which have been carried pursuant to the judgment of the High Court made in WP No. 3416 of 1978. Therefore, in the stated facts, although we find that no need arises to declare the impugned declaration as void we clarify that the earlier proceedings which had taken place in respect of the appellants' land, resulting in its vesting in the State Government free from encumbrances, has stood unaffected and any award made by the Collector or be made by

him under the L.A. Act shall be regarded as that based on earlier acquisition proceedings."

140. In *May George v. Special Tahsildar & Ors.*[102], this Court considered the question to declare a provision mandatory, test is to be applied as to whether non-compliance of the provision could render entire proceedings invalid or not. This Court referred to various decisions (which are referred to in the footnote[103]) and summarized the position thus:

> ***"24.*** *In Gullipilli Sowria Raj v. Bandaru Pavani, (2009) 1 SCC 714, this Court while dealing with a similar issue held as under (SCC p. 719, para 17)*
>
> *"17. ... The expression 'may' used in the opening words of Section 5 is not directory, as has been sought to be argued, but mandatory and non-fulfilment thereof would not permit a marriage under the Act between two Hindus. Section 7 of the 1955 Act is to be read along with Section 5 in that a Hindu marriage, as understood under Section 5, could be solemnised according to the ceremonies indicated therein."*
>
> ***25.*** *The law on this issue can be summarised to the effect that in order to declare a provision mandatory, the test to be applied is as to whether non-compliance with the provision could render the entire proceedings invalid or not. Whether the provision is mandatory or directory, depends upon the intent of the legislature and not upon the language for which the intent is clothed. The issue is to be examined having regard to the context, subject-matter and object of the statutory provisions in question. The Court may find out as to what would be the consequence which would flow from construing it in one way or the other and as to whether the statute provides for a contingency of the non-compliance with the provisions and as to whether the non-compliance is visited by small penalty or serious consequence would flow therefrom and as to whether a particular interpretation would defeat or frustrate the legislation and if the provision is mandatory, the act done in breach thereof will be invalid.*
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[102] (2010) 13 SCC 98

[103] *Dattatraya Moreshwar v. The State of Bombay and Ors.,* AIR 1952 SC 181; *State of U.P. and Ors. v. Babu Ram Upadhya,* AIR 1961 SC 751; *Raza Buland Sugar Co. Ltd., Rampur v. Municipal Board, Rampur,* AIR 1965 SC 895; *State of Mysore v. V.K. Kangan,* AIR 1975 SC 2190; *Sharif-Ud-Din v. Abdul Gani Lone,* AIR 1980 SC 303; *Balwant Singh and Ors. v.Anand Kumar Sharma* and Ors., (2003) 3 SCC 433; *Bhavnagar University v. Palitana Sugar Mill Pvt. Ltd. and Ors.,* AIR 2003 SC 511; *Chandrika Prasad Yadav v. State of Bihar and Ors.,* AIR 2004 SC 2036; *M/s. Rubber House v. Excellsior Needle Industries Pvt. Ltd.,* AIR 1989 SC 1160; *B.S. Khurana and Ors. v. Municipal Corporation of Delhi and Ors.* , (2000) 7 SCC 679; *State of Haryana and Anr. v. RaghubirDayal,* (1995) 1 SCC 133; and *GullipilliSowria Raj v. Bandaru Pavani @ Gullipili Pavani,* (2009) 1 SCC 714

> ***27.*** *In G.H. Grant (Dr.) v. State of Bihar, AIR 1966 SC 237, this Court has held that if a "person interested" is aggrieved by the fact that some other person has withdrawn the compensation of his land, he may resort to the procedure prescribed under the Act or agitate the dispute in suit for making the recovery of the award amount from such person."*
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> (emphasis supplied)

141. This Court opined, therefore, that once the land vests in the State, it cannot be divested, even if there is some irregularity in the acquisition proceedings. There is nothing in the Act of 1894 to show that non-compliance thereof will be fatal or will lead to any penalty.

142. Now, coming back to the main issue, the legal fiction of lapsing (under Section 24(2) of the Act of 2013) cannot be extended to denude title which has already vested in the beneficiaries of the acquisition Corporation/Local Bodies, etc., and who, in turn, have also conveyed title and transferred the land to some other persons after development. In *Commissioner of Sales Tax, U.P. v. Modi Sugar Mills*[104] the Court has held that *"A legal fiction must be limited to the purpose for which it has been created and cannot be extended beyond its legitimate field."* Similarly, in *Braithwaite & Co. v. E.S.I.C*[105] , this Court held that a legal fiction is adopted in law for a limited and definite purpose only and there is no justification for extending it beyond the purpose for which the legislature has adopted. Lapsing is provided only where possession has not been taken nor compensation has been paid, divesting of vested land is not intended nor specifically provided.

143. Black's Law Dictionary defines "vested" as follows:

> *"vested, adj. (18c) Having become a completed, consummated right for present or future enjoyment; not contingent-unconditional; absolute a vested interest in the estate.*
>
> *"Unfortunately, the word 'vested' is used in two senses. Firstly, an interest may be vested in possession, when there is a right to present enjoyment, e.g. when I own and occupy Blackacre. But an interest may be vested, even where it does not carry a right to immediate possession if it does confer a fixed right of taking possession in the future." George Whitecross Paton, A Textbook of Jurisprudence 305 (CW. Paton & David P. Derham eds., 4th ed. 1972).*
>
> *"A future interest is vested if it meets two requirements: first, that there be no condition precedent to the interest's becoming a present estate other than the natural expiration of those estates that are prior to it in possession; and second, that it be theoretically possible to identify who would get the right to possession if the interest should become a present estate at any time." Thomas F. Bergin 8. Paul C. Haskell, Preface to Estates in Land and Future Interests 66-67 (2d ed. 1984)."*

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[104] 1961 (2) SCR 189
[105] 1968 (1) SCR 771

144. In Webster's Dictionary, 'vested' is defined as:

> *"vested adj. [pp. of vest] 1. Clothed; robed, especially in church vestments. 2. in law, fixed; settled; absolute; not contingent upon anything: as, a vested interest."*

145. In *State of Punjab v. Sadhu Ram*[106], it has been observed that once possession is taken and the award has been passed, no title remains with the landowner and the land cannot be de-notified under Section 48(1) and observed thus:

> ***"3.** The learned Judge having noticed the procedure prescribed in disposal of the land acquired by the Government for public purposes, has held that the said procedure was not followed for surrendering the land to the erstwhile owners. The respondent having purchased the land had improved upon the land and is, therefore, entitled to be an equitable owner of the land. We wholly fail to appreciate the view taken by the High Court. The learned Judge had net referred to the relevant provisions of the Act and law. It is an undisputed fact that consequent upon the passing of the award under Section 11 and possession taken of the land, by operation of Section 16 of the Act, the right, title and interest of the erstwhile owner stood extinguished and the Government became absolute owner of the property free from all encumbrances. Thereby, no one has nor claimed any right, title and interest in respect of the acquired land. Before the possession could be taken, the Government have power under Section 48(1) of the Act to denotify the land. In that event, land is required to be surrendered to the erstwhile owners. That is not the case on the facts of this case. Under these circumstances, the Government having become the absolute owner of the property free from all encumbrances, unless the title is conferred on any person in accordance with a procedure known to law, no one can claim any title much less equitable title by remaining in possession. The trial Court as well as the appellate Court negative the plea of the respondent that he was inducted into possession as a lessee for a period of 20 years. On the other hand, the finding was that he was in possession as a lessee on yearly basis. Having lawfully come into possession as a lessee of the Government, Session 116 of Evidence Act estops him from denying title of the Government and set it up in third party. By disclaiming Government title, he forfeited even the annual lease. Under these circumstances, having come into possession as a lessee, after expiry and forfeiture of the lease, he has no right. Illegal and unlawful possession of the land entails payment of damages to the Government."*

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[106] 1996 (7) JT 118

146. In *Star Wire (India) Ltd. v. State of Haryana & Ors*[107], it was observed that once the award has been passed and possession has been taken, the land vests in the State free from all encumbrances. This Court held thus:

> ***"2.*** *This special leave petition arises from the judgment of the Punjab and Haryana High Court made on 25-4-1996 in LPA No. 437 of 1996. Notification under Section 4(1) of the Land Acquisition Act, LA (for short, 'the Act') was published on 1-6-1976. Declaration under Section 6 of the Act was published on 16-2-1977. The award was passed on 3-7-1981. Thereafter, the reference also become final. The petitioner has challenged the notification, the declaration, and the award as illegal. It contends that the award does not come in the way of the petitioner in filing the writ petition on 21-1-1994. The High Court has dismissed the writ petition on the grounds of laches."*

147. A similar view has been taken in *Market Committee v. Krishan Murari*[108] and *Puttu Lal (dead) by L.Rs. v. State of U.P. & Anr*[109]. The concept of 'vesting' was also considered in *The Fruit & Vegetable Merchants Union v. The Delhi Improvement Trust*[110]. Once vesting takes place, and is with possession, after which a person who remains in possession is only a trespasser, not in rightful possession and vesting contemplates absolute title, possession in the State. This court observed thus:

> *"(19) That the word "vest" is a word of variable import is shown by provisions of Indian statutes also. For example, S. 56 of the Provincial Insolvency Act (5 of 1920) empowers the Court at the time of the making of the order of adjudication or thereafter to appoint a receiver for the property of the insolvent and further provides that "such property shall thereupon vest in such receiver". The property vests in the receiver for the purpose of administering the estate of the insolvent for the payment of his debts after realising his assets. The property of the insolvent vests in the receiver not for all purposes but only for the purpose of the Insolvency Act and the receiver has no interest of his own in the property. On the other hand, Ss. 16 and 17 of the Land Acquisition Act (Act 1 of LA), provide that the property so acquired, upon the happening of certain events, shall "vest absolutely in the Government free from all encumbrances". In the cases contemplated by Ss. 16 and 17 the property acquired becomes the property of Government without any conditions or limitations either as to title or possession. The legislature has*

[107](1996) 11 SCC 698
[108](1996) 1 SCC 311
[109](1996) 3 SCC 99
[110]1957 SCR 01

> *made it clear that the vesting of the property is not for any limited purpose or limited duration. It would thus appear that the word "vest" has not got a fixed connotation meaning in all cases that the property is owned by the person or the authority in whom it vests. It may vest in title, or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation. The provisions of the Improvement Act, particularly Ss. 45 to 49 and 54 and 54-A when they speak of a certain building or street or square or other land vesting in a municipality or other local body or in a trust, do not necessarily mean that ownership has passed to any of them."*

In re: Vested rights under Section 24 of the Act of 2013

148. This Court is of opinion that Section 24 of the Act of 2013 does not intend to take away vested rights. This is because there is no specific provision taking away or divesting title to the land, which had originally vested with the State, or divesting the title or interest of beneficiaries or third-party transferees of such land which they had lawfully acquired, through sales or transfers. There is a specific provision made for divesting, nor does the Act of 2013 by necessary intendment, imply such a drastic consequence. Divesting cannot be said to have been intended. Here, the decision in *VKNM Vocational Higher Secondary School v. State of Kerala*[111] is relevant; it was observed as follows by this Court:

> ***"21.*** *In our considered view, the above principles laid down by the Constitution Bench of this Court in Garikapati case will have full application while considering the argument of the learned Senior Counsel for the fifth respondent claiming a vested right by relying upon unamended Rule 7-A(3). Principles (i), (iii), (iv) and (v) of the said judgment are apposite to the case on hand. When we make a comprehensive reference to the above principles, it can be said that for the legal pursuit of a remedy it must be shown that the various stages of such remedy are formed into a chain or rather as series of it, which are connected by an intrinsic unity which can be called as one proceeding, that such vested right, if any, should have its origin in a proceeding which was instituted on such right having been crystallised at the time of its origin itself, in which event all future claims on that basis to be pursued would get preserved till the said right is to be ultimately examined. In the event of such preservation of the future remedy having come into existence and got crystallised, that would date back to the date of origin when the*

[111] (2016) 4 SCC 216

so-called vested right commenced, that then and then only it can be held that the said right became a vested right and it is not defeated by the law that prevails at the date of its decision or at the date of subsequent filing of the claim. One other fundamental principle laid down which is to be borne in mind, is that even such a vested right can also be taken away by a subsequent enactment if such subsequent enactment specifically provides by express words or by necessary intendment. In other words, in the event of the extinction of any such right by express provision in the subsequent enactment, the same would lose its value."

149. The decision in *State of Haryana v. Hindustan Construction Co. Ltd*[112], is relied upon to contend that the line of enquiry is not to enquire if the new enactment has by its new provisions kept alive the rights and liabilities under the repealed law or whether it has taken away those rights and liabilities. When repeal is followed by a fresh enactment on the same subject, the provisions of the General Clauses Act would undoubtedly require an examination of the language of the new enactment if it expresses an intent different from the earlier repealed Act. The enquiry would necessitate the examination if the old rights and liabilities are kept alive or whether the new Act manifests an intention to do away with or destroy them. If the new Act manifests different intentions, the application of the General Clauses Act will stand excluded.

150. We have examined the provisions of Section 24 of the Act of 2013 in the light of the said pleas and thereafter arrived at our conclusions as to when and to what extent proceedings lapsed or/and were saved and what liabilities have been taken away and to what extent there is obliteration of the rights acquired and liabilities incurred earlier under the Act of 1894 and what is done away or destroyed by the new Act.

151. The Section 24(2) of the Act of 2013 is to be interpreted consistent with the legislative intent, particularly when it has provided for the lapse of the proceedings. It has to be interpreted in the light of provisions made in Sections 24 and 114 of the Act of 2013 and Section 6 of the General Clauses Act, what it protects and to what extent it takes away the rights of the parties. Undoubtedly, Section 24(2) has retroactive operation with respect to the acquisitions initiated under the Act of 1894 and which are not completed by taking possession nor compensation has been paid in spite of lapse of 5 years and proceedings are kept pending due to lethargy of the officials. The drastic consequences follow by the provisions contained in Section 24(2) in such cases.

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[112] (2017) 9 SCC 463

152. For considering the legislative intent, Bennion, Statutory Interpretation, 5th Edition (2012) has been referred to, in which it has been observed:

> *"Where, on a weighing of the factors, it seems that some retrospective effect was intended, the general presumption against retrospectively indicates that this should be kept to as narrow a compass as will accord with the legislative intention.*
>
> *Principle against doubtful penalisation. It is a general principle of legal policy that no one should suffer detriment by the application of a doubtful law. The general presumption against retrospectivity means that where one of the possible opposing constructions of an enactment would impose an ex post facto law, that construction is likely to be doubtful.*
>
> ....
>
> *If the construction also inflicts a detriment, that is a second factor against it. A retrospective enactment inflicts a detriment for this purpose 'if it takes away or impairs a vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability, in regard to events already past. The growing propensity of the courts to relate legal principle to the concept of fairness was shown by Staughton LJ when he said:*
>
> *"In my judgment the true principle is that Parliament is presumed not to have intended to alter the law applicable to past events and transactions in a manner which is unfair to those concerned in them, unless a contrary intention appears.""*
>
> *(emphasis supplied)*

It has been observed in Bennion, Statutory Interpretation, 5th Edition (2012) that when Parliament is presumed not to have intended to alter the law applicable to past events and transactions, which is unfair to those concerned in them unless the contrary intention appears.

153. Another decision in *Lauri v. Renad*[113], has been referred to in which it was observed that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary. Following observations have been relied upon:

> *"It certainly requires very clear and unmistakable language in a subsequent Act of Parliament to revive or recreate an expired right. It is a fundamental rule of English law that no statute shall be construed so as to have a retrospective operation unless its*

[113] (1892) 3 Ch. 402

language is such as plainly to require such a construction; and the same rule involves another and subordinate rule to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary."

(emphasis supplied)

154. In *Yamashita-Shinnihon Steamship Co. Ltd.* (supra) the House of Lords has observed that question of the extent of retrospectivity would also be dependent upon the degree of unfairness it causes to the parties. It has been observed:

"The rule that a person should not be held liable or punished for conduct not criminal when committed is fundamental and of long standing. It is reflected in the maxim nullum crimen nulla poena sine lege. It is protected by article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1953) (Cmd. 8969).

The rule also applies, but with less force, outside the criminal sphere. It is again expressed in maxims, lex prospicit non respicit and omnis nova constitutio futuris temporibus formam imponere debet non praeteritis. The French Civil Code provides that "La loi ne dipose que pour l'avenir; elle n'a point d'effet retroactif:"

But both these passages draw attention to an important point, that the exception only applies where application of it would not cause unfairness or injustice. This is consistent with the general rule or presumption which is itself based on considerations of fairness and justice, as shown by the passage in Maxwell quoted, ante, p. 494C-E, and recently emphasised by Staughton LJ in Secretary of State for Social Security v. Tunnicliffe [1991] 2 All E.R. 712, 724:

"In my judgment the true principle is that Parliament is presumed not to have intended to alter the law applicable to past events and transactions in a manner which is unfair to those concerned in them, unless a contrary intention appears. It is not simply a question of classifying an enactment as retrospective or not retrospective. Rather it may well be a matter of degree - the greater the unfairness, the more it is to be expected that Parliament will make it clear if that is intended."

The distinction between rights and procedure, and unfairness and fairness, may well overlap. Thus, if a limitation period is shortened but a plaintiff has time to sue before expiry of the shortened period, he is likely to be statute-barred if he does not sue within the shortened period (see The Ydun [1899] P. 236.);

but if a limitation period is extended after a previous shorter limitation period has already expired, the plaintiff will be unable to take advantage of the new period because an absolute defence has by then accrued to the defendant and it would not be fair to deprive him of it: See Yew Bon Tew v. Kenderaan Bas Mara [1983] 1 A.C. 553 and Maxwell v. Murphy (1957) 96 C.L.R. 261.

Further, Lord Griffiths, Lord Goff of Chieveley and Lord Slynn of Hadley, held as under:

"The principle governing the proper approach to a statutory provision alleged to have retrospective effect has been stated in a number of different ways, but no difference of substance is revealed by the authorities. Thus:

(1) the principle has been described as "a prima facie rule of construction" (Yew Bon Tew [1983] 1 A.C 553, 558F), "an established principle in the construction of statutory provisions" (Pearce v. Secretary of State for Defence [1988] A.C 755, 802C) or "a fundamental rule of English law" (Lauri v. Renad [1892] 3 Ch. 402, 421, Maxwell on the Interpretation of Statutes, 12th ed., p. 215, cited with approval in Carson v. Carson and Stoyek [1964] 1 W.L.R 511, 516-517).

(2) The principle is that a statute or statutes will not be interpreted so as to have a retrospective operation unless (i) "that result is unavoidable on the language used" (Yew Bon Tew, at pp. 558F, 563D-E) or "that effect cannot be avoided without doing violence to the language of the enactment: (In re Athlumney, Ex parte Wilson [1898] 2 Q.B 547, 552) or "its language is such as plainly to require such a construction" (Lauri v. Renad, at p. 421); or (ii) "they expressly or by necessary implication to provide: see Yew Bon Tew, at p. 558F" (Pearce v. Secretary of State for Defence [1988] A.C 755, 802C-D) or "such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication" (Maxwell on the Interpretation of Statutes, 12th ed., p.215]

(3) "if the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only" (In re Athlumney, at p. 552).

(4) If the statute does have some retrospective operation on the basis of the above principles, it is not to be construed as having greater retrospective operation "than its language renders necessary" (Lauri v. Renad, at p. 421) or "than is necessary to give effect either to its clear language or to its manifest purpose" (Arnold v. Central Electricity Generating Board [1988] A.C 228, 275.

The absence of express limiting words cannot be used as a basis for implying retrospective operation. That would reverse the true presumption. A necessary and distinct implication typically arises in the context of a statute that, by repealing a previous statute, would leave a "lacuna" in the law if the new statute were not to be construed as having retrospective effect: see, e.g., Food Corporation of India v. Marastro Compania Naviera S.A. [1987] 1 W.L.R. 134, 152. The particular problem in the present case is a transitional problem only, applicable only to those arbitrators that are stale as at 1 January 1992, in respect of which applications to strike out are made shortly thereafter. In the future, such claimants will either continue to be dilatory or not, in which case the references will proceed to a conclusion. The concern of the legislature, and the mischief at which the section was aimed, was not a limited number of existing stale arbitrations but future arbitrations. Moreover, although the mischief at which the section was aimed is not to be ignored, one should start by looking at the words themselves: see Chebaro v. Chebaro [1987] Fam. 127, 130, 134-135.

It would be unfair to a claimant to give a retrospective operation to section 13A. So far as claimants in existing arbitrations are concerned, they may well have been (correctly) advised prior to 1 January 1992 that they could proceed slowly with the claim without risk of having their claims dismissed by reason of such delay. A retrospective application of the statute would expose him to a penalty on the strength of conduct not susceptible to penalty when committed. It would not, however, be unfair to a respondent to limit section 13A to delay occurring after 1 January1992. Even if such delay were causative of prejudice or the risk of an unfair resolution of the dispute, under the existing law laid down in Bremer Vulkan a respondent should have been aware that it was a respondent's obligation (as well as a claimant's) to seek directions from the arbitrator to ensure a speedy resolution of disputes: see the Hannah Blumenthal case [1983] 1 A.C. 854, 923H. A retrospective alteration to the legitimate expectations of the parties as to the consequences of their conduct at the time it occurred would be contrary to the principles of legal and commercial certainty that formed part of the grounds on which the House of Lords declined in Hannah Blumenthal to depart from Bermer Vulkan: see pp. 913C, 917D, 922H."

(emphasis supplied)

155. Reliance was placed on *Gloucester Union v. Woolwich Union*[114], with respect to effect on existing rights wherein following observations have been made:

[114] (1917) 2 K.B. 374

"Before considering the legal effect of art. xxxi. of this Order it is necessary, we think, to bear in mind that by the common law, upon such a division of the parish of Upton St. Leonard's, any settlement already acquired in that parish would have been lost: see Reg v. Tipton Inhabitants 3; Dorking Union v. St. Saviour's Union. The purpose and effect of par. 1 of art. xxxi is to get rid of this difficulty and preserve the settlements that have been already acquired before the commencement of the Order. The purpose and effect of par. 2 is in like manner to preserve a status of irremovability that has been acquired at that date; and the question raised in this case is whether par. 3 of the article is to be construed in all its generality as applicable to acts or circumstances which have been done or occurred completely in the past and before the commencement of the Order, so as to create or confer a settlement where none existed before, or whether, as the appellants contend, it is to be construed as supplemental to pars. 1 and 2 and limited to the cases where persons are in process of acquiring a settlement or status of irremovability so as to preserve their inchoate rights. If the words in par. 3 are construed without limitation, then, the residence of the pauper at Chequer's Row in Upton St. Leonard's between 1893 and 1897 being deemed to be residence in Gloucester, a settlement in Gloucester is conferred upon him and the respondents succeed. We think this paragraph should be so construed subject to the general principle that a statute is prima facie prospective and does not interfere with existing rights unless it contains clear words to that effect, or unless, having regard to its object, it necessarily does so, and that a statute is not to be construed to have a greater to retrospective operation than its language renders necessary - see per Lindley LJ in Lauri v. Renad - whatever view may be entertained of the probably intention of the Legislature, unless some manifest absurdity or inconsistency results from such construction; but we have come to the conclusion that the construction of the paragraph contended for by the respondents produces such a practical inconsistency with par. 1 of the same article that it is necessary to put some limitation upon it. If a person had resided before the commencement of the Order for two years in that portion of the parish of Upton St. Leonards' which has been added to Gloucester and for one year following in the portion which remains the parish of Upton St. Leonard's, he would by the latter part of par.1 be deemed to have acquired a settlement in the parish of Upton St. Leonard's, but if par.3 is to be applied to such a case his residence in the added portion of Upton St. Leonard's is to be deemed to have been residence in

the parish of Gloucester; and if so deemed, then he has not had three years' consecutive residence in any one parish and has no settlement -in other words, the effect of par.3 in such a case is to destroy the settlement which is preserved by par.1 and to restore the common law rule which is intended to be abolished. The same result would follow in the converse case where the later period of residence completing the three years in the old parish of Upton St. Leonard's is in the area which has been added to the parish of Gloucester."

(emphasis supplied)

156. In *The King v. The General Commissioners of Income Tax for Southampton*[115] it was observed:

"The language of the section shows clearly that Parliament intended it to have a retrospective effect. The object was to prevent loss to the revenue when Commissioners had acted who were not, under the statutes, the right Commissioners to make the charge, provided that it was made by the Commissioners for the parish or place in which the person charged ordinarily resided. That the section was retrospective in effect was not disputed by Sir Robert Finlay, but he argued that the retrospective operation is limited by the language of the section and does not extend to a charge made in respect of profits derived from foreign possessions or securities under s. 108 of the Income Tax Act, 1842. In support of this argument he relied upon the express reference in the first sub-section of s. 32 to s. 106, and s.146 of the Income Tax Act, 1842, upon the omission of any reference in this sub-section to s. 108, and upon the repeal in sub-s.2 of s.32 of s.108. He contended that if the Legislature had meant to include s.108 in the first sub-section it would have referred to it in express berms and would not merely have repealed it by the second sub-section. In the first sub-section mention is made of other sections of the Income Tax Acts, but not of s. 108. It must be taken, he argued, that Parliament had in mind the difficulties created by s. 108, which were pointed out in Aramayo's Case by the House of Lords, and that Parliament intended to remove these difficulties by the repeal of s.108 so as to prevent its operation in future, but did not mean to change the law as regards acts done before passing of the statute. The question must depend upon the construction of the language of s.32. The rules to be applied are well settled. It is a fundamental rule of English law that enactments in a statute are generally to be construed as prospective and intended to regulate future conduct, but this rule is one of construction only and must yield

[115] (1916) 2 K.B. 249, (1917) 2 K.B. 374

> *to the intention of the Legislature: Moon v. Durden, per Parke B. It is also the law that a statute is not to be construed to have greater retrospective operation than its language renders necessary: Lauri v. Renad, per Lindley LJ to ascertain the intention regard should be had to the general scope and purview of the enactment, to the remedy sought to be applied, to the former state of the law, and to what was in the contemplation of the Legislature: Pardo v. Bingham per Lord Hatherly L.C"*
>
> (emphasis supplied)

157. In *K.S. Paripoornan* (supra), it was observed that in the case of retrospective operation the Court has to consider the effect on existing rights and obligations and for that purpose, the intention of the legislature has to be ascertained as indicated in the statute itself. This court observed that:

> ***"66.*** *The dictum of Lord Denman, C.J. in R. v. St. Mary, Whitechapel, (1848) 12 QB 120, 127 that a statute which is in its direct operation prospective cannot properly be called a retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing, which has received the approval of this Court, does not mean that a statute which is otherwise retrospective in the sense that it takes away or impairs any vested right acquired under existing laws or creates a new obligation or imposes a new duty or attaches a new disability in respect to transactions or considerations already past, will not be treated as retrospective. In Alexander v. Mercouris, (1979) 3 All ER 305 Goff, L.J., after referring to the said observations of Lord Denman, C.J., has observed that a statute would not be operating prospectively if it creates new rights and duties arising out of past transactions. The question whether a particular statute operates prospectively only or has retrospective operation also will have to be determined on the basis of the effect it has on existing rights and obligations, whether it creates new obligations or imposes new duties or levies new liabilities in relation to past transactions. For that purpose it is necessary to ascertain the intention of the legislature as indicated in the statute itself."*

158. In *Zile Singh v. State of Haryana & Ors.,* (supra), this Court has observed that the rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to the accrued right. This court, while dealing with retrospectivity of a statute, observed that retrospectivity must be reasonable and not excessive or harsh; otherwise, it runs the risk of being struck down for being unconstitutional. Following observations have been made:

> ***"15.*** *Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to*

Craies (Statute Law, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated. (p. 388) The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right. (p. 392)

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18. *In a recent decision of this Court in National Agricultural Coop. Marketing Federation of India Ltd. v. Union of India, (2003) 5 SCC 23 it has been held*

that there is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. Every legislation whether prospective or retrospective has to be subjected to the question of legislative competence. The retrospectivity is liable to be decided on a few touchstones such as: (i) the words used must expressly provide or clearly imply retrospective operation; (ii) the retrospectivity must be reasonable and not excessive or harsh, otherwise, it runs the risk of being struck down as unconstitutional; (iii) where the legislation is introduced to overcome a judicial decision, the power cannot be used to subvert the decision without removing the statutory basis of the decision. There is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. A validating clause coupled with a substantive statutory change is only one of the methods to leave actions unsustainable under the unamended statute, undisturbed. Consequently, the absence of a validating clause would not by itself affect the retrospective operation of the statutory provision, if such retrospectivity is otherwise apparent."

159. This Court has considered the harsh consequences of retrospective operation of the statute in *Commissioner of Income Tax-19, Mumbai v. Sarkar Builders*[116] and observed thus:

[116] (2015) 7 SCC 579

*"**25.** Can it be said that in order to avail the benefit in the assessment years after 1-4-2005, balconies should be removed though these were permitted earlier? Holding so would lead to absurd results as one cannot expect an assessee to comply with a condition that was not a part of the statute when the housing project was approved. We, thus, find that the only way to resolve the issue would be to hold that clause (d) is to be treated as inextricably linked with the approval and construction of the housing project and an assessee cannot be called upon to comply with the said condition when it was not in contemplation either of the assessee or even the legislature, when the housing project was accorded approval by the local authorities.*

***26.** Having regard to the above, let us take note of the special features which appear in these cases:*

***26.1.** In the present case, the approval of the housing project, its scope, definition and conditions, are all decided by and are dependent on the provisions of the relevant DC Rules. In contrast, the judgment in Reliance Jute and Industries Ltd. v. CIT, (1980) 1 SCC 139 was concerned with income tax only.*

***26.2.** The position of law and the rights accrued prior to enactment of the Finance Act, 2004 have to be taken into account, particularly when the position becomes irreversible.*

***26.3.** The provisions of Section 80-IB(10) mention not only a particular date before which such a housing project is to be approved by the local authority, even a date by which the housing project is to be completed, is fixed. These dates have a specific purpose which gives time to the developers to arrange their affairs in such a manner that the housing project is started and finished within those stipulated dates. This planning, in the context of facts in these appeals, had to be much before 1-4-2005.*

***26.4.** The basic objective behind Section 80-IB(10) is to encourage developers to undertake housing projects for weaker sections of society, inasmuch as to qualify for deduction under this provision, it is an essential condition that the residential unit be constructed on a maximum built-up area of 1000 sq ft where such residential unit is situated within the cities of Delhi and Mumbai or within 25 km from the municipal limits of these cities and 1500 sq ft at any other place.*

***26.5.** It is the cardinal principle of interpretation that a construction resulting in unreasonably harsh and absurd results must be avoided.*

> ***26.6.*** *Clause (d) makes it clear that a housing project includes shops and commercial establishments also. But from the day the said provision was inserted, they wanted to limit the built-up area of shops and establishments to 5% of the aggregate built-up area or 2000 sq ft, whichever is less. However, the legislature itself felt that this much commercial space would not meet the requirements of the residents. Therefore, in the year 2010, Parliament has further amended this provision by providing that it should not exceed 3% of the aggregate built-up area of the housing project or 5000 sq ft, whichever is higher. This is a significant modification making complete departure from the earlier yardstick. On the one hand, the permissible built-up area of the shops and other commercial shops is increased from 2000 sq ft to 5000 sq ft. On the other hand, though the aggregate built-up area for such shops and establishment is reduced from 5% to 3%, what is significant is that it permits the builders to have 5000 sq ft or 3% of the aggregate built-up area, "whichever is higher". In contrast, the provision earlier was 5% or 2000 sq ft, "whichever is less"."*
>
> (emphasis supplied)

160. This Court in *Jawarharmal* (supra) and *Rai Ramkrishna* (supra), has considered the practical realities before analysing the extent of retrospective operation of the statute. Several decisions were cited in regard to conflict of interest (which are referred to in the footnote hereafter[117]) and it was urged that the rule of construction that is to be adopted is one of purposive interpretation.

In re: Legislative History of Act of 2013

161. The Land Acquisition, Rehabilitation and Resettlement Bill, 2011 (Bill No.77 of 2011) was introduced in the Parliament. The provisions of Section 24, as introduced in the said Bill, read as under:

> *"24. (1) Notwithstanding anything contained in this Act, in any case where a notification under section 4 of the Land Acquisition Act, LA was issued before the commencement of this*

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[117] *Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill,* (2012) 2 SCC 108 @ 19-21; *Tinsukhia Electric Supply Company Ltd. v. State of Assam & Ors.,* (1989) 3 SCC 709 @ para 118-121; *C.I.T. v. Hindustan Bulk Carriers,* (2003) 3 SCC 57 @ para 14-21; *D. Saibaba v. Bar Council of India & Ors.,* (2003) 6 SCC 186 @ para 16-18; *Balram Kamanat v. Union of India,* (2003) 7 SCC 628 para 24; *New India Assurance Co. v. Nulli Nivelle,* (2008) 3 SCC 279 @ Para 51-54; *Government of Andhra Pradesh &Ors. v. Smt. P. Laxmi Devi,* (2008) 4 SCC 720 Para 41 & 42.; *Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd.,* (2008) 13 SCC 30 para 132-137; *N. Kannadasan v. Ajoy Khose and Ors.,* (2009) 7 SCC 1 para 54-67; *H.S. Vankani v. State of Gujarat,* (2010) 4 SCC 301 para 43-48; *State of Madhya Pradesh v. Narmada Bachao Andolan & Ors.,* (2011) 7 SCC 639 para 78-85; *State of Gujarat & Anr. v. Hon'ble Mr. Justice R.A. Mehta (Retd.) and Ors.,* (2013) 3 SCC 1: para 96-98).

Act but the award under section 11 thereof has not been made before such commencement, the process shall be deemed to have lapsed and the appropriate Government shall initiate the process for acquisition of land afresh in accordance with the provisions of this Act.

(2) Where possession of land has not been taken, regardless of whether the award under section 11 of the Land Acquisition Act, LA Act has been made or not, the process for acquisition of land shall also be deemed to have lapsed and the appropriate Government shall initiate the process of acquisition afresh in accordance with the provisions of this Act."

162. It is apparent from Section 24(1), as introduced originally, contained a provision with respect to award, which has not been made, but it was later on amended, and now as provided in Section 24(1)(a), there is no lapse and only higher compensation is available in case award has not been passed. The earlier Section 24(2) contained only the provision with respect to possession of the land that has not been taken. Earlier, there was no time limit prescribed, and it was proposed that the process for acquisition of land shall lapse.

Clause 24 of Notes on clauses of Bill read thus:

"Clause 24 seeks to provide that land acquisition process under the Land Acquisition Act, LA shall be deemed to have lapsed in certain cases where the award has not been made and possession of land has not been taken before the commencement of proposed legislation."

163. After considering the various suggestions of the State Government, the Committee made some recommendations, which are extracted hereunder:

"16.5 The Committee note that Clause 24 of the Bill provides that land acquisition cases/process shall be invalid on enactment of the new Act in cases where Collector has not given award or possession of the land has not been taken before the commencement of the proposed legislation. Some of the representatives of the industry and also the Ministries like Railways and Urban Development submitted before the Committee that land acquisition proceedings already initiated under the existing Land Acquisition, LA should not lapse as it would lead to time and cost over-run in many infrastructural projects. However, in such cases land compensation and R&R benefits could be allowed as per the provisions of LARR Bill. The Committee would like the Government to re-examine the issue and incorporate necessary provisions in the Rules to be framed under the new Act with a view to ensuring that the land

> *owners/farmers/affected families get enhanced compensation and R & R package under the provisions of the LARR Bill, 2011 and at the same time, the pace of implementation of infrastructural projects is not adversely impacted."*

164. Debates in the Lok Sabha on 29.8.2013, were referred to during the hearings, to cite various reasons given in respect of the question why effect should be given retrospectively in cases where acquisition has not been completed. Shri Jairam Ramesh, Minister concerned at the relevant time, replied to debate about the retrospective part with respect to Section 24 thus:

> *"... The hon'ble member has also raised question about retrospective clause. This is about section 24 under which it has been provided that if the award has not been passed under the previous law than the new law will be applicable. Secondly, if the award has been passed and no compensation has been given and no physical possession has been taken the new law will be applicable. The third situation where this clause will be applicable is when award has been passed but farmer has not been given more than 50 per cent compensation which will entail enforcement of this law. The hon'ble member and several others have raised this apprehension that this Act will ultimately give vast powers to the bureaucracy. In regard to this apprehension I would like to say that we have fixed time limit at every level of the procedure and I hope that the states will adhere to these timelines."*
>
> (emphasis supplied)

165. It is clear that while replying to the debate, the Minister concerned has stated that there would be lapse only if in case possession has not been taken and compensation has not been paid. The emphasis right from the beginning was on possession. Thus, from the perusal of debate too, it is apparent that the word "or" had been understood as "and".

In Re: Objectives of the Act

166. It was submitted on behalf of the landowners that the consideration of difficulties, harsh consequences, the importance of performance, time lost during litigation, revival of stale claims would not permit deviation from the mandate of the law of Section 24. If obligations are mandatory, then also intendment of the Act cannot be defeated. As such, it is the duty of the court to disregard such factors and to give contextual interpretation to the intendment. The language of the statute, wherever the context requires, its objects and reasons, the Preamble, its legislative history as well as the accompanying provisions (including the relevant provisions of the old Act) are to be considered by the court. In *Arnit Das v. State of*

Bihar[118], the court observed that the ambiguity in the definition of *"juvenile"* is to be resolved by taking into consideration the Preamble and the statement of objects and reasons. *Burrakur Coal Co. Ltd. v. Union of India*[119] and *A. Thangal Kunju Musaliar v. M. Venkatachalam Potti*[120]. During the hearing, the State had also relied on other decisions to say that where the issue had attained finality, relief ought not to be granted.[121] The Act of 2013 has been enacted considering the difficulties caused by the operation of the earlier laws and to subserve the public interest. Thus, the Court should interpret it in the context of the attendant circumstances. At the same time, the court should not, while ostensibly adopting a purposive or liberal interpretation, affect matters which have become final, or stale. In *Popat Bahiru Govardhane & Ors.* (supra) this aspect, in the context of limitation provisions, was highlighted in the following terms:

> ***"16.*** *It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."*

In Re: proviso to Section 24(2)

167. In reference to the question whether the proviso is part of section 24(2) or Section 24(1), it was submitted on behalf of the acquiring authorities and the States that the proviso needs to be read along with the main provision of section 24(2) and cannot be read with section 24(1)(b). It was pointed out that this Court has taken the view in *Delhi Metro Rail Corporation Ltd. v. Tarun Pal Singh & Ors.,* (2018) 14 SCC 161 that the proviso should be read as part of section 24(2) of the Act of 2013, cannot be construed as proviso to section 24(1)(b) whereas in

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[118] 2000 (5) SCC 488
[119] 1962 (1) SCR 44
[120] 1955 SCR 1196
[121] *Delhi Development Authority v. Sukhbir Singh,* (2016) 16 SCC 258, *Padma Sundara Rao (Dead) & Ors. v. State of T.N. & Ors.,* 2002 (3) SCC 533; *Popat Bahiru Govardhane & Ors. v. Special Land Acquisition Officer & Anr.,* 2013 (10) SCC 765; *B. Premanand & Ors. v. Mohan Koikal & Ors.,* (2011) 4 SCC 266 and *Bhavnagar University v. Palitana Sugar Mill (P) Ltd. & Ors.,* (2003) 2 SCC 111

Delhi Development Authority v. Virender Lal Bahri & Ors. (supra), a different view has been taken while referring the matter, and it has been observed that it should be treated as a proviso to section 24(1)(b) and not to section 24(2). As the interpretation of section 24(2) is involved in the matter, it is absolutely necessary to socio-justice and whether the proviso is part of section 24(2) or has to be read as an independent provision or it has to be treated as part of the proviso to section 24(1)(b), the question is required to be decided as it arises for the purpose of the very provisions of section 24(2).

168. It was submitted that the statutory provisions are to be read as they exist. Relocation of a proviso by the interpretive process, resulting in its placement at a different place is a drastic judicial measure which can be adopted in rarest of rare cases, and such an exercise may amount to encroaching upon the legislative field or causing violence to the plain language used by the legislature. By the proviso, Parliament has tried to balance the competitive new rights, and the proviso cannot be lifted and bodily placed at a different place. It was also submitted on behalf of the acquiring authorities that as the Section 24(1(b) ends with a 'full stop' (.) Section 24 (2) ends with a colon (:). These punctuation marks leave no room for any doubt that Parliament consciously used the proviso as an exception to section 24(2). The placement of the proviso needs no further comparative rules of interpretation. There is a very clear indication of legislative intent in section 24(2) itself. Punctuation plays a vital role in interpretation if some ambiguity is there in its interpretation. It is argued that *punctuations* play a very important role in interpreting statutes if some ambiguity is raised in its interpretation. Considering the use of a particular punctuation mark is an accepted method of statutory interpretation.

169. Considering the use of punctuation marks, as a statutory mode of interpretation, full stop means the particular sentence ends and stands detached from the next part. It was also submitted that the proviso is to be read together with the main provision to which it is attached.

170. On the other hand, it was submitted on behalf of the landowners that the proviso does not refer to the main factors of lapse under section 24(2). The proviso is not an exemption from lapsing if it is read as part of Section 24(2), then the absurd consequences would follow. The proviso is in accord with section 24(1)(b) and has to be read as part of it. Reliance has been placed on *D.D.A. v. Virendra Lal Bahri & Ors.* (supra). It was submitted that the proviso could not have been intended to be part of section 24(2) dealing with lapsing of acquisition where the subject-matter of the proviso is wholly unrelated to physical possession of the land, but only relating to compensation not being deposited. It was also submitted that if the proviso is read with section 24(2), arbitrary results will follow. The proviso would be arbitrary and liable to be struck down under Article 14 of the

Constitution. In case notification under section 4 applies only to a single plot of land or single owner, the conditions of section 24(2) are not fulfilled acquisition would lapse, and in a case where several pieces of land have been acquired, if compensation in respect of majority landholdings has not been deposited, such acquisition will not lapse, but only higher compensation under the Act of 2013 would be paid. The words *"award being made five years or more prior to the commencement of the Act"* are absent in the proviso. Reading these words to proviso would do violence to the literal language, and its plain meaning proviso and being a beneficial provision must be construed in the way which furthers its performance. It was also submitted that in respect of large chunks of land carved out by the same notification, the compensation in respect of the majority of landholdings has been deposited. In such a case no lapse will take place because the proviso in such a case will not apply and whether in respect of the majority of landholdings, compensation has or has not been deposited, would have no bearing on the issue whether lapsing does or does not take place under section 24(2).

With respect to the proviso, various questions arise for consideration.

(a) Interpretation:

171. The main question is whether under the scheme of section 24 the proviso is treated as part of Section 24(1)(b) or it is part of the exception carved out in section 24(2) particularly in view of the fact that the word 'or' has been interpreted by us as 'and.' In that context, when *Delhi Metro Rail Corporation Ltd. v. Tarun Pal Singh & Ors*[122] as well as when the question was considered in *Delhi Development Authority v. Virender Lal Bahri & Ors.,* [SLP [C] No.37375/2016], the question did not come up for consideration in any of the matters whether 'or' in two negative conditions in Section 24(2) has to be read conjunctively or disjunctively. When we read the word *"or"* as *'and'* in the main part of section 24(2), it is clear that the proviso has to stay as part of section 24(2) where it has been placed by the legislature, and only then it makes sense. If *'or'* used in-between two negative conditions of *'possession has not been taken'* or *'compensation has not been paid,'* disjunctively, in that case, the proviso cannot be operative and would become otiose and would make no sense as part of Section 24(2). In case of amount not having been paid the acquisition has to lapse, though possession (of the land) has been taken would not be the proper interpretation of the main part as mentioned above, when "or" is read conjunctively, section 24(2) provided for lapse in a case where possession has not been taken, nor compensation has been paid, in such a case proviso becomes operative in given exigency of not depositing amount with respect to majority of landholdings.

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[122] (2018) 14 SCC 161

172. A reading of section 24(2) shows that in case possession has been taken even if the compensation has not been paid, the proceedings shall not lapse. In case payment has not been made nor deposited with respect to the majority of the holdings in the accounts of the beneficiaries, then all the beneficiaries specified in the notification under Section 4 of the Act of 1894 shall get the enhanced compensation under the provisions of the Act of 2013. Section 24(2) not only deals with failure to take physical possession but also failure to make payment of compensation. If both things have not been done, there is lapse of the acquisition proceeding. But where payment has been made though possession has been taken or payment has been made to some of the persons but not to all, and it has also not been deposited as envisaged in the proviso, in that event all beneficiaries (under the same award) shall get higher compensation. This is because once possession is been taken, there can be no lapse of the proceedings, and higher compensation is intended on failure to deposit the compensation. Once an award has been passed and possession has been taken, there is absolute vesting of the land, as such higher compensation follows under the proviso, which is beneficial to holders. In a case where both the negative conditions have not been fulfilled, as mentioned in section 24(2), there is a lapse. Thus, the proviso, in our opinion is a wholesome provision and is, in fact, a part of section 24(2); it fits in the context of section 24(2) as deposit is related with the payment of compensation and lapse is provided due to non-payment along with not taking possession for five years or more whereas for non-deposit higher compensation is provided. Thus, when one of the conditions has been satisfied in case payment has been made, or possession has not been taken, there is no lapse of the proceedings as both the negative conditions must co-exist.

173. When we consider the provisions of section 24(1)(b) where an award has been passed under section 11 of the Act of 1894, then such proceedings shall continue under the provisions of the said Act as if it has not been repealed. The only exception carved out is the period of 5 years or more and that too by providing a non-obstante clause in Section 24(2) to anything contained in section 24(1). The *non-obstante* clause qualifies the proviso also to Section 24(2). It has to be read as part of Section 24(2) as it is an exception to Section 24(1)(b). In our opinion, Section 24(1)(b) is a self-contained provision, and is also a part of the *non-obstante* clause to the other provisions of the Act as provided in sub-section (1). Parliament worked out an exception, by providing a *non-obstante* clause in section 24(2), to Section 24(1). Compensation is to be paid under Section 24(1)(b) under the Act of 1894 and not under the Act of 2013. As such Section 24 (2) is an exception to section 24(1)(b) and the proviso is also an exception which fits in with *non-obstante* clause of Section 24 (2) only. Any other interpretation will be derogatory to the provisions contained in Section 24(1)(b) which provides that the pending proceedings shall continue under the Act of 1894 as if it had not been

repealed, that would include the part relating to compensation too. Even if there is no lapse of proceedings under section 24(1)(a), only higher compensation follows under Section 24(1)(a). Section 24(2) deals with the award having been made five years or before the commencement of the new Act. The legislative history also indicates/it was intended that five years' period should be adequate to make payment of compensation and to take possession. In that spirit, the proviso has been carved out as part of section 24(2). Thus when Parliament has placed it at a particular place, by a process of reasoning, there can be no lifting and relocation of the provision. To bodily lift it would be an impermissible exercise. Unless it produces absurd results and does not fit in the scheme of the Act and the provisions to which it is attached such an interpretation, doing violence to the express provision, is not a legitimate interpretative exercise. There is no need to add it as the proviso to Section 24(1)(b) as it has not been done by the legislature, and it makes sense where it has been placed. It need not be lifted.

(b) Punctuation used in Section 24(2):

174. Parliament has used the full stop (.) after section 24(1) and colon (:) after section 24(2). It cannot be gainsaid that punctuation plays a vital role, particularly when an attempt is made to relocate any part of the provision. The use of the colon is to introduce a sub-clause that follows logically from the text before it. We are examining this aspect of the colon, additionally. Though as the interpretation of the provision of Section 24(2) and its proviso needs no further deliberation regarding its placement, the same is to be read as a proviso to Section 24(2) and not Section 24(1)(b). Use of punctuation colon reinforces our conclusion and punctuation mark has been an accepted method of statutory interpretation when such a problem arises. Though sometimes punctuation can be ignored also but not generally. The full stop after section 24(1)(b) expresses deliberate intent to end a particular sentence and detach it from the next part. With regard to the meaning of the punctuation colon, the *University of Oxford Style Guide* states as under:

> ***"Use a colon to introduce a subclause which follows logically from the text before it,*** *is not a new concept and depends logically on the preceding main clause. Do not use a colon if the two parts of the sentence are not logically connected."*

175. The note of the University of England "Writing Correctly" has also been relied upon on behalf of the State of Haryana. Following discussion has been made:

> *"Colons have a number of functions in a sentence. If you use colons in your writing, use them sparingly, and never use a colon more than once in any sentence.*
>
> *Rule 1: Colons can be used to introduce a list, but they must follow a complete sentence (independent clause).*

Rule 2: Colons can be used to explain, summarise or extend the meaning in a sentence by introducing a word, phrase or clause that enlarges on the previous statement.

Rule 3: Colons are used to separate the title from the subtitle.

Rule 4: Colons can be used to introduce a quotation in formal academic writing."

(emphasis supplied)

176. It is clear that the colon (:) has a reference to the previous statement and enlarges the same and extends the meaning of the sentence. The colon indicates that the text is intrinsically linked to the previous provision preceding it, i.e., Section 24(2) in this case and not section 24(1). The colon indicates that what follows. The colon proves, explains, defines describes or lists elements of what precedes it. In case the proviso is bodily lifted and placed after section 24(1(b), section 24(2) will end with a "colon," which is never done to end a provision. Certain decisions have been referred to saying that importance and weightage are to be given to punctuation marks. The earlier view was that punctuations were added by the proof readers, and the Acts passed by Parliament did not contain any punctuation. However, it was submitted that in the past century, the English courts realised that the drafts placed before the Parliament also carry punctuations and, thus, it is important to give meaning to the same. *Bennion on Statutory Interpretation* has this to say regarding punctuation marks:

"16.8 Punctuation is a part of an Act and may be considered in construing a provision. It is usually of little weight, however, since the sense of an Act should be the same with or without its punctuation.

....

Although punctuation may be considered, it will generally be of little use since the sense of an Act should be the same with or without it. Punctuation is a device not for making meaning, but for making meaning plain. Its purpose is to denote the steps that ought to be made in oral reading and to point out the sense. The meaning of a well-crafted legislative proposition should not turn on the presence or absence of a punctuation mark."

177. In *Marshall v. Cottingham*[123] [1982] Ch 82 at 88, at 12 while referring to the change of position and establishing that punctuation may be used in interpretation, it was held that:

"the day is long past when the courts would pay no heed to punctuation in an Act of Parliament."

In *Hanlon v Law Society*[124] it was held as under :

"... not to take account of punctuation disregards the reality that

[123] [1981] 3 All ER 8
[124] [1981] AC 124 at 197

literate people, such as parliamentary draftsmen, punctuate what they write, if not identically, at least in accordance with grammatical principles. Why should not other literate people, such as judges, look at the punctuation in order to interpret the meaning of the legislation as accepted by parliament?"

Yet again in *Houston v Burns*[125], it was held that:

"Punctuation is a rational part of English composition and is sometimes quite significantly employed. I see no reason for depriving legal documents of such significance as attaches to punctuation in other writings."

178. Other decisions were also cited.[126] On similar lines, the American approach to the interpretation of punctuations is different. In *Taylor v. Caribou*[127], it was held as under:

"We are aware that it has been repeatedly asserted by courts and jurists that punctuation is no part of a statute, and that it ought not to be regarded in construction. This rule in its origin was founded upon common sense, for in England until 1849 statutes were entrolled upon parchment and enacted without punctuation .... Such a rule is not applicable to conditions where, as in this State, a bill is printed and is on the desk of every member of the Legislature, punctuation and all, before its final passage. There is no reason why punctuation, which is intended to and does assist in making clear and plain the meaning of all things else in the English language, should be rejected in the case of the interpretation of statutes. "Cessante ratione legis cessat ipso lex." Accordingly we find that it has been said that in interpreting a statute punctuation may be resorted to when other means fail...; that it may aid its construction ...; that by it the meaning may often be determined; that it is one of the means of discovering the legislative intent ...; that it may be of material assistance in determining the legislative intention...."

(emphasis supplied)

In *Aswini Kumar Ghose* (supra) stated that:

"Punctuation is after all a minor element in the construction of a statute, and very little attention is paid to it by English courts. Cockburn, C.J. said in Stephenson v. Taylor: "On the Parliament Roll there is no punctuation and we therefore are

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[125] [1910] AC 337 at 348

[126] *Dingmar v. Dingmar* 2007 (2) All ER 382; *Kennedy v Information Commissioner and another (Secretary of State for Justice intervening)* [2012] 1 WLR 3524

[127] 102 Me. 401, 67 A.2 (1907)

not bound by that in the printed copies." It seems, however, that in the Vellum copies printed since 1850 there are some cases of punctuation, and when they occur they can be looked upon as a sort of contemporanea expositio. When a statute is carefully punctuated and there is doubt about its meaning, a weight should undoubtedly be given to the punctuation. I need not deny that punctuation may have its uses in some cases, but it cannot certainly be regarded as a controlling element and cannot be allowed to control the plain meaning of a text.

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"77. The High Court has rejected the contention of the petitioner Aswini Kumar Ghosh on two grounds. In the first place it has been said that the comma was no part of the Act. That the orthodox view of earlier English Judges was that punctuation formed no part of the statute appears quite clearly from the observations of Willes, J. in Claydon v. Green. Vigorous expression was given to this view also by Lord Esher, M.R. in Duke of Devonshire v. Connor where he said:

"In an Act of Parliament there are no such things as brackets any more than there are such things as stops."

This view was also adopted by the Privy Council in the matter of interpretation of Indian statutes as will appear from the observations of Lord Hobhouse in Maharani of Burdwan v. Murtunjoy Singh,, namely, that "it is an error to rely on punctuation in construing Acts of the legislature". Same opinion was expressed by the Privy Council in Pugh v. Ashutosh Sen. If, however, the Rule regarding the rejection of punctuation for the purposes of interpretation is to be regarded as of imperfect obligation and punctuation is to be taken at least as contemporanea expositio, it will nevertheless have to be disregarded if it is contrary to the plain meaning of the statute. If punctuation is without sense or conflicts with the plain meaning of the words, the court will not allow it to cause a meaning to be placed upon the words which they otherwise would not have. This leads me to the second ground on which mainly the High Court rejected the plea of the petitioner Aswini Kumar Ghosh, namely, that the word "other" in the phrase "any other law" quite clearly connects the Indian Bar Councils Act with other laws as alternatives and subjects both to the qualification contained in the adjectival clause. I find myself in complete agreement with the High Court on this point. If the intention was that the adjectival clause should not qualify the Indian Bar Councils Act, then the use of the word "other" was wholly in

apposite and unnecessary. The use of that word unmistakably leads to the conclusion that the adjectival clause also qualifies something other than "other law". If the intention were that the Indian Bar Councils Act should remain unaffected by the qualifying phrase and should be superseded in toto for the purposes of this Act the legislature would have said "or in any law regulating the conditions etc." It would have been yet simpler not to refer to the Indian Bar Councils Act at all and to drop the adjectival clause and to simply say "Notwithstanding anything contained in any law". In the light of the true meaning of the title of the Act as I have explained above and having regard to the use of the word "other" I have no hesitation in holding, in agreement with the High Court, that what the non obstante clause intended to exclude or supersede was not the whole of the Indian Bar Councils Act but to exclude or supersede that Act and any other law only insofar as they or either of them purported to regulate the conditions subject to which a person not entered in the roll of advocates of a High Court might be permitted to practise in that High Court and that the comma, if it may at all be looked at, must be disregarded as being contrary to this plain meaning of the statute."

179. In *Jamshed N. Guzdar* (supra) this court held that:

***"42.** The general jurisdiction of the High Courts is dealt with in Entry 11-A under the caption "administration of justice", which has a wide meaning and includes administration of civil as well as criminal justice. The expression "administration of justice" has been used without any qualification or limitation wide enough to include the "powers" and "jurisdiction" of all the courts except the Supreme Court. The semicolon (;) after the words "administration of justice" in Entry 11-A has significance and meaning. The other words in the same entry after "administration of justice" only speak in relation to "constitution" and "organisation" of all the courts except the Supreme Court and High Courts. It follows that under Entry 11-A the State Legislature has no power to constitute and organise the Supreme Court and High Courts. It is an accepted principle of construction of a Constitution that everything necessary for the exercise of powers is included in the grant of power. The State Legislature being an appropriate body to legislate in respect of "administration of justice" and to invest all courts within the State including the High Court with general jurisdiction and powers in all matters, civil and criminal, it must follow that it can invest the High Court with such general jurisdiction and powers including the territorial and pecuniary jurisdiction and also to take away such jurisdiction and powers from the High Court except those, which are specifically*

conferred under the Constitution on the High Courts. It is not possible to say that investing the City Civil Court with unlimited jurisdiction, taking away the same from the High Court, amounts to dealing with "constitution" and "organisation" of the High Court. Under Entry 11-A of List III the State Legislature is empowered to constitute and organise City Civil Court and while constituting such court the State Legislature is also empowered to confer jurisdiction and powers upon such courts inasmuch as "administration of justice" of all the courts including the High Court is covered by Entry 11-A of List III, so long as Parliament does not enact law in that regard under Entry 11-A. Entry 46 of the Concurrent List speaks of the special jurisdiction in respect of the matters in List III. Entry 13 in List III is "... Code of Civil Procedure at the commencement of this Constitution...". From Entry 13 it follows that in respect of the matters included in the Code of Civil Procedure and generally in the matter of civil procedure Parliament or the State Legislature, as provided by Article 246(2) of the Constitution, acquire the concurrent legislative competence. The 1987 Act deals with pecuniary jurisdiction of the courts as envisaged in the Code of Civil Procedure and as such the State Legislature was competent to legislate under Entry 13 of List III for enacting the 1987 Act.

68. *A Full Bench of the Punjab and Haryana High Court in Rajinder Singh v. Kultar Singh AIR 1980 P&H 1, touching the same topic stated thus: (AIR p. 1)*

"So far as the High Courts are concerned, the topic of jurisdiction and powers in general is not separately mentioned in any of the entries of List I, but 'administration of justice' as a distinct topic finds a place in Entry 3 of List II (now Entry 11-A of List III).

The expression 'administration of justice' occurring in Entry 3 of List II of the VIIth Schedule has to be construed in its widest sense so as to give power to the State Legislature to legislate on all matters relating to administration of justice.

After the words 'administration of justice' in Entry 3 there is a semicolon, and this punctuation cannot be discarded as being inappropriate. The punctuation has been put with a definite object of making this topic as distinct and not having relation only to the topic that follows thereafter. Under Entry 78 of List I, the topic of jurisdiction and powers of the High Courts is not dealt with. Under Entry 3 of List II the State Legislature can confer jurisdiction and powers or restrict or withdraw the jurisdiction and powers already conferred on any of the courts

> *except the Supreme Court, in respect of any statute. Therefore, the State Legislature has the power to make a law with respect to the jurisdiction and powers of the High Court."*

180. There are several other decisions, which support the proposition that punctuation marks, especially colons have a significant role in the interpretation of words in a statute. These judgments include *Falcon Tyres Ltd. v. State of Karnataka*[128]. It was submitted that the semicolon after the word "cotton" did not mean that the first part of the section was disjunctive from "such produce" as has been subjected to any physical, chemical or other process. It was further submitted that punctuation is not a safe tool in construction of statute and if the first part of the section is read as disjunctive from the other part it conflicts with Sl. No. 2 in the Second Schedule. Further it was submitted that definition section which is the interpretation clause to the statute begins with the expression "unless the context otherwise requires". This court held that:

> ***"11.*** *We do not find any substance in the submission of the learned counsel for the appellant that the semicolon after the word "cotton" does not mean that the first part of the section is disjunctive from "such produce" as has been subjected to any physical, chemical or other process. Section 2(A)(1) is in two parts, it excludes two types of food from agricultural produce. According to us, the definition of the agricultural and horticultural produce does not say as to what would be included in the agricultural or horticultural produce, in substance it includes all agricultural or horticultural produce but excludes, (1) tea, coffee, rubber, cashew, cardamom, pepper and cotton from the definition of the agricultural or horticultural produce though all these products as per dictionary meaning or in common parlance would be understood as agricultural produce; and (2) "such produce as has been subjected to any physical, chemical or other process for being made fit for consumption", meaning thereby that the agricultural produce other than what has been excluded, which has been subjected to any physical, chemical or other process for making it fit for consumption would also be excluded from the definition of the agricultural or horticultural produce except where such agricultural produce is merely cleaned, graded, sorted or dried. For example, if the potatoes are cleaned, graded, sorted or dried, they will remain agricultural produce but in case raw potato is subjected to a process and converted into chips for human consumption it would cease to be agricultural produce for the purposes of the Entry Tax Act. The words "such produce"*

[128] (2006) 6 SCC 530

> *in the second part do not refer to the produce which has already been excluded from the agricultural or horticultural produce but refer to such other agricultural produce which has been subjected to any physical, chemical or other process for being made fit for human consumption."*

The other judgment cited was *State of Gujarat v. Reliance Industries Ltd.*[129] With respect to 'Full Stop' and 'Colon', Vepa P. Sarathi in the *Interpretation of Statutes,* Fifth Edition discussed the issue thus:

> *"The Stop. - The most important punctuation mark is the period or full stop. It has to be placed at the end of a complete sentence which is neither exclamatory nor interrogatory. Of course, in legislative drafting exclamatory or interrogative sentences will not occur. An incomplete sentence should however end with a dash. It should be noticed carefully whether the final stop should be inside or outside the quotes. One can tell easily by the sense.*
>
> *Colon. - It implies that what follows explains and amplifies the sentence that comes before it. It is generally used before a quotation, or to take the place of some word such as "namely"."*

181. *Aswini Kumar Ghose & Anr* (supra) also dealt with full stops and held that as long as punctuation does not detract from the meaning of the words in the text, it can be a controlling factor in interpretation. In *State of West Bengal v. Swapan Kumar Guha and Ors*[130], this court observed that grammar and punctuation are hapless victims of the pace of life and sometimes are used both as a matter of convenience and of meaningfulness. Besides, how far a clause which follows upon a comma governs every clause that precedes the comma is a matter not free from doubt. This Court observed that:

> ***"5.** Since the sole question for consideration arising out of the FIR, as laid, is whether the accused are conducting a money circulation scheme, it is necessary to understand what is comprehended within the statutory meaning of that expression. Section 2(c) of the Act provides:*
>
> *"2. (c) 'money circulation scheme' means any scheme, by whatever name called, for the making of quick or easy money, or for the receipt of any money or valuable thing as the consideration for a promise to pay money, on any event or contingency relative or applicable to the enrolment of members*

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[129] (2017) 16 SCC 28
[130] (1982) 1 SCC 561

> *into the scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscriptions;"*
>
> *Grammar and punctuation are hapless victims of the pace of life, and I prefer in this case not to go merely by the commas used in clause (c) because, though they seem to me to have been placed both as a matter of convenience and of meaningfulness, yet, a more thoughtful use of commas and other gadgets of punctuation would have helped make the meaning of the clause clear beyond controversy. Besides, how far a clause which follows upon a comma governs every clause that precedes the comma is a matter not free from doubt. I, therefore, consider it more safe and satisfactory to discover the true meaning of clause (c) by having regard to the substance of the matter as it emerges from the object and purpose of the Act, the context in which the expression is used and the consequences necessarily following upon the acceptance of any particular interpretation of the provision, the contravention of which is visited by penal consequences."*

182. The present case involves placement of colon preceding to the Proviso to Section 24 (2) and not Section 24 (1), which ends with a full stop, and it makes sense and the true meaning where Parliament has placed it. The proviso is part of section 24(2). It is not permissible to alter the provision and to read it as a proviso to section 24(1)(b), mainly when it makes sense where Parliament so placed it. To read the proviso as part of section 24(1)(b), will create repugnancy which the provisions contained in section 24(1)(b). The window period of 5 years is provided to complete the acquisition proceedings where the award has been passed, and the provisions of the Act of 1894 shall be applied as if it has not been repealed. Section 24(2) starts with a *non-obstante* clause; it plainly is notwithstanding Section 24 (1), and the proviso to section 24(2) enlarges the scope of section 24(2). When the window period has been provided under section 24(1)(b), i.e., section 24(2) and its proviso, higher compensation cannot follow in case of an award which has been passed within 5 years of the enactment of the Act of 2013 otherwise anomalous results shall accrue. In case proviso is read as a part of section 24(1)(b), it would be repugnant to the consideration of the provision which has been carved out saving acquisition and providing window period of 5 years to complete the acquisition proceedings. There were cases under the Act of 1894, in which award may have been made in December 2013, a few days before the Act was enforced on 1.1.2014. As the provisions of the Act of 1894 are applicable to such awards, obviously notice of the award has to be given under Section 12 of the said Act. There is no question of outright deposit. In such event as the deposit is to be made when the Collector is prevented by the exigencies

specified in Section 31(2) from making payment. The deposit is not contemplated directly either in the court or the treasury, as the case may be as provided in section 31(2), corresponding to section 77(2) of the Act of 2013.

183. The proviso relates to the non-payment. Compensation is deposited when the Collector is prevented from making payment. It is the obligation made under section 31(1) to tender the amount and pay unless prevented by the contingencies specified in section 31(2). Thus, the deposit has a co-relation with the expression "payment has not been made," and the proviso makes sense with Section 24 (2) only. In case of non-payment or prevention from payment, compensation is required to be deposited as the case may be in the Reference Court or otherwise in Treasury, if permissible.

184. The proviso uses the expression that the amount is to be deposited in the account of beneficiaries. Earlier under the Act of 1894, there was no such provision for depositing the amount in the bank account of beneficiaries but the method which was used as per the forms which were prescribed to deposit the amount, it was credited to the Reference Court or in the Treasury in the names of the beneficiaries and as against the award. It was not a separate account but an account of the Reference Court or set apart in the treasury. The proviso has to be interpreted and given the meaning with Section 24(2) as an amount was required to be paid and on being prevented had to be deposited as envisaged under the Act of 1894.

185. If we hold that even if the award has been passed within 5 years and the compensation amount has not been deposited with respect to such an award passed in the window period, higher compensation to follow if it is not deposited with respect to the majority of the holdings would amount to re-writing the statute. The provision of section 24(1)(a) is clear if an award has not been passed, higher compensation to follow. No lapse is provided. In case award has been passed within the window period of section 24(1)(b), *inter alia,* the provisions for compensation would be that of the Act of 1894. The only exception to section 24(1) is created by the non-obstante clause in section 24(2) by providing that in case the requisite steps have not been taken for 5 years or more, then there is lapse as a negative condition. The proviso contemplates higher compensation, in case compensation has not been paid, and the amount has not been deposited with respect to the majority of the holdings, to all the beneficiaries under the Act of 2013, who were holding land on the date of notification under Section 4. If the proviso is added, section 24(1)(b) will destroy the very provision of section 24(1)(b) providing proceedings to continue under the Act of 1894, which is not the function of the proviso to substitute the main Section but to explain it. It is not to cause repugnancy with the main provision. The function of the proviso is to explain or widen the scope. It is a settled proposition of law that the proviso cannot

travel beyond the provision to which it is attached. The proviso would travel beyond the Act of 1894 as it is the intention of section 24(1)(b) the proceedings to govern by the Act of 1894. Thus, the proviso has no space to exist with section 24(1)(b), and it has rightly not been attached by Parliament, with Section 24(2) and has been placed at the right place where it should have been.

186. It is in the cases where there is no lapse under section 24(2) if either step has been taken proviso operates to provide higher compensation. In the cases where possession has been taken, but the amount has not been deposited as required under the proviso, higher compensation to all the beneficiaries has to follow as once possession has been taken, the land is vested in the State and payment is necessary for any acquisition. As such, Parliament has provided in such cases higher compensation to follow as envisaged in the proviso to section 24(2). Lapse of acquisition is provided only in the exigencies where possession has not been taken, nor compensation has been paid in the proceedings for acquisition pending as on the date on which the Act of 2013 came into force, then the State Government has to initiate fresh proceedings if it so desires. The proviso is part of the scheme of section 24(2), and the entire provision of section 24(2), including the proviso, operates when inaction is there for a period of 5 years or more, as contemplated therein.

187. The fundamental consideration is that the proviso cannot supersede the main provision of section 24(1)(b) and destroy it. The function of the proviso is to except out the pressing provisions to which it is attached. In case possession has been taken, but only a few beneficiaries have been paid, there is no lapse. Even if nobody has been paid, there is no lapse once possession has been taken. In case compensation has not been deposited with respect to the majority of the holdings, there is no lapse, but higher compensation to all the beneficiaries has to follow. The provision provides equal treatment to all, not only to a few- and, in effect, is similar to Section 28A of the Act of 1894- in case the obligation to pay or deposit has not been discharged and there is no arrangement of money to discharge the obligation either by paying or depositing in the Reference Court and, if permissible, in the treasury. Section 24(2) saves land which has been vested in the State, once award has been passed and possession of land. However, in case compensation has not been deposited with respect to majority of landowners, in any given award, all beneficiaries have to be paid higher compensation under the new Act.

188. It was urged that section 24(1) and 24(2) deal with different subjects. It was submitted that Section 24(1) deals with compensation, whereas section 24(2) deals with the lapsing of the acquisition. We are unable to accept the submission. Section 24(2) also deals with payment of compensation and taking of possession. Section 24(1)(a) is concerning a situation where no award has been made, higher

compensation under the new Act to follow. In section 24(1)(b) where the award is made (at the time of coming into force of the new Act) further proceedings would be under the new law; subject to Section 24(2), the provisions of the Act of 1894 would apply to such an award. Thus, the main part of section 24(2) deals with payment of compensation; also the proviso which provides for higher compensation to be paid to all is in the context of section 24(2) and cannot be lifted and added to Section 24(1)(b) in the aforesaid circumstances. What would be the majority of the landholdings has to be seen in the context, what has been acquired in the case of a single plot being acquired, and in case compensation has not been deposited with respect to that, it will constitute the majority. The majority does not depend upon the number of holdings acquired, but what constitutes the majority as per the acquired area under the notification.

189. Section 24(1)(a) operates where no award is made in a pending acquisition proceeding; in such event all provisions of the new Act relating to determination of compensation would apply. Section 24 (1) (b) logically continues with the second situation, i.e. where the award has been passed, and states that in such event, proceedings would continue under the Act of 1894. Section 24 (2) - by way of an exception, states that where an award is made but requisite steps have not been taken for five years or more to take possession nor compensation has been paid then there is lapse of acquisition. If one of the steps has been taken, then the proviso can operate. Time is the essence. It is on the basis of time-lag that the lapse is provided and in default of payment for five years as provided on failure to deposit higher compensation is to be paid. It is based on that time-lag higher compensation has to follow. It is not the mere use of colon under section 24(2) but the placement of the proviso next to Section 24 (2) and not below Section 24(1)(b). Thus, it is not permissible to alter a placement of proviso more so when it is fully in consonance with the provisions of section 24(2). Section 24(2) completely obliterates the old *regime* to the effect of its field of operation. Under section 24(1)(a), there is a partial lapse of the old *regime* because all proceedings, till the stage of award are preserved. The award, in such proceedings, made after coming into force of the Act of 2013 has to take into account its provisions, for determination of compensation. Thus, proceedings upto the stage of the award are deemed final under the old Act. In the case under section 24(1)(b), the old regime prevails. The proviso is an exception to section 24(2) and in part the new *regime* for payment of higher compensation in case of default for 5 years or more after award.

In re: Proviso to be read as part of provision it is appended

190. A proviso has to be construed as a part of the clause to which it is appended. A proviso is added to a principal provision to which it is attached. It does not enlarge the enactment. In case the provision is repugnant to the enacting

part, the proviso cannot prevail. Though in absolute terms of a later Act. Its placement has been considered, and purpose has been considered in the following decisions. It was observed in *State of Rajasthan v. Leela Jain & Ors* that[131]:

> *"14. . . . So far as a general principle of construction of a proviso is concerned, it has been broadly stated that the function of a proviso is to limit the main part of the section and carve out something which but for the proviso would have been within the operative part. ...."*
>
> *(emphasis supplied)*

Similarly, this court in *Sales-tax Officer, Circle 1, Jabalpur v. Hanuman Prasad*[132] stated that:

> *"5... It is well-recognised that a proviso is added to a principal clause primarily with the object of taking out of the scope of that principal clause what is included in it and what the Legislature desires should be excluded....."*
>
> (emphasis supplied)

In *Commissioner of Commercial Taxes, Board of Revenue, Madras and Anr. v. Ramkishan Shrikishan Jhaver etc*[133] it was observed:

> ***"8.*** *... Generally speaking, it is true that the proviso is an exception to the main part of the section; but it is recognised that in exceptional cases a proviso may be a substantive provision itself...."*
>
> (emphasis supplied)

191. In S. *Sundaram Pillai & Ors. v. V.R. Pattabiraman & Ors*[134] , the scope of a proviso was clarified. The relevant discussion is quoted as under:

> ***"27.*** *The next question that arises for consideration is as to what is the scope of a proviso and what is the ambit of an Explanation either to a proviso or to any other statutory provision. We shall first take up the question of the nature, scope and extent of a proviso. The well established rule of interpretation of a proviso is that a proviso may have three separate functions. Normally, a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In other words, a proviso cannot be torn apart from the main*

[131] 1965 (1) SCR 276
[132] 1967 (1) SCR 831
[133] AIR (1968) SC 59
[134] (1985) 1 SCC 591

enactment nor can it be used to nullify or set at naught the real object of the main enactment."

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

"P. 317. Provisos —These are clauses of exception or qualification in an Act, excepting something out of, or qualifying something in, the enactment which, but for the proviso, would be within it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> (4) *it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."*
>
> *(emphasis supplied)*

192. *Craies on Statute Law,* 7th Edn., has observed, with respect to the construction of provisos thus:

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

R. v. Dibdin, 1910 P 57 (CA), held as under:

> *"The fallacy of the proposed method of interpretation is not far to seek. It sins against the fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso. It treats it as if it were an independent enacting clause instead of being dependent on the main enactment. The courts ... have refused to be led astray by arguments such as those which have been addressed to us, which depend solely on taking words absolutely in their strict literal sense, disregarding the fundamental consideration that they are appearing in the proviso."*
>
> (emphasis supplied)

193. *Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai*[135], considered the effect of a proviso and said that its function is *"to except or qualify something enacted in the substantive clause, which but for the proviso would be within that clause. It may ordinarily be presumed in construing a proviso that it was intended that the enacting part of the section would have included the subject-matter of the proviso."* Similar observations and considerations weighed in *Haryana State Cooperative Land Development Bank Ltd. v. Haryana State Cooperative Land Development Banks Employees Union & Anr.*[136] and other decisions noted below.[137] In *Subhaschandra Yograj Sinha* (supra) it was observed that :

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[135] 1966 (1) SCR 367

[136] (2004) 1 SCC 574

[137] *Shimbhu & Anr. v. State of Haryana,* (2014) 13 SCC 318; *Kedarnath Jute Manufacturing Co. Ltd. v. The Commercial Tax Officer and Ors.,* 1965 (3) SCR 626. *Shah Bhojraj Kuverji Oil Mills & Ginning Factory v. Subhash Chandra Yograj Sinha,* AIR 1961 SC 1596; *Dwarka Prasad v. Dwarka Das Saraf,* 1976 (1) SCC 128; *The Commissioner of Income-tax, Mysore, Travancore-Cochin and Coorg, Bangalore v. The Indo Mercantile Bank Ltd.,* 1959 (Supp 2) SCR 256 In *Romesh Kumar Sharma v. Union of India and Ors.*, (2006) 6 SCC 510.

> *"(9) The law with regard to provisos is well settled and well understood. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule. But, provisos are often added not as exceptions or qualifications to the main enactment but as savings clauses, in which cases they will not be construed as controlled by the section. The proviso which has been added to Section 50 of the Act deals with the effect of repeal. The substantive part of the section repealed two Acts which were in force in the State of Bombay. If nothing more had been said, Section 7 of the Bombay General clauses Act would have applied, and all pending suits and proceedings would have continued under the old law, as if the repealing Act had not been passed. The effect of the proviso was to take the matter out of Section 7 of the Bombay General Clauses Act and to provide for a special saving. It cannot be used to decide whether Section 12 of the Act is retrospective. It was observed by Wood, V.C., in Fitzgerald v. Champneys, (1861) 70 ER 958 that saving clauses are seldom used to construe Acts. These clauses are introduced into Acts which repeal others, to safeguard rights which, but for the savings, would be lost. The proviso here saves pending suits and proceedings, and further enacts that suits and proceedings then pending are to be transferred to the courts designated in the Act and are to continue under the Act and any or all the provisions of the Act are to apply to them. The learned Solicitor-General contends that the savings clause enacted by the proviso, even if treated as substantive law, must be taken to apply only to suits and proceedings pending at the time of the repeal which, but for the proviso, would be governed by the Act repealed. According to the learned Attorney-General, the effect of the savings is much wider, and it applies to such cases as come within the words of the proviso, whenever the Act is extended to new areas."*
>
> (emphasis supplied)

194. In *Motiram Ghelabhai v. Jagan Nagar & Ors*[138] , the view taken in *Bhojraj* (supra) was affirmed and applied. It was observed that provisos are often added not as exceptions or qualifications to the main enactment but as savings clauses, in which case they will not be construed as controlled by the section. In *Madhu Gopal v. VI Additional District Judge & Ors.*[139] this Court has laid down that in any

[138] (1985) 2 SCC 279
[139] (1988) (4) SCC 644

event, it is a well-settled principle of construction that unless clearly indicated, a proviso would not take away substantive rights given by the section or the sub-section. In *The King v. Dominion Engineering Co. Ltd.*[140], it was held that where a section of an enactment contains two provisions and the second proviso is repugnant in any way to the first, the second proviso must prevail for it stands last in the enactment and speaks the last intention of the makers. The following observations were made:

> *"(7) Proviso 2 qualifies the main enactment in the matter of delivery no less than does proviso 1 and it also qualifies proviso 1 itself. For it provides "further" that "in any case where there is no physical delivery of the goods," the tax is to be payable when the property in the goods passes to the purchaser. Thus where there is no physical delivery the notional delivery which proviso 1 introduces is rendered inapplicable. Anger J. found in proviso 2 an alternative ground for his decision against the Crown and it is the main ground of Hudson J.'s judgment in the Supreme Court. In their Lordships' view this proviso presents an insuperable obstacle to the Crown's claim. There has been no physical delivery of the goods by the Dominion Company to the Pulp Company. The proviso enacts that "in any case" where there has been no physical delivery the tax is to be payable when the property passes. The property in the goods in question has never passed to the Pulp Company. Consequently the tax has nevern become payable. If proviso 2 is repugnant in any way to proviso 1 it must prevail for it stands last in the enactment and so to quote Lord Tenterden C.J., "speaks the last intention of the maker" ((1831), 2 B. & Ad. 818 at p.821). The word is with the respondent, the Dominion Company, and must prevail."*

195. The proviso thus, is not foreign to compensation to be paid under section 24(2). It provides what is dealt with in Section 24(2) and takes to its logical conclusion, and provides for higher compensation, where there is and can be no lapsing of acquisition proceedings. The rule of construction- as is clear from the preceding case law discussed, is that the proviso should be limited in its operation to the subject-matter in a clause. A proviso is ordinarily a proviso and has to be harmoniously construed with the provisions. In our opinion, the proviso is capable of being harmoniously construed with Section 24(2) and not with section 24(1)(b), once we interpret the word 'or' as 'nor' in section 24(2).

196. In keeping with the *ratio* in the aforesaid decisions, this court is of the considered view that the proviso cannot nullify the provision of Section 24(1)(b)

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[140] AIR (34) 1947 PC 94

nor can it set at naught the real object of the enactment, but it can further by providing higher compensation, thus dealing with matters in Section 24 (2). Therefore, in effect, where award is not made [Section 24 (1)(a)] as well as where award is made but compensation is not deposited in respect of majority of the landowners in a notification (for acquisition) [i.e. proviso to Section 24 (2)] compensation is payable in terms of the new Act, i.e., Act of 2013.

197. For the aforesaid reasons, considering the placement of the proviso, semi-colon having been used at the end of section 24(2), considering the interpretation of section 24(1)(b) and the repugnancy which would be caused in case the proviso is lifted which is not permissible and particularly when we read the word 'or' as 'nor' in section 24(2), it has to be placed where the legislature has legislated it, it has not been wrongly placed as part of section 24(2) but is intended for beneficial results of higher compensation for one and all where there is no lapse, but amount not deposited as required. Higher compensation is contemplated by the Act of 2013, which intention is fully carried forward by the placement and interpretation.

In re: What is the meaning to be given to the word "paid" used in section 24(2) and "deposited" used in the proviso to section 24 (2)

198. Connected with this issue are questions like what is the consequence of payment not being made under section 31(1) and what are the consequences of amount not deposited under section 31(2). The provision of section 24(2) when it provides that compensation has not been paid where award has been made 5 years or more prior to the commencement of the Act of 2013. In contradistinction to that, the proviso uses the expression *"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"*. We have to find out when an amount is required to be deposited under the Act of 1894 and how the payment is made under the Act of 1894. The provisions of Section 31 of the Act of 1894 are attracted to the interpretation of provisions of section 24(2) to find out the meaning of the words *'paid'* and *'deposited'*. Section 31(1) makes it clear that on passing of award compensation has to be tendered to the beneficiaries and Collector shall pay it to them. The payment is provided only in section 31(1). The expression 'tender' and pay to them in section 31(1) cannot include the term *'deposited.'*

199. Section 31 (2) of the Act of 1894 deals with deposit in case Collector is 'prevented' from making payment by one or more contingencies mentioned in section 31(2). The deposit follows if the Collector is prevented from making payment. In case Collector is prevented from making payment due to contingencies such refusal to receive the amount, or if there be no person competent to alienate the land, or if there is a dispute as to the title to receive the compensation or as to the apportionment of it, he (i.e. the Collector) may withhold it or in case there is dispute as to apportionment, he may ask the parties to get a

decision from the Reference Court i.e., civil court and to clear the title. In such exigencies, the amount of compensation is required to be deposited in the court to which reference would be submitted under section 18. Section 31(2) requires deposit in case of reference under section 18 and not the reference, which may be sought under section 30 or section 28A of the Act of 1894.

200. Section 24(2) deals with the expression *where compensation has not been paid.* It would mean that it has not been tendered for payment under section 31(1). Though the word 'paid' amounts to a completed event however once payment of compensation has been offered/tendered under section 31(1), the acquiring authority cannot be penalized for non-payment as the amount has remained unpaid due to refusal to accept, by the landowner and Collector is prevented from making the payment. Thus, the word 'paid' used in section 24(2) cannot be said to include within its ken 'deposit' under section 31(2). For that special provision has been carved out in the proviso to section 24(2), which deals with the amount to be deposited in the account of beneficiaries. Two different expressions have been used in section 24. In the main part of section 24, the word 'paid' and in its proviso 'deposited' have been used.

201. The consequence of non-deposit of the amount has been dealt with in section 34 of the Act of 1894. As per section 24(2), if the amount has not been paid nor possession has been taken, it provides for lapse. Whereas the proviso indicates amount has not been deposited with respect to a majority of land holdings in a case initiated under the Act of 1894 for 5 years or more. The period of five years need not have been specified in the proviso as it is part of section 24(2) and has to be read with it, particularly in view of the colon and placement by the legislature as held above. Two different consequences of non-deposit of compensation are: (i) higher compensation in a case where possession has been taken, payment has been made to some and amount has not been deposited with respect to majority of the holdings, (ii) in case there is no lapse, the beneficiaries would be entitled to interest as envisaged under section 34 from the date of taking possession at the rate of 9% per annum for the first year and after that @ 15% per annum.

202. The word "paid" has been defined in the Oxford Dictionary to mean thus:

> ***"paid*** *past and past participle of* ***pay";*** *Give a sum of money thus owned."*
>
> *Cambridge English Dictionary,* defines *"paid"* as follows: *"being given money for something."*

P. Ramanatha Aiyar's Advance Law Lexicon, 3rd Edition, 2005, uses the following definition of "paid":

> *"applied; settled: satisfied."*

203. The word "paid" in Section 31(1) to the landowner cannot include in its ambit the expression "deposited" in court. Deposit cannot be said to be payment made to landowners. Deposit is on being prevented from payment. However, in case there is a tender of the amount that is to mean amount is made available to the landowner that would be a discharge of the obligation to make the payment and in that event such a person cannot be penalised for the default in making the payment. In default to deposit in court, the liability is to make the payment of interest under Section 34 of Act of 1894. Sections 32 and 33 (which had been relied upon by the landowners' counsel to say that valuable rights inhere, in the event of deposit with court, thus making deposit under Section 31 mandatory) provide for investing amounts in the Government securities, or seeking alternative lands, *in lieu* of compensation, etc. Such deposits, cannot fetch higher interest than the15 per cent contemplated under Section 34, which is *pari materia* to Section 80 of Act of 2013. Section 34 is *pari materia* to section 80 of Act of 2013 in which also the similar rate of interest has been specified. Even if the amount is not deposited in Reference Court nor with the treasury as against the name of the person interested who is entitled to receive it, if Collector has been prevented to make the payment due to exigencies provided in Section 31(2), interest to be paid. However, in case the deposit is made without tendering it to the person interested, the liability to pay the interest under section 34, shall continue. Even assuming deposit in the Reference Court is taken to be mandatory, in that case too interest has to follow as specified in section 34. However, acquisition proceeding cannot lapse due to non-deposit.

204. The concept of "deposit" is different and quite apart from the word "paid", due to which, lapse is provided in Section 24 of Act of 2013. In the case of non-deposit for the majority of landholdings, higher compensation would follow as such word "paid" cannot include in its ambit word "deposited". To hold otherwise would be contrary to provisions contained in Section 24(2) and its proviso carrying different consequences. It is provided in Section 34 of Act of 1894, in case payment has not been tendered or paid, nor deposited the interest has to be paid as specified therein. In Section 24(2) also lapse is provided in case amount has not been paid and possession has not been taken.

205. In our considered opinion, there is a breach of obligation to deposit even if it is taken that amount to be deposited in the reference court in exigencies being prevented from payment as provided in Section 31(2). The default will not have the effect of reopening the concluded proceedings. The legal position and consequence which prevailed from 1893 till 2013 on failure to deposit was only the liability for interest and all those transactions were never sought to be invalidated by the provisions contained in Section 24. It is only in the case where in a pending proceeding for a period of five years or more, the steps have not been taken for taking possession and for payment of compensation, then there is a lapse

under section 24(2). In case amount has not been deposited with respect to majority of land holdings, higher compensation has to follow. Both lapse and higher compensation are qualified with the condition of period of 5 years or more.

206. It was submitted that mere tender of amount is not payment. The amount has to be actually paid. In our opinion, when amount has been tendered, the obligation has been fulfilled by the Collector. Landowners cannot be forced to receive it. In case a person has not accepted the amount wants to take the advantage of non-payment, though the amount has remained due to his own act. It is not open to him to contend that amount has not been paid to him, as such, there should be lapse of the proceedings. Even in a case when offer for payment has been made but not deposited, liability to pay amount along with interest subsist and if not deposited for majority of holding, for that adequate provisions have been given in the proviso also to Section 24(2). The scheme of the Act of 2013 in Sections 77 and 80 is also the same as that provided in Sections 31 and 34 of the Act of 1894.

207. It was urged that landowners can seek investment in an interest bearing account, there is no doubt about that investment can be sought from the court under Sections 32 and 33 of Act of 1894, but interest in Government securities is not more than what is provided in section 34 at the rate of 9 percent from the date of taking possession for one year and thereafter, at the rate of 15 percent. We take judicial notice of the fact in no other Government security rate of interest is higher on the amount being invested under sections 32 and 33 of the Act of 1894. Higher rate of interest is available under section 34 to the advantage of landowners. It was submitted that in case the amount is deposited in the court, it is on behalf of the beneficiary. The submission overlooks the form in which it used to be deposited in the treasury too, that amount is also credited in the treasury payable to the beneficiary specified in his name with land details, date of award, etc.

208. There is another reason why this court holds that such an interpretation is reasonable and in tune with Parliamentary intent. Under the old *regime,* it was open to the Collector to fix a convenient date or dates for announcement of award, and tender payment. In the event of refusal by the landowner to receive, or in other cases, such as absence of the true owner, or in case of dispute as to who was to receive it, no doubt, the statute provided that the amount was to be deposited with the court: as it does today, under Section 77. Yet, neither during the time when the Act of 1894 was in operation, nor under the Act of 2013, the entire acquisition does not lapse for non-deposit of the compensation amount in court. This is a significant aspect which none of the previous decisions have noticed. Thus, it would be incorrect to imply that failure to deposit compensation [in court, under

Section 31 (2)] would entail lapse, if the amounts have not been paid for five years or more prior to the coming into force of the Act of 2013. Such an interpretation would lead to retrospective operation, of a provision, and the nullification of acquisition proceedings, long completed, by imposition of a norm or standard, and its application for a time when it did not exist.

209. If the expression "deposited" is held to be included in the expression "paid" used in Section 24(2) of the Act of 2013, inconsistency and repugnancy would be caused as between the proviso and the main sub-section, which has to be avoided and the non-compliance of the provisions of Section 31(2) is not fatal. Even if the amount has not been deposited, higher compensation has to follow in the exigency proviso to Section 24(2).

210. In Black's Law Dictionary, the word "tender" has been defined to mean thus:

> ***"tender,*** *n. (16c) 1. A valid and sufficient offer of performance; specific, an unconditional offer of money or performance to satisfy a debt or obligation a tender of delivery. The tender may save the tendering party from a penalty for non-payment or non-performance or may, if the other party unjustifiably refuses the tender, place the other party in default. Cf. OFFER OR PERFORMANCE; CONSIGNATION."*

211. It is apparent that "tender" of the amount saves the party tendering it from the consequence to be visited on non-payment of the amount. The obligation to make the payment has been considered in various other laws and decisions. When obligation to payment is fulfilled as to the scheme in the context of a particular act, for that purpose, decisions under various other laws are relevant and cannot be said to be irrelevant.

212. In *The Straw Board Manufacturing Co. Ltd., Saharanpur v. Gobind*[141] , this Court considered the provisions requiring payment of one month's wage under Section 33 of Industrial Disputes Act for making a valid discharge or dismissal. This Court has held that the employer has tendered the wages and that would amount for payment, otherwise a workman can make the provision unworkable by refusing to take the wages. This Court has observed thus:

> *"(8) Let us now turn to the words of the proviso in the background of what we have said above. The proviso lays down that no workman shall be discharged or dismissed unless he has been paid wages for one month and an application has been*

[141] 162 (Supp 3) SCR 318

> *made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer. It will be clear that two kinds of punishment are subject to the conditions of the proviso, namely, discharge or dismissal. Any other kind of punishment is not within the proviso. Further the proviso lays down two conditions, namely, (i) payment of wages for one month and (ii) making of an application by the employer to the authority before which the proceeding is pending for approval of the action taken. It is not disputed before us that when the proviso lays down the conditions as to payment of one month's wages, all that the employer is required to do in order to carry out that condition is to tender the wages to the employee. But if the employee chooses not to accept the wages he cannot come forward and say that there has been no payment of wages to him by the employer. Therefore, though S. 33 speaks of payment of one month's wages it can only mean that the employer has tendered the wages and that would amount to payment, for otherwise a workman could always make the section unworkable by refusing to take the wages. So far as the second condition about the making of the application is concerned, the proviso requires that the application should be made for approval of the action taken by the employer."*
>
> (emphasis supplied)

213. In *The Management of Delhi Transport Undertaking v. The Industrial Tribunal, Delhi & Anr*[142], a three-Judge Bench of this Court has laid down the law to the similar effect. It is not actual payment, but tender of amount which is necessary to fulfil obligation to pay. This Court observed thus:

> *"4. ...The proviso does not mean that the wages for one month should have been actually paid, because in many cases the employer can only tender the amount before the dismissal but cannot force the employee to receive the payment before dismissal becomes effective. In this case the tender was definitely made before the order of dismissal became effective and the wages would certainly have been paid if Hari Chand had asked for them. There was no failure to comply with the provision in this respect."*
>
> (emphasis supplied

214. In *Indian Oxygen Ltd. v. Narayan Bhoumik*[143], it was held that the *"the*

[142] 1965 (1) SCR 998
[143] (1968) 1 PLJR 94

condition as to payment in the proviso does not mean that wages have to be actually paid but if wages are tendered or offered, such a tender or offer would be sufficient compliance" with the statute. *The Benares State Bank Ltd. v. The Commissioner of Income Tax, Lucknow*[144], was decided in the context of Section 14(2)(c) of the Income Tax Act, 1922. It was observed that "paid" under Section 16 does not contemplate actual receipt of the dividend by the Member of the community. It is to be made unconditionally available to the members entitled to it. It observed thus:

> ***"5.*** *...This Court observed in J. Dalmia v. Commissioner of Income-tax, Delhi, 53 ITR 83 that the expression "paid" in Section 16(2) does not contemplate actual receipt of the dividend by the member: in general, dividend may be said to be paid within the meaning of Section 16(2) when the company discharges its liability and makes the amount of dividend unconditionally available to the member entitled thereto. ."*

215. Two different expressions have been used in Section 24(2). The expression "paid" has been used in Section 24(2) and whereas in the proviso "deposited" has been used. "Paid" cannot include "deposit", or else Parliament would have used different expressions in the main sub- section and its proviso, if the meaning were to be the same. The Court cannot add or subtract any word in the statute and has to give plain and literal meaning and when compensation has not been paid under Section 24(2), it cannot mean compensation has not been deposited as used in the proviso. While interpreting the statutory provisions, addition or subtraction in the legislation is not permissible. It is not open to the court to either add or subtract a word. There cannot be any departure from the words of law, as observed in legal maxim "A *Verbis Legis Non Est Recedendum".* In Principles of Statutory Interpretation (14th Edition) by Justice G.P. Singh, plethora of decisions have been referred. There is a conscious omission of the word "deposit" in Section 24(2), which has been used in the proviso. Parliament cannot be said to have used the different words carrying the same meaning in the same provision, whereas words "paid" and "deposited" carry a totally different meaning. Payment is actually made to the landowner and deposit is made in the court, that is not the payment made to the landowner. It may be discharge of liability of payment of interest and not more than that. Applying the rule of literal construction also natural, ordinary and popular meaning of the words "paid" and "deposited" do not carry the same meaning; the natural and grammatical meaning has to be given to them, as observed in *Principles of Statutory Interpretation* by Justice G.P. Singh (at page 91) thus:

> *"... Natural and grammatical meaning. The words of a statute*

[144] (1969) 2 SCC 316

are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary." "The true way", according to LORD BROUGHAM is, "to take the words as the Legislature have given them, and to take the meaning which the words given naturally imply, unless where the construction of those Words is, either by the preamble or by the context of the words in question, controlled or alter "; and in the words of VISCOUNT HALDANE, L. C., if the language used "has a natural meaning we cannot depart from that meaning unless reading the statute as a whole, the context directs us to do so. In an oft-quoted passage, LORD WENSLEYDALE stated the Rule thus: "In construing wills and indeed statutes and all written instruments, the grammatical and ordinary sense of the word is adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity, and inconsistency, but no further". And stated LORD ATKINSON: "In the construction of statutes, their words must be interpreted in their ordinary grammatical sense unless there be something in the context, or in the object of the statute in which they occur or in the circumstances in which they are used, to show that they were used in a special sense different from their ordinary grammatical sense". 28 VISCOUNT SIMON, L. C., said: "The golden Rule is that the words of a statute must prima facie be given their ordinary meaning". Natural and ordinary meaning of words should not be departed from "unless it can be shown that the legal context in which the words are used requires a different meaning". Such a meaning cannot be departed from by the judges "in the light of their own views as to policy" although they can "adopt a purposive interpretation if they can find in the statute read as a whole or in material to which they are permitted by law to refer as aids to interpretation an expression of Parliament's purpose or policy". For a modern statement of the rule, one may refer to the speech of LORD SIMON OF GLAISDALE in a case where he said: "Parliament is prima facie to be credited with meaning what is said in an Act of Parliament. The drafting of statutes, so important to a people who hope to live under the Rule of law, will never be satisfactory unless courts seek whenever possible to apply 'the golden rule' of construction, that is to read the statutory language, grammatically and terminologically, in the ordinary and primary sense which it bears in its context,

without omission or addition. Of course, Parliament is to be credited with good sense; so that when such an approach produces injustice, absurdity, contradiction or stultification of statutory objective the language may be modified sufficiently to avoid such disadvantage, though no further". The Rules stated above have been quoted with approval by the Supreme Court "

(emphasis supplied)

216. The same work also notes that when two different expressions are used in the same provision of a statute, there is a presumption that they are not used in the same sense. The following passage is relevant *(Principles of Statutory Interpretation* by Justice G.P. Singh at page 395):

"....When in relation to the same subject matter, different words are used in the same statute, there is a presumption that they are not used in the same sense.

In construing the words 'distinct matters' occurring in Section 5 of the Stamp Act, 1899, and in concluding that these words have not the same meaning as the words 'two or more of the descriptions in Schedule I' occurring in Section 6, VENKATARAMA AIYAR, J., observed: "When two words of different import are used in a statute in two consecutive provisions, it would be difficult to maintain that they are used in the same sense." Similarly, while construing the word 'gain' Under Section 3(ff) of the Bombay Municipal Corporation Act, 1888, which used the words 'profit or gain', the Supreme Court relied on the dictionary meanings of the words to hold that the word 'gain' is not synonymous with the word 'profit' as it is not restricted to pecuniary or commercial profits, and that any advantage or benefit acquired or value addition made by some activities would amount to 'gain'....."

**** 14. Brighton Parish Guardians v. Strand Union Guardians, (1891) 2 QB 156, p. 167 (CA); Member, Board of Revenue v. Arthur Paul Benthall AIR 1956 SC 35, p. 38 : 1955 (2) SCR 842; CIT v. East West Import & Export (P.) Ltd., Jaipur AIR 1989 SC 836, p. 838 : (1989) 1 SCC 760; B.R. Enterprises v. State of U.P. AIR 1999 SC 1867, p. 1902: (1999) 9 SCC 700 ('trade and business' in Article 298 have different meaning from 'trade and commerce' in Article 301); ShriIshal Alloy Steels Ltd. v. JayaswalasNeco Ltd., JT 2001 (3) SC 114, p. 119: (2001) 3 SCC 609 : AIR 2001 SC 1161 (The words 'a bank' and 'the bank' in Section 138 N.I. Act, 1881 do not have the same meaning); The Oriental Insurance Co. Ltd. V. Hansrajbhai v. Kodala AIR 2001 SC 1832, p. 1842 : (2001) 5 SCC 175; Kailash Nath*

Agarwal v. Pradeshiya Indust and Inv. Corporation of U.P., 2003 AIR SCW 1358, p. 1365: (2003) 4 SCC 305, p. 313. (The words 'proceeding' and 'suit' used in the same Section construed differently); But in Paramjeet Singh Pathak v. ICDS Ltd., (2006) 13 SCC 322: AIR 2007 SC 168 different view was taken therefore in Zenith Steel Tubes v. Sicom Ltd., (2008) 1 SCC 533: AIR 2008 SC 451 case referred to a larger Bench; D.L.F. Qutab Enclave Complex Educational Charitable Trust v. State of Haryana, 2003 AIR SCW 1046, p. 1057: AIR 2003 SC 1648 : (2003) 5 SCC 622 (The expressions 'at his own cost' and 'at its cost,' used in one Section given different meanings)"

217. In Privy Council decisions in *Crawford v. Spooner*[145] and *Lord Howard de Walden v. IRC & Anr*[146] following observations have been made:

"..... we cannot aid the legislature's defective phrasing of an Act, we cannot add or mend and, by construction, makeup deficiencies which are left there.

...

It is contrary to all rules of construction to read words into an Act unless it is necessary to do so. Similarly, it is wrong and dangerous to proceed by substituting some other words for words of the statute. Speaking briefly the court cannot reframe the legislation for the very good reason that it has no power to legislate."

218. In *V.L.S. Finance Ltd.* (supra) this Court observed that:

***"17.** Ordinarily, the offence is compounded under the provisions of the Code of Criminal Procedure and the power to accord permission is conferred on the court excepting those offences for which the permission is not required. However, in view of the non-obstante clause, the power of composition can be exercised by the court or the Company Law Board. The legislature has conferred the same power on the Company Law Board which can exercise its power either before or after the institution of any prosecution whereas the criminal court has no power to accord permission for composition of an offence before the institution of the proceeding. The legislature in its wisdom has not put the rider of prior permission of the court before compounding the offence by the Company Law Board and in case the contention of the appellant is accepted, same would amount to addition of the words "with the prior*

[145] (1846) 6 Moore PC 1
[146] (1948) 2 AER 825

permission of the court" in the Act, which is not permissible.

18. *As is well settled, while interpreting the provisions of a statute, the court avoids rejection or addition of words and resorts to that only in exceptional circumstances to achieve the purpose of the Act or give purposeful meaning. It is also a cardinal rule of interpretation that words, phrases, and sentences are to be given their natural, plain, and clear meaning. When the language is clear and unambiguous, it must be interpreted in an ordinary sense, and no addition or alteration of the words or expressions used is permissible. As observed earlier, the aforesaid enactment was brought in view of the need of leniency in the administration of the Act because a large number of defaults are of technical nature, and many defaults occurred because of the complex nature of the provision.*

(emphasis supplied)

219. In *Bharat Aluminium Company v. Kaiser Aluminium Technical Services Inc.*[147] , this Court observed thus:

"65. *Mr. Sorabjee has also rightly pointed out the observations made by Lord Diplock in Duport Steels Ltd. v. Sirs, (1980) 1 WLR 142. In the aforesaid judgment, the House of Lords disapproved the approach adopted by the Court of Appeal in discerning the intention of the legislature; it is observed that: (WLR p. 157 C-D)*

"... the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and to giving effect to it. Where the meaning of the statutory words is plain and unambiguous, it is not for the Judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral. In controversial matters such as are involved in industrial relations, there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable. Under our Constitution it is Parliament's opinion on these matters that is paramount."

(emphasis supplied)

In the same judgment, it is further observed: (WLR p. 157 F)
"... But if this be the case it is for Parliament, not for the judiciary, to decide whether any changes should be made to the law as

[147] (2012) 9 SCC 552

stated in the Acts...."

(emphasis supplied)

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67. *We are unable to accept the submission of the learned counsel for the appellants that the omission of the word "only" from Section 2(2) indicates that applicability of Part I of the Arbitration Act, 1996 is not limited to the arbitrations that take place in India. We are also unable to accept that Section 2(2) would make Part I applicable even to arbitrations which take place outside India. In our opinion, a plain reading of Section 2(2) makes it clear that Part I is limited in its application to arbitrations which take place in India. We are in agreement with the submissions made by the learned counsel for the respondents, and the interveners in support of the respondents, that Parliament by limiting the applicability of Part I to arbitrations which take place in India has expressed a legislative declaration. It has clearly given recognition to the territorial principle. Necessarily therefore, it has enacted that Part I of the Arbitration Act, 1996 applies to arbitrations having their place/seat in India.*

***

82. *Another strong reason for rejecting the submission made by the learned counsel for the appellants is that if Part I were to be applicable to arbitrations seated in foreign countries, certain words would have to be added to Section 2(2). The section would have to provide that "this part shall apply where the place of arbitration is in India and to arbitrations having its place out of India." Apart from being contrary to the contextual intent and object of Section 2(2), such an interpretation would amount to a drastic and unwarranted rewriting/alteration of the language of Section 2(2). As very strongly advocated by Mr Sorabjee, the provisions in the Arbitration Act, 1996 must be construed by their plain language/terms. It is not permissible for the court while construing a provision to reconstruct the provision. In other words, the court cannot produce a new jacket, whilst ironing out the creases of the old one. In view of the aforesaid, we are unable to support the conclusions recorded by this Court as noticed earlier."*

(emphasis supplied)

220. In *Harbhajan Singh* (supra) the following observations were made:

"7. *.... Ordinary, grammatical and full meaning is to be assigned to the words used while interpreting a provision to honour the rule —the legislature chooses appropriate words to*

express what it intends, and therefore, must be attributed with such intention as is conveyed by the words employed so long as this does not result in absurdity or anomaly or unless material — intrinsic or external — is *available to permit a departure from the rule."*

(emphasis supplied)

221. In *The Member, Board of Revenue v. Arthur Paul Benthall*[148] this Court held as under:

"4. *We are unable to accept the contention that the word "matter" in S. 5 was intended to convey the same meaning as the word "description" in S. 6. In its popular sense, the expression "distinct matters" would connote something different from distinct "categories". Two transactions might be of the same description, but all the same, they might be distinct.*

If A sells Black-acre to X and mortgages White-acre to Y, the transactions fall under different categories, and they are also distinct matters. But if A mortgages Black-acre to X and mortgages White-acre to Y, the two transactions fall under the same category, but they would certainly be distinct matters.

If the intention of the legislature was that the expression 'distinct matters' in S. 5 should be understood not in its popular sense but narrowly as meaning different categories in the Schedule, nothing would have been easier than to say so. When two words of different import are used in a statute in two consecutive provisions, it would be difficult to maintain that they are used in the same sense, and the conclusion must follow that the expression "distinct matters" in S. 5 and "descriptions" in section 6 have different connotations."

(emphasis supplied)

222. In *Commissioner of Income Tax, New Delhi v. M/s. East West Import and Export (P) Ltd*[149], it was observed as under:

"7. *The Explanation has reference to the point of time at two places: the first one has been stated as "at the end of the previous year" and the second, which is in issue, is "in the course of such previous year". Counsel for the revenue has emphasised upon the feature that in the same Explanation reference to time has been expressed differently and if the*

[148] 1955 (2) SCR 842
[149] (1989) 1 SCC 760

> *legislative intention was not to distinguish and while stating "in the course of such previous year" it was intended to convey the idea of the last day of the previous year, there would have been no necessity of expressing the position differently. There is abundant authority to support the stand of the counsel for the revenue that when the situation has been differently expressed the legislature must be taken to have intended to express a different intention."*
>
> (emphasis supplied)

Several other decisions have reiterated the same proposition, i.e that when the legislature uses two different expressions in the same statute, they must be given different meanings, to carry out legislative intent.[150]

223. The land owners had argued that the obligation to pay gets discharged only when compensation is actually paid and/or deposited. Even if it is received under protest under Section 31(1), it is finally accepted by the landowners post-settlement by the Reference Court. We are not able to accept the submission as Section 34 of the Act of 1894, is clear even if the amount is not paid or deposited, it carries interest. The logic behind this is that if the State is retaining the amount with peace and its liability to pay does not cease, but it would be liable to make the payment with interest as envisaged therein. Once tender is made, obligation to pay is fulfilled so that the amount cannot be said to have been paid, but obligation to pay has been discharged and if a person who has not accepted it, cannot penalise the other party for default to pay and non-deposit carries only interest as money had been retained with the Government.

224. Thus, in our opinion, the word "paid" used in Section 24(2) does not include within its meaning the word "deposited", which has been used in the proviso to Section 24(2). Section 31 of the Act of 1894, deals with the deposit as envisaged in Section 31(2) on being 'prevented' from making the payment even if the amount has been deposited in the treasury under the Rules framed under Section 55 or under the Standing Orders, that would carry the interest as envisaged under Section 34, but acquisition would not lapse on such deposit being made in the treasury. In case amount has been tendered and the landowner has refused to receive it, it cannot be said that the liability arising from non-payment of the amount is that of lapse of acquisition. Interest would follow in such a case also due to non-deposit of the amount. Equally, when the landowner does not

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[150] *B.R. Enterprises v. State of U.P. and Ors.,* (1999) 9 SCC 700; *Kailash Nath Agarwal and Ors. v. Pradeshiya Industrial & Investment Corporation of U.P. Ltd. and Anr.,* (2003) 4 SCC 305 (which interpreted "proceeding" and "suit" differently; In *DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana and Ors.,* (2003) 5 SCC 622 (where "at his cost" and "at its cost" were interpreted to mean different situations.

accept the amount, but seeks a reference for higher compensation, there can be no question of such individual stating that he was not paid the amount (he was determined to be entitled to by the collector). In such case, the landowner would be entitled to the compensation determined by the Reference court.

In re: Rules framed under Section 55 and the Standing Orders issued by State Governments

225. It was urged on behalf of acquiring Authorities that various State Governments have framed rules under Section 55 of the Act of 1894 and/or have issued the Standing Orders/instructions with respect to the Government money under Article 283 of the Constitution of India. These Standing Orders and Rules have remained in force from time immemorial; their provisions require the amount to be tendered, notice to be issued to the landowners to collect the amount of compensation awarded to them. If they do not appear and apply to the reference under Section 18, the officer shall cause the amounts due to be paid into the treasury as revenue deposits payable to the persons to whom they are respectively due and vouched for in the accompanying form (marked E). When the payee ultimately claims the payment, they shall be paid in the same manner as ordinary revenue deposits. The Land Acquisition (Bihar and Orissa) Rules were framed under Section 55 of the Act of 1894. Rule 10 thereof is extracted hereunder:

> *"10. In giving notice of the award under Section 12(2) and tendering payment Under Section 31(1), to such of the persons interested as were not present personally or by their representatives when the award was made, the officer shall require them to appear personally or by representatives by a certain date to receive payment of the compensation awarded to them, intimating also that no interest will be allowed to them if they fail to appear. If they do not appear, and do not apply for reference to the Civil Court Under Section 18, the officer shall after any further endeavour to secure their attendance that may seem desirable, cause the amounts due to be paid into the Treasury as Revenue deposits payable to the persons to whom they are respectively due and vouched for in the accompanying form (marked E). The officer shall also give notice to the payees of such deposits, the Treasury in which the deposits specifying have been made. When the payees ultimately claim payment of sums placed in deposit, the amounts will be paid to them in the same manner as ordinary revenue deposits. The officer should, as far as possible, arrange to make the payments due in or near the village to which the payees belong, in order that the number of undisbursed sums to be placed in deposit on account of non-attendance may be reduced to a minimum. Whenever payment is claimed through a representative whether before or after*

deposit of the amount awarded, such representative, must show legal authority for receiving the compensation on behalf of his principal."

(emphasis supplied)

226. In the State of Assam, rules have also been framed under Section 55 of the Act of 1894, dealing with the deposit. Rule 9 provides that in case reference is not sought under Section 18, the amount has to be deposited in treasury. Rule 9 is extracted hereunder:

"9. In giving notice of the award Under Section 12(2) and tendering payment Under Section 31(1), to such of the persons interested as were not present personally or by their representatives when the award was made, the Collector shall require them to appear personally or by representatives by a certain date, to receive payment of the compensation awarded to them intimating also that no interest will be allowed to them, if they fail to appear. If they do not appear and do not apply for a reference to the Civil Court Under Section 18, he shall, after any further endeavour to secure their attendance or make payment that may seem desirable, cause the amounts due to be paid into the WW as revenue deposits payable to the persons to whom they are respectively due, and vouched for in the form prescribed or approved by Government from time to time. He shall also give notice to the payees of such deposits, specifying the Treasury in which the deposits have been made. When the payees ultimately claim payment of sums placed in deposit, the amount will be paid to them in the same manner as ordinary revenue deposits. The Collector should, as far as possible, arrange to make the payment due in or near the village to which the land pertains in order that the number of undisbursed sum to be placed in deposit on account of nonattendance may be reduced to a minimum. Whenever payment is claimed through a representative, such representative, must show legal authority for receiving the compensation on behalf of the principal."

(emphasis supplied)

227. In the State of Karnataka too similar rules were framed in 1965 under Section 55 of the Act of 1894. Similarly, in the State of Kerala also Rule 14(2) of the Land Acquisition (Kerala) Rules, 1990 were framed under Section 55 of the Act of 1894, provided that payment relating to award shall be made or the amount shall be credited to the court or revenue deposit (treasury) within one month from the date of the award. Similar rules were framed in the State of Bihar and Orissa.

228. Standing Order No.28 was issued in 1909 by the State of Punjab and was applicable to Delhi also, which provided five modes of payment in para 74 and 75 thus:

> ***"74. Methods of making payments.***—*There are five methods of making payments:*
>
> *(1) By direct payments, see Para 75(I) infra*
> *(2) By order on treasury, see Para 75(II) infra*
> *(3) By money order, see Para 75(III) infra*
> *(4) By cheque, see Para 75(IV) infra*
> *(5) By deposit in a treasury, see Para 75(V) infra*
>
> ***75. Direct payments.—*** * * *
>
> *(V)* ***By treasury deposit.*** *— In giving notice of the award under Section 12(2) and tendering payment under Section 31(1) to such of the persons interested as were not present personally or by their representatives when the award was made, the officer shall require them to appear personally or by representatives by a certain date to receive payment of the compensation awarded to them, intimating also that no interest will be allowed to them if they fail to appear, if they do not appear and do not apply for a reference to the civil court under Section 18, the officer shall after any further endeavours to secure their attendance that may seem desirable, cause the amounts due to be paid to the treasury as revenue deposits payable to the persons to whom they are respectively due and vouched for in the form marked E below. The officer shall also give notice to the payees of such deposits, specifying the treasury in which the deposit has been made. When the payees ultimately claim payment of sums placed in deposit, the amounts will be paid to them in the same manner as ordinary revenue deposit. The officer should, as far as possible, arrange to make the payments due in or near the village to which the payee belong in order that the number of undisbursed sums to be placed in deposits on account of non-attendance may be reduced to a minimum. Whenever payment is claimed through a representative whether before or after deposit of the amount awarded, such representative, must have legal authority for receiving the compensation on behalf of his principal."*

Form E	Form E
Name of work for which land has been acquired _____ To the officer incharge of _____ treasury Please receive for transfer to credit of revenue deposit the sum of Rs _____ on account of compensation for land taken up for the above purpose payable as detailed below:-	Name of work for which land has been acquired _____ To the officer incharge of _____ treasury Please receive for transfer to credit of revenue deposit the sum of Rs _____ on account of compensation for land taken up for the above purpose payable as detailed below:-

Serial Number in award statement No.	Name of persons to whom due	Area of land	Amount payable to each	Remarks		Name of persons to whom due	Area of land	Amount payable to each	Remarks
		Acres	Rs.				Acres	Rs.	

Total_____Total_____
Land Acquisition Officer Land Acquisition Officer

Dated_____ Dated_____

Received the above amount and credited to credited
Revenue deposit

Treasury Officer
Note - this form should be used when the
amounts of compensation due
are sent to treasury in the absence of
proprietors who have failed to present
themselves for payment

Received the above amount and to Revenue deposit

Treasury Officer
Note - this form should be used when

amounts of compensation due
are sent to treasury in the absence of
proprietors who have failed to present
themselves for payment."

Sub-para (V) of the above made it clear that payment is credited to the treasury when a person who is served with a notice under Section 12(2) of the Act of 1894, is not present and the award is passed. When a notice is given to receive the payment of compensation and in case they fail to appear, the amount has to be paid to the treasury as revenue deposit payable to the landowner.

229. Rules and the Standing Orders are binding on the concerned Authorities and they have to follow them. They deposit the amounts in court only when a reference (for higher compensation) is sought, not otherwise. Even if a person refuses to accept it and the amount is deposited in court or even it is not tendered, only higher interest follows under Section 34. Once Rules have prevailed since long and even if it is assumed that deposit in court is mandatory on being prevented from payment as envisaged under Section 31(1), the only liability to make the payment of higher interest is fastened upon the State. The liability to pay the amount with interest would subsist. When amounts are deposited in court, there would occur a procedural irregularity and the adverse consequence envisaged is under Section 34 of the Act of 1894. The consequence of non-deposit in the court is that the amount of the landowner cannot be invested in the Government securities as envisaged under Sections 32 and 33 of the Act of 1894,

in which interest is not more 15 per cent. Thus, no prejudice is caused to the landowners rather they stand to gain and still payment is safe as it is kept in the court. We have already held that there is a distinction between the expression "paid" and "deposited", thus the amount being deposited as per Rules in the treasury or as per the Standing Orders considering the scheme of Section 31 read with Section 34 of the Act of 1894, which are *pari materia* to Sections 77 and 80 of the Act of 2013. We are of the considered opinion that acquisition cannot be invalidated, only higher compensation would follow in case amount has not been deposited with respect to majority of land holdings, all the beneficiaries would be entitled for higher compensation as envisaged in the proviso to Section 24(2).

230. Deposit in treasury in place of deposit in court causes no prejudice to the landowner or any other stakeholder as their interest is adequately safeguarded by the provisions contained in Section 34 of the Act of 1894, as it ensures higher rate of interest than any other Government securities. Their money is safe and credited in the earmarked quantified amount and can be made available for disbursement to him/them. There is no prejudice caused and every infraction of law would not vitiate the act.

231. In *Jankinath Sarangi v. State of Orissa*[151], this Court observed that every infraction of law would not vitiate the act. It has further been observed that test is actual prejudice has been caused to a person by the supposed denial to him of a particular right. Following observations have been made:

> ***"5.*** *From this material it is argued that the principles of natural justice were violated because the right of the appellant to have his own evidence recorded was denied to him and further that the material which was gathered behind his back was used in determining his guilt. In support of these contentions a number of rulings are cited chief among which are State of Bombay v. Narul Latif Khan, (1965) 3 SCR 135; State of Uttar Pradesh v. Sri C.S. Sharma, (1967) 3 SCR 848 and Union of India v. T.R. Varma, (1958) SCR 499. There is no doubt that if the principles of natural justice are violated, and there is a gross case, this Court would interfere by striking down the order of dismissal, but there are cases and cases. We have to look to what actual prejudice has been caused to a person by the supposed denial to him of a particular right. Here the question was a simple one, viz. whether the measurement book prepared for the contract work had been properly scrutinised and checked by the appellant or not. He did the checking in March 1954 and*

[151] (1969) 3 SCC 392

immediately thereafter in May 1954 the Executive Engineer re-checked the measurements and found that the previous checking had not been done properly.

Between March and May there could not be much rainfall, if at all, and the marks of digging according to the witnesses could not be obliterated during that time. It is however said that at the 6th and 7th mile the checking was done in July and by that time rains might have set in. Even so the witnesses at the sites of the pits could not be so considerably altered as to present a totally wrong picture. If anything had happened the earth would have swollen rather than contracted by reason of rain and the pits would have become bigger and not smaller. Anyway the questions which were put to the witnesses were recorded and sent to the Chief Engineer and his replies were received. No doubt the replies were not put in the hands of the appellant but he saw them at the time when he was making the representations and curiously enough he used those replies in his defence. In other words, they were not collected behind his back and could be used to his advantage and he had an opportunity of so using them in his defence. We do not think that any prejudice was caused to the appellant in this case by not examining the two retired Superintending Engineers whom he had cited or any one of them. The case was a simple one whether the measurement book had been properly checked. The pleas about rain and floods were utterly useless and the Chief Engineer's elucidated replies were not against the appellant. In these circumstances a fetish of the principles of natural justice is not necessary to be made. We do not think that a case is made out that the principles of natural justice are violated. The appeal must fail and is accordingly dismissed, but we will make no order as to costs."

(emphasis supplied)

232. In *Sunil Kumar Banerjee v. State of West Bengal and Ors.,*[152] the Court observed:

***"3.** There is no substance in the contention of the appellant that the 1955 Rules and not the 1969 Rules were followed. As pointed out by the High Court, in the charges framed against the appellant and in the first show cause notice the reference was clearly to the 1969 Rules. The appellant himself mentioned in*

[152] (1980) 3 SCC 304

one of his letters that the charges have been framed under the 1969 Rules. The enquiry report mentions that Shri Mukherjee was appointed as an Enquiry Officer under the 1969 Rules. It is, however true that the appellant was not questioned by the Enquiry Officer under Rule 8(19) which provided as follows:

"The enquiring authority may, after the member of the services closes his case and shall if the member of the service has not examined himself generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the member of the service to explain any circumstances appearing in the evidence against him."

It may be noticed straight away that this provision is akin to Section 342 of the Criminal Procedure Code of 1898 and Section 313 of the Criminal Procedure Code of 1973. It is now well established that mere non-examination or defective examination under Section 342 of the 1898 Code is not a ground for interference unless prejudice is established, vide, K.C. Mathew v. State of Travancore-Cochin, AIR 1956 SC 24; Bibhuti Bhusan Das Gupta v. State of W.B., AIR 1969 SC 381 We are similarly of the view that failure to comply with the requirements of Rule 8(19) of the 1969 Rules does not vitiate the enquiry unless the delinquent officer is able to establish prejudice. In this case the learned Single Judge the High Court as well as the learned Judges of the Division Bench found that the appellant was in no way prejudiced by the failure to observe the requirement of Rule 8(19). The appellant cross-examined the witnesses himself, submitted his defence in writing in great detail and argued the case himself at all stages. The appellant was fully alive to the allegations against him and dealt with all aspects of the allegations in his written defence. We do not think that he was in the least prejudiced by the failure of the Enquiry Officer to question him in accordance with Rule 8(19).

(emphasis supplied)"

A similar view has been taken in the *State of Andhra Pradesh v. Thakkidiram Reddy*[153] and other decisions.

233. There is a dual obligation, *namely,* part mandatory and part directory. In *Howard v. Secretary of State for the Environment,* (1975) Q.B. 235, Lord Denning has cited a portion from the speech of Lord Penzance, which is extracted hereunder:

[153] (1998) 6 SCC 554

"Now the distinction between matters that are directory and matters that are imperative is well known to us all in the common language of the courts at Westminster ... A thing has been ordered by the legislature to be done. What is the consequence if it is not done? In the case of statutes that are said to be imperative, the courts have decided that if it is not done the whole thing fails, and the proceedings that follow upon it are all void. On the other hand, when the courts hold a provision to be mandatory or directory, they say that, although such provision may not have been complied with the subsequent proceedings do not fail."

Later Lord Denning M.R. said, at pp. 242-243:

"The section is no doubt imperative in that the notice of appeal must be in writing and must be made within the specified time. But I think it is only directory as to the contents. Take first the requirement as to the 'grounds' of appeal. The section is either imperative in requiring 'the grounds' to be indicated, or it is not. That must mean all or none. I cannot see any justification for the view that it is imperative as to one ground and not imperative as to the rest. If one was all that was necessary, an appellant would only have to put in one frivolous or hopeless ground and then amend later to add his real grounds. That would be a futile exercise. Then as to 'stating the facts.' It cannot be supposed that the appellant must at all cost state all the facts on which he bases his appeal. He has to state the facts, not the evidence: and the facts may depend on evidence yet to be obtained, and may not be fully or sufficiently known at the time when the notice of appeal is given. All things, considered, it seems to me that the section, in so far as the 'grounds' and 'facts' are concerned, must be construed as directory only: that is, as desiring information to be given about them. It is not to be supposed that an appeal should fail altogether simply because the grounds are not indicated, or the facts stated. Even if it is wanting in not giving them, it is not fatal. The defects can be remedied later, either before or at the hearing of the appeal, so long as an opportunity is afforded of dealing with them."

(emphasis supplied)

234. In *Belvedere Court Management Ltd. v. Frogmore Developments Ltd.*[154], a distinction was made between essential and supportive provisions. The following observations are pertinent:

[154] (1996) 3 W.L.R. 1008 at p. 1032

> *"By way of final comment I would add that I am strongly attracted to the view that legislation of the present kind should be evaluated and construed on an analytical basis. It should be considered which of the provisions are substantive and which are secondary, that is, simply part of the machinery of the legislation. Further, the provisions which fall into the latter category should be examined to assess whether they are essential parts of the mechanics or are merely supportive of the other provisions so that they need not be insisted on regardless of the circumstances. In other words, as in the construction of contractual and similar documents, the status and effect of a provision has to be assessed having regard to the scheme of the legislation as a whole and the role of that provision in that scheme - for example, whether some provision confers an option properly so called, whether some provision is equivalent to a condition precedent, whether some requirement can be fulfilled in some other way or waived. Such an approach when applied to legislation such as the present would assist to enable the substantive rights to be given effect to and would help to avoid absurdities or unjustified lacunae."*
>
> (emphasis supplied)

235. In *Sharif-ud-Din* (supra) the difference between mandatory and directory rules was pointed out thus:

> ***"9.*** *The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Certain broad propositions which can be deduced from several decisions of courts regarding the rules of construction that should be followed in determining whether a provision of law is directory or mandatory may be summarised thus: The fact that the statute uses the word "shall" while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation, the court has to ascertain the object which the provision of law in question has to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. Where, however, a*

> *provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one. A procedural rule ordinarily should not be construed as mandatory if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such permission to rectify the error later on, another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow."*
>
> (emphasis supplied)

236. Similarly, in *Ram Deen Maurya (Dr.) v. State of Uttar Pradesh and Ors*[155] this Court observed that non-compliance with the directory provision does not affect the validity of the act done in breach thereof. In *Rai Vimal Krishna and Ors. v. State of Bihar & Ors.*[156], this Court considered the mode of publication and held that publication in a newspaper was the only effective mode and that the provision was mandatory.

237. This Court also considered the effect of non-deposit of the amount in *Hissar Improvement v. Smt. Rukmani Devi and Anr*[157] and held that in case compensation has not been paid or deposited, the State is liable to pay interest as provided in Section 34. The Court held thus:

> ***"5.*** *It cannot be gainsaid that interest is due and payable to the landowner in the event of the compensation not being paid or deposited in time in court. Before taking possession of the land, the Collector has to pay or deposit the amount awarded, as stated in Section 31, failing which he is liable to pay interest as provided in Section 34.*
>
> ***6.*** *In the circumstances, the High Court was right in stating that interest was due and payable to the landowner. The High Court was justified in directing the necessary parties to appear in the executing court for determination of the amount."*

[155] (2009) 6 SCC 735
[156] (2003) 6 SCC 401
[157] 1990 Supp SCC 806

238. In *Kishan Das v. State of U.P*[158] , this Court observed that where land owners themselves delayed the acquisition proceedings, it is discretionary for the court to award the interest and they cannot get the premium on their dilatory tactics. This Court stated that:

> ***"4.*** *In the light of the operation of the respective provisions of Sections 34 and 28 of the Act, it would be difficult to direct payment of interest. In fact, Section 23(1-A) is a set-off for loss in cases of delayed awards to compensate the person entitled to receive compensation; otherwise a person who is responsible for the delay in disposal of the acquisition proceedings will be paid premium for dilatory tactics. It is stated by the learned counsel for the respondents that the amount of interest was also calculated and total amount was deposited in the account of the appellants by the Land Acquisition Officer after passing the award, i.e., on 15-11-1976 in a sum of Rs 20,48,615. Under these circumstances, the liability to pay interest would arise when possession of the acquired land was taken and the amount was not deposited. In view of the fact that compensation was deposited as soon as the award was passed, we do not think that it is a case for us to interfere at this stage."*
>
> *(emphasis supplied)*

239. In *D-Block Ashok Nagar (Sahibabad) Plot Holders' Assn. v. State of U.P.*[159], it was observed that liability to pay interest under Section 34 arises from the date of taking possession.

240. It was argued that in fact in many cases, reference was sought as such the amounts being deposited in the treasury were not valid. Reference was sought for higher compensation and landowners had declined to accept the compensation for no good reason they could have received it under protest reserving their right to seek the reference and in case compensation was not paid or deposited, they could have claimed it along with interest as envisaged under Section 34.

241. It is clear that once land is acquired, award passed and possession has been taken, it has vested in the State. It had been allotted to beneficiaries. A considerable infrastructure could have been developed and a third-party interest had also intervened. The land would have been given by the acquiring authorities to the beneficiaries from whose schemes the land had been acquired and they have developed immense infrastructure. We are unable to accept the submission that merely by deposit of amount in treasury instead of court, we should invalidate all

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[158] (1995) 6 SCC 240
[159] (1997) 10 SCC 77

the acquisitions, which have taken place. That is not what is contemplated under Section 24(2). We are also not able to accept the submission that when law operates these harsh consequences need not be seen by the court. In our opinion, that submission is without merit in as such consequences are not even envisaged on proper interpretation of Section 24(2), as mentioned above.

242. The proviso to Section 24(2) of the Act of 2013, intends that the Collector would have sufficient funds to deposit it with respect to the majority of landholdings. In case compensation has not been paid or deposited with respect to majority of land holdings, all the beneficiaries are entitled for higher compensation. In case money has not been deposited with the Land Acquisition Collector or in the treasury or in court with respect to majority of landholdings, the consequence has to follow of higher compensation as per proviso to Section 24(2) of the Act of 2013. Even otherwise, if deposit in treasury is irregular, then the interest would follow as envisaged under Section 34 of Act of 1894. Section 24(2) is attracted if acquisition proceeding is not completed within 5 years after the pronouncement of award. Parliament considered the period of 5 years as reasonable time to complete the acquisition proceedings *i.e.,* taking physical possession of the land and payment of compensation. It is the clear intent of the Act of 2013, that provision of Section 24(2) shall apply to the proceeding which is pending as on the date on which the Act of 2013, has been brought into force and it does not apply to the concluded proceedings. It was urged before us by one of the Counsel that lands in the Raisina Hills and Lutyens' Zones of Delhi were acquired in 1913 and compensation has not been paid. The Act of 2013 applies only to the pending proceedings in which possession has not been taken or compensation has not paid and not to a case where proceedings have been concluded long back, Section 24(2) is not a tool to revive those proceedings and to question the validity of taking acquisition proceedings due to which possession in 1960s, 1970s, 1980s were taken, or to question the manner of deposit of amount in the treasury. The Act of 2013 never intended revival such claims. In case such landowners were interested in questioning the proceedings of taking possession or mode of deposit with the treasury, such a challenge was permissible within the time available with them to do so. They cannot wake from deep slumber and raise such claims in order to defeat the acquisition validly made. In our opinion, the law never contemplates -nor permits- misuse much less gross abuse of its provisions to reopen all the acquisitions made after 1984, and it is the duty of the court to examine the details of such claims. There are several litigations before us where landowners, having lost the challenge to the validity of acquisition proceedings and after having sought enhancement of the amount in the reference succeeding in it nevertheless are seeking relief arguing about lapse of acquisition after several rounds of litigation.

243. The expression used in Section 24(1)(b) is *'where an award under Section 11 has been made',* then *'such proceedings shall continue'* under the provisions of the said Act of 1894 as if the said Act has not been repealed'. The expression "proceedings shall continue" indicates that proceedings are pending at the time; it is a present perfect tense and envisages that proceedings must be pending as on the date on which the Act of 2013 came into force. It does not apply to concluded proceedings before the Collector after which it becomes *functus officio.* Section 24 of the Act of 2013, does not confer benefit in the concluded proceedings, of which legality if question has to be seen in the appropriate proceedings. It is only in the pending proceedings where award has been passed and possession has not been taken nor compensation has been paid, it is applicable. There is no lapse in case possession has been taken, but amount has not been deposited with respect to majority of land holdings in a pending proceeding, higher compensation under the Act of 2013 would follow under the proviso to Section 24(2). Thus, the provision is not applicable to any other case in which higher compensation has been sought by way of seeking a reference under the Act of 1894 or where the validity of the acquisition proceedings have been questioned, though they have been concluded. Such case has to be decided on their own merits and the provisions of Section 24(2) are not applicable to such cases.

In re: Issue no.4: mode of taking possession under the Act of 1894

244. Section 16 of the Act of 1894 provided that possession of land may be taken by the State Government after passing of an award and thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of urgency in Section 17(1). The word "possession" has been used in the Act of 1894, whereas in Section 24(2) of Act of 2013, the expression "physical possession" is used. It is submitted that drawing of *panchnama* for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2) requires actual physical possession to be taken, not the possession in any other form. When the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances.

245. The question which arises whether there is any difference between taking possession under the Act of 1894 and the expression "physical possession" used in Section 24(2). As a matter of fact, what was contemplated under the Act of 1894, by taking the possession meant only physical possession of the land. Taking over the possession under the Act of 2013 always amounted to taking over physical possession of the land. When the State Government acquires land and drawns up a

memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any re-entry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc., is deemed to be the trespasser on land which in possession of the State. The possession of trespasser always inures for the benefit of the real owner that is the State Government in the case.

246. It was urged on behalf of acquiring authorities and the states that there is no conflict of opinion with respect to the mode of taking possession in *IDA v Shailendra* and *Pune Municipal Corporation & Anr* (supra), and that the latter is not a decision as to the aspect of possession. A two-Judge Bench decision in *Shree Balaji Nagar Residential Association* (supra) has been overruled in the *Indore Development Authority* case (supra). The view taken in *Indore Development Authority* (supra) has to prevail as the decision in *Velaxan Kumar* (supra), was rendered by a two judge Bench of this court. This court, however, proceeds to examine the matter afresh as issues have been framed.

247. The concept of possession is complex one. It comprises the right to possess and to exclude others, essential is *animus possidendi.* Possession depends upon the character of the thing which is possessed. If the land is not capable of any use, mere non-user of it does not lead to the inference that the owner is not in possession. The established principle is that the possession follows title. Possession comprises of the control over the property. The element of possession is the physical control or the power over the object and intention or will to exercise the power. Corpus and *animus* are both necessary and have to co-exist. Possession of the acquired land is taken under the Act of 1894 under Section 16 or 17 as the case may be. The government has a right to acquire the property for public purpose. The stage under Section 16 comes for taking possession after issuance of notification under Section 4(1) and stage of Section 9(1). Under section 16, vesting is after passing of the award on taking possession and under section 17 before passing of the award.

248. Mitra's "Law of Possession and Ownership of Property", 2nd Edn., expressions 'trespass' and 'trespasser' have been dealt with by the learned Author with the help of *Words and Phrases,* Permanent Edition, West Publishing Co. which has also been quoted with respect to who is a trespasser:

> *"A "trespasser" is a person who enters or remains upon land in the possession of another without a privilege to do so created by the possessor's consent or otherwise. In re Wimmer's Estate, 182 P.2d 119, 121, 111 Utah 444."*
>
> *"A "trespasser" is one entering or remaining on land in another's possession without a privilege to do so created by possessor's consent, express or implied, or by law. Keesecker v. G.M. Mckelvey Co., 42 N.E. 2d 223, 226, 227, 68 Ohio App. 505."*

249. One who enters or remains in possession on land of another without a privilege to do so, is also treated as a trespasser. On the strength of Full Bench decision of Patna High Court in *S.M. Yaqub v. T.N. Basu*[160], Mitra, has referred to the observation that the possession should not be confused with occupation. A person may be in actual possession of the property without occupying it for a considerable time. The person who has a right to utilise the whole in any way he likes. Possession in part is good enough to infer that the person is in possession of the rest. Learned Author has referred to Jowitt's *Dictionary of English Law,* Ed. 1969, so as to explain what constitutes possession.

> *"There are three requisites of possession. First, there must be actual or potential physical control. Secondly, the physical control is not possession unless accompanied by intention hence if a thing is put into the hand of a sleeping person he has no possession of it. Thirdly, the possibility and intention must be visible or evidence by external signs for if the thing shows no signs of being under the control of anyone, it is not possession."*

250. In order to constitute possession, a person should be in physical control. The same is not possession unless and until the intention is there and thirdly, possibility and intention must be visible; otherwise, it is not possession. Mitra has further dealt with how to determine possession. The relevant extract is quoted hereunder:

> ***"36. Who is in possession - Determination of.***—*In Jones v. Chopman, (1849) 2 Ex. 803: 18 LJ Ex. 456: 76 PR 794; Maule, J, expounded the doctrine thus:*
>
> *"If there are two persons in a field, each asserting that the field is his, and each doing some act in the assertion of the right of possession, and if the question is, which of these two is in actual possession, I answer, the person who has the title is in actual possession and the other person is a trespasser.*

[160] AIR 1949 Pat 146

> *In such a case who is in possession is to be determined by the fact of the title and having the same apparent actual possession;*
>
> *The question as to which of the two really is in possession is determined by the fact of the possession; following the title, that is by the law, which makes it follow the title."*
>
> *In Kynoch Limited v. Rowlands, (1912) 1Ch 527; LJ Ch 340; 106 LT 316; per Joyce, J, where his Lordship says:*
>
> *"It is a well settled principle with reference to land at all events ..... that where possession in fact is underterminate or the evidence is undecisive, possession, in law follows the right to possess. As far back as the time of Littleton it was said, "Where two be in one house or other tenements together to claim the said lands and tenements, and the one claimeth by one title, and the other by another title, the law shall adjudge him in possession that has right to have the possession of the same tenements."*
>
> *(emphasis supplied)*

251. A person with title is considered to be in actual possession. The other person is a trespasser. The possession in law follows the right to possess as held in *Kynoch Limited v. Rowlands*[161]. Ordinarily, the owner of the property is presumed to be in possession and presumption as to possession is in his favour. In *Superintendent and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja & Ors.,* [162], this Court observed that possession implies a right and a fact; the right to enjoy annexed to the right of property and the fact of the real intention. It involves the power of control and intent to control. Possession is annexed to right of property.

> ***"13.*** *"Possession" is a polymorphous term which may have different meanings in different contexts. It is impossible to work out a completely logical and precise definition of "possession" uniformally applicable to all situations in the contexts of all statutes. Dias and Hughes in their book on Jurisprudence say that if a topic ever suffered from too much theorising it is that of "possession." Much of this difficulty and confusion is (as pointed out in Salmond's Jurisprudence, 12th Edn., 1966) caused by the fact that possession is not purely a legal concept. "Possession," implies a right and a fact; the right to enjoy annexed to the right of property and the fact of the real intention. It involves power of control and intent to control. (See Dias and Hughes, ibid.)*

[161] (1912) 1 Ch 527
[162] (1979) 4 SCC 274

> ***14.*** *According to Pollock and Wright,*
>
> *"when a person is in such a relation to a thing that, so far as regards the thing, he can assume, exercise or resume manual control of it at pleasure, and so far as regards other persons, the thing is under the protection of his personal presence, or in or on a house or land occupied by him or in any receptacle belonging to him and under his control, he is in physical possession of the thing."*
>
> ***15.*** *While recognising that "possession" is not a purely legal concept but also a matter of fact, Salmond (12th Edn., p. 52) describes "possession, in fact", as a relationship between a person and a thing. According to the learned Author the test for determining "whether a person is in possession of anything is whether he is in general control of it".*

252. In *Ram Dass v. Davinder*[163], this Court stated that possession and occupation in common parlance may be used interchangeably, but in law possession amounts to holding property as an owner, while to occupy is to keep possession by being present in it. In *Bhinka & Ors. v. Charan Singh, Bhinka & Ors. v. Charan Singh*[164], this court considered the dichotomy between taking and retaining possession. They are mutually exclusive expressions and apply to two different situations. The word 'taking' applies to a person taking possession of a land otherwise than in accordance with the provisions of the law, while the word 'retaining' applies to a person taking possession in accordance with the provisions of the law, but subsequently retaining the same illegally. In *Bhinka & Ors.* (supra), as to retaining possession, it was observed:

> ***"14.*** *If the appellants did not take possession of the disputed lands, did they retain possession of the same in accordance with the provisions of the law for the time being in force? The dichotomy between taking and retaining indicates that they are mutually exclusive and apply to two different situations. The word "taking" applies to a person taking possession of a land otherwise than in accordance with the provisions of the law, while the word "retaining" to a person taking possession in accordance with the provisions of the law but subsequently retaining the same illegally. So construed, the appellants' possession of the lands being illegal from the inception, they could not be described as persons retaining possession of the said lands in accordance with the provisions of any law for the time being in force, so as to be outside the scope of Section 180 of the Act."*

[163] (2004) 3 SCC 684
[164] 1959 (Suppl 2) SCR 798

253. Under section 16 of the Act of 1894, vesting of title in the Government, in the land took place immediately upon taking possession. Under Sections 16 and 17 of the Act of 1894, the acquired land became the property of the State without any condition or limitation either as to title or possession. Absolute title thus vested in the State.

254. This Court in *V. Chandrasekaran & Anr. v. Administrative Officer & Ors*[165] dealt with the concept of vesting under the Act of 1894. The facts of the said case indicated that the appellants and the officials of the State and Development Board connived with each other to enable the appellant to grab/encroach upon the public land, which was acquired and falsified the documents so as to construct flats thereon. Considering the gravamen of the fraud, the Chief Secretary of the State was directed to trace out such officials and to take suitable action against each of them. It was also held by this Court that alienation of land subsequent to notification under Section 4(1) is void and no title passes on the basis of such sale deed. This Court held that once land vested in the State free from all encumbrances, it cannot be divested. Once land has been acquired, it cannot be restored to tenure-holders/persons interested, even if it is not used for the purpose for which it is so acquired. Once possession of land has been taken, it vests in the State free from all encumbrances. Under sections 16 and 17, the acquired property becomes the property of the Government without any limitation or condition either as to title or possession. Reliance has been placed on *Fruit and Vegetable Merchants Union* (supra):

> ***"19.*** *That the word "vest" is a word of variable import is shown by provisions of Indian statutes also. For example, Section 56 of the Provincial Insolvency Act (5 of 1920) empowers the court at the time of the making of the order of adjudication or thereafter to appoint a receiver for the property of the insolvent and further provides that "such property shall thereupon vest in such receiver". The property vests in the receiver for the purpose of administering the estate of the insolvent for the payment of his debts after realising his assets. The property of the insolvent vests in the receiver not for all purposes but only for the purpose of the Insolvency Act and the receiver has no interest of his own in the property. On the other hand, Sections 16 and 17 of the Land Acquisition Act (Act 1 of LA), provide that the property so acquired, upon the happening of certain events, shall "vest absolutely in the Government free from all encumbrances". In the cases contemplated by Sections 16 and 17 the property acquired becomes the property of Government without any conditions or limitations either as to title or*

[165] (2012) 12 SCC 133

> *possession. The legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration. It would thus appear that the word "vest" has not got a fixed connotation, meaning in all cases that the property is owned by the person or the authority in whom it vests. It may vest in title, or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation. The provisions of the Improvement Act, particularly Sections 45 to 49 and 54 and 54-A when they speak of a certain building or street or square or other land vesting in a municipality or other local body or in a trust, do not necessarily mean that ownership has passed to any of them."*
>
> (emphasis supplied)

255. In *National Textile Corporation Ltd. v. Nareshkumar Badrikumar Jagad & Ors*[166], the concept of vesting was considered. This court observed that vesting means an absolute and indefeasible right. Vesting, in general sense, means vesting in possession. Vesting may include vesting of interest too. This Court observed thus:

> ***"38.*** *"Vesting" means having obtained an absolute and indefeasible right. It refers to and is used for transfer or conveyance. "Vesting" in the general sense, means vesting in possession. However, "vesting" does not necessarily and always means possession but includes vesting of interest as well. "Vesting" may mean vesting in title, vesting in possession or vesting in a limited sense, as indicated in the context in which it is used in a particular provision of the Act. The word "vest" has different shades, taking colour from the context in which it is used. It does not necessarily mean absolute vesting in every situation and is capable of bearing the meaning of a limited vesting, being limited, in title as well as duration. Thus, the word "vest" clothes varied colours from the context and situation in which the word came to be used in the statute. The expression "vest" is a word of ambiguous import since it has no fixed connotation and the same has to be understood in a different context under different sets of circumstances. [Vide Fruit & Vegetable Merchants Union v. Delhi Improvement Trust, AIR 1957 SC 344, Maharaj Singh v. State of U.P. AIR 1976 SC 2602, Municipal Corpn. of Hyderabad v. P.N. Murthy AIR 1987 SC 802, Vatticherukuru Village Panchayat v. Nori Venkatarama Deekshithulu 1991 Supp (2) SCC 228, M. Ismail Faruqui v. Union of India AIR 1995 SC 605, SCC p. 404, para*

[166] 2011 (12) SCC 695

41, Govt. of A.P. v. Nizam, Hyderabad (1996) 3 SCC 282, K.V. Shivakumar v. Appropriate Authority (2000) 3 SCC 485, Municipal Corpn. of Greater Bombay v. Hindustan Petroleum Corpn. AIR 2001 SC 3630 and Sulochana Chandrakant Galande v. Pune Municipal Transport (2010) 8 SCC 467.]"

(emphasis supplied)

256. Thus, it is apparent that vesting is with possession and the statute has provided under Sections 16 and 17 of the Act of 1894 that once possession is taken, absolute vesting occurred. It is an indefeasible right and vesting is with possession thereafter. The vesting specified under section 16, takes place after various steps, such as, notification under section 4, declaration under section 6, notice under section 9, award under section 11 and then possession. The statutory provision of vesting of property absolutely free from all encumbrances has to be accorded full effect. Not only the possession vests in the State but all other encumbrances are also removed forthwith. The title of the landholder ceases and the state becomes the absolute owner and in possession of the property. Thereafter there is no control of the land-owner over the property. He cannot have any animus to take the property and to control it. Even if he has retained the possession or otherwise trespassed upon it after possession has been taken by the State, he is a trespasser and such possession of trespasser enures for his benefit and on behalf of the owner.

257. After the land has vested in the State, the total control is of the State. Only the State has a right to deal with the same. In *Municipal Corporation of Greater Bombay & Ors. v. Hindustan Petroleum Corporation & Anr*[167], this Court discussed the concept of vesting in the context of Section 220 of the Bombay Municipal Corporation Act. It has referred to various decisions including that of *Richardson v. Robertson,* (1862) 6 LT 75 thus:

> ***"8.*** *It is no doubt true that Section 220 provides that any drain which vests in the Corporation is a municipal drain and shall be under the control of the Corporation. In this context, the question arises as to what meaning is required to assign to the word "vest" occurring in Section 220 of the Act? In Richardson v. Robertson 6 LT at p. 78, it was observed by Lord Cranworth as under: (LT p. 78)*
>
> > *"The word 'vest' is a word, at least, of ambiguous import. Prima facie 'vesting' in possession is the more natural meaning. The expressions 'investiture' — 'clothing' — and whatever else be the explanation as to the origin of the word, point prima facie rather to the enjoyment than*

[167] 2001 (8) SCC 143

> *to the obtaining of a right. But I am willing to accede to the argument that was pressed at the Bar, that by long usage 'vesting' originally means the having obtained an absolute and indefeasible right, as contradistinguished from the not having so obtained it. But it cannot be disputed that the word 'vesting' may mean, and often does mean, that which is its primary etymological signification, namely, vesting in possession."*
>
> ***15.** We are, therefore, of the view that the word "vest" means vesting in title, vesting in possession or vesting in a limited sense, as indicated in the context in which it is used in a particular provision of the Act."*
>
> (emphasis supplied)

258. The word 'vest' has to be construed in the context in which it is used in a particular provision of the Act. Vesting is absolute and free from all encumbrances that includes possession. Once there is vesting of land, once possession has been taken, section 24(2) does not contemplate divesting of the property from the State as mentioned above.

259. Now, the court would examine the mode of taking possession under the Act of 1894 as laid down by this Court. In *Balwant Narayan Bhagde* (supra) it was observed that the act of Tehsildar in going on the spot and inspecting the land was sufficient to constitute taking of possession. Thereafter, it would not be open to the Government or the Commission to withdraw from the acquisition under Section 48(1) of the Act. It was held thus:

> ***"28.** We agree with the conclusion reached by our brother Untwalia, J., as also with the reasoning on which the conclusion is based. But we are writing a separate judgment as we feel that the discussion in the judgment of our learned Brother Untwalia, J., in regard to delivery of "symbolical" and "actual" possession under Rules 35, 36, 95 and 96 of Order 21of the Code of Civil Procedure, is not necessary for the disposal of the present appeals and we do not wish to subscribe to what has been said by our learned Brother Untwalia, J., in that connection, nor do we wish to express our assent with the discussion of the various authorities made by him in his judgment. We think it is enough to state that when the Government proceeds to take possession of the land acquired by it under the Land Acquisition Act, LA, it must take actual possession of the land since all interests in the land are sought to be acquired by it. There can be no question of taking "symbolical" possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act*

contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land. How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of. There can be no hard and fast rule laying down what act would be sufficient to constitute taking of possession of land. We should not, therefore, be taken as laying down an absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise would be sufficient to constitute taking of possession of land in every case. But here, in our opinion, since the land was lying fallow and there was no crop on it at the material time, the act of the Tehsildar in going on the spot and inspecting the land for the purpose of determining what part was waste and arable and should, therefore, be taken possession of and determining its extent, was sufficient to constitute taking of possession. It appears that the appellant was not present when this was done by the Tehsildar, but the presence of the owner or the occupant of the land is not necessary to effectuate the taking of possession. It is also not strictly necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken at a particular time, though it may be desirable where possible, to give such notice before possession is taken by the authorities, as that would eliminate the possibility of any fraudulent or collusive transaction of taking of mere paper possession, without the occupant or the owner ever coming to know of it."

260. In *Tamil Nadu Housing Board v. A. Viswam* (supra) it was held that drawing of *Panchnama* in the presence of witnesses would constitute a mode of taking possession. This court observed:

***"9.** It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or Panchnama by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not cooperate in taking possession of the land."*

(emphasis supplied)

261. In *Banda Development Authority* (supra) this Court held that preparing a *Panchnama* is sufficient to take possession. This Court has laid down thus:

***"37.** The principles which can be culled out from the above noted judgments are:*

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

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

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

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

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

262. In *State of Tamil Nadu and Anr. v. Mahalakshmi Ammal and Ors.,* (supra), this court dealt with the effect of vesting on possession and mode of taking it and opined thus:

"9. *It is well-settled law that publication of the declaration under Section 6 gives conclusiveness to public purpose. Award was made on 26-9-1986 and for Survey No. 2/11 award was made on 31-8-1990. Possession having already been undertaken on 24-11-1981, it stands vested in the State under Section 16 of the Act free from all encumbrances and thereby the Government acquired absolute title to the land. The initial award having been made within two years under Section 11 of the Act, the fact that subsequent award was made on 31-8-1990 does not render the initial award invalid. It is also to be seen that there is stay of dispossession. Once there is stay of*

dispossession, all further proceedings necessarily could not be proceeded with as laid down by this Court. Therefore, the limitation also does not stand as an impediment as provided in the proviso to Section 11-A of the Act. Equally, even if there is an irregularity in service of notice under Sections 9 and 10, it would be a curable irregularity and on account thereof, award made under Section 11 does not become invalid. Award is only an offer on behalf of the State. If compensation was accepted without protest, it binds such party but subject to Section 28-A. Possession of the acquired land would be taken only by way of a memorandum, Panchnama, which is a legally accepted norm. It would not be possible to take any physical possession. Therefore, subsequent continuation, if any, had by the erstwhile owner is only illegal or unlawful possession which does not bind the Government nor vested under Section 16 divested in the illegal occupant. Considered from this perspective, we hold that the High Court was not justified in interfering with the award."

263. In *Balmokand Khatri Educational and Industrial Trust, Amritsar v. State of Punjab & Ors*[168], this Court ruled that under compulsory acquisition it is difficult to take physical possession of land. The normal mode of taking possession is by way of drafting the *Panchnama* in the presence of *Panchas.* This Court observed thus:

"4. *It is seen that the entire gamut of the acquisition proceedings stood completed by 17-4-1976 by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession.*

5. *Under these circumstances, merely because the appellant retained possession of the acquired land, the acquisition cannot be said to be bad in law. It is then contended by Shri Parekh that the appellant-Institution is running an educational institution and intends to establish a public school and that since other land was available, the Government would have acquired some*

[168] (1996) 4 SCC 212

> *other land leaving the acquired land for the appellant. In the counter-affidavit filed in the High Court, it was stated that apart from the acquired land, the appellant also owned 482 canals 19 marlas of land. Thereby, it is seen that the appellant is not disabled to proceed with the continuation of the educational institution which it seeks to establish. It is then contended that an opportunity may be given to the appellant to make a representation to the State Government. We find that it is not necessary for us to give any such liberty since acquisition process has already been completed."*

264. In *P.K. Kalburqi v. State of Karnataka and Ors.,*[169], with respect of mode of possession, this Court laid down as under:

> **"6.** *Moreover, the Hon'ble Minister who passed the order of denotification of the lands in question sought to make a distinction between symbolic possession and actual possession and proceed to pass the order on the basis of his understanding of the law that symbolic possession did not amount to actual possession, and that the power to withdraw from the acquisition could be exercised at any time before "actual possession" was taken. This view appears to be contrary to the majority decision of this Court in Balwant Narayan Bhagde v. M.D. Bhagwat, wherein this Court observed that how such possession would be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of. There can be no hard-and-fast rule laying down what act would be sufficient to constitute taking of possession of land. In the instant case the lands of which possession was sought to be taken were unoccupied, in the sense that there was no crop or structure standing thereon. In such a case only symbolic possession could be taken, and as was pointed out by this Court in the aforesaid decision, such possession would amount to vesting the land in the Government. Moreover, four acres and odd belonging to the appellant was a part of the larger area of 118 acres notified for acquisition. We are, therefore, satisfied that the High Court has not committed any error in holding that possession of the land was taken on 6-11-1985. Even the order of the Minister on which considerable reliance has been placed by the appellant indicates that possession of the lands was taken, though symbolic."*

265. In *Sita Ram Bhandar Society, New Delhi* (supra) this Court held that when possession of large area of land is to be taken, then it is permissible to take

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[169] (2005) 12 SCC 489

possession by drawing *Panchnama*. A similar view was expressed in *Om Prakash Verma & Ors* (supra) which stated that:

> ***"85.*** *As pointed out earlier, the expression "civil appeals are allowed" carry only one meaning i.e. the judgment of the High Court is set aside and the writ petitions are dismissed. Moreover, the determination of surplus land based on the declaration of owners has become final long back. The notifications issued under Section 10 of the Act and the panchnama taking possession are also final. On behalf of the State, it was asserted that the possession of surplus land was taken on 20-7-1993 and the panchnama was executed showing that the possession has been taken. It is signed by the witnesses. We have perused the details which are available in the paper book. It is settled law that where possession is to be taken of a large tract of land then it is permissible to take possession by a properly executed panchnama. [Vide Sita Ram Bhandar Society v. Govt. (NCT of Delhi) (2009) 10 SCC 501.]*
>
> ***86.*** *It is not in dispute that the panchnama has not been questioned in any proceedings by any of the appellants. Though it is stated that Chanakyapuri Cooperative Society was in possession at one stage and Shri Venkateshawar Enterprises was given possession by the owners and possession was also given to Golden Hill Construction Corporation and thereafter it was given to the purchasers, the fact remains that the owners are not in possession. In view of the same, the finding of the High Court that the possession was taken by the State legally and validly through a panchnama is absolutely correct and deserves to be upheld."*

266. In *M. Venkatesh and Ors. v. Commissioner, Bangalore Development Authority, etc.*[170], a three-Judge Bench of this Court has opined that one of the modes of taking possession is by drawing *panchnama*. The Court observed:

> ***"17.*** *To the same effect are the decisions of this Court in Ajay Krishan Shinghal v. Union of India (1996) 10 SCC 721, Mahavir v. Rural Institute (1995) 5 SCC 335, Gian Chand v. Gopala (1995) 2 SCC 528, Meera Sahni v. Lt. Governor of Delhi (2008) 9 SCC 177 and Tika Ram v. State of U.P. (2009) 10 SCC 689 More importantly, as on the date of the suit, the respondents had not completed 12 years in possession of the suit property so as to entitle them to claim adverse possession against BDA, the true owner. The argument that possession of the land was never taken also needs notice only to be rejected*

[170] (2015) 17 SCC 1

> *for it is settled that one of the modes of taking possession is by drawing a panchnama which part has been done to perfection according to the evidence led by the defendant BDA. Decisions of this Court in T.N. Housing Board v. A. Viswam (1996) 8 SCC 259 and Larsen & Toubro Ltd. v. State of Gujarat (1998) 4 SCC 387, sufficiently support BDA that the mode of taking possession adopted by it was a permissible mode."*

267. In *Ram Singh v. Jammu Development Authority*[171], this Court stated that the mode of taking possession is by drawing a *Panchnama*. Concerning the mode of taking possession in any other land, law to a similar effect has been laid down in *NAL Layout Residents Association v. Bangalore Development Authority*[172]. Certain decisions were cited with respect to other statutes regarding coalfields etc. and how the possession is taken and vesting is to what extent. Those have to be seen in the context of the particular Act. Possession comprises of various rights, thus it has to be couched in a particular statute for which we have a plethora of decisions of this Court. Hence, we need not fall back on the decisions in other cases. The decision in *Burrakur Coal Co. Ltd.* (supra) held that a person can be said to be in possession of minerals contained in a well-defined mining area even though his actual physical possession is confined to a small portion. Possession in part extends to the whole of the area. The decision does not help the cause of the petitioner. Once possession has been taken by drawing a *Panchnama*, the State is deemed to be in possession of the entire area and not for a part. There is absolute vesting in Government with possession and control free from all encumbrances as specifically provided in Section 16 of the Act of 1894.

268. *Maguni Charan Dwivedi v. State of Orissa*[173] , dealt with the provision of land laws requiring actual cultivating possession with which we are not concerned here. *Sri Tarkeshwar Sio Thakur Jiu v. Dar Dass Dey & Co.*[174], it was again a case relating to mining. The decision is of no avail. The decision in *Ramesh Bejoy Sharma v. Pashupati Rai*[175] related to khas possession and physical possession of the tenant with which we are not concerned in the instant case, and the decision has no relevance so as to determine the expression. In the instant case, we are not dealing with the question, what are the rights to be conferred on the actual cultivators under revenue laws?

269. *Karanpura Development Co. v. Union of India*[176], was again a case of mines. In *Larsen & Toubro Ltd. v. State of Gujarat*[177], this Court relied upon *Tamil*

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[171] 2017 (13) SCC 474
[172] (2018) 12 SCC 400
[173] 1976 (2) SCC 134
[174] 1979 (3) SCC 106
[175] (1979) 4 SCC 27
[176] (1988) Supp. SCC 488
[177] (1998) 4 SCC 387

Nadu Housing Board v. A. Viswam, (supra), *Balmokand Khatri Educational & Industrial Trust* (supra) and held that drawing of *Panchnama* is sufficient to take possession and acquisition was held to be valid.

270. The decision in *Velaxan Kumar* (supra) cannot be said to be laying down the law correctly. The Court considered the photographs also to hold that the possession was not taken. Photographs cannot evidence as to whether possession was taken or not. Drawing of a *Panchnama* is an accepted mode of taking possession. Even after re-entry, a photograph can be taken; equally, it taken be taken after committing trespass. Such documents cannot prevail over the established mode of proving whether possession is taken, of lands. Photographs can be of little use, much less can they be a proof of possession. A person may re-enter for a short period or only to have photograph. That would not impinge adversely on the proceedings of taking possession by drawing *Panchnama*, which has been a rarely recognised and settled mode of taking possession.

271. In the decision in *Raghbir Singh Sehrawat v. State of Haryana*[178], the observation made was that it is not possible to take the possession of entire land in a day on which the award was declared, cannot be accepted as laying down the law correctly and same is contrary to a large number of precedents. The decision in *Narmada Bachao Andolan v. State of M.P*[179], is confined to particular facts of the case. The Commissioner was appointed to find out possession on the spot. DVDs. and CDs were seen to hold that the landowners were in possession. The District Judge, Indore, recorded the statements of the tenure-holder. We do not approve the method of determining the possession by appointment of Commissioner or by DVDs and CDs as an acceptable mode of proving taking of possession. The drawing of *Panchnama* contemporaneously is sufficient and it is not open to a court Commissioner to determine the factum of possession within the purview of Order XXVII, Rule 9 CPC. Whether possession has been taken, or not, is not a matter that a court appointed Commissioner cannot opine. However, drawing of *Panchnama* by itself is enough and is a proof of the fact that possession has been taken.

272. It was submitted on behalf of landowners that under Section 24 the expression used is not possession but physical possession. In our opinion, under the Act of 1894 when possession is taken after award is passed under section 16 or under section 17 before the passing of the award, land absolutely vests in the State on drawing of *Panchnama* of taking possession, which is the mode of taking possession. Thereafter, any re-entry in possession or retaining the possession is wholly illegal and trespasser's possession inures for the benefit of the owner and even in the case of open land, possession is deemed to be that of the owner. When

[178] (2012) 1 SCC 792
[179] (2011) 7 SCC 639

the land is vacant and is lying open, it is presumed to be that of the owner by this Court as held in *Kashi Bai v. Sudha Rani Ghose*[180]. Mere re-entry on Government land once it is acquired and vests absolutely in the State (under the Act of 1894) does not confer, any right to it and Section 24(2) does not have the effect of divesting the land once it vests in the State.

273. In *Maria Margadia Sequeria v Erasmo Jack De Sequeria*[181], approving a decision of this Court, this court clarified what amounts to "possession" in law and held:

> *"Possession is flexible term and is not necessarily restricted to mere actual possession of the property. The legal conception of possession may be in various forms. The two elements of possession are the corpus and the animus. A person though in physical possession may not be in possession in the eye of law, if the animus be lacking. On the contrary, to be in possession, it is not necessary that one must be in actual physical contact. To gain the complete idea of possession, one must consider (i) the person possessing, (ii) the things possessed and, (iii) the persons excluded from possession. A man may hold an object without claiming any interest therein for himself. A servant though holding an object, holds it for his master. He has, therefore, merely custody of the thing and not the possession which would always be with the master though the master may not be in actual contact of the thing. It is in this light in which the concept of possession has to be understood in the context of a servant and master."*
>
> ********** ***** **********

Principles of law which emerge in Maria Margadia Sequeria (supra) are crystallized as under:-

> *"1. No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property."*

274. In the decision reported as *National Thermal Power Ltd v Mahesh Dutta*[182] this court held that:

> *"28. When possession is to be taken over in respect of the fallow or Patit land, a mere intention to do so may not be enough. It is, however, the positive stand by the appellant that the lands in question are agricultural land and crops used to be grown*

[180] AIR 1958 SC 434
[181] 2012 (5) SCC 370
[182] 2009 (8) SCC 339

therein. If the lands in question are agricultural lands, not only actual physical possession had to be taken but also they were required to be properly demarcated. If the land had standing crops, as has been contended by Mr. Raju Ramachandran, steps in relation thereto were required to be taken by the Collector. Even in the said certificate of possession, it had not been stated that there were standing crops on the land on the date on which possession was taken. We may notice that delivery of possession in respect of immoveable property should be taken in the manner laid down in Order XXI Rule 35 of the Code of Civil Procedure.

29. It is beyond any comprehension that when possession is purported to have been taken of the entire acquired lands, actual possession would be taken only of a portion thereof. The certificate of possession was either correct or incorrect. It cannot be partially correct or partially incorrect. Either the possession had actually been delivered or had not been delivered. It cannot be accepted that possession had been delivered in respect of about 10 acres of land and the possession could not be taken in respect of the rest 55 acres of land. When the provisions of Section 17 are taken recourse to, vesting of the land takes effect immediately.

30. Another striking feature of the case is that all the actions had been taken in a comprehensive manner. The Collector in his certificate of possession dated 16th November, 1984 stated that the possession had been taken over in respect of the entire land; the details of the land and the area thereof had also been mentioned in the certificate of possession; even NTPC in its letter dated 24th February, 1986 stated that possession had not been delivered only in respect of land situated in four villages mentioned therein. Indisputably NTPC got possession over 10.215 acres of land. It raised constructions thereover. It is difficult to comprehend that if the NTPC had paid 80% of the total compensation as provided for under sub-section (3A) of Section 17 of the Act, out of 65.713 acres of land it had obtained possession only in respect of about 10.215 acres of land and still for such a long time it kept mum. Ex-facie, therefore, it is difficult to accept that merely symbolic possession had been taken."

275. In *V. Chandrasekaran & Anr. v. Administrative Officer & Ors.*[183], the land was acquired and possession was handed over to the authorities. Later on the land was sold, documents were manipulated, and flats were constructed in an illegal manner. It was held that the land once acquired, cannot be restored. The State has no right to reconvey the land and no person can claim such a right nor derive an advantage. Sale of land after a notification under section 4 of the LA Act was held to be void. It was held in the facts of the case that the judicial process cannot be used to subvert its way. Such persons must not be permitted to profit from the frivolous litigation, and they must be prevented from taking false pleas by relying on forged documents or illegal action.

276. We have seen the blatant misuse of the provisions of section 24(2). Acquisitions that were completed several decades before even to say 50-60 years ago, or even as far back as 90 years ago were questioned; cases filed were dismissed. References were sought claiming higher compensation and higher compensation had been ordered. Now, there is a fresh bout of litigation started by erstwhile owners even after having received the compensation in many cases by submitting that possession has not been taken and taking of possession by drawing a *Panchnama* was illegal and they are in physical possession. As such, there is lapse of proceedings.

277. The court is alive to the fact that are a large number of cases where, after acquisition land has been handed over to various corporations, local authorities, acquiring bodies, etc. After depositing compensation (for the acquisition) those bodies and authorities have been handed possession of lands. They, in turn, after development of such acquired lands have handed over properties; third party interests have intervened and now declaration is sought under the cover of section 24(2) to invalidate all such actions. As held by us, section 24 does not intend to cover such cases at all and such gross misuse of the provisions of law must stop. Title once vested, cannot be obliterated, without an express legal provision; in any case, even if the landowners' argument that after possession too, in case of non-payment of compensation, the acquisition would lapse, were for arguments' sake, be accepted, these third party owners would be deprived of their lands, lawfully acquired by them, without compensation of any sort. Thus, we have no hesitation to overrule the decisions in *Velaxan Kumar* (supra) and Narmada Bachao Andolan (supra), with regard to mode of taking possession. We hold that drawing of Panchnama of taking possession is the mode of taking possession in land acquisition cases, thereupon land vests in the State and any re-entry or retaining the possession thereafter is unlawful and does not inure for conferring benefits under section 24(2) of the Act of 2013.

[183] (2012) 12 SCC 133

In Re Question No.5: the effect of interim order of Court

278. On behalf of acquiring authorities, it was submitted that period spent during the interim stay or injunction by which Authorities have not been able to take possession or to make payment, has to be excluded from computing the period of 5 years or more as provided in Section 24(2). It was submitted that in case authorities are restrained by interim order passed by the court in a pending litigation, the land acquisition cannot lapse by including the period for which interim stay order preventing the Authorities from taking action has operated. Reliance has been placed on the principles contained in maxim "*actus curiae neminem gravabit*". It was also submitted even in the absence of the provisions specifically excluding the period of interim stay/injunction having been made in Section 24(2) of the Act, 2013, the aforesaid principles are attracted and the period has to be excluded.

279. The landowners, on the other hand argued that there is no valid reason to exclude the period spent during the interim order by the court from the prescribed period of 5 years under Section 24(2) of the Act of 2013. For the main reason that the legislature has not specially provided for exclusion of such period in Section 24 and secondly, where Parliament has desired to exclude the period of interim order has made provision for exclusion of such period in proviso to Section 19 and *explanatio*n to Section 69 of the Act of 2013. In the Act of 1894, there was a similar provision made in Section 6 and *explanation* to Section 11A. During the process of consultation of the stakeholders while enacting the Act of 2013, the Government of NCT of Delhi had suggested that an explanation be added in the provisions of Section 24 to exclude the period of interim order passed by the court. The suggestion was not accepted by the Department of Land Reforms on the ground that same would be in conflict with the retrospective effect of the clause. Ultimately, in the final recommendation, the period of interim order of the court was not made. Thus, it is "*casus omissus*" which cannot be applied by the court. The maxim "*actus curiae neminem gravabit*" is not applied and is rare if ever applied to interpret the statute.

280. In *Padma Sundar Rao* (supra), a Constitution Bench of this Court has declined to rely on the maxim and similarly in *Khandaka Jain Jewellers*, (supra), the maxim was not applied. It was urged that in *Snell's Equity* (33rd Edition), 2015 with respect to the maxim, it has been observed that maxim of equity is not a specific rule of principle of law. It is a statement of a broad theme which underlies equitable concepts and principles. As a result, the utility of equitable maxim is limited. It can provide some support to the court when there is some uncertainty as to the scope of a particular rule of principle and a court in exercising an equitable discretion may apply the same.

281. Reference was also made to decision of *Parson Tools and Plants* (supra) to contend that court cannot supply the omission by engrafting on it or introducing in it under the guise of interpretation. To do so, it would be entrenching upon the preserves of the legislature. Where under Section 24 cut-off date is prescribed and there is no starting point and period for completion of task, the notion of excluding time spent in litigations is an alien concept to the provisions. The court must assume that the old law was oppressive and unjust and such introduction of exclusion of time may create complication in the working of the statute. It was also submitted that common law principles can be excluded by the legislature by express or implied implication in the statute itself. In this regard, reliance has been placed upon *Union of India v. SICOM Ltd*[184]. It was submitted on behalf of landowners that no provision had been enacted by issuing any ordinance and later amending the law, for providing for exclusion of the time spent on interim order under Section 24(2), but Ordinance lapsed. The legislature could have amended the provisions as such the court cannot exclude the period.

282. Before we go to various rival submissions, the pivotal question for consideration is the interpretation of Section 24 and aims and objectives of the Act of 2013. Section 24 contemplates that the proceedings initiated under the Act of 1894, are pending as on the date on which Act of 2013 has been enacted and if no award has been passed in the proceedings, then there is no lapse and only determination of compensation has to be made under the Act of 2013. Where an award has been passed, it is provided under Section 24(1)(b), the pending proceedings shall continue under the provisions of the Act of 1894 as if the old Act has not been repealed. The provisions totally exclude the applicability of any provision of Act of 2013. There are two requirements under Section 24(2), which are to be met by the Authorities, where award has been made 5 years or more prior to the commencement of the Act of 2013, if the physical possession of the land has not been taken nor compensation has been paid. If possession has been taken, compensation has to be paid by the acquiring authorities. The time of five years is provided for authorities to take action, not to sleep over the matter. In case of lethargy or machinery and default on the part of the Authorities and for no other reason the lapse is provided. Lapse is provided only in case of default by Authorities acquiring the land, not caused by any other reason or order of the court. When the interpretation of the provision is clear, there was no necessity for Parliament to make such a provision under Section 24(2) for exclusion of the period of the interim order. Though it has excluded the period of interim order for making declaration under the proviso to Sections 19(7) and exclusion has also been made for computation of the period under Section 69 of the Act of 2013. It is due to the necessity to provide so in view of the language of the provision. Under

[184] (2009) 2 SCC 121

section 69 of the Act of 2013, additional compensation at the rate of 12 per cent has to be given on market value for the period commencing from the date of the publication of the preliminary notification under Section 11. The additional compensation at the rate of 12 per cent has been excluded for the period acquisition proceedings have been held up on account of the interim injunction order of any court. The provisions of Section 24 cast an obligation upon the Authorities to take steps meaning thereby that it is open to them to take such steps, and inaction or lethargy on their part has not been countenanced by Parliament. Resultantly, lapse of proceedings takes place. It is by the very nature of the provisions if it was not possible for authorities for any reason not attributable to them or the Government to take requisite steps, the period has to be excluded. The Minister concerned Shri Jairam Ramesh in answer to the debate quoted above has made it clear that time limit of five years has been fixed for the Authorities to take action. If we do not exclude the period of interim order, the very spirit of the provision will be violated.

283. With respect to fixation of period is five years for the executive Authorities to take the requisite steps, *Delhi Development Authority v. Sukhbir Singh and Ors.* (supra) observed that what the legislature is in effect telling the executive is that they ought to have put their house in order and completed the acquisition proceedings within a reasonable time after the pronouncement of award. Not having done so even after a leeway of five years, would cross the limits of legislative tolerance, after which the whole proceeding would be deemed to have lapsed. Thus, it is apparent from the decision of *Delhi Development Authority v. Sukhbir Singh and Ors.* (supra), which is relied upon by the landowners, that time limit is fixed for the executive authorities to take steps. In case they are prevented by the court's order, obviously, as per the interpretation of the provisions is that such period has to be excluded. In case such a provision would have been made, it would have been "*ex abundanti cautela*". There was no necessity of making such a provision even if this proposition has been discussed during the formulation of legislation. However, the provision providing exclusion has been enacted. It casts an obligation upon the Authorities to take requisite steps within five years, that by itself excludes such period of interim order.

284. It was pointed out that in certain States, amendments have been incorporated in Section 24(2), excluding the period of interim order passed by the Court. In our opinion, there is no such necessity for providing exclusion of time and it has been done by the States "*ex abundanti cautela*" and there is no doubt about it that Central Government has also tried to introduce the provision of the exclusion of time by issuance of ordinances, however, they lapsed. It was due to the interpretation and the decision rendered by this Court in *Shree Balaji Nagar Residential Association* (supra), which cannot be said to be laying down the law correctly.

285. The intent of the Act of 2013, is not to benefit litigants only. It has introduced a new regime which is beneficial to the landowners. The provisions of Section 24 by itself do not intend to confer the benefits on litigating parties, while as per Section 114 of the Act of 2013 and section 6 of the General Clauses Act, has to be litigated as per the provisions of the Act of 1894.

286. Section 24 treats land acquisition proceedings as one and prescribes the transition mechanism for the said proceedings. Possession of the land holdings in normal course is to be taken at one go, not in piecemeal by the Authorities. Once award is made, possession can be taken and on that the land vests in State under section 16, and under Section 17(1) of the Act of 1894, the possession of any land can be taken for public purposes in cases of urgency without passing of the award. The expression "*acquisition proceedings*" is referred to in sub-sections (1) and (2) of Section 24 and its proviso makes it clear that in case in majority of the landholdings compensation has not been deposited, all the beneficiaries as on the date of notification under Section 4 (of the Act of 1894) shall be entitled to compensation in accordance with the provisions of the Act of 2013. That also intends to give benefits to all the concerned. Payment of compensation too has to be made. Possession of land holdings is to be taken in terms of the notification under Section 4 and declaration under section 6 and payment has to be made to the beneficiaries. In case payment has not been made to the landowners nor is possession taken, there is a lapse. In case compensation has not been deposited within 5 years with respect to majority of land holdings, then all the beneficiaries are entitled for higher compensation under the Act of 2013.

287. In the opinion of this court it is not the intendment of the Act of 2013 that those who have litigated should get benefits of higher compensation as contemplated under Section 24 benefit is conferred on all beneficiaries. It is not intended by the provisions that in piecemeal the persons who have litigated and have obtained the interim order should get the benefits of the provisions of the Act of 2013. Those who have accepted the compensation within 5 years and handed over the possession too, are to be benefited, in case amount has not been deposited with respect to majority of holdings. There are cases in which projects have come up in part and as per plan rest of the area is required for planned development with respect to which interim stays have been obtained. It is not the intendment of the law to deliver advantage to relentless litigants. It cannot be said hence, that it was due to the inaction of the authorities that possession could not be taken within 5 years. Public policy is not to foment or foster litigation but put an end to it. In several instances, in various High Courts writ petitions were dismissed by single judge Benches and the writ appeals were pending for a long time and in which, with respect to part of land of the projects, efforts were made to obtain the benefit of Section 24(2). Parliament in our view did not intend to confer benefits to such litigants for the aforementioned reasons. Litigation may be frivolous or may be

worthy. Such litigants have to stand on the strength of their own case and in such a case provisions of Section 114 of the Act of 2013 and Section 6 of the General Clauses Act, 1897, are clearly attracted and such proceedings have to be continued under the provisions of the old Act that would be in the spirit of Section 24(1)(b) itself of the Act of 2013. Section 6(b) of the General Clauses Act, 1897, provides that repeal will not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder. Section 6(c) states that repeal would not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. When there is a provision itself in Section 24(1)(b) of continuance of the proceedings where award has been passed under the Act of 1894, for the purposes of Section 24 as provided in Section 24(b), the provisions of Section 114 is clearly attracted so as the provisions of Section 6 of the General Clauses Act, 1897, to the extent of non obstante clause of Section 24, where possession has not been taken nor payment has been made, there is a lapse, that too by the inaction of the Authorities. Any court's interim order cannot be said to be inaction of the authorities or agencies; thus, time period is not to be included for counting the 5 years period as envisaged in Section 24(2). As per proviso to Section 24(2), where possession has been taken, but compensation has not been paid or deposited with respect to majority of land holdings, all the beneficiaries would be entitled for higher compensation only to that extent, the provisions of Section 114 of the Act of 2013, would be superseded but it would not obliterate the general application of Section 6 of the General Clauses Act, 1897, which deals with effect of repeal except as provided in section 24(2) and its proviso.

288. It was submitted on behalf of acquiring authorities that principle of *casus omissus* is not necessarily applicable in all the cases. Reliance has been placed on *Seaford Court Estates Ltd. v. Asher*[185], in which following observations have been made:

> *"The question for decision in this case is whether we are at liberty to extend the ordinary meaning of "burden" so as to include a contingent burden of the kind I have described. Now this court has already held that this sub-section is to be liberally construed so as to give effect to the governing principles embodied in the legislation (Winchester Court Ld. v. Miller); and I think we should do the same. Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of*

[185] (1949) 2 K.B. 481

Parliament have often been unfairly criticized. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word sc as to give "force and life" to the intention of the legislature. That was clearly laid down by the resolution of the judges in Heydon's case, and it is the safest guide to-day. Good practical advice on the subject was given about the same time by Plowden in his second volume Evston v. Studd. Put into homely metaphor it is this: A judge should ask himself the question: If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases.

Approaching this case in that way, I cannot help feeling that the legislature had not specifically in mind a contingent burden such as we have here. If it had, would it not have put it on the same footing as an actual burden? I think it would. It would have permitted an increase of rent when the terms were so changed as to put a positive legal burden on the landlord. If the parties expressly agreed between themselves the amount of the increase on that account the court would give effect to their agreement. But if, as here, they did not direct their minds to the point, the court has itself to assess the amount of the increase. It has to say how much the tenant should pay "in respect of" the transfer of this burden to the landlord. It should do this by asking what a willing tenant would agree to pay and a willing landlord would agree to accept in respect of it. Just as in the earlier cases the courts were able to assess the value of the "fair wear and tear" clause, and of a "cooker." So they can assess the value of the hot water clause and translate it fairly in terms of rent; and what applies to hot water applies also to the removal of refuse and so forth. I agree that the appeal should be allowed, and with the order proposed by Asquith LJ."

(emphasis supplied)

289. Reliance was also placed on *M. Pentiah v. Muddala Veeramallappa*[186], in which this Court observed that where the language of a statute in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment or to some inconvenience or absurdity, hardship or injustice, which is not intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. In *Hameedia Hardware Stores v. B. Mohan Lal Sowcar*[187], it was held that absurdity has to be avoided. In that decision reliance was placed on the decision in *Seaford Court Estates Ltd.* (supra), wherein it was observed that when a defect or omission appears, a judge cannot simply fold his hands and blame the draftsman. It is the duty to give force and life to the intention of the legislature. The court has to construe the words of the statute in a reasonable way having regard to the context.

290. Again, in *Madan Singh Shekhawat v. Union of India*[188] , the decision in *Seaford Court Estates Ltd.* (supra) has been followed. Following observations have been made:

> ***"18.*** *Applying the above rule, we are of the opinion that the rule-makers did not intend to deprive the army personnel of the benefit of the disability pension solely on the ground that the cost of the journey was not borne by the public exchequer. If the journey was authorised, it can make no difference whether the fare for the same came from the public exchequer or the army personnel himself."*

291. There cannot be any dispute with the above propositions. However, in the present case, when we construe the provisions of Section 24, it clearly ousts the period spent during the interim stay of the court. Five years' period is fixed for the purpose to take action, if they have not taken the action for 5 years or more, then there is lapse, not otherwise. Even if there had been a provision made with respect to the exclusion of time spent in the court proceedings with respect to interim stay due to court's order, it could have been *ex abundanti cautela*, which has been considered by this Court in *Union of India and Ors. v. Modi Rubber Ltd*[189]. It would have been superfluous to make such a provision. Following observations were made in *Modi Rubber Ltd.* (supra):

> ***"7.*** *Both these notifications, as the opening part shows, are issued under Rule 8(1) of the Central Excise Rules, 1944 and since the definition of 'duty' in Rule 2, clause (v) must necessarily be projected in Rule 8(1) and the expression "duty of*

[186] (1961) 2 SCR 295
[187] (1988) 2 SCC 513
[188] (1999) 6 SCC 459
[189] (1986) 4 SCC 66

excise" in Rule 8(1) must be read in the light of that definition, the same expression used in these two notifications issued under Rule 8(1) must also be interpreted in the same sense, namely, duty of excise payable under the Central Excises and Salt Act, 1944 and the exemption granted under both these notifications must be regarded as limited only to such duty of excise. But the respondents contended that the expression "duty of excise" was one of large amplitude and in the absence of any restrictive or limitative words indicating that it was intended to refer only to duty of excise leviable under the Central Excises and Salt Act, 1944, it must be held to cover all duties of excise whether leviable under the Central Excises and Salt Act, 1944 or under any other enactment. The respondents sought to support this contention by pointing out that whenever the Central Government wanted to confine the exemption granted under a notification to the duty of excise leviable under the Central Excises and Salt Act, 1944, the Central Government made its intention abundantly clear by using appropriate words of limitation such as "duty of excise leviable ... under Section 3 of the Central Excises and Salt Act, 1944" or "duty of excise leviable ... under the Central Excises and Salt Act, 1944" or "duty of excise leviable ... under the said Act" as in the Notification No. CER-8(3)/55-C.E. dated September 17, 1955, Notification No. 255/77-C.E. dated July 20, 1977, Notification No. CER-8(1)/55-C.E. dated September 2, 1955, Notification No. CER-8(9)/55-C.E. dated December 31, 1955, Notification No. 95/61-C.E. dated April 1, 1961, Notification No. 23/55-C.E. dated April 29, 1955 and similar other notifications. But, here said the respondents, no such words of limitation are used in the two notifications in question and the expression "duty of excise" must, therefore, be read according to its plain natural meaning as including all duties of excise, including special duty of excise and auxiliary duty of excise. Now, it is no doubt true that in these various notifications referred to above, the Central Government has, while granting exemption under Rule 8(1), used specified language indicating that the exemption, total or partial, granted under each such notification is in respect of excise duty leviable under the Central Excises and Salt Act, 1944. But, merely because, as a matter of drafting, the Central Government has in some notifications specifically referred to the excise duty in respect of which exemption is granted as "duty of excise" leviable under the Central Excises and Salt Act, 1944, it does not follow that in the absence of such words of specificity, the expression "duty of excise" standing by itself must be read as referring to all duties of excise. It is not uncommon to find that

> *the legislature sometimes, with a view to making its intention clear beyond doubt, uses language ex abundanti cautela though it may not be strictly necessary and even without it the same intention can be spelt out as a matter of judicial construction and this would be more so in case of subordinate legislation by the executive. The officer drafting a particular piece of subordinate legislation in the Executive Department may employ words with a view to leaving no scope for possible doubt as to its intention or sometimes even for greater completeness, though these words may not add anything to the meaning and scope of the subordinate legislation. Here, in the present notifications, the words duty of excise leviable under the Central Excises and Salt Act, 1944' do not find a place as in the other notifications relied upon by the respondents. But, that does not necessarily lead to the inference that the expression "duty of excise" in these notifications was intended to refer to all duties of excise including special and auxiliary duties of excise. The absence of these words does not absolve us from the obligation to interpret the expression "duty of excise" in these notifications. We have still to construe this expression — what is its meaning and import — and that has to be done bearing in mind the context in which it occurs. We have already pointed out that these notifications having been issued under Rule 8(1), the expression "duty of excise" in these notifications must bear the same meaning which it has in Rule 8(1) and that meaning clearly is — excise duty payable under the Central Excises and Salt Act, 1944 as envisaged in Rule 2 clause (v). It cannot in the circumstances bear an extended meaning so as to include special excise duty and auxiliary excise duty."*
>
> (emphasis supplied)

292. Relying on *State of U.P. and Ors. v. Hindustan Aluminium Corpn. and Ors.,*[190] it was submitted that whether a piece of legislation has spent itself or exhausted in operation are matters of law and no such rights exist in a citizen to ask for a declaration that the law has been impliedly repealed on any such ground. In extreme and clear cases, no doubt, an antiquated law may be said to have become obsolete and, more so, if it is a penal law and has become incapable of user by a drastic change in the circumstances. Craies on Statute Law, Seventh Edition, has discussed about different classes of enactments such as expired, spent, repealed in general terms, virtually repealed, superseded and obsolete.

293. The Act of 2013 operates prospectively. Section 114 of the Act of 2013, effects a repeal, but with certain savings, in accordance with Section 24. Thus,

[190] (1979) 3 SCC 229

acquisition proceedings are preserved under the Act of 1894, till the stage of making of award; where award is not made, the provisions of compensation under the Act of 2013 apply; where award is made, further proceedings would be under the new Act (of 2013). In case possession has been taken by the authorities concerning awards which were made 5 years or before, under the Act of 1894 and such proceedings are pending, that would be due to inaction of the authorities on the date on which the Act of 2013 came into force. The lapse (of acquisition) and higher compensation to follow only under Section 24(2), where compensation is not paid, nor possession of lands is taken. A period of 5 years or more has been provided under Section 24. In the case, however, where possession is taken, but compensation is not deposited in respect of majority landholdings, compensation under the Act of 2013 is payable to all-including those who received compensation earlier.

294. Reliance has been placed on the decision in *Syndicate Bank v. Prabha D. Naik and Anr*[191], in which it was observed that the legislature is supposed to be conscious of the needs of the society at large and the prevalent laws. It was held that there is no reason for assuming that the legislature was not aware of the difficulties and the prevailing situation. There is no dispute with the aforesaid proposition; however, it does not espouse the cause of the landowners.

295. The correctness of the decision of *Shree Balaji Nagar Residential Association* (supra) was doubted in *Yogesh Neema and Ors.* (supra), and the matter was referred to a larger Bench. In *Shree Balaji Nagar Residential Association* (supra) following observations were made:

> ***"11.*** *From a plain reading of Section 24 of the 2013 Act, it is clear that Section 24(2) of the 2013 Act does not exclude any period during which the land acquisition proceeding might have remained stayed on account of stay or injunction granted by any court. In the same Act, the proviso to Section 19(7) in the context of limitation for publication of declaration under Section 19(1) and the Explanation to Section 69(2) for working out the market value of the land in the context of delay between preliminary notification under Section 11 and the date of the award, specifically provide that the period or periods during which the acquisition proceedings were held up on account of any stay or injunction by the order of any court be excluded in computing the relevant period. In that view of the matter, it can be safely concluded that the legislature has consciously omitted to extend the period of five years indicated in Section 24(2) even if the proceedings had been delayed on account of an order of stay or injunction granted by a court of law or for any reason. Such*

[191] (2001) 4 SCC 713

casus omissus cannot be supplied by the court in view of law on the subject elaborately discussed by this Court in Padma Sundara Rao v. State of T.N (2002) 3 SCC 533.

12. *Even in the Land Acquisition Act of 1894, the legislature had brought about amendment in Section 6 through an Amendment Act of 1984 to add Explanation 1 for the purpose of excluding the period when the proceeding suffered stay by an order of the court, in the context of limitation provided for publishing the declaration under Section 6(1) of the Act. To a similar effect was the Explanation to Section 11-A, which was added by Amendment Act 68 of 1984. Clearly, the legislature has, in its wisdom, made the period of five years under Section 24(2) of the 2013 Act absolute and unaffected by any delay in the proceedings on account of any order of stay by a court. The plain wordings used by the legislature are clear and do not create any ambiguity or conflict. In such a situation, the court is not required to depart from the literal rule of interpretation."*

296. This Court held that the conscious omission by Parliament in Section 24(2) to exclude the period, an interim order operates is to be given effect and that the court should not fill in the gap. In *Indore Development Authority* (supra), the decision rendered in *Shree Balaji Nagar Residential Association* (supra) was overruled with consensus and it was not the subject matter in *Pune Municipal Corporation* (supra). However, the learned counsel for the parties had urged that this question arises as such it should be framed and considered by the present larger Bench. Hence, we have examined the matter afresh.

297. In cases where some landowners have chosen to take recourse to litigation (which they have a right to) and have obtained interim orders on taking possession or orders of *status quo*, as a matter of practical reality it is not possible for the authorities or State officials to take the possession or to make payment of the compensation. In several instances, such interim orders also impeded the making of an award. Now, so far as awards (and compensation payments, pursuant to such proceedings were concerned) the period provided for making of awards under the Act of 2013 could be excluded by virtue of Explanation to Section 11A[192]. Thus,

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[192] ***"11-A. Priod within which an award shall be made***
The Collcctor shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period. the entire proceedings for the acquisition ofthc land shall lapse:

Provided that in a case where thc said declaration has been published before the commencement of the Land Acquisition (Amendment) Act. 1984 the award shall be made within a period of two years from such commencements.

Explanation : *In computing the period of two years referred to in this section. the period during which any action or proceeding to be taken in pursuance of the s..'lid declaration is stayed by an order ofa court shall be excluded.*

no fault of inaction can be attributed to the authorities and those who had obtained such interim orders, cannot benefit by their own action in filing litigation, which may or may not be meritorious. Apart from the question of merits, when there is an interim order with respect to the possession or order of *status quo* or stay of further proceedings, the authorities cannot proceed; nor can they pay compensation. Their obligations are intertwined with the scheme of land acquisition. It is observed that authorities may wait in the proceedings till the interim order is vacated.

298. In our considered opinion, litigation which initiated by the landowners has to be decided on its own merits and the benefits of Section 24(2) should not be available to the litigants. In case there is no interim order, they can get the benefits they are entitled to, not otherwise as a result of fruit of litigation, delays and dilatory tactics and some time it may be wholly frivolous pleas and forged documents as observed in *V. Chandrasekaran* (supra) mentioned above.

299. In *Abhey Ram (Dead) by L.Rs. and Ors. v. Union of India and Ors*[193]., this Court considered the extended meaning of words "stay of the action or proceedings". It was observed that any type of orders passed by this Court would be an inhibitive action on the part of the Authorities to proceed further. This Court observed thus:

> ***"9****. Therefore, the reasons given in B.R. Gupta v. Union of India, 37 (1989) DLT 150 (Del) DB, are obvious with reference to the quashing of the publication of the declaration under Section 6 vis-a-vis the writ petitioners therein. The question that arises for consideration is whether the stay obtained by some of the persons who prohibited the respondents from publication of the declaration under Section 6 would equally be extendible to the cases relating to the appellants. We proceed on the premise that the appellants had not obtained any stay of the publication of the declaration but since the High Court in some of the cases has, in fact, prohibited them as extracted hereinbefore, from publication of the declaration, necessarily, when the Court has not restricted the declaration in the impugned orders in support of the petitioners therein, the officers had to hold back their hands till the matters were disposed of. In fact, this Court has given extended meaning to the orders of stay or proceeding in various cases, namely, Yusufbhai Noormohmed Nendoliya v. State of Gujarat, (1991) 4 SCC 531, Hansraj H. Jain v. State of Maharashtra, (1993) 3 SCC 634, Sangappa Gurulingappa Sajjan v. State of Karnataka, (1994) 4 SCC 145, Gandhi Grah*

[193] (1997) 5 SCC 421

> *Nirman Sahkari Samiti Ltd. v. State of Rajasthan, (1993) 2 SCC 662, G. Narayanaswamy Reddy v. Govt. of Karnataka, (1991) 3 SCC 261 and Roshnara Begum v. Union of India, (1986) 1 Apex Dec 6. The words "stay of the action or proceeding" have been widely interpreted by this Court and mean that any type of the orders passed by this Court would be an inhibitive action on the part of the authorities to proceed further. When the action of conducting an enquiry under Section 5-A was put in issue and the declaration under Section 6 was questioned, necessarily unless the Court holds that enquiry under Section 5-A was properly conducted and the declaration published under Section 6 was valid, it would not be open to the officers to proceed further into the matter. As a consequence, the stay granted in respect of some would be applicable to others also who had not obtained stay in that behalf. We are not concerned with the correctness of the earlier direction with regard to Section 5-A enquiry and consideration of objections as it was not challenged by the respondent Union. We express no opinion on its correctness, though it is open to doubt."*

300. In *Om Parkash v. Union of India and Ors.*[194], it was observed that interim order of stay granted in one of the matters of the landowners would put complete restraint on the respondents to proceed further to issue declaration under Section 6 of the Act. It was observed as under:

> ***"72.** Thus, in other words, the interim order of stay granted in one of the matters of the landowners would put complete restraint on the respondents to have proceeded further to issue notification under Section 6 of the Act. Had they issued the said notification during the period when the stay was operative, then obviously they may have been hauled up for committing contempt of court. The language employed in the interim orders of stay is also such that it had completely restrained the respondents from proceeding further in the matter by issuing declaration/notification under Section 6 of the Act."*

301. In *Suresh Chand v. Gulam Chisti*[195], this Court considered the provision where tenant would not be entitled to the protection of Section 39. If the suit had prolonged beyond ten years, then the tenant would be entitled to such protection. The interpretation suggested was not accepted by this Court as that would encourage the tenant to protract the litigation. This Court frowned upon obtaining of fruits by protracting the litigation on the ground of public policy. This Court observed thus:

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[194] (2010) 4 SCC 17
[195] (1990) 1 SCC 593

> ***"17.*** *It was argued that the words 'commencement of this Act' should be construed to mean the date on which the moratorium period expired and the Act became applicable to the demised building. Such a view would require this Court to give different meanings to the same expression appearing at two places in the same section. The words 'on the date of commencement of this Act' in relation to the pendency of the suit would mean July 15, 1972 as held in Om Prakash Gupta v. Dig Vijendrapal Gupta, (1982) 2 SCC 61, but the words 'from such date of commencement' appearing immediately thereafter in relation to the deposit to be made would have to be construed as the date of actual application of the Act at a date subsequent to July 15, 1972. Ordinarily, the rule of construction is that the same expression where it appears more than once in the same statute, more so in the same provision, must receive the same meaning unless the context suggests otherwise. Besides, such an interpretation would render the use of prefix 'such' before the word 'commencement' redundant. Thirdly such an interpretation would run counter to the view taken by this Court in Atma Ram Mittal case, (1988) 4 SCC 284, wherein it was held that no man could be made to suffer because of the court's fault or court's delay in the disposal of the suit. To put it differently, if the suit could be disposed of within the period of 10 years, the tenant would not be entitled to the protection of Section 39, but if the suit is prolonged beyond ten years, the tenant would be entitled to such protection. Such an interpretation would encourage the tenant to protract the litigation, and if he succeeds in delaying the disposal of the suit till the expiry of 10 years, he will secure the benefit of Section 39, otherwise not. We are, therefore, of the opinion that it is not possible to uphold the argument."*

302. In *Shyam Sunder and Ors. v. Ram Kumar and Anr.*[196], a Constitution Bench of this Court observed that substantive rights of the parties are to be examined on the date of the suit unless the legislature makes such rights retrospective. The Court made following observations:

> ***"28.*** *From the aforesaid decisions the legal position that emerges is that when a repeal of an enactment is followed by a fresh legislation, such legislation does not affect the substantive rights of the parties on the date of the suit or adjudication of the suit unless such a legislation is retrospective and a court of appeal cannot take into consideration a new law brought into*

[196] (2001) 8 SCC 24

existence after the judgment appealed from has been rendered because the rights of the parties in an appeal are determined under the law in force on the date of the suit. However, the position in law would be different in the matters which relate to procedural law, but so far as substantive rights of parties are concerned, they remain unaffected by the amendment in the enactment. We are, therefore, of the view that where a repeal of provisions of an enactment is followed by fresh legislation by an amending Act, such legislation is prospective in operation and does not affect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment. We are further of the view that there is a presumption against the retrospective operation of a statute and further a statute is not to be construed to have a greater retrospective operation than its language renders necessary, but an amending Act which affects the procedure is presumed to be retrospective unless the amending Act provides otherwise. We have carefully looked into the new substituted Section 15 brought in the parent Act by the Amendment Act, 1995 but do not find it either expressly or by necessary implication retrospective in operation which may affect the rights of the parties on the date of adjudication of the suit and the same is required to be taken into consideration by the appellate court. In Shanti Devi v. Hukum Chand, (1996) 5 SCC 768, this Court had occasion to interpret the substituted Section 15 with which we are concerned and held that on a plain reading of Section 15, it is clear that it has been introduced prospectively and there is no question of such section affecting in any manner the judgment and decree passed in the suit for pre-emption affirmed by the High Court in the second appeal. We are respectfully in agreement with the view expressed in the said decision and hold that the substituted Section 15 in the absence of anything in it to show that it is retrospective, does not affect the right of the parties which accrued to them on the date of the suit or on the date of passing of the decree by the court of the first instance. We are also of the view that the present appeals are unaffected by the change in law insofar it related to the determination of the substantive rights of the parties and the same are required to be decided in the light of the law of pre-emption as it existed on the date of passing of the decree."

(emphasis supplied)

303. In *Sarah Mathew* (supra), it was observed that delay caused by the court in taking cognizance cannot deny justice to the litigant. A court of law would interpret and make the reasonable construction rather than applying a doctrine which would make the provision unsustainable and ultra vires the Constitution.

This Court observed thus:

> *"37. We are inclined to take this view also because there has to be some amount of certainty or definiteness in matters of limitation relating to criminal offenses. If, as stated by this Court, taking cognizance is the application of mind by the Magistrate to the suspected offense, the subjective element comes in. Whether a Magistrate has taken cognizance or not will depend on facts and circumstances of each case. A diligent complainant or the prosecuting agency which promptly files the complaint or initiates prosecution would be severely prejudiced if it is held that the relevant point for computing limitation would be the date on which the Magistrate takes cognizance. The complainant or the prosecuting agency would be entirely left at the mercy of the Magistrate, who may take cognizance after the limitation period because of several reasons; systemic or otherwise. It cannot be the intention of the legislature to throw a diligent complainant out of the court in this manner. Besides, it must be noted that the complainant approaches the court for redressal of his grievance.*
>
> *He wants action to be taken against the perpetrators of crime. The courts functioning under the criminal justice system are created for this purpose. It would be unreasonable to take the view that delay caused by the court in taking cognizance of a case would deny justice to a diligent complainant. Such an interpretation of Section 468 CrPC would be unsustainable and would render it unconstitutional. It is well settled that a court of law would interpret a provision which would help to sustain the validity of the law by applying the doctrine of reasonable construction rather than applying a doctrine which would make the provision unsustainable and ultra vires the Constitution. (U.P. Power Corpn. Ltd. v. Ayodhya Prasad Mishra. (2008) 10 SCC 139)"*

304. When the authorities are disabled from performing duties due to impossibility, would be a good excuse for them to save them from rigour of provisions of Section 24(2). A litigant may be right or wrong. He cannot be permitted to take advantage of a situation created by him of interim order. The doctrine "*commodum ex-injuria sua Nemo habere debet*" that is convenience cannot accrue to a party from his own wrong. Provisions of Section 24 do not discriminate litigants or non-litigants and treat them differently with respect to the same acquisition, otherwise, anomalous results may occur and provisions may become discriminatory in itself.

305. In *Union of India v. Shiv Raj*[197], this Court did not consider the question of exclusion of the time. In *Karnail Kaur and Ors. v. State of Punjab and Ors.*, (supra) and in *Shree Balaji Nagar Residential Association* (supra), various aspects including the interpretation of provisions of Section 24 were not taken into consideration. Thus, the said rulings cannot be said to be laying down good law.

306. In *Union of India and Ors. v. North Telumer Colliery & Ors*[198], this Court observed that delaying tactics should not be permitted to fructify. By causing delay, the owner would get huge amount of interest, but he may not get a penny out of the principal amount. It would amount to conferring unjust benefit on the owners which can never be the intention of the Parliament. This Court observed:

> ***"8**. The High Court's conclusions are primarily based on the interpretation of Section 18(5) of the Coal Act. The High Court has quoted the meaning of words "enure" and "benefit" from various dictionaries. No dictionary or any outside assistance is needed to understand the meaning of these simple words in the context and scheme of the Coal Act. The interest has to enure to the benefit of the owners of the coal mines. The claims before the Commissioner under the Coal Act are from the creditors of the owners, and the liabilities sought to be discharged are also of the owners of the coal mines. When the debts are paid and the liabilities discharged, it is only the owners of coal mines who are benefited. Taking away the interest amount by the owners without discharging their debts and liabilities would be unreasonable. They have only to adopt delaying tactics to postpone the disbursement of claims and consequently earn more interest. Due to such delay, the owner would get huge amount of interest though ultimately, he may not get a penny out of principal amount on the final settlement of claims. It would amount to conferring unjust benefit on the owners which can never be the intention of the Parliament. We do not agree with the interpretation given by the High Court and hold that the interest accruing under the Coal Act is the money paid to the Commissioner in relation to the coal mine and the same has to be utilized by the Commissioner in meeting the claims of the creditors and discharging other liabilities in accordance with the provisions of the Coal Act."*

307. It may not be doubtful conduct to file frivolous litigation and obtain stay; but benefit of Section 24 (2) should not be conferred on those who prevented the taking of possession or payment of compensation, for the period spent during the stay.

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[197] 2014 (6) SCC 564
[198] 1989 (3) SCC 411

308. In *Padma Sundara Rao (Dead) & Ors.* (supra), this Court considered the question of *casus omissus* and observed thus:

> ***"12.*** *The rival pleas regarding rewriting of statute and casus omissus need careful consideration. It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in words used by the legislature itself. The question is not what may be supposed and has been intended, but what has been said. "Statutes should be construed, not as theorems of Euclid," Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them." (See Lenigh Valley Coal Co. v. Yensavage, 218 FR 547) The view was reiterated in Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama (1990) 1 SCC 277.*
>
> ***13.*** *In D.R. Venkatchalam v. Deputy Transport Commissioner (1977) 2 SCC 273, it was observed that Courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.*
>
> ***14.*** *While interpreting a provision, the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify, or repeal it, if deemed necessary. (See Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd., (2000) 5 SCC 515) The legislative casus omissus cannot be supplied by the judicial interpretative process. The language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in Narasimhaiah's case. In Nanjudaiah's case, the period was further stretched to have the time period run from the date of service of the High Court's order. Such a view cannot be reconciled with the language of Section 6(1). If the view is accepted, it would mean that a case can be covered by not only clause (i) and/or clause (ii) of the proviso to Section 6(1), but also by a non-prescribed period. The same can never be the legislative intent.*
>
> ***16.*** *The plea relating to the applicability of the stare decisis principles is clearly unacceptable. The decision in K. Chinnathambi Gounder v. Government of T.N., AIR 1980 Mad*

> *251 was rendered on 22-6-1979, i.e., much prior to the amendment by the 1984 Act. If the legislature intended to give a new lease of life in those cases where the declaration under Section 6 is quashed, there is no reason why it could not have done so by specifically providing for it. The fact that the legislature specifically provided for periods covered by orders of stay or injunction clearly shows that no other period was intended to be excluded and that there is no scope for providing any other period of limitation. The maxim actus curiae neminem gravabit highlighted by the Full Bench of the Madras High Court has no application to the fact situation of this case."*

309. There is no dispute with the aforesaid proposition that *casus omissus* cannot be applied by the court and in case of clear necessity, the court has to interpret the law, if the provision of law is misused and subjected to abuse of process of law. It is for the legislature to amend, modify and repeal a law, if deemed necessary. Because of the above-mentioned interpretation of the provisions of Section 24 itself, we are unable to accept the submission made. We are not applying *casus omissus* as urged. In *Padma Sundara Rao* (supra), this Court considered the period of limitation for issuances of declaration under Section 6 of the Act of 1894. The period has been stretched further in the case of *State of Karnataka v. D.C. Nanjudaiah*[199]. Few expressions in the aforesaid decision were held to be incorrect. In *Padma Sundara Rao* (supra), this Court held that when a period, which the legislature has specifically provided, is covered by orders of stay and injunction, no other period could be intended to be excluded by providing time period to run from the date of service of the High Court's order and it would not be open to court to add to that period. The question in *Padma Sundara Rao* (supra) was totally different and it was of counting the period over and above excluded in the provisions, *inter alia,* from the very interpretation of Section 24.

310. As regards application of the maxim to a statute, in *Rana Girders Ltd. v. Union of India*[200], this Court observed that the statutory provision would prevail upon the common law principles. The decision in *Rana Girders Ltd.* (supra) was considered in *Union of India* (supra) where this Court observed thus:

> ***"9.*** *Generally, the rights of the Crown to recover the debt would prevail over the right of a subject. Crown debt means the "debts due to the State or the King; debts which a prerogative entitles the Crown to claim priority for before all other creditors." [See Advanced Law Lexicon by P. Ramanatha Aiyar (3rd Edn.), p. 1147.] Such creditors, however, must be held to mean unsecured creditors. The principle of Crown debt as such pertains to the*

[199] (1996) 10 SCC 619
[200] 2013 (10) SCC 746

common law principle. A common law, which is law within the meaning of Article 13 of the Constitution, is saved in terms of Article 372 thereof. Those principles of common law, thus, which were existing at the time of coming into force of the Constitution of India, are saved by reason of the aforementioned provision. A debt that is secured or which by reason of the provisions of a statute becomes the first charge over the property having regard to the plain meaning of Article 372 of the Constitution of India must be held to prevail over the Crown debt, which is an unsecured one.

10. *It is trite that when Parliament or a State Legislature makes an enactment, the same will prevail over the common law. Thus, the common law principle which was existing on the date of coming into force of the Constitution of India must yield to a statutory provision. To achieve the same purpose, Parliament as also the State Legislatures inserted provisions in various statutes, some of which have been referred to hereinbefore, providing that the statutory dues shall be the first charge over the properties of the taxpayer. This aspect of the matter has been considered by this Court in a series of judgments."*

311. There is no doubt that common law principles have to be weighed upon the statutory provision and latter has to prevail, but the statutory provision itself makes it clear that in the instant matter such period has to be excluded, thus, the principles of common law also apply with full force. In *Mary Angel and Ors. v. State of T.N.*[201], the maxim *"expression unius est exclusio alterius*" came to be considered by this Court. It was held that maxim needs to be applied when its application having regard to the subject matter to which it is to be applied, leads to inconsistency or injustice. This Court observed:

"19. *Further, for the rule of interpretation on the basis of the maxim "expressio unius est exclusio alterius," it has been considered in the decision rendered by the Queen's Bench in the case of Dean v. Wiesengrund, (1955) 2 QB 120. The Court considered the said maxim and held that after all, it is no more than an aid to construction and has little if any, weight where it is possible to account for the "inclusio unius" on grounds other than the intention to affect the "exclusio alterius." Thereafter, the Court referred to the following passage from the case of Colquhoun v. Brooks, (1887) 19 QBD 400, QBD at 406 wherein the Court called for its approval—*

"... 'The maxim "expressio unius est exclusio alterius" has been pressed upon us. I agree with what is said in the court below by

[201] 1999 (5) SCC 209

> *Wills, J., about this maxim. It is often a valuable servant, but a dangerous master to follow in the construction of statutes or documents. The exclusio is often the result of inadvertence or accident, and the maxim ought not to be applied, when its application, having regard to the subject-matter to which it is to be applied, leads to inconsistency or injustice.' In my opinion, the application of the maxim here would lead to inconsistency and injustice, and would make Section 14(1) of the Act of 1920 uncertain and capricious in its operation."*

312. The maxim "lex *non cogit ad impossibilia"* means that the law does not expect the performance of the impossible. Though payment is possible but the logic of payment is relevant. There are cases in which compensation was tendered, but refused and then deposited in the treasury. There was litigation in court, which was pending (or in some cases, decided); earlier references for enhancement of compensation were sought and compensation was enhanced. There was no challenge to acquisition proceedings or taking possession etc. In pending matters in this Court or in the High Court even in proceedings relating to compensation, Section 24 (2) was invoked to state that proceedings have lapsed due to non-deposit of compensation in the court or to deposit in the treasury or otherwise due to interim order of the court needful could not be done, as such proceedings should lapse.

313. In *Chander Kishore Jha v. Mahabir Prasad*[202] , an election petition was to be presented in the manner prescribed in Rule 6 of Chapter XXI-E of the Patna High Court Rules. The rules stipulated that the election petition, could under no circumstances, be presented to the Registrar to save the period of limitation. The election petition could be presented in the open court upto 4.15 p.m. i.e., working hours of the court. The Chief Justice had passed the order that court shall not sit for the rest after 3.15 p.m. Thus, the petition filed the next day was held to be within time. In *Mohammed Gazi v. State of M.P. & Ors*[203]*.,* the maxim *"actus curiae neminem gravabit"* came up for consideration along with maxim "lex *non cogit ad impossibilia"* - the law does not compel a man to perform act which is not possible. Following observations had been made:

> ***"7.*** *In the facts and circumstances of the case, the maxim of equity, namely, actus curiae neminem gravabit — an act of the court shall prejudice no man, shall be applicable. This maxim is founded upon justice and good sense, which serves a safe and certain guide for the administration of law. The other maxim is, lex non cogit ad impossibilia — the law does not compel a man to do what he cannot possibly perform. The law itself and its*

[202] 1999 (8) SCC 266
[203] 2000 (4) SCC 342

> *administration are understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in consideration of particular cases. The applicability of the aforesaid maxims has been approved by this Court in Raj Kumar Dey v. Tarapada Dey, (1987) 4 SCC 398 and Gursharan Singh v. New Delhi Municipal Committee, (1996) 2 SCC 459."*

314. Another Roman Law maxim *"nemo tenetur ad impossibilia",* means no one is bound to do an impossibility. Though such acts of taking possession and disbursement of compensation are not impossible, yet they are not capable of law performance, during subsistence of a court's order; the order has to be complied and cannot be violated. Thus, on equitable principles also, such a period has to be excluded. In *Industrial Finance Corporation of India Ltd. v. Cannanore Spinning & Weaving Mills Ltd. & Ors.*[204]*,* this Court observed that where law creates a duty or charge and the party is disabled to perform it, without any default and has no remedy over, there the law will in general excuse him. This Court relying upon the aforesaid maxim observed as under:

> ***"30.*** *The Latin maxim referred to in the English judgment lex non cogit ad impossibilia also expressed as impotentia excusat legem in common English acceptation means, the law does not compel a man to do that which he cannot possibly perform. There ought always thus to be an invincible disability to perform the obligation, and the same is akin to the Roman maxim nemo tenetur ad impossible. In Broom's Legal Maxims, the state of the situation has been described as below:*
>
> > *"It is, then, a general rule which admits of ample practical illustration, that impotentia excusat legem; where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over, there the law will in general excuse him (t): and though impossibility of performance is, in general, no excuse for not performing an obligation which a party has expressly undertaken by contract, yet when the obligation is one implied by law, impossibility of performance is a good excuse. Thus in a case in which consignees of a cargo were prevented from unloading a ship promptly by reason of a dock*

[204] 2002 (5) SCC 54

> *strike, the Court, after holding that in the absence of an express agreement to unload in a specified time there was implied obligation to unload within a reasonable time, held that the maxim lex non cogit ad impossibilia applied, and Lindley, L.J., said: 'We have to do with implied obligations, and I am not aware of any case in which an obligation to pay damages is ever cast by implication upon a person for not doing that which is rendered impossible by causes beyond his control.'"*

315. In *HUDA and Anr. v. Dr. Babeswar Kanhar & Anr*[205], this Court considered the general principle that a party prevented from doing an act by some circumstances beyond his control, can do so at the first subsequent opportunity as held in *Sambasiva Chari v. Ramasami Reddi*[206]. In *Dr. Babeswar Kanhar* (supra), it was observed thus:

> ***"5.*** *What is stipulated in clause 4 of the letter dated 30-10-2001 is a communication regarding refusal to accept the allotment. This was done on 28-11-2001. Respondent 1 cannot be put to a loss for the closure of the office of HUDA on 1-12-2001 and 2-12-2001 and the postal holiday on 30-11-2001. In fact, he had no control over these matters. Even the logic of Section 10 of the General Clauses Act, 1897, can be pressed into service. Apart from the said section and various provisions in various other Acts, there is the general principle that a party prevented from doing an act by some circumstances beyond his control, can do so at the first subsequent opportunity (see Sambasiva Chari v. Ramasami Reddi, (1898) 8 MLJ 265). The underlying object of the principle is to enable a person to do what he could have done on holiday, on the next working day. Where, therefore, a period is prescribed for the performance of an act in a court or office, and that period expires on holiday, then the act should be considered to have been done within that period if it is done on the next day on which the court or office is open. The reason is that the law does not compel the performance of an impossibility. (See Hossein Ally v. Donzelle, ILR (1880) 5 Cal 906.) Every consideration of justice and expediency would require that the accepted principle, which underlies Section 10 of the General Clauses Act, should be applied in cases where it does not otherwise in terms apply. The principles underlying are lex non cogit ad impossibilia (the law does not compel a man to do the impossible) and actus curiae neminem gravabit (the act of court shall prejudice no man). Above being the position, there is nothing infirm in the orders passed by the forums below. However, the rate of interest fixed appears to be slightly on the higher side and is reduced to*

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[205] (2005) 1 SCC 191
[206] ILR (1899) 22 Mad 179

9% to be paid with effect from 3-12-2001, i.e., the date on which the letter was received by HUDA."

316. In *re Presidential Poll*[207], this Court made similar observations. When there is a disability to perform a part of the law, such a charge has to be excused. When performance of the formalities prescribed by a statute is rendered impossible by circumstances over which the persons concerned have no control, it has to be taken as a valid excuse. The Court observed:

> ***"15.*** *The impossibility of the completion of the election to fill the vacancy in the office of the President before the expiration of the term of office in the case of death of a candidate as may appear from Section 7 of the 1952 Act does not rob Article 62(1) of its mandatory character. The maxim of law impotentia excusat legam is intimately connected with another maxim of law lex non cogit ad impossibilia. Impotentia excusat legam is that when there is a necessary or invincible disability to perform the mandatory part of the law that impotentia excuses. The law does not compel one to do that which one cannot possibly perform. "Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him and has no remedy over it, there the law will in general excuse him." Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like the act of God, the circumstances will be taken as a valid excuse. Where the act of God prevents the compliance of the words of a statute, the statutory provision is not denuded of its mandatory character because of supervening impossibility caused by the act of God. (See Broom's Legal Maxims 10th Edn. At pp. 162-163 and Craies on Statute Law 6th Edn. at p. 268)."*

317. In *Standard Chartered Bank v. Directorate of Enforcement*[208], the legal maxim *"impotentia excusat legem"* has been applied to hold that law does not compel a man to do that which cannot possibly be performed. Though the maxim with respect to the impossibility of performance may not be strictly applicable, however, the effect of the court's order, for the time being, made the Authorities disable to fulfill the obligation. Thus, when they were incapable of performing, they have to be permitted to perform at the first available opportunity, which is the time prescribed by the statute for them, i.e., the total period of 5 years excluding the period of the interim order.

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[207] (1974) 2 SCC 33
[208] (2005) 4 SCC 530

318. The maxim *actus curiae neminem gravabit* is founded upon the principle due to court proceedings or acts of court, no party should suffer. If any interim orders are made during the pendency of the litigation, they are subject to the final decision in the matter. In case the matter is dismissed as without merit, the interim order is automatically dissolved. In case the matter has been filed without any merit, the maxim is attracted *commodum ex injuria sua nemo habere debet,* that is, convenience cannot accrue to a party from his own wrong. No person ought to have the advantage of his own wrong. In case litigation has been filed frivolously or without any basis, iniquitously in order to delay and by that it is delayed, there is no equity in favour of such a person. Such cases are required to be decided on merits. In *Mrutunjay Pani and Anr. v. Narmada Bala Sasmal and Anr*[209], this Court observed that:

> *"(5) X x x The same principle is comprised in the latin maxim commodum ex injuria sua nemo habere debet, that is, convenience cannot accrue to a party from his own wrong. To put it in other words, no one can be allowed to benefit from his own wrongful act. ..."*

319. It is not the policy of law that untenable claims should get fructified due to delay. Similarly, sufferance of a person who abides by law is not permissible. The Act of 2013 does not confer the benefit on unscrupulous litigants, but it aims at and frowns upon the lethargy of the officials to complete the requisites within five years.

320. The States urge that by refusal to accept compensation, one cannot take advantage of own conduct. This idea is explained in *Maxwell on the Interpretation of Statutes* (12th Edition) by P. St. J. Langon, wherein following observations have been made:

> *"On the principles of avoiding injustice and absurdity, any construction will, if possible, be rejected (unless the policy of the Act requires it) if it would enable a person by his own act to impair an obligation which he has undertaken, or otherwise to profit by his own wrong. He may not take advantage of his own wrong. He may not plead in his own interest a self created necessity" (Kish v. Taylor, (1911) 1 K.B. 625, per Fletcher Moulton I.J. at page 634).*
>
> *Thus an Act which authorised justices to discharge apprentice from his indenture in certain circumstances "on the master's appearance" before them justified a discharge in his wilful absence. It would have been unreasonable to have construed the*

[209] AIR 1961 SC 1353

> *Act in such a way that the master derived an advantage from his own obstinacy (Ditton's Case (1701) 2 Salk. 490)"*

321. In *G.T.C. Industries Ltd. v. Union of India*[210], it was observed that while vacating stay, it is the court's duty to account for the period of delay and to settle equities. It is not the gain which can be conferred. In *Jaipur Municipal Corporation v. C. L. Mishra*[211], it has been observed that interim order merges in the final order, and it cannot have an independent existence, cannot survive beyond final decision. In *Ram Krishna Verma v. the State of U.P*[212], reliance was placed on *Grindlays Bank Ltd. v. C.I.T*[213]. It was held that no one could be permitted to suffer from the act of the court and in case an interim order has been passed and ultimately petition is found to be without merit and is dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralized.

322. In *Mahadeo Savlaram Shelke v. Pune Municipal Corporation*[214], it has been observed that the Court can under its inherent jurisdiction *ex debito justitiae* has a duty to mitigate the damage suffered by the defendants by the act of the court. Such action is necessary to put a check on abuse of process of the court. In *Amarjeet Singh and Ors. v. Devi Ratan and Ors*[215], and *Ram Krishna Verma* (supra), it was observed that no person can suffer from the act of court and unfair advantage of the interim order must be neutralized. In *Amarjeet Singh* (supra), this Court observed:

> ***"17.*** *No litigant can derive any benefit from mere pendency of the case in a court of law, as the interim order always merges in the final order to be passed in the case, and if the writ petition is ultimately* dismissed, *the interim order stands nullified automatically. A party cannot be allowed to take any benefit of its own wrongs by getting an interim order and thereafter blame the court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim actus curiae neminem gravabit, which means that the act of the court shall prejudice no one, becomes applicable in such a case. In such a fact situation, the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralized, as the institution of litigation cannot be permitted to confer any*

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[210] (1998) 3 SCC 376
[211] (2005) 8 SCC 423
[212] (1992) 2 SCC 620
[213] (1980) 2 SCC 191
[214] (1995) 3 SCC 33
[215] (2010) 1 SCC 417

advantage on a suitor from delayed action by the act of the court. (Vide Shiv Shankar v. U.P. SRTC, 1995 Supp (2) SCC 726, GTC Industries Ltd. v. Union of India, (1998) 3 SCC 376 and Jaipur Municipal Corpn. v. C.L. Mishra, (2005) 8 SCC 423.)

***18.** In Ram Krishna Verma v. the State of U.P. (1992) 2 SCC 620, this Court examined a similar issue while placing reliance upon its earlier judgment in Grindlays Bank Ltd. v. ITO, (1980) 2 SCC 191 and held that no* person *can suffer from the act of the court and in case an interim order has been passed, and the petitioner takes advantage thereof, and ultimately the petition is found to be without any merit and is dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralized."*

323. In *Karnataka Rare Earth and Anr. v. Senior Geologist, Department of Mines & Geology*[216], this Court observed that maxim *actus curiae neminem gravabit* requires that the party should be placed in the same position but for the court's order which is ultimately found to be not sustainable which has resulted in one party gaining advantage which otherwise would not have earned and the other party has suffered but for the orders of the court. The successful party can demand the delivery of benefit earned by the other party, or make restitution for what it has lost. This Court observed:

***"10.** In x x x x the doctrine of actus curiae neminem gravabit and held that the doctrine was not confined in its application only to such acts of the court which were erroneous; the doctrine is applicable to all such acts as to which it can be* held *that the court would not have so acted had it been correctly apprised of the facts and the law. It is the principle of restitution that is attracted. When on account of an act of the party, persuading the court to pass an order, which at the end is held as not sustainable, has resulted in one party gaining advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered, but for the order of the court and the act of such party, then the successful party finally held entitled to a relief, assessable in terms of money at the end of the litigation, is entitled to be compensated in the same manner in which the parties would have been if the interim order of the court would not have been passed. The successful party can demand: (a) the delivery of*

[216] (2004) 2 SCC 783

> *benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost.*
>
> ***11.*** *In the facts of this case, in spite of the judgment of the High Court, if the appellants* would *not have persuaded this Court to pass the interim orders, they would not have been entitled to operate the mining leases and to raise and remove and dispose of the minerals extracted. But for the interim orders passed by this Court, there is no difference between the appellants and any person raising, without any lawful authority, any mineral from any land, attracting applicability of sub-section (5) of Section 21. As the appellants have lost from the Court, they cannot be allowed to retain the benefit earned by them under the interim orders of the Court. The High Court has rightly held the appellants liable to be placed in the same position in which they would have been if this Court would not have protected them by issuing interim orders. All that the State Government is demanding from the appellants is the price of the minor minerals. Rent, royalty or tax has already been recovered by the State Government and, therefore, there is no demand under that head. No penal proceedings, much less any criminal proceedings, have been initiated against the appellants. It is absolutely incorrect to contend that the appellants are being asked to pay any penalty or are being subjected to any penal action. It is not the case of the appellants that they are being asked to pay the price more than what they have realized from the exports or that the price appointed by the respondent State is in any manner arbitrary or unreasonable."*
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> (emphasis supplied)

324. In *A.R. Antulay* (supra), this Court observed that it is a settled principle that an act of the court shall prejudice no man. This maxim *actus curiae neminem gravabit* is founded upon justice and good sense and affords a safe and certain guide for the administration of the law. No man can be denied his rights. In India, a delay occurs due to procedural wrangles. In *A.R. Antulay* (supra), this Court observed:

> ***"102.*** *This being the apex court, no litigant has any opportunity of approaching any higher forum to question its decisions. Lord Buckmaster in* Montreal *Street Railway Co. v. Normadin, 1917 AC 170 (sic) stated:*
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> *"All rules of court are nothing but provisions intended to secure the proper administration of justice. It is, therefore, essential that they should be made to serve and be subordinate to that purpose."*

This Court in State of Gujarat v. Ramprakash P. Puri, (1970) 2 SCR 875, reiterated the position by saying: [SCC p. 159: SCC (Cri) p. 31, para 8]

"Procedure has been described to be a handmaid and not a mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it. Like all rules of procedure, this rule demands a construction which would promote this cause."

Once judicial satisfaction is reached that the direction was not open to be made and it is accepted as a mistake of the court, it is not only appropriate but also the duty of the court to rectify the mistake by exercising inherent powers. Judicial opinion heavily leans in favour of this view that a mistake of the court can be corrected by the court itself without any fetters. This is on principle, as indicated in (Alexander) Rodger case (1869-71) LR 3 PC 465. I am of the view that in the present situation, the court's inherent powers can be exercised to remedy the mistake. Mahajan., J. speaking for a Four Judge Bench in Keshardeo Chamria v. Radha Kissen Chamria, 1953 SCR 136 at Page 153 stated:

"The judge had jurisdiction to correct his own error without entering into a discussion of the grounds taken by the decree-holder or the objections raised by the judgment-debtors."

325. In *Superintendent of Taxes v. Onkarmal Nathmal Trust*[217], this Court considered the conduct of the State Government in not questioning the interim order at any stage in seeking variation or modification of the order of injunction. It was held that the State could not take advantage of its own wrong and lack of diligence and could not contend it was impossible to issue notice within the purview of Section 7(2) of the new Act. The decision is distinguishable and turns on its own facts. Though the act is possible to be performed but not as per the public policy which frowns upon violation of the court's interim order. The decision cannot be applied, particularly in view of the provisions contained in Section 24(2), and on facts, it has no application.

326. Reliance was placed on *Neeraj Kumar Sainy v. the State of U.P.*[218]. There, this Court observed that no one should suffer any prejudice because of the act of the court; the legal maxim cannot operate in a vacuum. It has to get the sustenance from the facts. As the appellants resigned to their fate and woke up to have control over the events forgetting that the law does not assist the non-vigilant. One cannot

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[217] (1976) 1 SCC 766
[218] (2017) 14 SCC 136

indulge in the luxury of lethargy, possibly nurturing the feeling that forgetting is a virtue. If such is the conduct, it is not permissible to take shelter under the maxim *actus curiae neminem gravabit.* There is no dispute with the aforesaid principle. Party has to be vigilant about the right, but the ratio cannot be applied. In the opinion, the *ratio* in the decision cannot be applied for the purpose of interpretation of Section 24(2).

327. There can be no doubt that when parties are before court, the final decision has to prevail, and they succeed or fail based on the merits of their relative cases. Neither can be permitted to take shelter under the cover of court's order to put the other party in a disadvantageous position. If one has enjoyed under the court's cover, that period cannot be included towards inaction of the authorities to take requisite steps under Section 24. The State authorities would have acted but for the court's order. *In fact, the occasion for the petitioners to approach the court in those cases, was that the State or acquiring bodies were taking their properties.* Ultimately case had to stand on its merit in the challenge to the acquisition or compensation, and no right or advantage could therefore be conferred (or accrue) under Section 24(2) in such situations.

328. The argument of the landowners was that on the one hand, the court should not discern a *casus omissus* and in effect, the absence of provision to exclude the time during which an interim order operated, means that Parliament intended such omission. The maxim *'expressio unius est exclusio alterious*' means that express mention of one or more persons or things of a particular class may be regarded as by implication excluding all others of that class. The maxim, however, does not apply when the provisions of the legislation in question show that the exclusion could not have been intended. In *Colquhoun v. Brooks*[219], the House of Lords opined that:

> *"The maxim 'expressio unius est exclusio alterious' has been pressed upon us. I agree with what is said in the court below by Wills, J. about this maxim. It is often a valuable servant, but a dangerous master to follow in the construction of statutes or documents. The 'exclusio' is often the result of inadvertence or accident, and the maxim ought not to be applied when its application, having regard to the subject matter to which it is to be applied, leads to inconsistency or injustice."*

Lewis Sutherland's *Statutory Construction* (2nd ed.), Section 491, applies the rule as follows:

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[219] (1889) 21 QBD 52

> *"Expressio unius est exclusio alterious - The maxim, like all rules of construction, is applicable under certain conditions to determine the intent of the lawmaker when it is not otherwise manifest. Under these conditions, it leads to safe and satisfactory conclusions; but otherwise the expression of one or more things is not a negation or exclusion of other things. What is expressed is exclusive only when it is creative, or in derogation of some existing law, or of some provisions in the particular act. The maxim is applicable to a statutory provision which grants originally a power or right."*

329. In a case before the United States Court of Customs and Patent Appeals decided on 5th November, 1934, *Yardley & Co. Ltd. V. United States,* the court considered the question of classification and assessment with duty of certain merchandise consisting of empty glass jars and lids, and whether these could be considered as 'entireties' that would be dutiable under paragraph 33 of the Tariff Act of 1930. The court in that case relied on the observations in *Colquhoun v. Brooks (supra)* and held that the glass jars with their lids would be dutiable as entireties, despite there not being an express legislative provision to that effect. It was held that the rule of *expressio unius est exclusio alterious* would not be applicable in the context of the legislative provision in the Tariff Acts of 1909, 1913 and 1922, as the relevant provision therein (in the 1930 Act) was merely declaratory in nature and not in derogation of existing law. In *Assistant Collector of Central Excise v. National Tobacco Company of India Ltd.*[220], this Court held that the rule of *expressio unius est exclusio alterious:*

> *"is subservient to the basic principle that courts must endeavour to ascertain the legislative intent and purpose, and then adopt a rule of construction which effectuates rather than one that may defeat these."*

330. In *Karnataka State v. Union of India*[221], the Court observed that:

> *"Before the principle can be applied at all the Court must find an express mode of doing something that is provided in a statute, which, by its necessary implication, could exclude the doing of that very thing and not something else in some other way. Far from this being the case here, as the discussion above has shown, the Constitution makers intended to cover the making of provisions by Parliament for inquiries for various objects which may be matters of public importance without any indications of any other limits except that they must relate to subjects found in the Lists. I have also indicated why a provision*

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[220] (1972) 2 SCC 560
[221] (1977) 4 SCC 608

like Section 3 of the Act would, in any case, fall under entry 97 of List I of Schedule VII read with Articles 248 and 356 of the Constitution even if all subjects to which it may relate are not found specified in the lists. Thus, there is express provision in our Constitution to cover an enactment such as Section 3 of the Act, hence, there is no room whatsoever for applying the "Expressio Unius" rule to exclude what falls within an expressly provided legislative entry. That maxim has been aptly described as a "useful servant but a dangerous master " (per Lopes L.J. in Colquhoun v. Brooks [1888] 21 Q.B.D. The limitations or conditions under which this principle of construction operates are frequently overlooked by those who attempt to apply it.

To advance the balder and broader proposition that what is not specifically mentioned in the Constitution must be deemed to be deliberately excluded from its purview, so that nothing short of a Constitutional amendment could authorise legislation upon it, is really to invent a "Cams Omissus" so as to apply the rule that, where there is such a gap in the law, the Court cannot fill it. The rule, however, is equally clear that the Court cannot so interpret a statute as "to produce a casus omissus" where there is really none (see: The Mersey Docks and Harbour Board v. Penderson Brothers [1888] 13 A.C. 595). If our Constitution itself provides for legislation to fill what is sought to be construed as a lacuna, how can legislation seeking to do this be held to be void because it performs its intended function by an exercise of an expressly conferred legislative power? In declaring the purpose of the provisions so made and the authority for making it, Courts do not supply an omission or fill up a gap at all. It is Parliament which can do so and has done it. To hold that parliament is incompetent to do this is to substitute an indefensible theory or a figment of one's imagination- that the Constitution stands in the way somehow-for that which only a clear Constitutional bar could achieve."

In *Mary Angel* (supra) this Court observed as follows:

"...The rule of interpretation on the basis of the maxim "expressio unius est exclusio alterius", ... has been considered in the decision rendered by the Queen's Bench in the case of Dean v. Wiesengrund (1955) 2 QBD 120. The Court considered the said maxim and held that after all it is more than an aid to construction and has little, if any, weight where it is possible to account for the "exclusio unius" on grounds other than intention to effect the "exclusio alterius". Thereafter, the Court referred to the following passage from the case of Colquhoon v.

Brooks (1887) 19 QBD 400 wherein the Court called for its approval - "The maxim 'expressio unius est exclusio alterius' has been pressed upon us. I agree with what is said in the Court below by Wills J, about this maxim. It is often a valuable servant, but a dangerous master to follow in the construction of statutes of documents. The exclusio is often the result of inadvertence or accident, and the maxim ought not to be applied, when its application having regard to the subject matter to which it is to be applied, leads to inconsistency or injustice. In my opinion, the application of the maxim here would lead to inconsistency and injustice, and would make Section 14(1) of the Act of 1920 uncertain and capricious in its operation."

The aforesaid maxim was referred to by this Court in the case of Asst. Collector, Central Excise v. National Tobacco Co. 1978 (2) ELT 416 (SC), the Court in that case considered the question whether there was or was not an implied power to hold an inquiry in the circumstances of the case in view of the provisions of the Section 4 of the Central Excise Act read with Rule 10(A) of the Central Excise Rules and referred to the aforesaid passage "the maxim" is often a valuable servant, but a dangerous master ..." and held that the rule is subservient to the basic principle that Courts must endeavour to ascertain the legislative intent and purpose, and then adopt a rule of construction which effectuates rather than one that may defeat these. Moreover, the rule of prohibition by necessary implication could be applied only where a specified procedure is laid down for the performance of a duty. In the case of Parbhani Transport Co-op Society Ltd. v. R. T.A. Aurangabad [1960] 3 SCR 177, this Court observed that the maxim 'expressio unius est exclusio alterius' is a maxim for ascertaining the intention of the legislature and where the statutory language is plain and the meaning clear, there is no scope for applying. Further, in Harsh Chander Vajpai v. Triloki Singh, [1957] 1 SCR 370, the Court referred to the following passage from Maxwell on Interpretation of Statutes, 10th Edition, pages 316-317:

> *"Provisions sometimes found in statutes, enacting imperfectly or for particular cases only that which was already and more widely the law, have occasionally furnished ground for the contention that an intention to alter the general law was to be inferred from the partial or limited enactment, resting on the maxim expressio unius, exclusio alterius. But that maxim is inapplicable in such cases. The only inference which a court can draw from such superfluous provisions (which generally*

> *find a place in Acts to meet unfounded objections and idle doubts), is that the Legislature was either ignorant or unmindful of the real state of the law, or that it acted under the influence of excessive caution.*
>
> *Lastly, we would state that in the case of Pampathy v. State of Mysore (supra), the Court has specifically observed that no legislative enactment dealing with the procedure can provide for all cases and that Court should have inherent powers apart from the express provisions of law which are necessary for the proper discharge of duties."*

331. For all these reasons, it is held that the omission to expressly enact a provision, that excludes the period during which any interim order was operative, preventing the State from taking possession of acquired land, or from giving effect to the award, in a particular case or cases, cannot result in the inclusion of such period or periods for the purpose of reckoning the period of 5 years. Also, merely because timelines are indicated, with the consequence of lapsing, under Sections 19 and 69 of the Act of 2013, *per se* does not mean that omission to factor such time (of subsistence of interim orders) has any special legislative intent. This Court notices, in this context, that even under the new Act (nor was it so under the 1894 Act) no provision has been enacted, for lapse of the entire acquisition, for non-payment of compensation within a specified time; nor has any such provision been made regarding possession. Furthermore, non-compliance with payment and deposit provisions (under Section 77) only results in higher interest pay-outs under Section 80. The omission to provide for exclusion of time during which interim orders subsisted, while determining whether or not acquisitions lapsed, in the present case, is a clear result of inadvertence or accident, having regard to the subject matter, refusal to apply the principle underlying the maxim *actus curae neminem gravabit* would result in injustice.

In Re: Principle of Restitution:

332. The principle of restitution is founded on the ideal of doing complete justice at the end of litigation, and parties have to be placed in the same position but for the litigation and interim order, if any, passed in the matter. In *South Eastern Coalfields Ltd. v. State of M.P. & Ors.*[222], it was held that no party could take advantage of litigation. It has to disgorge the advantage gained due to delay in case lis is lost. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final order going against the party successful at the interim stage. Section 144 of the Code of Civil Procedure is not the fountain source of

[222] (2003) 8 SCC 648

restitution. It is rather a statutory recognition of the rule of justice, equity and fair play. The court has inherent jurisdiction to order restitution so as to do complete justice. This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it. In exercise of such power, the courts have applied the principle of restitution to myriad situations not falling within the terms of section 144 CPC. What attracts applicability of restitution is not the act of the court being wrongful or mistake or an error committed by the court; the test is whether, on account of an act of the party persuading the court to pass an order held at the end as not sustainable, resulting in one party gaining an advantage which it would not have otherwise earned, or the other party having suffered an impoverishment, restitution has to be made. Litigation cannot be permitted to be a productive industry. Litigation cannot be reduced to gaming where there is an element of chance in every case. If the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order. This Court observed in *South Eastern Coal Field* (supra) thus:

> ***"26.*** *In our opinion, the principle of restitution takes care of this submission. The word "restitution" in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in execution of decree or order of the court or in direct consequence of a decree or order (see Zafar Khan v. Board of Revenue, U.P., 1984 Supp SCC 505) In law, the term "restitution" is used in three senses: (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits derived from a wrong done to another; and (iii) compensation or reparation for the loss caused to another. (See Black's Law Dictionary, 7th Edn., p. 1315). The Law of Contracts by John D. Calamari & Joseph M. Perillo has been quoted by Black to say that "restitution" is an ambiguous term, sometimes referring to the disgorging of something which has been taken and at times referring to compensation for the injury done:*
>
> *"Often, the result under either meaning of the term would be the same. ... Unjust impoverishment, as well as unjust enrichment, is a ground for restitution. If the defendant is guilty of a non-tortious misrepresentation, the measure of recovery is not rigid but, as in other cases of restitution, such factors as relative fault, the agreed-upon risks, and the fairness of alternative risk allocations not agreed upon and not attributable to the fault of either party need to be weighed."*

> *The principle of restitution has been statutorily recognized in Section 144 of the Code of Civil Procedure, 1908. Section 144 CPC speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on a par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favor of a party, stands reversed in the event of a final decision going against the party successful at the interim stage. x x x*
>
> ***27.*** *x x x*
>
> *This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it (A. Arunagiri Nadar v. S.P. Rathinasami, (1971) 1 MLJ 220). In the exercise of such inherent power, the courts have applied the principles of restitution to myriad situations not strictly falling within the terms of Section 144.*
>
> ***28.*** *That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the "act of the court" embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. x x x the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation."*
>
> (emphasis supplied)

333. In *State of Gujarat & Ors. v. Essar Oil Ltd. & Anr*[223], it was observed that the principle of restitution is a remedy against unjust enrichment or unjust benefit. The Court observed:

> ***"61.*** *The concept of restitution is virtually a common law principle, and it is a remedy against unjust enrichment or unjust benefit. The core of the concept lies in the conscience of the*

[223] (2012) 3 SCC 522

court, which prevents a party from retaining money or some benefit derived from another, which it has received by way of an erroneous decree of the court. Such remedy in English Law is generally different from a remedy in contract or in tort and falls within the third category of common law remedy, which is called quasi-contract or restitution.

62. *If we analyze the concept of restitution, one thing emerges clearly that the obligation to restitute lies on the person or the authority that has received unjust enrichment or unjust benefit (see Halsbury's Laws of England, 4th Edn., Vol. 9, p. 434)."*

334. In *A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam*[224], it was stated that restitutionary jurisdiction is inherent in every court, to neutralize the advantage of litigation. A person on the right side of the law should not be deprived, on account of the effects of litigation; the wrongful gain of frivolous litigation has to be eliminated if the faith of people in the judiciary has to be sustained. The Court observed:

"37. *This Court, in another important case in Indian Council for Enviro-Legal Action v. Union of India (of which one of us, Dr. Bhandari, J. was the author of the judgment) had an occasion to deal with the concept of restitution. The relevant paragraphs of that judgment dealing with relevant judgments are reproduced hereunder: (SCC pp. 238-41 & 243-46, paras 170-76, 183-88 & 190-93)*

"170. x x x

171. In Ram Krishna Verma v. the State of U.P. this Court observed as under: (SCC p. 630, para 16)

'16. The 50 operators, including the appellants/private operators, have been running their stage carriages by blatant abuse of the process of the court by delaying the hearing as directed in Jeewan Nath Wahal's case and the High Court earlier thereto. As a fact, on the expiry of the initial period of the grant after 29-9-1959, they lost the right to obtain renewal or to ply their vehicles, as this Court declared the scheme to be operative. However, by sheer abuse of the process of law, they are continuing to ply their vehicles pending the hearing of the objections. This Court in Grindlays Bank Ltd. v. ITO held that the High Court, while exercising its power under Article 226, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the

[224] (2012) 6 SCC 430

court must be neutralized. It was further held that the institution of the litigation by it should not be permitted to confer an unfair advantage on the party responsible for it. In the light of that law and in view of the power under Article 142(1) of the Constitution this Court, while exercising its jurisdiction would do complete justice and neutralize the unfair advantage gained by the 50 operators including the appellants in dragging the litigation to run the stage carriages on the approved route or area or portion thereof and forfeited their right to hearing of the objections filed by them to the draft scheme dated 26-2-1959.'

172. This Court in Kavita Trehan v. Balsara Hygiene Products Ltd. observed as under: (SCC p. 391, para 22)

'22. The jurisdiction to make restitution is inherent in every court and will be exercised whenever the justice of the case demands. It will be exercised under inherent powers, where the case did not strictly fall within the ambit of Section 144. Section 144 opens with the words:

***"144. Application for restitution.**—(1) Where and insofar as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose .. "*

The instant case may not strictly fall within the terms of Section 144, but the aggrieved party in such a case can appeal to the larger and general powers of restitution inherent in every court.'

173. This Court in Marshall Sons & Co. (I) Ltd. v. Sahi Oretrans (P) Ltd. observed as under: (SCC pp. 326-27, para 4)

'4. From the narration of the facts, though it appears to us, prima facie, that a decree in favor of the appellant is not being executed for some reason or the other, we do not think it proper at this stage to direct the respondent to deliver the possession to the appellant since the suit filed by the respondent is still pending. It is true that proceedings are dragged on for a long time on one count or the other and, on occasion, become highly technical accompanied by unending prolixity at every stage, providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage, and the person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of the immovable property, its

execution takes a long time. In such a situation, for protecting the interest of the judgment-creditor, it is necessary to pass appropriate orders so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property. Inappropriate cases, the court may appoint a Receiver and direct the person who is holding over the property to act as an agent of the [Receiver with a direction to deposit the royalty amount fixed by the] Receiver or pass such other order which may meet the interest of justice. This may prevent further injury to the plaintiff in whose favor the decree is passed and to protect the property, including further alienation.'

174. In Padmawati v. Harijan Sewak Sangh decided by the Delhi High Court on 6-11-2008, the Court held as under: (DLT p. 413, para 6)

'6. The case at hand shows that frivolous defenses and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where the court finds that using the courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the courts. One of the aims of every judicial system has to be to discourage unjust enrichment using courts as a tool. The costs imposed by the courts must in all cases should be the real costs equal to deprivation suffered by the rightful person.'

We approve the findings of the High Court of Delhi in the case mentioned above.

175. The High Court also stated: (Padmawati case, DLT pp. 414-15, para 9)

'9. Before parting with this case, we consider it necessary to observe that one of the [main] reasons for overflowing of court dockets is the frivolous litigation in which the courts are engaged by the litigants and which is dragged on for as long as possible. Even if these litigants ultimately lose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person

deprived of his right but also must be burdened with exemplary costs. The faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make the wrongdoer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the courts to see that such wrongdoers are discouraged at every step, and even if they succeed in prolonging the litigation due to their money power, ultimately, they must suffer the costs of all these years' long litigation. Despite the settled legal positions, the obvious wrongdoers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour since even if they lose, the time gained is the real gain. This situation must be redeemed by the courts.'

176. Against this judgment of the Delhi High Court, Special Leave to Appeal (Civil) No. 29197 of 2008 was preferred to this Court. The Court passed the following order: (SCC p. 460, para 1)

'1. We have heard the learned counsel appearing for the parties. We find no ground to interfere with the well-considered judgment passed by the High Court. The special leave petition is, accordingly, dismissed.'

* * *

183. In Marshall Sons & Co. (I) Ltd. v. Sahi Oretrans (P) Ltd. this Court in para 4 of the judgment observed as under: (SCC pp. 326-27)

4. ... It is true that proceedings are dragged on for a long time on one count or the other and, on occasion, become highly technical accompanied by unending prolixity at every stage, providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage, and a person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes a long time. In such a situation, for protecting the interest of the judgment-creditor, it is necessary to pass appropriate orders so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property. In appropriate cases, the court may appoint a Receiver and direct the person who is holding over the

> *property to act as an agent of the Receiver with a direction to deposit the royalty amount fixed by the Receiver or pass such other order which may meet the interest of justice. This may prevent further injury to the plaintiff in whose favour the decree is passed and to protect the property, including further alienation.'*
>
> *184. In Ouseph Mathai v. M. Abdul Khadir, this Court reiterated the legal position that: (SCC p. 328, para 13)*
>
> *'13. ... [the] stay granted by the court does not confer a right upon a party and it is granted always subject to the final result of the matter in the court and at the risks and costs of the party obtaining the stay. After the dismissal of the lis, the party concerned is relegated to the position which existed prior to the filing of the petition in the court which had granted the stay. Grant of stay does not automatically amount to extension of a statutory protection."*

There are other decisions as well, which iterate and apply the same principle.[225]

335. A wrong-doer or in the present context, a litigant who takes his chances, cannot be permitted to gain by delaying tactics. It is the duty of the judicial system to discourage undue enrichment or drawing of undue advantage, by using the court as a tool. In *Kalabharati Advertising v. Hemant Vimalnath Narichania*[226], it was observed that courts should be careful in neutralizing the effect of consequential orders passed pursuant to interim orders. Such directions are necessary to check the rising trend among the litigants to secure reliefs as an interim measure and avoid adjudication of the case on merits. Thus, the restitutionary principle recognizes and gives shape to the idea that advantages secured by a litigant, on account of orders of court, *at his behest,* should not be perpetuated; this would encourage the prolific or serial litigant, to approach courts time and again and defeat rights of others- including undermining of public purposes underlying acquisition proceedings. A different approach would mean that, for instance, where two landowners (sought to be displaced from their lands by the same notification) are awarded compensation, of whom one allows the issue to attain finality- and moves on, the other obdurately seeks to stall the public purpose underlying the acquisition, by filing one or series of litigation, during the pendency of which interim orders might inure and bind the parties, the latter

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[225] *Indian Council for Enviro-Legal Action v. Union of India,* (2011) 8 SCC 161, *Grindlays Bank Ltd. v. CIT,* (1980) 2 SCC 191, *Ram Krishna Verma v. the State ofU.P.,* (1992) 2 SCC 620. Also *Marshall Sons & Co. (I) Ltd. v. Sahi Oretrans (P) Ltd. and Anr.,* (1999) 2 SCC 325.

[226] (2010) 9 SCC 437

would profit and be rewarded, with the deemed lapse condition under Section 24 (2). Such a consequence, in the opinion of this Court, was never intended by Parliament; furthermore, the restitutionary principle requires that the advantage gained by the litigant should be suitably offset, in favour of the other party.

336. In *Krishnaswamy S. Pd. v. Union of India*[227], it was observed that an unintentional mistake of the Court, which may prejudice the cause of any party, must and alone could be rectified. Thus, in our opinion, the period for which the interim order has operated under Section 24 has to be excluded for counting the period of 5 years under Section 24(2) for the various reasons mentioned above.

In Re Question no.6: Whether Section 24 revives stale and barred claim

337. Before proceeding further, in our opinion, Section 24 contemplates pending proceedings and not the concluded ones in which possession has been taken, and compensation has been paid or deposited. Section 24 does not provide an arm or tool to question the legality of proceedings, which have been undertaken under the Act of 1894 and stood concluded before five years or more. It is only in cases where possession has not been taken, nor compensation is paid, that there is a lapse. In case possession has been taken, and compensation has not been deposited with respect to majority of landholdings, the beneficial provision of the statute provides that all beneficiaries shall be paid compensation as admissible under the Act of 2013. The beneficiaries, i.e., landowners contemplated under the proviso to Section 24(2), are the ones who were so recorded as beneficiaries as on the date of issuance of notification under Section 4 of the Act of 1894. The provision is not meant to be invoked on the basis of void transactions, and by the persons who have purchased on the basis of power of attorney or otherwise, they cannot claim the benefit under Section 24 as is apparent from proviso to Section 24(2) and the decision in *Shiv Kumar and Ors. v. Union of India and Ors*[228].

338. This Court is cognizant that Section 24 is used for submitting various claims, by way of filing applications in the pending proceedings either before the High Court or this Court. There are cases in which in the first round of litigation where the challenge to acquisition proceedings has failed, validity has been upheld, and possession has been taken after passing of the award. It is contended that drawing of *panchnama* was not the permissible mode to take possession, and actual physical possession remains with such landowners/purchasers/power of attorney holders as such benefit of Section 24 should be given to them notwithstanding the fact that they have withdrawn the compensation also.

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[227] (2006) 3 SCC 286
[228] 2019 (1) SCALE 698

339. This Court is cognizant of cases where reference was sought for enhancement of compensation, money was deposited in the treasury, enhancement was made, and possession was taken. Yet, acquisitions have been questioned, and claims are being made under Section 24, that acquisition has lapsed, as the deposit (of compensation amount) in the treasury was not in accordance with the law, the amount should have been deposited in reference court. Further, this Court also notes that there have been cases in which after taking possession, when development is complete, infrastructure has developed despite which claims are being made under Section 24, on the ground that either the possession has not been taken in accordance with law or compensation has been deposited in the treasury, thus questioning the acquisitions. The decision in *Mahavir and Ors. v. Union of India*[229] was an instance in which a claim was made that acquisition was made more than a century ago, and compensation has not been paid as such acquisition has lapsed relating to the land of Raisina Hills in New Delhi. The importance of Raisina Hills is well-known to everybody. The grossest misuse of Section 24 has been sought to be made, which is intended to confer benefit. It was never intended to revive such claims and be used in the manner in which it has been today, where large numbers of acquisitions and development projects, such as construction of roads, hospitals, townships, housing projects, etc., are sought to be undone, though such acquisitions have been settled in several rounds of litigation. In several matters, the validity has been questioned under the guise as if the right has been conferred for the first time under the Act of 2013, claiming that such acquisitions have lapsed. There are also cases in which the claims for release of land under Section 48 of the Act of 1894 have been dismissed. Now, claims are made that as land is open and landowners/intermediaries/POA holders continue to be in physical possession, thus, it should be returned to them, as the acquisition has lapsed under Section 24(2). Before us also arguments have been raised to grant relief in all such cases by making purposive interpretation of benevolent provisions. It was urged that this Court is bound to give relief as Section 24 is retrospective in operation, and the authorities have not cared to take possession for more than five years or more, and they have not paid the compensation and deposited it in treasury which cannot be said to be legal. It is declared that the acquisition has lapsed, and the land is given back to them. In case any infrastructure is existing, the State Government should acquire the land afresh after following the process of Act of 2013. Earlier, injustice was done to landowners, as observed in various decisions mentioned above. We should not disturb the decisions of this Court and are bound to follow the law laid down in *Pune Municipal Corporation* (supra) and the principle of *stare decisis*.

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[229] (2018) 3 SCC 588

340. By and large, concluded cases are being questioned by way of invoking the provisions contained in Section 24. In our considered opinion, the legality of concluded cases cannot be questioned under the guise of Section 24(2) as it does not envisage or confer any such right to question the proceedings and the acquisitions have been concluded long back, or in several rounds of litigation as mentioned above, rights of the parties have been settled.

341. In this context, it is noteworthy that the Urban Land (Ceiling and Regulation) Act, 1976, was repealed in the year 1999; thereafter, claims were raised. After repeal, it was claimed that actual physical possession has not been taken by the State Government as such repeal has the effect of effacing the proceedings of taking possession, which it was alleged, was not in accordance with the law. In *State of Assam v. Bhaskar Jyoti Sarma and Ors*[230], submission was raised by the State of Assam that physical possession has been taken over by the competent authority and it was submitted on behalf of landowner that procedure prescribed under Section 10(5) of the Urban Land (Ceiling and Regulation) Act, 1976, was not followed. It was before taking possession under Section 10(6) of the Urban Land (Ceiling and Regulation) Act, 1976, the notification under Section 10(5) was necessary; thus, no possession can be said to have been taken within the meaning of Section 3 of the Repeal Act. The question this Court had to consider was whether actual physical possession was taken over in that case by the competent authority. The State of Assam submitted that though possession was taken over in the year 1991, may be unilaterally and without notice to the landowner. It was urged that mere non-compliance with Section 10(5) would be insufficient to attract the provisions of Section 3 of the Repeal Act. This Court repelled the submission of the landowner and held as under:

> ***"15.*** *The High Court has held that the alleged dispossession was not preceded by any notice under Section 10(5) of the Act. Assuming that to be the case all that it would mean is that on 7-12-1991 when the erstwhile owner was dispossessed from the land in question, he could have made a grievance based on Section 10(5) and even sought restoration of possession to him no matter he would upon such restoration once again be liable to be evicted under Sections 10(5) and 10(6) of the Act upon his failure to deliver or surrender such possession. In reality therefore unless there was something that was inherently wrong so as to affect the very process of taking over such as the identity of the land or the boundaries thereof or any other circumstance of a similar nature going to the root of the matter hence requiring an adjudication, a person who had lost his land by*

[230] (2015) 5 SCC 321

reason of the same being declared surplus under Section 10(3) would not consider it worthwhile to agitate the violation of Section 10(5) for he can well understand that even when the Court may uphold his contention that the procedure ought to be followed as prescribed, it may still be not enough for him to retain the land for the authorities could the very next day dispossess him from the same by simply serving a notice under Section 10(5). It would, in that view, be an academic exercise for any owner or person in possession to find fault with his dispossession on the ground that no notice under Section 10(5) had been served upon him.

16. *The issue can be viewed from another angle also. Assuming that a person in possession could make a grievance, no matter without much gain in the ultimate analysis, the question is whether such grievance could be made long after the alleged violation of Section 10(5). If actual physical possession was taken over from the erstwhile landowner on 7-12-1991 as is alleged in the present case, any grievance based on Section 10(5) ought to have been made within a reasonable time of such dispossession. If the owner did not do so, forcibly taking over of possession would acquire legitimacy by sheer lapse of time. In any such situation, the owner or the person in possession must be deemed to have waived his right under Section 10(5) of the Act. Any other view would, in our opinion, give a license to a litigant to make a grievance not because he has suffered any real prejudice that needs to be redressed but only because the fortuitous circumstance of a Repeal Act tempted him to raise the issue regarding his dispossession being in violation of the prescribed procedure.*

17. *Reliance was placed by the respondents upon the decision of this Court in Hari Ram case. That decision does not, in our view, lend much assistance to the respondents. We say so because this Court was in State of UP v. Hari Ram, (2013) 4 SCC 280 considering whether the word "may" appearing in Section 10(5) gave to the competent authority the discretion to issue or not to issue a notice before taking physical possession of the land in question under Section 10(6). The question of whether the breach of Section 10(5) and possible dispossession without notice would vitiate the Act of dispossession itself or render it non-est in the eye of the law did not fall for consideration in that case. In our opinion, what Section 10(5) prescribes is an ordinary and logical course of action that ought to be followed before the authorities decided to use force to dispossess the occupant under Section 10(6). In the case at hand, if the appellant's version regarding dispossession of the*

erstwhile owner in December 1991 is correct, the fact that such dispossession was without a notice under Section 10(5) will be of no consequence and would not vitiate or obliterate the Act of taking possession for the purposes of Section 3 of the Repeal Act. That is because Bhabadeb Sarma, erstwhile owner, had not made any grievance based on breach of Section 10(5) at any stage during his lifetime, implying thereby that he had waived his right to do so."

This Court held that provisions of the Repeal Act could not be extended in such a case where possession has been taken without following the procedure, and the landowner cannot retain the land. This Court also observed that once possession has been taken over in the year 1991, any grievance as to non-compliance of Section 10(5) ought to have been made within a reasonable time of such dispossession. By sheer lapse of time, the possession would acquire legitimacy. Thus, the owner or the person in possession must be deemed to have waived his right under Section 10(5) of the Act. This Court also observed that only because of the fortuitous circumstance of a Repeal Act, which confers certain rights, the litigation had tempted the landowner to raise the issue regarding his dispossession being in violation of the prescribed procedure. It is clear from the aforesaid decision that such claims cannot be entertained, and any such dispute raised belatedly was repelled by this Court.

342. Section 24(2) is sought to be used as an umbrella so as to question the concluded proceedings in which possession has been taken, development has been made, and compensation has been deposited, but may be due to refusal, it has not been collected. The challenge to the acquisition proceedings cannot be made within the parameters of Section 24(2) once *panchnama* had been drawn of taking possession, thereafter re-entry or retaining the possession is that of the trespasser. The legality of the proceedings cannot be challenged belatedly, and the right to challenge cannot be revived by virtue of the provisions of Section 24(2). Section 24(2) only contemplates lethargy/inaction of the authorities to act for five years or more. It is very easy to lay a claim that physical possession was not taken, with respect to open land. Yet, once vesting takes place, possession is presumed to be that of the owner, i.e., the State Government and land has been transferred to the beneficiaries, Corporations, Authorities, etc., for developmental purposes and third-party interests have intervened. Such challenges cannot be entertained at all under the purview of Section 24(2) as it is not what is remotely contemplated in Section 24(2) of the Act of 2013.

343. In matters of land acquisition, this Court has frowned upon, and cautioned courts about delays and held that delay is fatal in questioning the land acquisition proceedings. In case possession has not been taken in accordance with law and vesting is not in accordance with Section 16, proceedings before courts are to be initiated within reasonable time, not after the lapse of several decades.

344. In *Hari Singh and Ors. v. State of U.P. and Ors*[231], there was a delay of two and a half years in questioning the proceedings. This Court held that the writ petition was liable to be dismissed on the ground of laches only.

345. In *State of T.N. and Ors. v. L. Krishnan & Ors*[232], this Court held that petitioners could not raise their claim at a belated stage. Following observations were made:

> ***"45.*** *There remains the last ground assigned by the High Court in support of its decision. The High Court has held that the non-compliance with sub-rules (b) and (c) of Rule 3 of the Rules made by the Government of Tamil Nadu pursuant to Section 55(1) of the Land Acquisition Act vitiates the report made under Section 5-A and consequently the declarations made under Section 6. The said sub-rules provide that on receipt of objections under Section 5-A, the Collector shall fix a date of hearing to the objections and give notice of the same to the objector as well as to the department. It is open to the department to file a statement by way of answer to the objections filed by the landowners. The submission of the writ petitioners was that in a given case, it might well happen that in the light of the objections submitted by the landowners, the department concerned may decide to drop the acquisition. Since no such opportunity was given to the department concerned herein, it could not file its statement by way of answer to their objections. This is said to be prejudice. We do not think it necessary to go into the merits of this submission on account of the laches on the part of the writ petitioners. As stated above, the declaration under Section 6 was made sometime in the year 1978, and the writ petitioners chose to approach the Court only in the years 1982-83. Had they raised this objection at the proper time and if it were found to be true and acceptable, the opportunity could have been given to the Government to comply with the said requirement. Having kept quiet for a number of years, the petitioners cannot raise this contention in writ petitions filed at a stage when the awards were about to be passed.*

346. In *Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Pvt. Ltd*[233], this Court observed, with respect to delay and laches that:

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[231] AIR 1984 SC 1020
[232] (1996) 1 SCC 250
[233] (1996) 11 SCC 501

*"**29.** 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 loath 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 by 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 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 petition on the ground of laches.*

***

S.B. MAJUMDAR, J. (concurring)—I have gone through the judgment prepared by my esteemed learned brother K. Ramaswamy, J. I respectfully agree with the conclusion to the effect that Respondents 1 and 2 had missed the bus by adopting an indolent attitude in not challenging the acquisition proceedings promptly. Therefore, the result is inevitable that the writ petition is liable to be dismissed on the ground of gross delay and laches.

35. x x x The acquired land got vested in the State Government and the Municipal Corporation free from all encumbrances as enjoined by Section 16 of the Land Acquisition Act. Thus right to get more compensation got vested in diverse claimants bypassing the award, as well as the vested right, was created in favor of the Bombay Municipal Corporation by virtue of the vesting of the land in the State Government for being handed over to the Corporation. All these events could not be wished away by observing that no third party rights were created by them. The writ petition came to be filed after all these events had taken place. Such a writ petition was clearly stillborn due to gross delay and laches. I, therefore, respectfully agree with the conclusion to which my learned brother Ramaswamy, J., has reached that on the ground of delay and laches the writ petition is required to be dismissed, and the appeal has to be allowed on that ground."

(emphasis supplied)

There are several other decisions of this Court, where delay was held, to disentitle litigants any relief. [234]

347. In *Jasveer Singh and Anr. v. State of Uttar Pradesh & Ors.*[235], the writ petition was filed in which High Court had directed the redetermination of the compensation. In that case the matter was remanded by this Court to consider the additional compensation under Section 23-(1A). Thereafter a submission was raised in the High Court under Section 24. This Court held that the challenge could not have been entertained. This Court observed thus:

> ***"2.*** *On 19-12-2005 the appellants filed a writ petition before the High Court seeking quashing of the acquisition proceedings which was decided by the High Court on 3-12-2010 directing redetermination of compensation. The said order was set aside by this Court on 16-10-2012 in State of U.P. v. Jasveer Singh [Civil Appeal No.7535 of 2012, order dated 16-10-2012 (SC)]. It was observed that:*
>
> *"After considering the pros and cons, without entering into serious controversies and making any comment on the merit of the case, we are of the considered opinion that in view of the judgment and order of this Court dated 26-11-2010, which was passed in the presence of the counsel for both the parties, the High Court ought not to have heard the matter at all. Thus, the judgment and order impugned before us have lost its sanctity. Therefore, the same is hereby set aside.*
>
> *However, in order to meet the ends of justice, we remand the case to the High Court to hear the writ petition afresh expeditiously, preferably within a period of six months from the date of production of the certified copy of the order before the Hon'ble Chief Justice. The matter may be assigned to any particular Bench by the Hon'ble Chief Justice for final disposal. The parties shall be at liberty to raise all factual and legal issues involved in the case. The High Court is requested to deal with the relevant issues in detail.*
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> *More so, if the respondents are so aggrieved regarding withdrawal of their appeals, which had been remanded by this Court for determining the entitlement of interest under Section 23(1-A) of the Land Acquisition Act, 1984 and an application is*

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[234] In *Hindustan Zinc Ltd. v. Bhagwan Singh Bhati and Ors.,* (2008) 3 SCC 462, there was a fatal delay of 10 years in the filing of the writ petition. In *Govt. of A.P. and Ors. v. Kollutla Obi Reddy and Ors.,* (2005) 6 SCC 493, the writ petition was filed after six years of the land acquisition. The writ petition was dismissed on the ground of delay and laches.

[235] (2017) 6 SCC 787

made by the respondent to revive the same, the High Court may consider and decide the said application in accordance with law. All the matters shall be heard simultaneously by the same Bench if the appeals are restored."

3. *Thereafter, the High Court considered the contention of the appellants that the award in respect of compensation was no award in the eye of the law and though the possession was taken long back and railway line had been laid out, the acquisition proceedings were liable to be set aside, and compensation was liable to be awarded at present market rate. The High Court rejected the said plea vide judgment dated 30-5-2014 in Jasvir Singh v. the State of U.P., 2014 SCC OnLine All 8465. It was observed that objection of the appellants against the award had already been considered and remand by the Supreme Court on 12-9-2005 was only in respect of statutory benefits. For the first time plea was sought to be raised in the writ petition against validity of acquisition which was impermissible in view of the law laid down by this Court in Aflatoon v. Lt. Governor of Delhi, (1975) 4 SCC 285, Swaika Properties (P) Ltd. v. State of Rajasthan, (2008) 4 SCC 695, Sawaran Lata v. State of Haryana, (2010) 4 SCC 532 and Banda Development Authority v. Moti Lal Agarwal, (2011) 5 SCC 394. The judgment of this Court in Royal Orchid Hotels v. G. Jayarama Reddy, (2011) 10 SCC 608, was distinguished as that case related to the fraudulent exercise of power of an eminent domain. The High Court concluded: (Jasvir Singh case, 2014 SCC OnLine All 8465 (SCC OnLine paras 4547)*

"45. Taking into consideration the entire facts and circumstances of the case, we are of the view that the writ petition is highly barred by laches and deserves to be dismissed on the ground of laches alone.

46. As has been observed above, the petitioners' main grievance is for enhancement of compensation, for which the petitioner has already filed First Appeal No. 880 of 1993 and First Appeal No. 401 of 1998 which appeals are being allowed by order of the date, we see no reason to entertain the writ petition.

47. *Although various submissions on merits challenging the entire acquisition proceedings have been raised by the learned counsel for the petitioners, we have taken the view that the writ petition is highly barred by laches, we do not find it necessary to enter into the submissions raised by the learned counsel for the petitioners on merits."*

348. In *Swaika Properties Pvt. Ltd. and Ors. v. State of Rajasthan and Ors*[236], the writ petition was filed after taking possession and award has become final. The writ petition was dismissed on the ground of delay and laches. In *Larsen & Toubro Ltd. v. State of Gujarat and Ors.*[237], in the absence of a challenge to the acquisition proceedings within a reasonable time, the challenge was repelled. Delay was also fatal in *Haryana State Handloom and Handicrafts Corporation Ltd. and Ors. v. Jain School Society*[238]. The writ petition was filed after two years to question the declaration under Section 6 and was dismissed on the ground of delay in *Urban Improvement Trust, Udaipur vs. Bheru Lal and Ors*[239]. A Delay of 5 to 10 years was held to be fatal in questioning the acquisition proceedings as held in *Vishwas Nagar Evacuee Plot Purchasers Association & Ors. v. Under Secretary, Delhi Admn. & Ors.*[240]

349. There is a plethora of decisions where, owing to delay of 6 months or more, this Court has repelled the challenge to the acquisition proceedings. In our opinion, Section 24 does not revive the right to challenge those proceedings which have been concluded. The legality of those judgments and orders cannot be reopened or questioned under the guise of the provisions of Section 24(2). By reason of our reasoning in respect of that provision (which we have held that under Section 24(2) that word "or" is to be read as 'and' or as 'nor,' even if one of the requirements has been fulfilled, i.e., either possession taken or compensation paid), there is no lapse unless both conditions are fulfilled, i.e., compensation has not been paid nor has possession been taken; the legality of the concluded proceedings cannot be questioned. It is only in the case where steps have not been taken by the Authorities. The lapse or higher compensation is provided under Section 24(2) and its proviso under the Act of 2013.

350. In *U.P. State Jal Nigam and Anr. v. Jaswant Singh and Anr*[241], this Court has observed that if a claimant is aware of the violation of his rights and does not claim his remedies, such inaction or conduct tantamounts a waiver of the right. In such cases, the lapse of time and delay are most material and cannot be ignored by the Court. In *Rabindranath Bose and Ors. v. Union of India and Ors*[242], the Constitution Bench of this Court has observed that the Court cannot go into the stale demands after a lapse of several years. This Court observed thus:

> ***"32.*** *The learned counsel for the petitioners strongly urges that the decision of this Court in Tilokchand Motichand case needs*

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[236] (2008) 4 SCC 695
[237] (1998) 4 SCC 387
[238] (2003) 12 SCC 538
[239] (2002) 7 SCC 712
[240] (1990) 2 SCC 268
[241] (2006) 11 SCC 464
[242] (1970) 1 SCC 84

review. But after carefully considering the matter, we are of the view that no relief should be given to petitioners who, without any reasonable explanation, approach this Court under Article 32 of the Constitution after inordinate delay. The highest Court in this land has been given original jurisdiction to entertain petitions under Article 32 of the Constitution. It could not have been the intention that this Court would go into stale demands after a lapse of years. It is said that Article 32 is itself a guaranteed right. So it is, but it does not follow from this that it was the intention of the Constitution-makers that this Court should discard all principles and grant relief in petitions filed after inordinate delay."

351. In *Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd*[243], this Court observed that if delay has resulted in material evidence relevant to adjudication being lost or rendered unavailable, would be fatal. It was held that the time limit of 6 months prescribed under Section 10(4A) of the I.D. Act, 1947 and should not be interpreted to revive stale and dead claims, it would not be possible to defend such claims due to lapse of time and due to material evidence having been lost or rendered unavailable. The lapse of time results in losing the remedy and the right as well. The delay would be fatal. It will be illogical to hold that the amendment to the Act inserting Section 10(4A) should be interpreted as reviving all stale and dead claims. This Court observed thus:

"29. *This Court while dealing with Sections 10(1)(c) and (d) of the I.D. Act, has repeatedly held that though the Act does not provide a period of limitation for raising a dispute under Section 10(1)(c) or (d), if on account of delay, a dispute has become stale or ceases to exist, the reference should be rejected. It has also held that lapse of time results in losing the remedy and the right as well. The delay would be fatal if it has resulted in material evidence relevant to adjudication being lost or rendered unavailable (vide Nedungadi Bank Ltd. v. K.P. Madhavankutty, (2000) 2 SCC 455; Balbir Singh v. Punjab Roadways, (2001) 1 SCC 133; Asstt. Executive Engineer v. Shivalinga, (2002) 10 SCC 167 and S.M. Nilajkar v. Telecom Distt. Manager, (2003) 4 SCC 27). When belated claims are considered as stale and non-existing for the purpose of refusing or rejecting a reference under Section 10(1)(c) or (d), in spite of no period of limitation is prescribed, it will be illogical to hold that the amendment to the Act inserting Section 10(4-A) prescribing a time-limit of six months, should be interpreted as reviving all stale and dead claims.*

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[243] (2007) 9 SCC 109

> ***31.*** *Section 10(4-A) does not, therefore, revive non-existing or stale or dead claims but only ensures that claims which were life, by applying the six-month rule in Section 10(4-A) as on the date when the section came into effect, have a minimum of six months' time to approach the Labour Court. That is ensured by adding the words "or the date of commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987, whichever is later" to the words "within six months from the date of communication to him of the order of discharge, dismissal, retrenchment or termination." In other words, all those who have communicated orders of termination during a period of six months prior to 7-4-1988 were deemed to have been communicated such orders of termination as on 7-4-1988 for the purpose of seeking a remedy. Therefore, the words "within six months from the date of commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987, whichever is later" only enables those who had been communicated order of termination within six months prior to 7-4-1988, to apply under Section 10(4-A)."*

352. In *State of Karnataka v. Laxuman*[244], this court held that stale claims should not be entertained even if no time limit is fixed by the statute. This court observed as follows:

> ***"9.*** *As can be seen, no time for applying to the Court in terms of sub-section (3) is fixed by the statute. But since the application is to the Court, though under a special enactment, Article 137, the residuary article of the Limitation Act, 1963, would be attracted and the application has to be made within three years of the application for making a reference or the expiry of 90 days after the application. The position is settled by the decision of this Court in Addl. Spl. Land Acquisition Officer v. Thakoredas, (1997) 11 SCC 412. It was held: (SCC p. 414, para 3)*
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> *"3. Admittedly, the cause of action for seeking a reference had arisen on the date of service of the award under Section 12(2) of the Act. Within 90 days from the date of the service of the notice, the respondents made the application requesting the Deputy Commissioner to refer the cases to the civil Court under Section 18. Under the amended sub-section (3)(a) of the Act, the Deputy Commissioner shall, within 90 days from 1-9-1970, make a reference under Section 18 to the civil Court, which he failed to do. Consequently, by operation of subsection 3(b) with the expiry of the aforestated 90 days, the cause of action had accrued to the respondents to make an application to the civil Court with a prayer to direct the Deputy Commissioner to make a reference. There is no period of limitation prescribed in subsection (3)(b) to make that application, but it should be done*

[244] (2005) 8 SCC 709

within the limitation prescribed by the Schedule to the Limitation Act. Since no article expressly prescribed the limitation to make such an application, the residuary article under Article 137 of the Schedule to the Limitation Act gets attracted. Thus, it could be seen that in the absence of any special period of limitation prescribed by clause (b) of sub-section (3) of Section 18 of the Act, the application should have been made within three years from the date of expiry of 90 days prescribed in Section 18(3)(b), i.e., the date on which cause of action had accrued to the respondent claimant. Since the application had been admittedly made beyond three years, it was clearly barred by limitation. Since the High Court relied upon the case in Municipal Council, (1969) 1 SCC 873 which has stood overruled, the order of the High Court is unsustainable."

This position is also supported by the reasoning in Kerala SEB v. T.P. Kunhaliumma, (1976) 4 SCC 634. It may be seen that under the Central Act sans the Karnataka amendment, there was no right to approach the Principal Civil Court of original jurisdiction to compel a reference, and no time-limit was also fixed for making such an approach. All that was required of a claimant was to make an application for reference within six weeks of the award or the notice of the award, as the case may be. But obviously, the State Legislature thought it necessary to provide a time-frame for the claimant to make his claim for enhanced compensation and for ensuring an expeditious disposal of the application for reference by the authority under the Act fixing a time within which he is to act and conferring an additional right on the claimant to approach the civil Court on satisfying the condition precedent of having made an application for reference within the time prescribed."

353. We are of the opinion that courts cannot invalidate acquisitions, which stood concluded. No claims in that regard can be entertained and agitated as they have not been revived. There has to be legal certainty where infrastructure has been created or has been developed partially, and investments have been made, especially when land has been acquired long back. It is the duty of the Court to preserve the legal certainty, as observed in *Vodafone International Holdings B. V. v. Union of India and Ors*[245]. The landowners had urged that since the Act of 2013 creates new situations, which are beneficial to their interests, the question of delay or laches does not arise. This Court is of the opinion that the said contention is without merits. As held earlier, the doctrine of laches would always preclude an indolent party, who chooses not to approach the court, or having approached the

[245] (2012) 6 SCC 613

court, allows an adverse decision to become final, to re-agitate the issue of acquisition of his holding. Doing so, especially in cases, where the title has vested with the State, and thereafter with subsequent interests, would be contrary to public policy. In *A.P. State Financial Corp. v. Garware Rolling Mill*[246], this Court observed that equity is always known to defend the law from crafty evasions and new subtleties invented to evade the law. There is no dearth of talent left in longing for the undue advantage of the wholesome provisions of Section 24(2) on the basis of wrong interpretation.

354. In *British Railway Board v. Pickin*[247], the following observations were made:

> *"... equity, when faced with an appeal to a regulatory public statute, which requires compliance with formalities, will not allow such statute (assumedly passed to prevent fraud) to be used to promote fraud and will do so by imposing a trust or equity upon a legal right. ..."*

355. We are unable to accept the submission on behalf of the landowners that it is by operation of law the proceedings are deemed to have lapsed and that this Court should give full effect to the provisions. It was submitted that lapse of acquisition proceedings was not contemplated under the Act of 1894, and there is departure made in Section 24 of the Act of 2013. Thus, Section 24 gives a fresh cause of action to the landowners to approach the courts for a declaration that the acquisition lapsed, if either compensation has not been paid or the physical possession has not been taken. The decision of this Court in the *Mathura Prasad Bajoo Jaiswal and Ors. v. Dossibai N.B. Jeejeebhoy*[248] was relied upon to contend that there cannot be *res judicata* in the previous proceedings when the cause of action is different; reliance is also placed on *Canara Bank v. N.G. Subbaraya Setty and Anr*[249], where the decision of *Mathura Prasad Bajoo Jaiswal and Ors.* (supra) was followed as to belated challenges. Reliance was further placed on *Anil Kumar Gupta v. the State of Bihar*[250] in which it was held that vesting of land in the Government can be challenged on the ground that possession had not been taken in accordance with the prescribed procedure. The invocation of the urgency clause in Section 17, can be questioned on the ground that there was no real urgency. The notification issued under Section 4 and declaration under Section 6 can be challenged on the ground of non-compliance of Section 5-A(1). Notice issued under Section 9 and the award passed under Section 11 can also be questioned on permissible grounds. Reliance has also been placed on *Ram Chand*

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[246] (1994) 2 SCC 647
[247] (1974) AC 765
[248] (1970) 1 SCC 613
[249] (1918) 16 SCC 228
[250] (2012) 12 SCC 443

and Ors. v. Union of India[251] to contend that inaction and delay on the part of the acquiring authority would also give rise to a cause of action in favour of the landowner.

356. The entire gamut of submissions of the landowners is based on the misinterpretation of the provisions contained in Section 24. It does not intend to divest the State of possession (of the land), title to which has been vested in the State. It only intends to give higher compensation in case the obligation of depositing of compensation has not been fulfilled with regard to the majority of holdings. A fresh cause of action in Section 24 has been given if for five years or more possession has not been taken nor compensation has been paid. In case possession has been taken and compensation has not been deposited with respect to the majority of landholdings, higher compensation to all incumbents follows, as mentioned above. Section 24 does not confer a new cause of action to challenge the acquisition proceedings or the methodology adopted for the deposit of compensation in the treasury instead of reference court, in that case, interest or higher compensation, as the case may be, can follow. In our considered opinion, Section 24 is applicable to pending proceedings, not to the concluded proceedings and the legality of the concluded proceedings, cannot be questioned. Such a challenge does not lie within the ambit of the deemed lapse under Section 24. The lapse under section 24(2) is due to inaction or lethargy of authorities in taking requisite steps as provided therein.

357. We are also of the considered opinion that the decision in an earlier round of litigation operates as *res judicata* where the challenge to the legality of the proceedings had been negatived and the proceedings of taking possession were upheld. Section 24 does not intend to reopen proceedings which have been concluded. The decision in *Mathura Prasad Bajoo Jaiswal and Ors.* (supra) is of no avail. Similar is the decision in *Anil Kumar Gupta v. State of Bihar (supra)*. No doubt about it that proceedings (i.e., the original acquisition, or aspects relating to it) can be questioned but within a reasonable time; yet once the challenge has been made and failed or has not been made for a reasonable time, Section 24 does not provide for reopening thereof.

358. So far as the proposition laid down in *Ram Chand and Ors. v. Union of India* (supra) is concerned, inaction and delay on the part of acquiring authorities have been taken care of under Section 24. The mischief rule (or *Heydon's Mischief Rule)* was pressed into service on behalf of landowners relying upon the decision in *Bengal Immunity Co v. the State of Bihar* (supra), it was submitted that Act of 1894 did not provide for lapse in the case of inordinate delay on the part of acquiring Authorities to complete the acquisition proceedings. Mischief has been

[251](1994) 1 SCC 4

sought to be cured by the legislature by introducing the Act of 2013 by making provisions in Section 24 of the lapse of proceedings. The submission is untenable. The provisions made under section 24 have provided a window of 5 years to complete the acquisition proceedings, and if there is a delay of 5 years or more, there is a lapse and not otherwise. The provision cannot be stretched any further, otherwise, the entire infrastructure, which has come up, would have to go and only the litigants would reap the undeserving fruits of frivolous litigation, having lost in several rounds of litigation earlier, which can never be the intendment of the law.

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."*

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 101 cannot 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 34 of 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 of Section 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 under Section 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.

Order accordingly

I.L.R. [2020] M.P. 2419 (SC)
SUPREME COURT OF INDIA

Before Mr. Justice Arun Mishra, Mr. Justice B.R. Gavai & Mr. Justice Krishna Murari

M.A. No. 1235/2019 decided on 1 September, 2020

SARIKA …Appellant

Vs.

ADMINISTRATOR, MAHAKALESHWAR MANDIR COMMITTEE, UJJAIN (M.P.) & ors. …Respondents

Constitution – Article 142 – Mahakaleshwar Temple – Erosion of Shivalingam – Preservation **– On basis of report submitted by Expert Committee, following directions issued :-**

(i) Any devotee/visitor should do no rubbing of Shivalingam. Rubbing not to be done by anyone except during traditional Puja and Archana performed on behalf of temple. If done by any devotee, accompanying Poojari/Purohit shall be responsible. Committee to provide water from Koti Thirth Kund, filtered and purified to maintain pH value.

(ii). pH value of Bhasma during Bhasma Aarti be improved.

(iii). Weight of Mund Mala and Serpakarnahas should be reduced to preserve from mechanical abrasion. Committee to find out whether it is necessary to use Metal Mund Mala or there can be a way out to use Mund Mala and Serpakarnahas without touching the Shivalingam.

(iv). Rubbing of curd, ghee, honey by devotees is also a cause of erosion. No panchamrita to be poured by any devotee. Only pouring a limited quantity of pure milk is allowed whereas all pure materials can be used during the traditional puja performed on behalf of temple.

(v). Entire proceedings of Puja and Archana in Garbh Griha to video recorded 24 hrs. and be preserved for atleast 6 months.

(vi). Myriad religious rituals and ceremonies to be performed regularly but by the expert/customary Poojaris and Purohits.

(vii). Necessary repair and maintenance be carried out urgently. Collector and S.P. Ujjain directed to remove encroachment within 500 mtrs of the temple premises.

(viii). Comprehensive plan be prepared and implemented for preservation and maintenance of Chandranageshwar Temple.

(ix). CBRI Roorkee and Ujjain Smart City Ltd were issued direction to submit report regarding structural stability of the temple.

(x). Modern additions shall be removed. Original work in the temple to be restored. (Para 5 & 9)

संविधान – अनुच्छेद 142 – महाकालेश्वर मंदिर – शिवलिंगम का क्षरण – परिरक्षण – विशेषज्ञ समिति द्वारा प्रस्तुत प्रतिवेदन के आधार पर निम्नलिखित निदेश जारी किये गये:–

(i) कोई भक्त/आगंतुक शिवलिंगम को मलेगा नहीं। मंदिर की ओर से संपादित पारंपरिक पूजा अर्चना के दौरान छोड़कर किसी के द्वारा मला नहीं जाये। यदि किसी भक्त द्वारा किया जाता है, साथी पुजारी/पुरोहित उत्तरदायी होगा। समिति, **pH** मान बनाएं रखने के लिए कोटी तीर्थ कुण्ड से छाना हुआ और शुद्ध किया हुआ पानी उपलब्ध कराये।

(ii) भस्म आरती के दौरान भस्म का **pH** मान सुधारा जाए।

(iii) यांत्रिक घर्षण से परिरक्षण के लिए मुण्ड माला एवं सर्पकर्णहास का वजन घटाया जाए। समिति यह पता लगाये कि क्या धातु की मुण्ड माला का उपयोग आवश्यक है अथवा शिवलिंग को छुए बिना मुण्ड माला एवं सर्पकर्णहास के उपयोग का कोई अन्य मार्ग है।

(iv) भक्तों द्वारा दही, घी, शहद मलना भी क्षरण का एक कारण है। किसी भक्त द्वारा पंचामृत उड़ेला नहीं जाए। केवल शुद्ध दूध की सीमित मात्रा उड़ेलने की मंजूरी है जबकि मंदिर की ओर से संपादित पारंपरिक पूजा के दौरान सभी शुद्ध सामग्रियों का उपयोग किया जा सकता है।

(v) गर्भ गृह में पूजा अर्चना की संपूर्ण कार्यवाहियों की 24 घंटे वीडियो रिकार्डिंग होगी और कम से कम 6 महीनों तक सुरक्षित रखी जाएं।

(vi) असंख्य धार्मिक अनुष्ठानों एवं विधियों को नियमित रूप से संपादित करना होता है, परंतु इसे विशेषज्ञ/रूढ़ीगत पुजारियों एवं पुरोहितों द्वारा किया जाए।

(vii) आवश्यक मरम्मत एवं अनुरक्षण अविलम्ब रूप से पूरा किया जाए। कलेक्टर एवं एस.पी., उज्जैन को मंदिर परिसर से 500 मीटर के भीतर के अतिक्रमण हटाने के लिए निदेशित किया गया।

(viii) चंद्रनागेश्वर मंदिर के परिरक्षण एवं अनुरक्षण हेतु व्यापक योजना तैयार एवं कार्यान्वित की जाए।

(ix) सी.बी.आर.आई. रूरकी एवं उज्जैन स्मार्ट सीटी लि. को भी मंदिर की संरचनात्मक स्थिरता के संबंध में प्रतिवेदन प्रस्तुत करने के लिए निदेश जारी किये गये थे।

(x) आधुनिक परिवर्धन हटाये जाएं। मंदिर में मूल रूप बहाल किया जाए।

J U D G M E N T

The Judgment of the Court was delivered by :-

ARUN MISHRA, J.:- This Court is monitoring the compliance of the judgment and order passed by this Court in Civil Appeal No. 4676/2018 on 02.05.2018. We have appointed an Expert Committee consisting of experts of Archaeological Survey of India and Geological Survey of India concerning the prevention of erosion of Shivalinga in Shri Mahakaleshwar Temple at Ujjain. The Expert Team visited Ujjain on 19.01.2019. Its Report indicates that there was erosion of Shivalinga after the last inspection, and it is a continuing process. The last inspection was made earlier in 2018. The time gap was short when the inspection was made. As such, the extent of further erosion was not measured. However, the facts remain that there was some erosion of the Shivalingam. We have vide order dated 19.08.2020 called for the Action Taken Report from the Temple Committee. The Temple Committee has submitted the response to the various measures pointed out by the Committee of the Experts in the inspection report dated 19.01.2020. Since it has been noted that the deterioration and erosion of Lingam is a continuing process, the photographs of July 2020 indicate that there was further erosion of the Lingam. A patch of Shivlinga towards the side of the deity of Shri Kartikeyan is quite visible. The matter is of grave concern as due to reckless offerings, the Lingam of Omkareshwar Temple was destroyed. The Report indicates that the pH value of Bhasma Aarti stands at 10.51, which is required to be improved and is reactive to Cryptocrystalline siliceous cementing material of orthoquartzite at room temperature and causing deterioration in Jyotirlingam. Sanitation and drainage were required to be improved. There was a mechanical erosion also of the Lingam due to the weight of Mund Mala and Serpakarnahas. Though their weight has been reduced to half, mechanical abrasion takes place due to their existing weight. It was also suggested that the rubbing of the Lingam by the devotees be strictly banned. It was also reported that there was modern style construction made in the temple premises, which needs to be removed. It was also pointed out that the modern construction within the temple premises was in progress, which was required to be stopped and removed. The necessity was also felt to restore the original work. The walls were painted with colours, which was giving a bad look to the ancient heritage place. There were additions in the form of eyesore painting inside the temple, which were yet to be removed. It was reported that ghee, milk, curd, and honey are regular in the offering. The Temple Management Committee has decided to provide pure and natural offering material to pilgrims. There was a necessity for a periodical review of the remedial measures.

2. The stand of the Temple Committee is that during Bhasma Aarti, the cloth is covered on Shivalinga and is cleaned with RO water after that. They are

regulating the entry into the Garbh Griha, and during the COVID pandemic, no access is permitted. They have been restoring the original work, which is in progress and will be completed within three months. Concerning eyesore paintings, their removal is in the process and would be completed within three months. The Temple Committee has decided to meet monthly to do a review.

3. A Report dated 28.07.2019 indicated that Chandranageshwar Temple in the premises was also not in good shape, and repair work was required. Its roof has become weak.

4. The Temple Committee pointed out that there is a necessity of further inspection by the experts' team, as the last inspection was made 1½ years ago. The team of experts is located at Bhopal. They can visit the temple at any time. Periodic inspection by the Expert Committee is necessary for the remedial measures and to prevent erosion and to preserve the temple structure. To ensure that there was no rubbing of Shivalinga, the Poojaries (Janeupati, Khutpati), Purohits, and their authorized representatives be directed to ensure that no visitors or devotees rub the Shivalinga. There should be a video recording of the entire process, and it should be preserved at least for six months. The Temple Committee shall provide water from Koti Thirth Kund filtered and purified to maintain the required pH value and shall also provide milk from its resources so that pure milk is offered to the deity. No visitor shall be allowed to offer Panchamrita to Shivalinga.

5. It was pointed out that during COVID-19, visitors and devotees are not permitted to enter the sanctum sanctorum. But in our opinion, at the same time, customary Poojaries and Purohits must perform rituals as they know the rituals and are expert in *pooja* and *archana.* When the Temple Committee prepares the details of rituals, customary Poojaries and Purohits must be associated with the Committee to render proper help and guidance in the various matters relating to the temple. Of late, it is seen that unfortunately the performance of necessary rituals is the most neglected aspect in the temples, and new Poojaries do not understand them; the same should not be the state of affairs. There is no scope for commercialization. The myriad religious rituals and ceremonies are to be performed regularly. We cannot direct what kind of *pooja-archana* rituals should be performed, but no doubt, they should be done regularly by the experts in the field. Accordingly, we direct that the Temple Committee acts in the manner described above.

6. Concerning the temple structure's stability, the Temple Committee has pointed out that on 31.07.2019, this Court directed the Central Government to get the temple and various structures inspected by CBRI, Roorkee. The CBRI visited the temple in September 2019 and submitted a structural assessment proposal and wanted 12 months to submit the project report. It has claimed a sum of Rs. 41.30

Lakhs as project charges, to be paid in advance. Prayer has been made that this Court may direct the Central Government to bear the expenses of Rs.41.30 Lakhs, to be paid to CBRI. The CBRI may be required to submit its project report within a reasonable time. Shri Tushar Mehta, learned Solicitor General appearing on behalf of the Union of India, has agreed that the Central Government would be bearing the expenses of Rs.41.30 Lakhs to be paid to CBRI, Roorkee.

7. It is also submitted on behalf of the Temple Committee that it is necessary to undertake repairs and maintenance and other construction activities within the temple premises and further, as suggested by CBRI. The State or Central Government may be directed to contribute adequate funds for that purpose, including for the preservation of Chandranageshwar Temple. The Temple Committee has also prayed that encroachment within the area of 500 mtrs. from the temple are required to be removed, as recommended by the Expert Committee. The concerned authorities should remove the encroachments and prohibit the construction, otherwise than essential facilities for the public and pilgrims.

8. The learned counsel appearing on behalf of the State of Madhya Pradesh has placed on record a detailed plan prepared by the Ujjain Smart City Limited (USCL) for the comprehensive development of Shri Mahakaleshwar Temple and surrounding areas. The project is named as "Mahakaal Rudrasagar Integrated Development Approach" (MRIDA). Letter dated 27.08.2020 issued by CEO, Ujjain Smart City Ltd. to the Collector is placed on record, pointing out various developments proposed for the development in Phase I and Phase II of the abovementioned project.

9. Considering the facts and circumstances of the Report submitted by the Experts Committee dated 19.01.2019 and the Report of the Temple Committee as well as the project report prepared by the Ujjain Smart City Ltd., we issue the following directions:-

(i) That the Expert Committee shall visit the temple and submit a report by 15th December 2020, as to the steps to be taken to prevent deterioration of Shivlinga and the steps to be taken to preserve the temple structure, including Chandranageshwar Temple.

(ii) We also direct the Committee to do a yearly survey and submit a report to this Court.

(iii) To preserve the Shivalingam, we direct that :

(a) any devotee should do no rubbing of the Shivalingam.

(b) The Temple Committee to ensure that the pH value of Bhasma during the Bhasma Aarti is improved and Shivalingam is preserved from

further deterioration and to implement the best methodology to prevent further damage to the Lingam.

(c) The Temple Committee ensures that weight of Mund Mala and Serpakarnahas is further reduced to preserve the Shivalingam from mechanical abrasion. The Temple Committee to find out a way and consider whether it is necessary to use the Metal Mund Mala on the Shivalingam, or there can be a way out to use Mund Mala and Serpakarnahas without touching the Shivalingam. Possibility of further reducing weight may also be found out to prevent mechanical abrasion.

(d) The rubbing of curd, ghee, honey on the Shivalingam by the devotees is also a cause of erosion. It would be appropriate that only pouring of a limited quantity of pure milk is allowed by the Committee. Whereas in the traditional puja to be done on behalf of the temple, all pure materials can be used.

(e) Poojaries, Janeupati, Khutpati, Purohits, and their authorized representatives to strictly ensure that no visitor or devotee rub the Shivalingam at any cost. If it is done by any devotee, accompanying Poojari or Purohit shall be responsible for not stopping the rubbing. No rubbing of Shivalingam to be done by anyone except during traditional Puja and Archana performed on behalf of the temple.

(f) The entire proceedings of Puja and Archana in Garbh Griha to be video recorded 24 hours and be preserved at least for six months. If any violation is found by any Poojari, Purohit, let the Temple Committee take suitable action against that Poojari or Purohit, as considered appropriate.

(g) As agreed to on behalf of the Temple Committee, no Panchamrita to be poured on Shivalingam by any devotee. It may be used only during traditional Puja and Archana of the Shivlingam.

(h) The Temple Committee shall provide pure milk from its resources to the visitors and devotees for offering and make arrangements for that. The Committee should ensure that no impure or adulterated milk is offered to Shivalingam and concerned Poojari/ Purohit to ensure compliance.

(iv) The Temple Committee shall provide water from Koti Thirth Kund filtered and purified and further maintain the required pH value.

(v) Let the CBRI, Roorkee visit the temple, if necessary, and submit a project report as per its proposal dated 17.09.2019. CBRI, Roorkee, is directed to submit a project report regarding structural stability within six months. A sum of Rs. 41.30 Lakhs, as required by it, shall be paid by the Central Government as early as possible.

(vi) Ujjain Smart City Ltd., as per its letter dated 27.08.2020, is directed to undertake Mahakaal Rudrasagar Integrated Development Approach (Phase I and Phase II) forthwith and submit to this Court detailed project report and the time frame within six weeks.

(vii) Let the details of necessary repairs, maintenance, and improvement be worked out and carried out forthwith. Let the Collector prepare a comprehensive plan for this purpose with the help of the Superintendent Engineer and available Architect. The State Government shall sanction fund immediately. Let a suitable plan and estimate be prepared within four weeks, and necessary repair and maintenance work be carried out urgently.

(viii) The Expert Committee ordered the removal of modern additions, as noted at Item No. 20. They shall be removed, and the Temple Committee shall file a compliance report to this Court by 15th December, 2020.

(ix) The original work in the temple is required to be restored. As assured by the Committee, let restoration work be done concerning eyesore painting by 15th December, 2020. The Temple Committee is directed to ensure in future not to permit or resort to such painting and covering of the original work, objected by the Expert Committee. Let a report be submitted to this Court in this regard by 15th December, 2020.

(x) We direct the Collector and Superintendent of Police of Ujjain to ensure that encroachment within 500 mtrs. of the area of the temple premises are removed, as suggested by the Experts Committee. Let needful be done by 15th December, 2020, and a report be submitted to this Court.

(xi) Concerning the preservation and maintenance of Chandranageshwar Temple, a comprehensive plan be prepared and implemented, and be submitted to this Court for information.

(xii) If any area is slippery in Garbh Griha, the Temple Committee to ensure that the needful is done.

(xiii) Let the necessary religious rituals be performed regularly along with other aspects as discussed in Para 5 of the order.

Let the case be listed for further monitoring and consideration of the Compliance Report in the second week of January 2021.

Order accordingly

I.L.R. [2020] M.P. 2426 (DB)
WRIT APPEAL

Before Mr. Justice Ajay Kumar Mittal, Chief Justice &
Mr. Justice Sujoy Paul

W.A. No. 805/2019 (Jabalpur) decided on 03 September, 2020

DHARA SINGH PATEL …Appellant

Vs.

STATE OF M.P. & ors. …Respondents

***A. Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 39(1) – Suspension* – FIR lodged against appellant in 1993, thereafter he has been elected on two occasions as office bearer, thus prescribed authority rightly opined that it will not be justifiable to place appellant under suspension – Single Judge erred in dismissing the writ petition – Impugned orders set aside – Appeal allowed. (Para 13 & 17)**

क. पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 39 (1) – निलंबन – 1993 में अपीलार्थी के विरूद्ध प्रथम सूचना प्रतिवेदन पंजीबद्ध किया गया, तत्पश्चात् दो अवसरों पर उसे पदाधिकारी के रूप में निर्वाचित किया गया, अतः विहित प्राधिकारी ने उचित विचार किया है कि अपीलार्थी को निलंबित रखना न्यायसंगत नहीं होगा – रिट याचिका खारिज करने में एकल न्यायाधीश ने त्रुटि की है – आक्षेपित आदेश अपास्त – अपील मंजूर।

***B. Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 39(1) – Prescribed Authority – Powers* – Held – If power is conferred with prescribed authority, as per Adhiniyam, he alone is entitled to pass the order – Even his superior authority cannot direct him to act in a particular manner, moreso when discretion has been exercised in a judicious manner. (Para 13)**

ख. पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 39(1) – विहित प्राधिकारी – शक्तियॉ – अभिनिर्धारित – यदि विहित प्राधिकारी को शक्ति प्रदत्त की जाती है, अधिनियम के अनुसार, वह अकेला आदेश पारित करने का हकदार है – यहॉ तक कि उसका वरिष्ठ प्राधिकारी भी उसे एक विशिष्ट ढंग से कार्य करने के लिए निर्देशित नहीं कर सकता, जब विवेकाधिकार का प्रयोग न्यायसंगत रूप से किया गया हो।

***C. Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 39(1) – Suspension Order* – Held – Petitioner completed his term in January 2020 – It is admitted that even if appellant contests next election and is again elected, he will be required to be placed under suspension again – Since order of suspension has a drastic and recurring effect, this appeal cannot be treated as infructuous. (Para 15)**

ग. पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 39(1) – निलंबन आदेश – अभिनिर्धारित – याची ने जनवरी 2020 में अपनी सेवा अवधि पूर्ण की – यह स्वीकार किया गया कि यद्यपि अपीलार्थी अगला चुनाव लड़ता है तथा पुनः निर्वाचित होता है, उसे पुनः निलंबित करना अपेक्षित होगा – चूंकि निलंबन के आदेश का एक कठोर तथा आवर्ती प्रभाव होता है, इस अपील को निष्फल नहीं माना जा सकता।

***D. Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 39(1) – Term "May"; "Shall" & "Must"* – Held – The expression "may" used in Section 39(1) cannot be read as "shall" or "must". (Para 12)**

घ. पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 39(1) – शब्द ''कर सकता है''; ''करेगा'' व ''करना चाहिए'' – अभिनिर्धारित – धारा 39 (1) में प्रयोग की गई अभिव्यक्ति ''कर सकता है'' को ''करेगा'' अथवा ''करना चाहिए'' नहीं पढ़ा जा सकता।

***E. Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P. 2005 (14 of 2006), Section 2(1) and Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 39(4) – Writ Appeal –Maintainability* – Held – Division Bench of this Court has earlier, in case of *Balu Singh* has opined that as per Section 39(4) of 1993 Adhiniyam, once office bearer is placed under suspension, such person shall also be disqualified for being elected during suspension period – Since consequences of such order is of final nature, writ appeal is maintainable. (Para 14)**

ङ. उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, म.प्र., 2005 (2006 का 14), धारा 2 (1) एवं पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 39(4) – रिट अपील – पोषणीयता – अभिनिर्धारित – इस न्यायालय की खंडपीठ ने पूर्व में बालू सिंह के प्रकरण में यह मत दिया था कि 1993 के अधिनियम की धारा 39 (4) के अनुसार, एक बार पदाधिकारी को निलंबित कर दिया जाता है, तो ऐसे व्यक्ति को निलंबन अवधि के दौरान निर्वाचित होने के लिए भी अयोग्य घोषित किया जाएगा – चूंकि उक्त आदेश के परिणाम अंतिम स्वरूप के हैं, रिट अपील पोषणीय है।

Cases Referred :

2006 (2) Vidhi Bhasvar 90, 2011 (5) SCC 435, 2014 (1) MPLJ 308, AIR 1963 SC 1618, (2007) 10 SC 528, 1987 (1) SCC 424, AIR 1977 SC 965.

K.C. Ghildiyal, for the appellant.
R.K. Verma, Adll. A.G. for the respondent Nos. 1 to 4-State.
Sanjay K. Agrawal, for the respondent no. 5.

J U D G M E N T

The Judgment of the Court was delivered by :-
SUJOY PAUL, J.:- This *intra -court* Appeal assails the order dated 02.04.2019

passed by the Writ Court in WP. No.4064/19 whereby the petition filed by the petitioner against the order of Commissioner Bhopal Division, Bhopal dated 18.02.2019 was dismissed.

2. Draped in brevity, the relevant facts are that in the year 1993 a criminal case based on the FIR No.279 dated 16.07.1993 for committing offences under Section 420, 467, 468, 471, 259 and 34 of IPC and Section 25 of the Arms Act was registered against the appellant. Indisputably, this case is still pending before the Court. During the pendency of said criminal case, the appellant was elected as Office Bearer (Sarpanch) in the year 2004-05. He completed his previous tenure pursuant to said election. Thereafter, he was again elected in March 2015 and was working as President, Janpad Panchayat Ashta (District Sehore).

3. The respondent No.5 preferred an application under Section 39 of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as 'Adhiniyam') before the Collector Raisen seeking suspension of the appellant because of said criminal case. The learned Collector by order dated 07.12.2015 rejected the said application of respondent No.5. Feeling aggrieved, the respondent No.5 preferred an Appeal No.0074/Appeal/18-19 before the learned Commissioner, Bhopal Division, Bhopal. The learned Appellate Authority allowed the said appeal by order dated 18.12.2019, set aside the order of Collector dated 07.12.2015 and directed him to place the petitioner under suspension and proceed further as per the Adhiniyam. In the writ petition, the appellant assailed this order dated 18.12.2019. The learned Single Judge opined that if the charges in a criminal case were framed prior to the election of Office Bearer, in view of judgment of Division Bench in the case of *Balu Singh vs. State of M.P. 2006 (2) Vidhi Bhasvar 90*, the Office Bearer can be placed under suspension. It was further held that as per Sub-section (2) of Section 39 of Adhiniyam, 1993, the order of suspension shall be intimated to the State Government within 10 days of passing of order and thereupon State Government shall pass necessary orders. If the order of suspension is not confirmed within 90 days, it shall be deemed to be revoked. The learned Single Judge was apprised by State Government that because of interim order passed in writ petition, it could not take a decision regarding confirmation after getting intimation of suspension. Learned Single Judge opined that the petition is premature because order of suspension is subject to confirmation by State Government, which is still pending.

4. Shri K.C. Ghildiyal, learned counsel for the petitioner contended that; (i) Section 39 of Adhiniyam, 1993 gives discretion by using the word 'may' to the Prescribed Authority to take decision regarding suspension of an Office Bearer. The Prescribed Authority/Collector by exercising its discretion passed a detailed order dated 07.12.2015, which could not have been interfered with by the Appellate Authority. The Appellate Authority cannot direct prescribed Authority

to act in a particular manner. Reliance is placed on (2011) 5 SCC 435 *(Joint Action Committee of Air Line Pilots' Association of India (ALPAI) & Others vs. Director General of Civil Aviation & Others)* and judgment of this Court reported in 2014 (1) MPLJ 308 *(Swati Singh vs. M.P. Kshetra Vidyut Vitran Co. Ltd.);* (ii) the order of suspension/ Appellate Authority will have an adverse impact on the appellant in the teeth of Sub-section 4 of Section 39; and (iii) the Collector passed the order under Section 39 (1) by applying his discretion in a judicious manner. The appellant indisputably completed two terms as Office Bearer of Panchayat after lodging of criminal case in the year 1993. In this factual backdrop, placing the petitioner under suspension would be travesty of justice.

5. Shri R.K. Verma, learned Additional A.G. and Shri Sanjay K. Agrawal, learned counsel for the respondent No.5 supported the impugned orders. Shri Agrawal urged that; (i) the word 'may' used in Section 39 (1) of Adhiniyam, 1993 must be read as 'shall'. He relied upon AIR 1963 SC1618 *(State of U.P. vs. Jogendra Singh)* and (2007) 10 SCC 528 *(Deewan Singh & Others vs. Rajendra Pd. Ardevi & Others);* (ii) the order of suspension is confirmed by State Government in March, 2019 and the said order is not subject matter of challenge; and (iii) present term as Office Bearer of appellant is already over in January, 2020 and hence for all practical purposes, this appeal has rendered infructuous.

6. In the rejoinder submissions, Shri Ghildiyal pointed out that the order of confirmation of suspension passed by State Government dated 23.03.2019 was not available during the pendency of writ petition. This consequential order of confirmation was supplied by the State Government later on, which has been called in question in this writ appeal.

7. No other point is pressed by the parties.

8. We have heard the learned counsel for the parties at length and perused the record.

9. Section 39 (1) of Adhiniyam, 1993 reads as under:-"39. Suspension of office-bearer of Panchayat. - (1) The prescribed authority **may** suspend from office any office-bearer,-

> (a) against whom charges have been framed in any criminal proceedings under [Chapters V-A, VI, IX], IX-A, X, XII, Sections 302, 303, 304B, 305, 306, 312 to 318, 366-A, 366-B, 373 to 377 of Chapter XVI, Sections 395 to 398, 408, 409, 458 to 460 of Chapter XVII and Chapter XVIII of the Indian Penal Code, 1860 (XLV of 1860) or under any Law for the time being in force for the prevention of adulteration of food stuff and drugs, [suppression of immoral traffic in women and children, Protection of Civil Rights and Prevention of Corruption]; or"
>
> [Emphasis Supplied]

10. Section 39(1) of the Adhiniyam permits the prescribed authority to suspend any office bearer when charges are framed in any criminal proceedings relating to certain provisions of IPC or other laws mentioned therein. The legislature in its wisdom has used the word "may" while giving power to prescribed authority to place an office bearer under suspension. Interestingly, the first proviso to Rule (1)of the M.P. Civil Services (Classification, Control & Appeal) Rules, 1966 reads as under:

> "Provided that a Government Servant **shall invariably be placed under suspension** when a challan for a criminal offence involving corruption or other moral turpitude is filed after sanction of prosecution by the Government against him."
>
> [Emphasis Supplied]

11. The language employed in the aforesaid proviso shows the clear intention of legislature that if a charge for criminal offence involving corruption or other moral turpitude is filed, the employee shall invariably be placed under suspension whereas a discretion is given to prescribed authority in sub section (1) of Section 39 of Adhiniyam to place an office bearer under suspension. In the case of *Jogendra Singh* (supra), it was poignantly held that the word "may" generally does not mean "must" or "shall". The meaning has to be gathered in the light of the context. In *Deewan Singh* (supra), while interpreting Section 53 of the Rajasthan Public Trust Act, 1959, the Apex Court held that if the expression "shall" is read as "may" although there does not exist any reason therefor, the statute provides for a power coupled with duty. It is profitable to remember the words of Chinappa Reddy, J: "interpretation must depend on the text and context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives it colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. [See: 1987 (1) SCC 424, *(Reserve Bank of India Vs. Pearless General Finance and Investment Co.)].* As stated by Krishna Iyer J: "to be literal in meaning is to see the skin and miss the soul. The judicial key to construction is the composite preception of the *deha* and *dehi* of the provision. [See: AIR 1977 SC 965 *(Chairman, Board of Mining Examination & Chief Inspector of Mines Vs. Ramjee)]*.

12. In the context, the expression "may" is used in sub-section (1) of Section 39, we are unable to hold that it must be read as "shall" or "must". The judgment cited by Shri Agrawal are based on different statutes having different contextual backdrop and cannot be pressed into service in the present case.

13. In 2011 (5) SCC 435 *(Joint Action Committee Air Line Pilots' Association of India (Alpai) and others Vs. Director General of Civil Aviation and others)*, the Apex Court opined as under:

> "It is settled legal proposition that the authority which has been conferred with the competence under the statue alone can pass the order. No other person, even a superior authority, can interfere with the functioning of the statutory authority. In a democratic set-up like ours, persons occupying key positions are not supposed to mortgage their discretion, volition and decision-making authority and be prepared to give way to carry out commands having no sanctity in law. Thus, if any decision is taken by a statutory authority at the behest or on suggestion of a person who has not statutory role to play, the same would be patently illegal. (Vide *Purtabpore Co. Ltd.v. Cane Commr. of Bihar,* reported in (1969) 1 SCC 308, *Chandrika Jha* v. *State of Bihar,* reported in (1984) 2 SCC 41, *Tarlochan Dev Sharma* v. *State of Punjab,* reported in (2001) 6 SCC 260 and *Manohar Lal* v. *Ugrasen,* reported in (2010) 11 SCC 557."
>
> [Emphasis Supplied]

As per *ratio decidenti* (sic : *decidendi*) of this case, it is clear like cloudless sky that if a power is conferred with the prescribed authority, as per the Adhiniyam, he alone is entitled to pass the order. Even his superior authority cannot direct him to act in a particular manner. Moreso, when discretion was exercised in a judicious manner. At the cost of repetition, it is noteworthy that in this case, FIR was lodged against the appellant in the year 1993. Thereafter, he has been elected on two occasions as office bearer. Considered this backdrop, the prescribed authority rightly opined that it will not be justifiable to place the appellant under suspension. The prescribed authority, in our opinion, took the relevant factual backdrop into account while taking a decision whether the appellant is required to be placed under suspension. The Appellate Authority/Commissioner was not justified in interfering with said order by directing the Collector to act in a particular manner i.e. by placing the appellant under suspension. This direction of learned Commissioner clearly runs contrary to the principles laid down in the case of *Joint Action Committee Air Line Pilots' Association of India* (supra).

14. We are not oblivious of the fact that in the case of *Balu Singh* (supra), the Division Bench was examining an interlocutory order of learned Single Bench wherein interim order was not granted against suspension of office bearer of Panchayat. An objection was raised by the respondents therein regarding the maintainability of writ appeal on the ground that it is not maintainable against an interlocutory order. The Division Bench opined that as per sub-section (4) of Section 39 of the Adhiniyam, once officer (sic : office) bearer is placed under suspension, such person shall also be disqualified for being elected during the period of suspension. Since the consequences of such suspension order was of a final nature, the writ appeal was held to be maintainable. Interestingly, in the case of *Balu Singh* (supra) the criminal case was instituted against him way back in 1999 and matter was pending before the JMFC, Ratlam. In 2004, Panchayat

elections took place and Balu Singh was elected. The Division Bench opined that it is not the case of the respondents that after his assuming charge as office bearer, some criminal charges have been framed against him. The order of suspension therein was accordingly stayed.

15. Aforesaid finding of Division Bench takes care of argument of Shri Sanjay K. Agrawal that since appellant has completed his term in January, 2020, the present appeal has rendered infructuous. On a specific query from the Bench, Shri Agrawal fairly admitted that even if appellant contests next election and is again elected, he will be required to be placed under suspension again. Since the order of suspension has a drastic and recurring effect, in our view, this appeal, by no stretch of imagination can be thrown overboard by treating it as "infructuous".

16. The argument of Shri Agrawal that order of confirmation of suspension is not called in question is factually incorrect. Admittedly, the confirmation order was served on the appellant after decision of writ petition and, therefore, it is called in question in this writ appeal. The confirmation order is only a consequential order founded upon the order of learned Commissioner. Hence this hypertechnical objection of respondent No.5 deserves to be rejected.

17. In view of foregoing analysis, the learned Single Judge has erred in dismissing the writ petition. Resultantly, the order of learned Commissioner dated 18.02.2019, the order of State Government confirming the suspension dated 23.03.2019 and order dated 02.04.2019 passed in W.P. No.4064/2019 are set aside.

18. Writ Appeal is allowed.

Appeal allowed

I.L.R. [2020] M.P. 2432
WRIT PETITION
Before Mr. Justice G.S. Ahluwalia
W.P. No. 4281/2019 (Gwalior) decided on 27 January, 2020

FISHERMEN SAHAKARI SANGH MATSODYOG SAHAKARI SANSTHA MARYADIT, GWALIOR …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

A. Registration Act (16 of 1908), Section 17(2)(vii) – Lease Deed – **Held – Lease deed has to be granted and executed by concerning Panchayat and not by the Government – It is not exempted from registration u/S 17(2)(vii) of the Act of 1908. (Para 12)**

क. रजिस्ट्रीकरण अधिनियम (1908 का 16), धारा 17(2)(vii) – पट्टा विलेख – अभिनिर्धारित – पट्टा विलेख का प्रदान व निष्पादन संबंधित पंचायत द्वारा किया जाना है और न कि सरकार द्वारा – इसे 1908 के अधिनियम की धारा 17(2)(vii) के अंतर्गत पंजीयन से छूट प्राप्त नहीं है।

***B. Lease Deed – Accrual of Vested Right* – Held – A vested right would accrue only when the contract is concluded – Unless and until the lease deed is registered, no vested right accrued in favour of petitioner. (Para 14)**

ख. पट्टा विलेख – निहित अधिकार का प्रोद्भवन – अभिनिर्धारित – एक निहित अधिकार केवल तब प्रोद्भूत होगा जब संविदा की समाप्ति होती है – जब तक कि पट्टा विलेख पंजीबद्ध नहीं है, याची के पक्ष में कोई निहित अधिकार प्रोद्भूत नहीं होता।

***C. Constitution – Article 226 and General Clauses Act (10 of 1897), Section 21 – Order of Approval – Effect* – Held – Commissioner has merely kept his approval order in abeyance – Commissioner is well within jurisdiction to reconsider his order of approval – No final decision taken as to whether approval is to be recalled or not – Petition being premature is dismissed. (Para 16)**

ग. संविधान – अनुच्छेद 226 एवं साधारण खण्ड अधिनियम (1897 का 10), धारा 21 – अनुमोदन का आदेश – प्रभाव – अभिनिर्धारित – आयुक्त ने उसके अनुमोदन आदेश को मात्र प्रास्थगन में रखा है – आयुक्त का अपने अनुमोदन के आदेश पर पुनर्विचार करना भलीभांति अधिकारिता के भीतर है – कोई अंतिम विनिश्चय नहीं किया गया कि क्या अनुमोदन को वापस लेना है अथवा नहीं – याचिका समयपूर्व होने के नाते खारिज।

***D. Constitution – Article 226 – Scope* – Held – In exercise of power under Article 226, Court can merely consider the decision making process. (Para 14)**

घ. संविधान – अनुच्छेद 226 – व्याप्ति – अभिनिर्धारित – अनुच्छेद 226 के अंतर्गत शक्ति के प्रयोग में न्यायालय मात्र निर्णय लेने की प्रक्रिया का विचार कर सकता है।

***E. General Clauses Act (10 of 1897), Section 21 – Modification of Order* – Held – An authority who has a power to issue an order has an inbuilt power to rescind, modify and alter its own order. (Para 19)**

ङ. साधारण खण्ड अधिनियम (1897 का 10), धारा 21 – आदेश का उपांतरण – अभिनिर्धारित – एक प्राधिकारी जिसके पास एक आदेश जारी करने की शक्ति है उसे उसके स्वयं के आदेश को विखंडित, उपांतरित एवं परिवर्तित करने की सन्निहित शक्ति है।

Cases referred :

(1979) 3 SCC 489, (1993) 1 SCC 445, (1997) 1 SCC 53, (1999) 1 SCC 492, (2000) 2 SCC 617, (2005) 6 SCC 138, (2007) 14 SCC 517, (2012) 5 SCC 443.

Vivek Jain, for the petitioner.
R.K. Soni, G.A. for the State.
H.K. Shukla, for the respondent No. 4.

J U D G M E N T

G.S. AHLUWALIA, J.:- This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:-

> "i) That, the order annexure P/1 and the actions consequential thereto may kindly be quashed,
>
> ii) any other relief deemed fit in the facts and circumstances of the case doing justice in the matter including costs be also awarded."

2. By order dated 14/2/2019 the Commissioner has recalled its approval dated 6/2/2019.

3. According to the petitioner, the necessary facts in short are that the petitioner is a Cooperative Society registered under M.P. Cooperative Societies Act. Pehsari Reservoir situated in District Gwalior was handed over to the Zila Panchayat under the policy framed by the State for awarding fishing rights. Accordingly, notice inviting tenders were issued and the petitioner also applied for grant of lease. As per Clause 1.2 of the policy after receiving the applications, recommendations has to be obtained from the Fisheries Department and thereafter, the concerning Panchayat shall finalize the matter within 30 days and forward the same to the competent authority. It is submitted that the lease has to be granted by the Zila Panchayat, therefore, the Divisional Commissioner is the competent authority as per Clause 5.1 of the policy. The applications which were received were sent to Assistant Director, Fisheries, for its recommendations and the comparative chart was prepared and the petitioner was placed at the top of the panel. Certain objections were made as to the working area of the petitioner and ultimately the Agricultural Standing Committee by its resolution dated 4/8/2018 decided to recommend award of fisheries rights to the petitioner. The said resolution dated 4/8/2018 was not challenged by any of the tenderers. Thereafter, the matter was forwarded to the Commissioner by the Collector. The Commissioner in its turn directed the Joint Registrar, Fisheries, to place its comments after examining the matter. After receiving the recommendations dated 28/1/2019 from the Joint Director, Fisheries, the Commissioner gave his approval and thereafter, an order dated 8/2/2019 was issued by the respondent no.3 and the lease deed was signed after depositing the lease rent on 11/2/2019. It is submitted that before the lease deed could be registered, the Commissioner recalled its own approval at the behest of the Departmental Minister and hence, the present petition has been filed against the order dated 14/2/2019 passed by the

Commissioner, Gwalior Division, Gwalior by which his approval dated 6/2/2019 has been kept in abeyance.

4. Challenging the order dated 14/2/2019 it is submitted by the counsel for the petitioner that once the approval was granted by the Commissioner, then he has no jurisdiction to review its own order and to direct for keeping the same in abeyance. Further, the respondent no.2 has *malafidely* acted on the recommendation of the concerning Minister and thus, it is a colourable exercise of power. It is further submitted that since the resolution dated 4/8/2018 passed by the Agricultural Standing Committee was never challenged by respondent no.4 and, therefore, now the respondent no.4 is estopped from interfering in the matter.

5. *Per contra,* it is submitted by the counsel for the respondents no.1 and 2 that since the lease deed has not been registered so far, therefore, it cannot be said that the procedure for grant of lease has been concluded and no right has accrued in favour of the petitioner so far. It is further submitted that the respondent no.2 has passed the impugned order thereby keeping its own approval in abeyance in exercise of power under Section 85 of M.P. Panchayat Raj Adhiniyam. Further, it is submitted that the order dated 14/2/2019 is not a final order, but it is an order of interlocutory in nature and merely the recommendation / approval sent by the Commissioner, Gwalior Division, Gwalior by its letter dated 6/2/2019 has been kept in abeyance and the final decision is yet to be taken in the matter.

6. The respondent no.4 has also filed its return and has submitted that the proposal to grant lease to the petitioner is contrary to the policy and when the defect in allotment process was brought to the knowledge of the Commissioner, then only the approval has been kept in abeyance and no final order has been passed so far.

7. Heard learned counsel for the parties.

8. Section 107 of Transfer of Property Act reads as under:-

> **"107. Leases how made** —A lease of immoveable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument.
>
> All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.
>
> Where a lease of immoveable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:
>
> Provided that the State Government may from time to time, by notification in the Official Gazette, direct that leases of

immoveable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession."

Section 17 of the Registration Act, 1908 (in short "the Act, 1908") reads as under :-

"17. Documents of which registration is compulsory.—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

[(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:]

Provided that the [State Government] may, by order published in the [Official Gazette], exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

[(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882)

shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.]

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—

(i) any composition deed; or

(ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v) [any document other than the documents specified in sub-section (1A)] not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding]; or

(vii) any grant of immovable property by [Government]; or

(viii) any instrument of partition made by a Revenue-Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or

(x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or

[(xa) any order made under the Charitable Endowments Act, 1890 (6 of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or]

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer.

[Explanation.—A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered."

9. By referring to Section 17 (2) (vii) of the Act, 1908, it is submitted by the counsel for the petitioner that any grant of immovable property by the Government is exempted from registration and, therefore, it is incorrect to say that as the lease deed has not been registered, therefore, no right would accrue to the petitioner.

10. Considered the submissions.

11. The petitioner has relied upon the policy and directions issued by the State Government for grant of fishing lease by the Panchayat. The opening words of the said policy and guidelines read as under:-

''राज्य शासन द्वारा त्रिस्तरीय पंचायतों, नगर पंचायत, नगर पालिका तथा नगर निगम और अन्य विभाग को उनके अधिकारिता के तालाब/जलाशय में मत्स्य पालन हेतु पट्टा देने का अधिकार सौंपा गया है।''

12. Thus, it is clear that the lease has to be granted by the concerning Panchayat and not by the Government. Thus, in the considered opinion of this

Court, the lease deed to be executed by the concerning Panchayat is not exempted from registration as provided under Section 17 (2) (vii) of the Act, 1908.

13. Now the next question for consideration is that "merely because a approval was made in favour of the petitioner, whether any vested right has accrued in favour of the petitioner or not?"

14. It is well established principle of law that a vested right would accrue only when the contract is concluded. In the present case, this Court is of the considered opinion that unless and until the lease deed is registered, it cannot be said that any vested right had accrued in favour of the petitioner. Even otherwise, this Court in exercise of its power under Article 226 of the Constitution of India can merely consider the decision making process.

15. The Supreme Court in the case of *Ramana Dayaram Shetty v. International Airport Authority of India,* reported in (1979) 3 SCC 489 has held as under :

> **11.** Today the Government in a welfare State, is the regulator and dispenser of special services and provider of a large number of benefits, including jobs, contracts, licences, quotas, mineral rights, etc. The Government pours forth wealth, money, benefits, services, contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationships to Government are of many kinds. They comprise social security benefits, cash grants for political sufferers and the whole scheme of State and local welfare. Then again, thousands of people are employed in the State and the Central Governments and local authorities. Licences are required before one can engage in many kinds of businesses or work. The power of giving licences means power to withhold them and this gives control to the Government or to the agents of Government on the lives of many people. Many individuals and many more businesses enjoy largesse in the form of Government contracts. These contracts often resemble subsidies. It is virtually impossible to lose money on them and many enterprises are set up primarily to do business with Government. Government owns and controls hundreds of acres of public land valuable for mining and other purposes. These resources are available for utilisation by private corporations and individuals by way of lease or licence. All these mean growth in the Government largesse and with the increasing magnitude and range of governmental functions as we move closer to a welfare State, more and more of our wealth consists

of these new forms. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. But on that account, can it be said that they do not enjoy any legal protection? Can they be regarded as gratuity furnished by the State so that the State may withhold, grant or revoke it at its pleasure? Is the position of the Government in this respect the same as that of a private giver? We do not think so. The law has not been slow to recognise the importance of this new kind of wealth and the need to protect individual interest in it and with that end in view, it has developed new forms of protection. Some interests in Government largesse, formerly regarded as privileges, have been recognised as rights while others have been given legal protection not only by forging procedural safeguards but also by confining/structuring and checking Government discretion in the matter of grant of such largesse. The discretion of the Government has been held to be not unlimited in that the Government cannot give or withhold largesse in its arbitrary discretion or at its sweet will. It is insisted, as pointed out by Prof. Reich in an especially stimulating article on "The New Property" in *73 Yale Law Journal 733,* "that Government action be based on standards that are not arbitrary or unauthorised". The Government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licences only in favour of those having grey hair or belonging to a particular political party or professing a particular religious faith. The Government is still the Government when it acts in the matter of granting largesse and it cannot act arbitrarily. It does not stand in the same position as a private individual.

12. We agree with the observations of Mathew, J., in *V. Punnan Thomas* v. *State of Kerala* that:

"The Government, is not and should not be as free as an individual in selecting the recipients for its largesse. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal."

The same point was made by this Court in *Erusian Equipment and Chemicals Ltd.* v. *State of West Bengal* where the question was whether blacklisting of a person without giving him an opportunity to be heard was bad? Ray, C.J., speaking on behalf of himself and his colleagues on the Bench pointed out that blacklisting of a person not only affects his reputation which is,

in Poundian terms, an interest both of personality and substance, but also denies him equality in the matter of entering into contract with the Government and it cannot, therefore, be supported without fair hearing. It was argued for the Government that no person has a right to enter into contractual relationship with the Government and the Government, like any other private individual, has the absolute right to enter into contract with any one it pleases. But the Court, speaking through the learned Chief Justice, responded that the Government is not like a private individual who can pick and choose the person with whom it will deal, but the Government is still a Government when it enters into contract or when it is administering largesse and it cannot, without adequate reason, exclude any person from dealing with it or take away largesse arbitrarily. The learned Chief Justice said that when the government is trading with the public, "the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions. . . The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure". This proposition would hold good in all cases of dealing by the Government with the public, where the interest sought to be protected is a privilege. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences, etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

The Supreme Court in the case of *Sterling Computers Ltd. v. M & N Publications Ltd.,* reported in **(1993) 1 SCC 445** has held as under :

12. At times it is said that public authorities must have the same liberty as they have in framing the policies, even while

entering into contracts because many contracts amount to implementation or projection of policies of the Government. But it cannot be overlooked that unlike policies, contracts are legally binding commitments and they commit the authority which may be held to be a State within the meaning of Article 12 of the Constitution in many cases for years. That is why the courts have impressed that even in contractual matters the public authority should not have unfettered discretion. In contracts having commercial element, some more discretion has to be conceded to the authorities so that they may enter into contracts with persons, keeping an eye on the augmentation of the revenue. But even in such matters they have to follow the norms recognised by courts while dealing with public property. It is not possible for courts to question and adjudicate every decision taken by an authority, because many of the Government Undertakings which in due course have acquired the monopolist position in matters of sale and purchase of products and with so many ventures in hand, they can come out with a plea that it is not always possible to act like a quasi-judicial authority while awarding contracts. Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although not strictly following the norms laid down by the courts, such decisions are upheld on the principle laid down by Justice Holmes, that courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of "play in the joints" to the executive.

* * * *

17. It is true that by way of judicial review the Court is not expected to act as a court of appeal while examining an administrative decision and to record a finding whether such decision could have been taken otherwise in the facts and circumstances of the case. In the book *Administrative Law,* Prof. Wade has said:

"The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The court must therefore resist the temptation to

draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which legislature is presumed to have intended. The decisions which are extravagant or capricious cannot be legitimate. But if the decision is within the confines of reasonableness, it is no part of the court's function to look further into its merits. 'With the question whether a particular policy is wise or foolish the court is not concerned; it can only interfere if to pursue it is beyond the powers of the authority."

But in the same book Prof. Wade has also said:

"The powers of public authorities are therefore essentially different from those of private persons. A man making his will may, subject to any rights of his dependants, dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law this does not affect his exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his land, to release a debtor, or, where the law permits, to evict a tenant, regardless of his motives. This is unfettered discretion. But a public authority may do none of these things unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interest.

There are many cases in which a public authority has been held to have acted from improper motives or upon irrelevant considerations, or to have failed to take account of relevant considerations, so that its action is ultra vires and void."

18. While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily as to whether there has been any infirmity in the "decision making process". In this connection reference may be made to the case of *Chief Constable of the North Wales Police* v. *Evans* where it was said that: (p. 144a)

"The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself a conclusion which is correct in the eyes of the court."

By way of judicial review the court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such enquiry. But at the same time as was said by the House of Lords in the aforesaid case, *Chief Constable of the North Wales Police* v. *Evans* the courts can certainly

examine whether "decision-making process" was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution.

The Supreme Court in the case of *Tata Cellular v. Union of India,* reported in (1994) 6 SCC 651 has held as under :

70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. *Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State.* The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

* * *

77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?

2. Committed an error of law,

3. committed a breach of the rules of natural justice,

4. reached a decision which no reasonable tribunal would have reached or,

5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R.* v. *Secretary of State for the Home Department, ex Brind,* Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

* * *

94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of *the invitation to tender* cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

The Supreme Court in the case of *Dutta Associates (P) Ltd. v. Indo Merchantiles (P) Ltd* reported in (1997) 1 SCC 53, has held as under :

> **7.** In the circumstances, we affirm the judgment of the Division Bench in writ appeal on the grounds stated above and direct that fresh tenders may be floated in the light of the observations made in this judgment. We reiterate that whatever procedure the Government proposes to follow in accepting the tender must be clearly stated in the tender notice. The consideration of the tenders received and the procedure to be followed in the matter of acceptance of a tender should be *transparent, fair and open.* While a bona fide error or error of judgment would not certainly matter, any *abuse of power for extraneous reasons,* it is obvious, would expose the authorities concerned, whether it is the Minister for Excise or the Commissioner of Excise, to appropriate penalties at the hands of the courts, following the law laid down by this Court in *Shiv Sagar Tiwari* v. *Union of India (In re, Capt. Satish Sharma and Sheila Kaul).*

The Supreme Court in the case of *Raunaq International Ltd. v. I.V.R. Construction Ltd* reported in (1999) 1 SCC 492 has held as under :

> **9.** The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are of paramount importance are commercial considerations. These would be:
>
> (1) the price at which the other side is willing to do the work;
>
> (2) whether the goods or services offered are of the requisite specifications;
>
> (3) whether the person tendering has the ability to deliver the goods or services as per specifications. When large works contracts involving engagement of substantial manpower or requiring specific skills are to be offered, the financial ability of the tenderer to fulfil the requirements of the job is also important;
>
> (4) the ability of the tenderer to deliver goods or services or to do the work of the requisite standard and quality;
>
> (5) past experience of the tenderer and whether he has successfully completed similar work earlier;
>
> (6) time which will be taken to deliver the goods or services; and often
>
> (7) the ability of the tenderer to take follow-up action, rectify defects or to give post-contract services.
>
> Even when the State or a public body enters into a commercial transaction, considerations which would prevail in its decision

to award the contract to a given party would be the same. However, because the State or a public body or an agency of the State enters into such a contract, there could be, in a given case, an element of public law or public interest involved even in such a commercial transaction.

10. What are these elements of public interest? *(1)* Public money would be expended for the purposes of the contract. *(2)* The goods or services which are being commissioned could be for a public purpose, such as, construction of roads, public buildings, power plants or other public utilities. (3) The public would be directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously. (4) The public would also be interested in the quality of the work undertaken or goods supplied by the tenderer. Poor quality of work or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in redoing the entire work — thus involving larger outlays of public money and delaying the availability of services, facilities or goods, e.g., a delay in commissioning a power project, as in the present case, could lead to power shortages, retardation of industrial development, hardship to the general public and substantial cost escalation.

11. When a writ petition is filed in the High Court challenging the award of a contract by a public authority or the State, the court must be satisfied that there is some element of public interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by court intervention, the proposed project may be considerably delayed thus escalating the cost far more than any saving which the court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the court is satisfied that there is a substantial amount of public interest, or the transaction is entered into mala fide, the court should not intervene under Article 226 in disputes between two rival tenderers.

The Supreme Court in the case of *Air India Ltd. v. Cochin International Airport Ltd* reported in (2000) 2 SCC 617 has held as under :

> **7.** The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in *Ramana Dayaram Shetty* v. *International Airport Authority of India, Fertilizer Corpn. Kamgar Union (Regd.)* v. *Union of India, CCE* v. *Dunlop India Ltd., Tata Cellular* v. *Union of India, Ramniklal N. Bhutta* v. *State of Maharashtra* and *Raunaq International Ltd.* v. *I.V.R. Construction Ltd.* The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene.

The Supreme Court in the case of *Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd* reported in (2005) 6 SCC 138 has held as under :

> **12.** After an exhaustive consideration of a large number of decisions and standard books on administrative law, the Court enunciated the principle that the modern trend points to judicial restraint in administrative action. The court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The court does not have the expertise to

> correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible. The Government must have freedom of contract. In other words, fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principles of reasonableness but also must be free from arbitrariness not affected by bias or actuated by mala fides. It was also pointed out that quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. (See para 113 of the Report, SCC para 94.)

The Supreme Court in the case of *Jagdish Mandal v. State of Orissa* reported in (2007) 14 SCC 517**,** has held as under :

> **22.** Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.

The Supreme Court in the case of *Heinz India (P) Ltd. v. State of U.P.* reported in (2012) 5 SCC 443 has held as under :

60. The power of judicial review is neither unqualified nor unlimited. It has its own limitations. The scope and extent of the power that is so very often invoked has been the subject-matter of several judicial pronouncements within and outside the country. When one talks of "judicial review" one is instantly reminded of the classic and oft-quoted passage from *Council of Civil Service Unions* v. *Minister for the Civil Service*, where Lord Diplock summed up the permissible grounds of judicial review thus: (AC pp. 410 D, F-H and 411 A-B)

"... Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. .

By 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the Judges, by whom the judicial power of the State is exercisable.

By 'irrationality' I mean what can by now be succinctly referred to as *'Wednesbury* unreasonableness'. It applies to a decision which is so outrageous in its defiance of logic or of accepted

moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that Judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. .

I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an Administrative Tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice."

68. We may while parting with the discussion on the legal dimensions of judicial review refer to the following passage from *Reid* v. *Secy. of State for Scotland* which succinctly sums up the legal proposition that judicial review does not allow the court of review to examine the evidence with a view to forming its own opinion about the substantial merits of the case. (AC pp. 541 F-H and 542 A)

"Judicial review involves a challenge to the legal validity of the decision. It does not allow the court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. It may be that the tribunal whose decision is being challenged has done something which it had no lawful authority to do. It may have abused or misused the authority which it had. It may have departed from the procedures which either by statute or at common law as a matter of fairness it ought to have observed. As regards the decisions itself it may be found to be perverse, or irrational or grossly disproportionate to what was required. Or the decision may be found to be erroneous in respect of a legal deficiency, as for example, through the absence of evidence, or of sufficient evidence, to support it, or through account being taken of irrelevant matter, or through a failure for any reason to take account of a relevant matter, or through some misconstruction of the terms of the statutory provision which the decision-maker is required to apply. But while the evidence may have to be explored in order to see if the decision is vitiated by such legal deficiencies it is perfectly clear that in case of review, as distinct from an ordinary appeal, the court may not set about forming its own preferred view of evidence."

16. In the present case, by order dated 14/2/2019 the Commissioner has merely kept his approval dated 6/2/2019 in abeyance. Thus, it is clear that the Commissioner has not taken a final decision as to whether his approval dated 6/2/2019 is liable to be recalled or not, therefore, this Court is of the considered opinion that this petition is premature.

17. It is further submitted by the counsel for the petitioner that once the approval dated 6/2/2019 was granted by the Commissioner, then he has no authority to review the same.

18. Considered the submissions made by the counsel for the petitioner.

19. Section 21 of the General Clauses Act reads as under:-

> **"21 Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws**.-Where, by any Central Act or Regulation, a power issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

20. From the plain reading of the said Section, it is clear that the authority who has a power to issue an order has an inbuilt power to rescind, modify and alter its own order. In the present case, the Commissioner in the light of certain allegations has decided to reconsider his approval dated 6/2/2019. Since no vested right has accrued in favour of the petitioner and as the Commissioner is well within its right to rescind his own order, therefore, it cannot be said that the decision of the Commissioner to reconsider his approval dated 6/2/2019 is without jurisdiction. Since no final order has been passed by the Commissioner so far and Commissioner is well within its right to reconsider its own order dated 6/2/2019, which was issued in exercise of its administrative powers, this Court is of the considered opinion that no fault in the order dated 14/2/2019 issued by the Commissioner, Gwalior Division, Gwalior could be pointed out by the petitioner.

21. Accordingly, this petition fails and is hereby **dismissed.**

Petition dismissed

I.L.R. [2020] M.P. 2453
WRIT PETITION

Before Mr. Justice S. A. Dharmadhikari

W.P. No. 10370/2020 (Gwalior) decided on 05 September 2020

MADHAVI RATHORE (SMT.) …Petitioner

Vs.

STATE OF M.P. & Ors. …Respondents

***A. Constitution – Article 226 – Habeas Corpus – Custody of Minor Child* – Held – Child is 15 months of age and mother who nurtured the child for 9 months in womb is certainly entitled for custody of child – Welfare of child is of paramount importance – Mother is well educated – Nothing on record to show that parents of petitioner/mother with whom she is living are not capable to maintain petitioner and her child – Respondents directed to handover custody of child to petitioner/mother – Petition allowed.**

(Para 13, 17, 19 & 20)

क. संविधान – अनुच्छेद 226 – बंदी प्रत्यक्षीकरण – अवयस्क बालक की अभिरक्षा – अभिनिर्धारित – बालक 15 माह की उम्र का है और माता जिसने 9 माह तक बालक को गर्भ में पाला है, निश्चित रूप से बालक की अभिरक्षा के लिए हकदार है – बालक का कल्याण सर्वोपरि महत्वपूर्ण है – माता भली भांति शिक्षित है – अभिलेख पर यह दर्शाने के लिए कुछ नहीं कि याची/माता के माता–पिता जिनके साथ वह रह रही है वे याची एवं उसके बालक का भरणपोषण करने के लिए समर्थ नहीं हैं – प्रत्यर्थीगण को बालक की अभिरक्षा याची/माता को सौंपने के लिए निदेशित किया गया – याचिका मंजूर।

***B. Constitution – Article 226 and Hindu Minority and Guardianship Act (32 of 1956) – Section 6 – Custody of Minor Child* – Held – Child is 15 months of age and in view of Section 6 of the Act of 1956, child has to be given in custody of mother.** **(Para 18)**

ख. संविधान – अनुच्छेद 226 एवं हिन्दू अप्राप्तवयता और संरक्षकता अधिनियम (1956 का 32) – धारा 6 – अवयस्क बालक की अभिरक्षा – अभिनिर्धारित – बालक 15 माह की उम्र का है और 1956 के अधिनियम की धारा 6 को दृष्टिगत रखते हुए बालक को माता की अभिरक्षा में दिया जाना होगा।

C. *Constitution – Article 226 – Custody of Minor Child – Habeas Corpus – Maintainability of Petition* – Held – Writ petition for issuance of a writ in nature of Habeas Corpus under Article 226 in peculiar facts and circumstances of case is certainly maintainable. **(Para 13)**

ग. संविधान – अनुच्छेद 226 – अवयस्क बालक की अभिरक्षा – बंदी प्रत्यक्षीकरण – याचिका की पोषणीयता – अभिनिर्धारित – प्रकरण के विशेष तथ्यों एवं

परिस्थितियों में अनुच्छेद 226 के अंतर्गत, बंदी प्रत्यक्षीकरण के स्वरूप की एक रिट जारी किये जाने हेतु रिट याचिका निश्चित रूप से पोषणीय है।

Cases Referred:

(1973) 2 SCC 674, (2000) 5 SCC 247, (1981) 2 SCC 277, AIR (MP) 1976 92, AIR (HP) 1987 34, W.P. No. 7739/2020 decided on 8.6.2020, (2019) 7 SCC 490.

Prashant Sharma, for the petitioner.
Rohit Mishra, Addl. A.G. for the respondents no.1 to 5/State.
K.N. Gupta with *Praveen Newaskar,* for the respondents no. 6 to 8.

O R D E R

S.A. DHARMADHIKARI, J.:- In pursuance of the directions issued by the Apex Court and guidelines issued by the High Court of Madhya Pradesh in the wake of COVID-19 outbreak, the matter was taken up through video conferencing while adhering to the norms of social distancing prescribed by the Government.

2. With the consent of parties, this petition is disposed of finally.

3. This petition under Article 226 of Constitution of India has been filed by the petitioner seeking issuance of writ in the nature of habeas corpus directing the respondents No. 1 to 5 to produce the corpus Yatharth before this Court, who is alleged to be in illegal detention of the respondents No. 6 to 8.

4. The brief facts leading to filing of this case are that the petitioner/Madhavi and respondents No. 6 got married on 03/12/2017. The child namely Yatharth was born out of their wedlock on 02/02/2019. The matrimonial dispute between the petitioner(wife) and respondent No. 6 (husband) was going on. The respondent No. 6 was employed at Indore. After his services were terminated, he came back to Gwalior. He was harassing and used to beat the petitioner. He demanded dowry of Rs. 5 Lakhs from the petitioner. Some altercation took place now and then to the extent that respondent No. 6 had locked the petitioner in a room and took away the minor child Yatharth along with him.

5. The corpus Yatharth is 15 months old child and has been illegally snatched by the respondent No. 6/husband and her inlaws from the possession of the petitioner, who is living in her parental house. On 30/06/2020, when the petitioner requested her husband to hand over the corpus to her, the respondent No. 6/husband beat the petitioner along with her brother and mother and had tied them with rope. In these circumstances, the petitioner was left with no other option, but to file an FIR bearing crime No. 84/2020 at police station Sirol, District Gwalior,

6. Learned counsel for the petitioner submits that child is a minor aged about 15 months and respondents No. 7 to 8 are grandparents and are senior citizens. They are not in a position to look after the child properly, therefore, the petitioner has made repeated request to hand over the child to her, but the respondents No. 6 to 8 did not hand over the child to her. In these compelling circumstances, the petitioner has filed the instant petition.

7. In the light of order passed by this Court on 13/08/2020, the petitioner along with corpus and respondents No. 6 to 8 were present in person before this Court through Video Conferencing. Respondents No. 1 to 5 have filed the status report. A detailed and exhaustive return has also been filed on behalf of the respondents No. 6 to 8. This Court had also interacted with the petitioner and respondent No. 6.

8. Shri K. N. Gupta, learned senior counsel appearing on behalf of respondents No. 6 to 8 submits that present petition has been filed claiming right of guardianship of a minor son and the petition under Article 226 of Constitution of India is only procedural and it does not bestow any right between the parties. The issue is required to be adjudicated by the competent civil court as per the provision contained in Hindu Minority and Guardianship Act, 1956 r/w Guardians and Wards Act, 1890. In support of his contentions, learned Senior Counsel has placed reliance on the judgments delivered by the Apex Court in the case of *Kanu Sanyal vs. District Magistrate, Darjeeling reported* in (1973) 2 SCC 674 and in the case of *Syed Saleemuddin vs. Doctor Rukhsana reported* in (2000) 5 SCC 247 to contend that the dispute arose between the husband and wife in relation to custody of guardianship of a minor child, therefore, the petitioner cannot claim guardianship as per provision contained in section 6 of Hindu Minority and Guardianship Act. In view of above, it is contended that this Court cannot exercise the powers of issuance of writ in the nature of habeas corpus under Article 226 of Constitution of India. He further contended that unless the custody of the child with respondent No. 6 is declared illegal by the competent civil court in appropriate proceedings, the mother / petitioner cannot claim custody of the child. He further pointed out that from the date of marriage i.e. 03/12/2017, the petitioner was of unsound mind. After delivery of the child, the petitioner became more furious and did not take care of the child. She was taken to various psychiatrists serving in the mental hospital at Gwalior. When the petitioner was examined by the Doctor, she became more furious. Her mental disorder rose to a level that she started refusing to feed the child and also did not take care of the child including cleanliness and maintaining hygiene. The husband / respondent No. 6 used to ask her to take care of the child, but she used to beat him as well as her father-in-law and mother-in-law. The respondents No. 6 to 8 have also lodged a complaint on 10/07/2020 to this effect. Her abnormal behaviour was also recorded in the mobile as well as in C.D. All these facts goes to show that the

petitioner is not in a position to maintain the child. The basic and primary requirement is the welfare of the child which is to be seen before granting custody of the child.

9. In reply, learned counsel for the petitioner has taken this Court to the various photographs annexed with the petition to show that the child is interacting with the mother and is comfortable with the mother. On seeing the said photographs, no one can make out that the petitioner is of unsound mind. Moreover, she is highly qualified and has obtained the degree of Bachelor of Engineering. It is further submitted that proper care and upbringing of the child can be done by the mother only. The husband is free to invoke the provision of Guardians and Wards Act and after getting decree from the civil court either of the parent is entitled to get the custody of the child. It is further submitted that competent civil court or the doctor has not declared the petitioner to be insane or lunatic.

10. Heard learned counsel for the parties at length and perused the material available on record.

11. The first issue before this Court is whether a *Habeas Corpus* petition is maintainable or not in respect of custody of a minor child, who is in the custody of the father and grandparents at Gwalior.

12. The apex Court in the case of *Capt. Dushyant Somal Vs. Sushma Somal* and another reported in (1981) 2 SCC 277 has dealt with the jurisdictional aspect with regard to issuance of *Habeas Corpus* writ in respect of illegal custody of Child. Paragraphs 3, 5 and 7 of the aforesaid judgment reads as under :-

> "3. There can be no question that a Writ of Habeas Corpus is not to be issued as a matter of course, particularly when the writ is sought against a parent for the custody of a child. Clear grounds must be made out. Nor is a person to be punished for contempt of Court for disobeying an order of Court except when the disobedience is established beyond reasonable doubt, the standard of proof being similar, even if not the same, as in a criminal proceeding. Where the person alleged to be in contempt is able to place before the Court sufficient material to conclude that it is impossible to obey the order, the Court will not be justified in punishing the alleged contemner. But all this does not mean that a Writ of Habeas Corpus cannot or will not be issued against a parent who with impunity snatches away a child from the lawful custody of the other parent, to whom a Court has given such custody. Nor does it mean that despite the contumacious conduct of such a parent in not producing the child even after a direction to do so has been given to him, he can still plead justification for the disobedience of the order by

merely persisting that he has not taken away the child and contending that it is therefore, impossible to obey the order. In the case before us, the evidence of the mother and the grand-mother of the child was not subjected to any cross-examination; the appellant-petitioner did not choose to go into the witness box; he did not choose to examine any witness on his behalf. The evidence of the grand-mother, corroborated by the evidence of the mother, stood unchallenged that the appellant-petitioner snatched away Sandeep when he was waiting for a bus in the company of his grand-mother. The High Court was quite right in coming to the conclusion that he appellant-petitioner had taken away the child unlawfully from the custody of the child's mother. The Writ, of Habeas Corpus was, therefore, rightly issued. In the circumstances, on the finding, impossibility of obeying the order was not an excuse which could be properly put forward.

5. It was submitted that the appellant-petitioner did not give evidence, he did not examine any witness on his behalf and he did not cross-examine his wife and mother-in-law because, he would be disclosing his defence in the criminal case, if he so did. He could not be compelled to disclose his defence in the criminal case in that manner as that would offend against the fundamental right guaranteed by Article 20(3) of the Constitution. It was suggested that the entire question whether the appellant-petitioner had unlawfully removed the child from the custody of the mother could be exhaustively enquired into in the criminal case where he was facing the charge of kidnapping. It was argued that on that ground alone the writ petition should have been dismissed, the submission is entirely misconceived. In answer to the rule nisi, all that he was required to do was to produce the child in Courts if the child was in his custody. If after producing the child, he wanted to retain the custody of the child, he would have to satisfy the Court that the child was lawfully in his custody. There was no question at all of compelling the appellant-petitioner to be a witness against himself. He was free to examine himself as a witness or not. If he examined himself he could still refuse to answer questions, answers to which might incriminate him in pending prosecutions. He was also free to examine or not other witnesses on his behalf and to cross examine or not, witnesses examined by the opposite party. Protection against testimonial compulsion" did not convert the position of a person accused of an offence into a position of privilege, with, immunity from any other action contemplated by law. A criminal prosecution was not a fortress against all other actions in law. To accept the position that the

> pendency of a prosecution was a valid answer to a rule for Habeas Corpus would be to subvert the judicial process and to mock at the Criminal Justice system. All that Article 20(3) guaranteed was that a person accused of an offence Shall not be compelled to be a witness against himself, nothing less and, certain nothing more. Immunity against testimonial compulsion did not extend to refusal to examine and cross-examine witnesses and it was not open to a party proceeding to refuse to examine himself or anyone else as a witness on his side and to cross examine the witnesses for the opposite party on the ground of testimonial compulsion and then to contend that no relief should be given to. the opposite party on the basis of the evidence adduced by the other party. We are unable to see how Article 20(3) comes into the picture at all.
>
> 7. It was argued that the wife had alternate remedies under the Guardian and Wards Act and the CrPC and so a Writ should not have been issued. True, alternate remedy ordinarily inhibits a prerogative writ. But it is not an impassable hurdle. Where what is complained of is an impudent disregard of an order of a Court, the fact certainly cries out that a prerogative writ shall issue,. In regard to the sentence, instead of the sentence imposed by the High Court, we substitute a sentence of three months, simple imprisonment and a fine of Rupees Five hundred. The sentence of imprisonment or such part of it as may not have been served will stand remitted on the appellant-petitioner producing the child in the High Court. With this modification in the matter of sentence, the appeal and the Special Leave Petition are dismissed. Criminal Miscellaneous Petition No. 677/81 is dismissed as we are not satisfied that it is a fit case for laying a complaint."

13. In light of the aforesaid judgment, this court is of the opinion that a writ petition for issuance of a writ in nature of *Habeas Corpus* under article 226 of the Constitution of India in the peculiar facts and circumstances of the case is certainly maintainable. Otherwise also, keeping in view the welfare of the child and other factors, this court is of the opinion that the child has to be in the custody of mother.

14. In the case of *Veena Agrawal Vs. Shri Prahlad Das Agarwal* reported in AIR (MP) 1976 92, the Division Bench of this Court in paragraphs No.5 and 6 has held as under:-

> "5. Having heard learned counsel of the parties, we are of opinion that this petition must be allowed. At the outset we would like to mention that in the nature of the present case it is not at all necessary for us to go into the details of allegations and

counter-allegations of the parties. We are required to decide this, petition on the sole consideration in whose custody the welfare of the minor lies. Under Section 6(a) of the Hindu Minority and Guardianship Act, 1956, it is provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother. The clause gives legislative sanction to the principle which is now well established that although the father is the natural guardian of the minor child and entitled as such to his custody, the prime and paramount consideration is the welfare of the minor and the custody of a child of tender years should, therefore, remain with the mother unless there are grave and weighty considerations which require that the mother should not be permitted to have the minor with her. For applying the aforesaid rule we will have to look to the facts emerging from the petition and the return filed before us. The fact that the petitioner belongs to a respectable family is not in dispute and also her father is drawing a handsome salary. The petitioner has besides her father, her mother, four sisters but no brother. Out of these four sisters, first two are already married and the 4th and 5th studying in a college. The petitioner is the third daughter of her parents. The petitioner is staying with her parents. She herself is a highly educated lady. Therefore, it cannot be denied that if the custody of the male child is given to her she will not be able to look after him and the welfare of the child would in any manner be in jeopardy. As regards the contention advanced on behalf of the respondent that even he can look after the child cannot be a ground for depriving the mother of the custody of the child in view of the provisions of Section 6(a) of the Hindu Minority and Guardianship Act, Even the basis stated by the respondent that he would be in a position to look after the child is not convincing. The petitioner is a lecturer and he will have to discharge his official duties by remaining away from his house. He cannot, therefore, feed the child in a manner which is expected of a mother. The contention advanced on his behalf is that he would keep his aged mother with him and also an Ayah who would be able to look after the child properly cannot be equated with the looking after of the child by his own mother. Besides that, looking to the salary a lecturer draws it does not appear feasible that the respondent would be able to keep an Aya. The mother of the respondent is of an old age, as stated before us, and she would not be able to properly look after the child. We are, therefore, not convinced that the respondent-father is in a position to look after his newly born male child in preference to that of the mother.

> 6. In Bhagwati Bai v. Yadav Krishna Awadhiya, AIR 1969 Madh Pra 23, a Division Bench of this Court has held as under : "The writ of habeas corpus ad subjic-iendum, i.e., you have the body to submit or answer, is commonly known as the writ of habeas corpus. It is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from an illegal or improper detention. The writ also extends its influence to restore the custody of a minor to his guardian when wrongfully deprived of it The detention of a minor by a person who is not entitled to his legal custody is treated, for the purpose of granting the writ, as equivalent to imprisonment of the minor. It is, therefore, not necessary to show that any force or restraint is "being used against the minor by the respondent. In Gohar Begum v. Suggi Begum, (1960) 1 SCR 597 = (AIR 1960 SC 93) where the mother had, under the personal law, the legal right to the custody of her illegitimate minor child, the writ was issued."

15. In the case of *Kamla Devi Vs. State* reported in AIR (HP) 1987 34, the High Court of Himachal Pradesh in paragraph No.25 has held as under:-

> "25. The law, which generally lags behind social advances, has haltingly stepped in by enacting Section 6 of the Hindu Minority and Guardianship Act, 1956 and taken a small step in the direction of treating the mother as better suited for custody till the minor attains the age of 5. The relevant portion of Section 6 of the said Act reads as follows : "The natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are-(a) in the case of a boy or an unmarried girl -the father, and after him, the mother: - Provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother."
>
> (Emphasis supplied)
>
> The "tender years rule" has thus found statutory recognition and the legislative policy underlying thereto is based not only on the social philosophy but also in realities and points in the direction that the custody of minor children who have not completed the age of 5 years should ordinarily be with the mother irrespective of the fact that the father is the natural guardian of such minors. When moved for a writ of Habeas Corpus and in exercising the general and inherent jurisdiction in a child custody case, the Court is required to bear this legislative prescription in mind while judging the issue as to the welfare of the child.
>
> Findings Against The Factual Backdrop :"

16. In similar circumstances, the co-ordinate Bench of this Court at Indore has passed a judgment dated 08/06/2020 in W.P. No. 7739/2020 (Anushree Goyal vs. State of M.P. & Ors.), wherein, the co-ordinate Bench of this Court has held that the custody of the minor child is to be given to the mother i.e. petitioner and has allowed the said writ petition.

17. Undisputedly, the facts also reveal that there are matrimonial dispute between the parties. The child in question is hardly 15 months of age. The mother and father are well educated. There is nothing adverse brought before this Court that the parents of the petitioner with whom she is living are not capable of maintaining the petitioner as well as the child.

18. In the present case the child is aged about 15 months and this Court keeping in view Section 6 of Hindu Minority and Guardianship Act, 1956 is of the opinion that the child has to be given in the custody of the mother.

19. This Court is not dealing with the application preferred under Section 4 of Guardians and Wards Act, 1890. This Court is dealing with the *Habeas Corpus* writ petition. In the case of *Sheoli Hati Vs. Somnath Das* reported in (2019) 7 SCC 490 the Hon'ble Supreme while deciding the issue relating to custody of a child has held that the welfare of a child is of paramount importance. While dealing with this *Habeas Corpus* petition again this Court is of the opinion that the welfare of a child is of paramount importance and the mother/petitioner, who has nurtured the child for nine months in the womb, is certainly entitled for custody of the child keeping in view the statutory provisions governing the field. In these circumstances, this Court is left with no other alternative except to direct the respondents No. 6 to 8 to handover the custody of the child to the present petitioner.

20. In view of above, the respondents No. 6 to 8 are directed to handover the custody of the child Yatharth to the present petitioner/mother on **8th September, 2020 at 11 Am** in her present residential address under the supervision of Assistant Sub Inspector of concerned police station, who escorted the petitioner as well as corpus and was present before this Court on 20/08/2020 so that the transition of the child shall take place peacefully and without any untoward incident. Both parents as well as the in-laws shall co-operate with each other. In pursuance to the direction of this Court, the SHO of the police station concerned is directed to file report with regard to peacefully handing over the corpus/child in the custody of the petitioner by **10th September, 2020** before the Registry of this Court.

21. However, the respondents No. 6 to 8 would be at liberty to proceed in accordance with law for seeking custody of child, if so advised.

22. Accordingly, the instant petition stands allowed to the extent indicated herein above. There shall be no order as to costs.

Petition allowed

I.L.R. [2020] M.P. 2462
MISCELLANEOUS PETITION
Before Mr. Justice G.S. Ahluwalia
M.P. No. 80/2020 (Gwalior) decided on 22 January, 2020

RAJENDRA KUMAR AGRAWAL …Petitioner

Vs.

ANIL KUMAR & anr. …Respondents

***A. Stamp Act, Indian (2 of 1899), Schedule 1-A, Article 5(3)(i) – Stamp Duty – Calculation – Question of Possession* – Held – Although agreement to sell was termed as "without possession" but clause of agreement shows that there was a clear intention of parties to terminate landlord-tenant relationship – Since possession of Respondent-1 (tenant) was altered from that of tenant to that of transferee under contract, agreement to sell would be a conveyance and is chargeable under Article 5(3)(i) of Schedule 1-A – Document was not sufficiently stamped – Impugned order set aside – Petition allowed. (Paras 10, 12 & 16 to 18)**

क. स्टाम्प अधिनियम, भारतीय (1899 का 2), अनुसूची 1–A, अनुच्छेद 5(3)(i) – स्टाम्प शुल्क – गणना – कब्जे का प्रश्न – अभिनिर्धारित – यद्यपि विक्रय के करार को ''बिना कब्जे'' के रूप में परिभाषित किया गया था लेकिन करार का खंड यह दर्शाता है कि पक्षकारों का भू–स्वामी–किराएदार के संबंध को समाप्त करने का एक स्पष्ट आशय था – चूंकि प्रत्यर्थी क्र. 1 (किराएदार) के कब्जे को संविदा के अंतर्गत किराएदार से अंतरिती में परिवर्तित किया गया था, विक्रय का करार एक हस्तांतरण होगा तथा अनुसूची 1–A के अनुच्छेद 5(3)(i) के अंतर्गत प्रभार्य है – दस्तावेज पर्याप्त रूप से स्टाम्पित नहीं था – आक्षेपित आदेश अपास्त – याचिका मंजूर।

***B. Civil Practice – Stamp Duty – Jurisdiction of Court* – Held – Merely because agreement to sell is a registered document, it does not mean that insufficiency of stamp duty cannot be looked into by the Court. (Para 16)**

ख. सिविल पद्धति – स्टाम्प शुल्क – न्यायालय की अधिकारिता – अभिनिर्धारित – मात्र क्योंकि विक्रय का करार एक रजिस्ट्रीकृत दस्तावेज है, इसका अर्थ यह नहीं है कि स्टाम्प शुल्क की कमी को न्यायालय द्वारा विचार में नहीं लिया जा सकता।

Cases referred :

(2003) 4 SCC 705, (2019) 4 SCC 153, W.P. No. 1777/2019 order passed on 10.04.2019.

B.D. Jain, for the petitioner.
S.K. Shrivastava, for the respondent No. 1.

O R D E R

G.S. AHLUWALIA, J.:- Heard finally.

This Petition under Article 227 of the Constitution of India has been filed against the order dated 2-12-2019 passed by 13 th A.D.J., Gwalior in Civil Suit No.(106-A/2013) C.S.No.21-A/2014 by which the objection filed by the petitioner regarding the execution of agreement to sell on an insufficiently stamped paper has been rejected.

2. The necessary facts for the disposal of the present petition in short are that the respondent no.1 has filed a suit for specific performance of contract. When the Plaintiff tried to exhibit the agreement to sell in his evidence, then an objection was raised with regard to the admissibility of the document on the ground that it is insufficiently stamped.

3. The Trial Court by the impugned order dated 2-12-2019 has rejected the objection raised by the petitioner.

4. Challenging the order passed by the Trial Court, it is submitted by the Counsel for the petitioner, that although in the cause title, it is mentioned that the agreement to sell is without possession, but in fact, it is incorrect to say that the agreement to sell was without delivery of possession. By referring to page 3 of the agreement to sell, it is submitted by the Counsel for the petitioner, that since, it is specifically mentioned that after the execution of the agreement to sell, the status of the respondent no.1 of a tenant would come to an end and the respondent no.1 would become the owner, therefore, it is submitted that the nature of possession of the respondent no.1 was altered after the execution of the agreement to sell, and therefore, it cannot be said that merely because the respondent was already in possession of the property in dispute in the capacity of tenant, therefore, no possession was given at the time of execution of the agreement to sell.

5. *Per contra,* it is submitted by the Counsel for the respondent no.1, that the respondent no.1, was already in possession of the property in dispute in the capacity of a tenant, and the relationship of the landlord and tenant would not come to an end even after the execution of the agreement to sell, it cannot be said that the possession of the property in dispute was handed over to the respondent no.1. It is further submitted that since, the petitioner has also filed a suit for

eviction, therefore, it is clear that the petitioner is still treating the respondent no.1 as his tenant.

6. Heard the learned Counsel for the parties.

7. The moot question for determination is that whether the possession of the property in dispute was handed over to the respondent no.1 at the time of execution of agreement to sell or not?

8. The undisputed fact is that the respondent no.1 was already in possession of the property in dispute in the capacity of the tenant. Agreement to sell (Annexure P/4) was executed on 4-1-2012 for a consideration amount of Rs.25,00,000/-. An advance of Rs.2,00,000/- was paid and the remaining amount of Rs. 23,00,000/- was payable at the time of agreement to sell.

9. The cause title of the agreement to sell reads as under :-

लिखतम विक्रय अनुबंध पत्र
(कब्जा रहित)

However, para 3 of the agreement reads as under :-

> यह कि पक्षकार क्रमांक 2 विरूद्व पक्षकार क्रमांक 1 ने निष्कासन का वाद न्यायालय त्रयोदशम् व्यवहार न्यायालय वर्ग 2 ग्वालियर के समक्ष मे प्रस्तुत कर रखा है उक्त वाद मे पक्षकार क्रमांक 1 राजेन्द्र कुमार अग्रवाल विक्रय अनुबंध पत्र हो जाने से वापस ले लेगा। पक्षकार क्रमाक 1 विक्रय अनुबंध पत्र हो जान से पक्षकार क्रमांक 2 से किराया जो अनुबंध के पूर्व लिया जा रहा था अनुबंध दिनांक से प्राप्त नही कर सकेगा और किराये का अधिकार पक्षकार क्रमांक 1 के समाप्त हो गये है पक्षकार क्रमांक 2 भवन स्वामी मे परिर्तित हो जायेगा।

10. Thus, by executing the agreement to sell, the intention of the parties was to terminate the relationship of landlord and tenant. Therefore, the nature of possession of the respondent no.1 also got altered because the relationship of landlord and tenant was terminated and it was also observed that the respondent no.1 shall not be liable to pay rent and the status of the respondent no.1 would be that of owner.

11. The Supreme Court in the case of *D.S. Parvathamma v. A. Srinivasan,* reported in (2003) 4 SCC 705 has considered the question as to whether the landlord tenant relationship would come to an end after the execution of agreement to sell or not and has held as under :

> **"9.** Secondly, the appellant has failed to allege and prove that he was delivered possession in part-performance of the contract or he, being already in possession as lessee, continued in possession in part-performance of the agreement to purchase

> i.e. by mutual agreement between the parties his possession as lessee ceased and commenced as that of a transferee under the contract. On the contrary, there is a finding recorded in the earlier suit that in spite of his having entered into a contract to purchase the property he had not disowned his character as lessee and he was treated as such by the parties. The judgment dated 1-9-1999 in the civil suit notes the conduct of the plaintiff inconsistent with his conduct as a vendee-in-possession. When a person already in possession of the property in some other capacity enters into a contract to purchase the property, to confer the benefit of protecting possession under the plea of part-performance, his act effective from that day must be consistent with the contract alleged and also such as cannot be referred to the preceding title. The High Court of Madhya Pradesh had occasion to deal with the facts very near to the facts before us in *Bhagwandas Parsadilal* v. *Surajmal.* A tenant-in-possession entered into an agreement to purchase the house forming the subject-matter of tenancy. However, he failed to show his nature of possession having altered from that of a tenant into that of a transferee. In a suit of ejectment based on landlord-tenant relationship, the tenant sought to protect his possession by raising the plea of part-performance as against the subsequent purchaser of the property. Referring to Section 91 of the Indian Trusts Act, the High Court held that a subsequent purchaser of the property with notice of an existing contract affecting that property must hold the property for the benefit of the person in whose favour the prior agreement to sell has been executed to the extent it is necessary to give effect to that contract. But that does not mean that till a final decision has been reached the contract creates a right in the person-in-possession i.e. the tenant, to refuse to surrender possession of the premises even if such possession was obtained by him not in part-performance of the contract but in his capacity as a tenant. Having entered into possession as a tenant and having continued to remain in possession in that capacity he cannot be heard to say that by reason of the agreement to sell his possession was no longer that of a tenant. (Also see *Dakshinamurthi Mudaliar* v. *Dhanakoti Amma* and *A.M.A. Sultan* v. *Seydu Zohra Beev.)* In our opinion the law has been correctly stated by the High Court of Madhya Pradesh in the abovesaid decision."
>
> *(Underline applied)*

The Supreme Court in the case of *H.K. Sharma v. Ram Lal,* reported in (2019) 4 SCC 153 has held as under :

> **22.** The question, which arises for consideration in these appeals, is when the lessor and the lessee enters into an agreement for sale/purchase of the tenanted premises where the lessor agrees to sell the tenanted premises to his lessee for consideration on certain conditions, whether, as a result of entering into such agreement, the jural relationship of lessor and the lessee in relation to the leased property comes to an end and, if so, whether it results in determination of the lease.
>
> **23.** In other words, the question that arises for consideration is when the lessor enters into an agreement to sell the tenanted property to his lessee during the subsistence of the lease, whether execution of such agreement would ipso facto result in determination of the lease and sever the relationship of lessor and the lessee in relation to the leased property.
>
> **24.** In our considered opinion, the aforementioned question has to be decided keeping in view the provisions of Section 111 of the TP Act and the intention of the parties to the lease-whether the parties intended to surrender the lease on execution of such agreement in relation to the tenanted premises or they intended to keep the lease subsisting notwithstanding the execution of such agreement.
>
> *(Underline applied)*

12. If the above referred clause of the agreement to sell is considered, then it is clear that there was a clear intention of the parties to terminate the landlord tenant relationship and the possession of the respondent was altered from that of tenant to that of transferee under the contract. Thus, it is held that although the agreement to sell was termed as **without possession** but in fact the possession of the property in dispute was delivered to the respondent no.1 in the capacity of transferee under contract.

13. Now, the next question which arises for consideration is that whether 1% stamp duty would be payable on the agreement to sell or the agreement to sell is a conveyance with delivery of possession.

14. The above mentioned question is no more *res integra.*

15. This Court in the case of *Narendra Patel and others Vs. State of M.P. And others* by order dated 10-4-2019 passed in W.P. No. 1777 of 2019 has held as under :

> "Conveyance" has been defined in Section 2(10) of Indian Stamp Act, which reads as under :
>
> **"(10) Conveyance** includes a conveyance on sale and every instrument by which property, whether movable or immovable,

is transferred *inter vivos* and which is not otherwise specifically provided for by Schedule 1 or by Schedule 1-A, as the case may be."

A Division Bench of this Court in the case of *Umesh Vs. Rajaram* reported in (2010) 2 MPLJ 104 has held as under :-

"'16. ..... If the agreement is in relation to the property or sale of the same, then ordinarily the stamp duty payable would be Rs. 50/-, but in case, the document contains a recital that the possession of the property has been already been transferred or handed over to the proposed purchaser, without executing a conveyance or it shall be handed over to the purchaser without execution of the conveyance in future, then the document shall come out of the definition of an 'agreement', but would become a 'conveyance', as provided under Article 23 of Schedule 1-A.

(Emphasis supplied)"

Thus, this Court is of the considered opinion, that the Collector Stamps did not commit any mistake in holding that where the agreement to sell contains the recital that the possession of the property is already with the intending purchaser then the document would come out of the definition of agreement and would become a conveyance and hence is chargeable under Article 5(e)(i) of Schedule 1-A of Stamp Act.

16. In the present case since, the possession of the respondent no.1 was altered from that of tenant to that of transferee under contract, therefore, this Court is of the considered opinion, that the agreement to sell would be a conveyance and hence, it was insufficiently stamped. Merely because the agreement to sell is a registered document, therefore, it does not mean, that the sufficiency of the stamp duty cannot be looked into by the Court.

17. Accordingly, it is held that the agreement to sell is a conveyance and is chargeable under Article 5(3)(i) of Schedule 1-A of Stamp Act.

18. Resultantly, the order dated 2-12-2019 passed by 13th A.D.J., Gwalior in Civil Suit No.(106-A/2013) C.S. No.21-A/2014 is hereby set aside.

19. The petition succeeds and is hereby **Allowed.**

Petition allowed

I.LR. [2020] M.P. 2468
APPELLATE CRIMINAL
Before Mr. Justice J.P. Gupta

Cr.A. No. 10870/2019 (Jabalpur) order passed on 23 September, 2020

SHAKUNTALA KHATIK …Appellant

Vs.

STATE OF M.P. …Respondent

***A. Representation of the People Act (43 of 1951), Section 8 and Criminal Procedure Code, 1973 (2 of 1974), Section 389(1) – Suspension of Conviction* – Held – Rojnamcha entry makes prosecution story suspicious – *Prima facie* appellant has immense chance of success in appeal and can get acquittal or sentence lesser than 2 years imprisonment – Depriving her from contesting election of MLA would be injustice as per the present circumstances – Conviction suspended – Application allowed. (Para 13 & 14)**

क. लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 8 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 389 (1) – दोषसिद्धि का निलंबन – अभिनिर्धारित – रोजनामचा प्रविष्टि, अभियोजन कहानी संदेहास्पद बनाती है – प्रथम दृष्ट्या, अपीलार्थी के अपील में सफल होने की अपार संभावना है और उसे दोषमुक्ति मिल सकती है या 2 वर्ष से कम कारावास का दण्डादेश मिल सकता है – उसे विधान सभा के सदस्य का निर्वाचन लड़ने से वंचित करना, वर्तमान परिस्थितियों के अनुसार अन्याय होगा – दोषसिद्धि निलंबित – आवेदन मंजूर।

***B. Criminal Procedure Code, 1973 (2 of 1974), Section 389(1) – Suspension of Conviction* – Held – Power of suspension of conviction is vested to Appellate Court u/S 389(1) CrPC should be exercised in very exceptional case having regard to all aspects including ramification of such suspension – Apex Court concluded that stay of conviction can only be granted in exceptional circumstances and no hard and fast rule or guideline can be laid down as to what those exceptional circumstances are. (Para 4 & 5)**

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 389 (1) – दोषसिद्धि का निलंबन – अभिनिर्धारित – धारा 389 (1) दं.प्र.सं. के अंतर्गत अपीली न्यायालय को निहित, दोषसिद्धि के निलंबन की शक्ति का प्रयोग, अति अपवादात्मक प्रकरण में, सभी पहलूओं को ध्यान में रखते हुए किया जाना चाहिए जिसमें उक्त निलंबन की जटिलताएँ शामिल हैं – सर्वोच्च न्यायालय ने निष्कर्षित किया कि दोषसिद्धि की रोक केवल अपवादात्मक परिस्थितियों में प्रदान की जा सकती है तथा कोई कठोर नियम या दिशानिर्देश अधिकथित नहीं किया जा सकता कि वे अपवादात्मक परिस्थितियॉ क्या हैं।

Cases Referred :

(2018) 18 SCC 114, (2014) 8 SCC 909, Cr.A. 9444/2019 order dated 06.11.2019.

Varun Tankha with *Shivendra Pandey,* for the appellant-accused.
Pradeep Gupta, G.A. for the respondent-State.

O R D E R

J.P. GUPTA, J. :- This order shall govern the disposal of IA No.6472/2020 filed on 4-6-2020, on behalf of the appellant, under Section 389 (1) of Cr.P.C. for suspension of conviction of offences under Sections 147, 115/149, 332/149, 504/149, 506 Part-I/149 and 341/149 of IPC, awarded by the Court of 21st Additional Session and Special Judge (MP/MLA), Bhopal, in Special case (PPM) no.29/2018 vide its judgment dated 30.11.2019, whereby the appellant and 6 others accused persons have been convicted and sentenced as under:-

Conviction		Sentence		
Sections	**Act**	**Imprisonment**	**Fine**	**Imprisonment in lieu of fine**
147	IPC	RI for 6 months	Rs.500/-	1 Month RI
115/149	IPC	RIfor 3 years	Rs.1000/-	3 Months RI
332/149	IPC	RIfor 3 years	Rs.1000/-	3 Months RI
504/149	IPC	RI for 1 year	Rs.1000/-	3 Months RI
506 Pat-I/149	IPC	RI for 1 year	Rs.1000/-	3 Months RI
341/149	IPC	Nil	Rs.500/-	7 days RI

All sentences shall run concurrently.

2. Vide order dated 19.12.2019 execution of jail sentence of the appellant has already been suspended. This application for suspension of conviction has been preferred on the ground that the appellant's conviction is contrary to law. The prosecution has failed to prove the offenses (sic : offences) against the appellant beyond reasonable doubts, despite of it, learned Trial court has erroneously convicted and sentenced the appellant. Apart from it, the sentence is also on higher side. The appellant is first offender. The alleged incident took place in a heat of passion on provocation from administrative side and the appellant could not have been convicted for any of the offences for more than 2 years. At the time of alleged incident, the appellant was a Member of Legislative Assembly (MLA) from *Karaira* constituency of the State of Madhya Pradesh, but on account of aforesaid conviction and sentence, she became disqualified for further election of MLA as prescribed under Section 8 of the Representation of the People Act, 1951.

While she intends to contest upcoming Bye-election of MP Legislative Assembly which are going to be held in short span of time. In the circumstances, the case of the appellant comes in the purview of exceptional case, therefore, the conviction be suspended.

3. On behalf of the State, the Government Advocate has submitted that the finding of learned trial Court with regard to the conviction of the appellant is based on the sound evidence and reasoning. The evidence of the police personnel cannot be ignored merely on the ground that they are police officers and looking to the facts of the case, it cannot be said that the sentence is extremely on higher side. The offenses (sic : offences) committed by the appellant being a Member of the Legislative Assembly exhibits disregard to the law while the appellant was under obligation to avoid the law and show respect more than ordinary people. Therefore, the sentence should be exemplary and the case of the appellant does not come in purview of exceptional case as every convicted accused can claim that if his conviction is not suspended he will be deprived from contesting election of MP / MLA. In such circumstances, the object of disqualifying of criminals would be defeated. Hence, application be rejected.

4. Having heard learned counsel for the parties and on perusal of the record, in view of this court, there is a settled law that power of suspension of conviction is vested to the Appellate court under Section 389 (1) of Cr.P.C.; but this power should be exercised in a very exceptional cases having regard to all aspects including ramification of such suspension. In this regard, both the parties have cited number of judgments of Hon'ble the Apex court which all are not required to be cited here. A Three Judges Bench of Hon'ble the Apex Court in a recent case of *Lok Prahari vs. Election Commission of India and others* (2018) 18 SCC 114, has summarized the law on this point. In this regard, relevant paras 12, 13, 14 and 16 are as under :-

> **12.** Section 389 of the Code of Criminal Procedure, 1973, empowers the appellate court, pending an appeal by a convicted person and for reasons to be recorded in writing to order that the execution of a sentence or order appealed against, be suspended. In the decision in *Rama Narang* v. *Ramesh Narang [Rama Narang* v. *Ramesh Narang,* (1995) 2 SCC 513] , a Bench of three Judges of this Court examined the issue as to whether the Court has the power to suspend a conviction under Section 389(1). This Court held that an order of conviction by itself is not capable of execution under the Code of Criminal Procedure, 1973. But in certain situations, it can become executable in a limited sense upon it resulting in a disqualification under other enactments. Hence, in such a case, it was permissible to invoke

the power under Section 389 (1) to stay the conviction as well. This Court held: (SCC p. 527, para 19)

> "19. That takes us to the question whether the scope of Section 389(1) of the Code extends to conferring power on the appellate court to stay the operation of the order of conviction. As stated earlier, if the order of conviction is to result in some disqualification of the type mentioned in Section 267 of the Companies Act, we see no reason why we should give a narrow meaning to Section 389(1) of the Code to debar the court from granting an order to that effect in a fit case. The appeal under Section 374 is essentially against the order of conviction because the order of sentence is merely consequential thereto; albeit even the order of sentence can be independently challenged if it is harsh and disproportionate to the established guilt. Therefore, when an appeal is preferred under Section 374 of the Code the appeal is against both the conviction and sentence and therefore, we see no reason to place a narrow interpretation on Section 389(1) of the Code not to extend it to an order of conviction, although that issue in the instant case recedes to the background because High Courts can exercise inherent jurisdiction under Section 482 of the Code if the power was not to be found in Section 389(1) of the Code."

13. In *Navjot Singh Sidhu* v. *State of Punjab [Navjot Singh Sidhu* v. *State of Punjab,* (2007) 2 SCC 574 : (2007) 1 SCC (Cri) 627 : AIR 2007 SC 1003] a Bench of two learned Judges of this Court held that a stay of the order of conviction by an appellate court is an exception, to be resorted to in a rare case, after the attention of the appellate court is drawn to the consequences which may ensue if the conviction is not stayed. The Court held: (SCC pp. 581-82, para 6)

> "6. The legal position is, therefore, clear that an appellate court can suspend or grant stay of order of conviction. But the person seeking stay of conviction should specifically draw the attention of the appellate court to the consequences that may arise if the conviction is not stayed. Unless the attention of the court is drawn to the specific consequences that would follow on account of the conviction, the person convicted cannot obtain an order of stay of conviction.
>
> Further, grant of stay of conviction can be resorted to in rare cases depending upon the special facts of the case."

14. The above position was reiterated by a Bench of three Judges of this Court in *Ravikant S. Patil* v. *Sarvabhouma S. Bagali [Ravikant S. Patil* v. *Sarvabhouma S. Bagali,* (2007) 1 SCC 673 : (2007) 1 SCC (Cri) 417] , after adverting to the earlier decisions on the issue viz. *Rama Narang* v. *Ramesh Narang [Rama Narang* v. *Ramesh Narang,* (1995) 2 SCC 513] , *State of T.N.* v. *A. Jaganathan [State of T.N.* v. *A. Jaganathan,* (1996) 5 SCC 329 : 1996 SCC (Cri) 1026] , *K.C. Sareen* v. *CBI [K.C. Sareen* v. *CBI,* (2001) 6 SCC 584 : 2001 SCC (Cri) 1186] , *B.R. Kapur* v. *State of T.N. [B.R. Kapur* v. *State of T.N.,* (2001) 7 SCC 231] and *State of Maharashtra* v. *Gajanan [State of Maharashtra* v. *Gajanan,* (2003) 12 SCC 432 : 2004 Supp SCC (Cri) 459] . This Court concluded as follows: *(Ravikant S. Patil case [Ravikant S. Patil* v. *Sarvabhouma S. Bagali,* (2007) 1 SCC 673 : (2007) 1 SCC (Cri) 417] , SCC p. 679, para 15)

> "15. It deserves to be clarified that an order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon the facts of a case. Where the execution of the sentence is stayed, the conviction continues to operate. But where the conviction itself is stayed, the effect is that the conviction will not be operative from the date of stay. As order of stay, of course, does not render the conviction non-existent, but only non-operative. Be that as it may. Insofar as the present case is concerned, an application was filed specifically seeking stay of the order of conviction specifying the consequences if conviction was not stayed, that is, the appellant would incur disqualification to contest the election. The High Court after considering the special reason, granted the order *[Sarvabhouma S. Bagali* v. *Ravikant S. Patil,* 2005 SCC OnLine Kar 799] staying the conviction. As the conviction itself is stayed in contrast to a stay of execution of the sentence, it is not possible to accept the contention of the respondent that the disqualification arising out of conviction continues to operate even after stay of conviction."

16. These decisions have settled the position on the effect of an order of an appellate court staying a conviction pending the appeal. Upon the stay of a conviction under Section 389 CrPC, the disqualification under Section 8 will not operate. The decisions in *Ravikant S. Patil [Ravikant S. Patil* v. *Sarvabhouma S. Bagali,* (2007) 1 SCC 673 : (2007) 1 SCC (Cri) 417] and *Lily Thomas [Lily Thomas* v. *Union of India,* (2013) 7 SCC 653 : (2013) 3 SCC (Civ) 678 : (2013) 3 SCC (Cri) 641 : (2013) 2 SCC

(L&S) 811] conclude the issue. Since the decision in *Rama Narang [Rama Narang* v. *Ramesh Narang,* (1995) 2 SCC 513] , it has been well settled that the appellate court has the power, in an appropriate case, to stay the conviction under Section 389 besides suspending the sentence. The power to stay a conviction is by way of an exception. Before it is exercised, the appellate court must be made aware of the consequence which will ensue if the conviction were not to be stayed. Once the conviction has been stayed by the appellate court, the disqualification under sub-sections (1), (2) and (3) of Section 8 of the Representation of the People Act, 1951 will not operate. Under Article 102(1)(e) and Article 191(1)(e), the disqualification operates by or under any law made by Parliament. Disqualification under the above provisions of Section 8 follows upon a conviction for one of the listed offences. Once the conviction has been stayed during the pendency of an appeal, the disqualification which operates as a consequence of the conviction cannot take or remain in effect. In view of the consistent statement of the legal position in *Rama Narang [Rama Narang* v. *Ramesh Narang,* (1995) 2 SCC 513] and in decisions which followed, there is no merit in the submission that the power conferred on the appellate court under Section 389 does not include the power, in an appropriate case, to stay the conviction. Clearly, the appellate court does possess such a power. Moreover, it is untenable that the disqualification which ensues from a conviction will operate despite the appellate court having granted a stay of the conviction. The authority vested in the appellate court to stay a conviction ensures that a conviction on untenable or frivolous grounds does not operate to cause serious prejudice. As the decision in *Lily Thomas [Lily Thomas* v. *Union of India,* (2013) 7 SCC 653 : (2013) 3 SCC (Civ) 678 : (2013) 3 SCC (Cri) 641 : (2013) 2 SCC (L&S) 811] has clarified, a stay of the conviction would relieve the individual from suffering the consequence inter alia of a disqualification relatable to the provisions of sub-sections (1), (2) and (3) of Section 8.

5. In this regard, another judgment of the Apex Court in a case of *Shyam Narain Pandey vs. State of Uttar Pradesh* (2014) 8 SCC 909 is relevant in which it has been held that "stay of conviction can be granted only in exceptional circumstances, though sentence may be suspended but only after recording reasons, therefor, no hard-and-fast rule or guidelines can be laid down as to what those exceptional circumstances are where stay of conviction can be granted."

6. The aforesaid enunciation of law makes it clear that the power of suspension of conviction is vested to the Appellate court to ensure that the

conviction on untenable or fabulous (sic : frivolous) ground does not operate to cause serious prejudice.

7. In the present case, the appellant was M.L.A. and her desire and claim to contest upcoming Bye-elections of MP Legislative Assembly is bona fide and disqualification under the Representation of the People Act on account of aforesaid conviction and sentence prevents her to exercise her aforesaid right. In a democratic set up restriction on exercise of such right can be considered hardship to aspirants, if the conviction and sentence prima facie arguable to be fabulous (sic : frivolous) and malice, in other words where the appellant has fair chance to succeed in the appeal against the conviction and sentence.

8. In the present case, on behalf of the appellant it is argued that final disposal of the appeal will take more than a decade on account of earlier pendency of the cases in this High Court and prima facie in this case, the conviction is erroneous. Main allegation against the appellant is that on 8.6.2017 she was leading a crowd of supporters of the Congress party workers, assembled to protest against the police firing on the farmers in Mandsaur District who were demonstrating their anger against antifarmer policy of the State Government. The appellant did not take prior permission or give information to the administration about gathering and march on rally and burnt effigy of the CM near electric pole and when the administration tried to extinguish ablaze with the assistance of fire brigade workers, some water fell on the clothes of the appellant, she started abusing the police personnel and instigated supporters to set police station on fire and police officers tried to convince her but she instigated supporters to demolish public property and started shouting slogans and assaulted one Sanjeev Tiwari, Town Inspector, Police Station *Karaira* (PW-2) and snatched her uniform and called him *'Nalayak'* and beaten him by her slippers and in this regard, Sanjeev Tiwari lodged FIR at Police Station *Karaira* on 12.6.2017 where investigation was conducted by his subordinate Sub Inspector and after investigation, charge sheet was filed against the appellant and other accused persons. In the trial, none of the witnesses except Police officer Sanjeev Tiwari (PW-2) and Sub Inspector Parmanand Sharma (PW-7) and Suresh Chandra Nagar (PW-8) Inspector, have supported the prosecution version as they all are interested and partison witnesses. They are not reliable witness without independent corroboration. One Ravindra Singh Tomar (PW-1) Head Constable posted as security guard of the appellant has also stated that at the time of incident, there was an altercation between the appellant and Sanjeev Tiwari (PW-2) and at that time, the appellant took her slipper in her hands but he denied to see that the appellant beaten the T.I. with slipper. The workers of fire-brigade Suresh Batham (PW-3) and Sanjay Dubey (PW-4) did not say anything against the appellant except extinguishing fire which was broken during demonstration by the Congress Party workers. Koshal Bhargava (PW-6) who has claimed to be a journalist only a witness to

produce the C.D. prepared from his mobile video but the CD has not been exhibited to any of the witnesses to show the pictures of the incident and identified the persons took part in the demonstration. Therefore, it also does not support the prosecution.

9. Learned counsel for the appellant has further submitted that it is a concocted case as the FIR has not been recorded on the same day and it has been recorded after four days with the connivance of the higher officers and this aspect becomes crystal clear by Rojnamcha dated 8.6.2017 Ex.P/12 which has been written after the incident on the instructions of Sanjeev Tiwari (PW-2), in which entire incident has been mentioned but neither it is stated that the appellant instigated to set ablaze the police station nor it is stated that the appellant beaten him with slipper or anything else. The averments with regard to both main allegations are absent. If the prosecution story had been correct, the aforesaid averment would have been mentioned in the aforesaid Rojnamcha. In the light of the Rojnamcha Ex.P/12 prima facie it can be said that it is a fabricated case. The appellant was prosecuted on the instructions of leader of Ruling Party without fair investigation as the same was done by the immediate subordinate officer of the complainant. Accordingly, the prosecution has failed to prove the offenses (sic : offences) beyond the reasonable doubt. Accordingly, the conviction is not sustainable.

10. Apart from it, the appellant is first offender. The incident was taken place on provocation made by the police. The appellant is a lady without giving her an opportunity to save in the public place, her clothe *(Sari)* got drenched by throwing water. Therefore, she exhibited her resistance and anger against the police officers. In such circumstances, it cannot be said that action was intentional or preplanned. Therefore, she does not deserve to be sentenced for more than 2 years for any offence. Therefore, the case of the appellant comes in purview of exceptional case and if the conviction is not suspended it would cause serious prejudice and her political career would also ruin.

11. Learned Panel Lawyer appearing on behalf of the State has submitted that at this stage merit of the case cannot be discussed and considered. If it is done it will prejudice the prosecution case and it is not a case in which it is said that conviction is based without any evidence.

12. This court in the case of *Prahlad Lodhi Vs. State of M.P.* vide order dated 6.11.2019 in criminal appeal no. 9444/2019 after considering the relevant enunciation of law, has rightly observed in paragraph 16 which is quoted herein below :-

> "16. On the basis of above proposition of law, this Court is of the opinion that while suspending the sentence or conviction, the Court must go through the whole evidence recorded during trial

> by both parties and without commenting on the merits, satisfies itself whether a strong case of conviction is made out against the applicant or not. The prosecution is obliged to prove its case against the accused beyond doubt not on the basis of preponderance of probabilities".

13. In view of the aforesaid legal proposition of law, having gone through the entire evidence and without commenting anything on merit, it can be said that the appellant has a sound case in her favour as the earliest version of the prosecution reflected in Rojnamcha Ex.P/12, prima facie makes the case of the prosecution suspicious. In such circumstances, without commenting anything on merit, prima facie it can be said that the appellant has immense chances of success in the appeal and get the order of acquittal or sentence lesser than two years imprisonment. In such circumstances, depriving her from contesting election of MLA would be injustice and it would amount to frustrate the provisions of law which has been made by the Legislature to pass appropriate order to meet a situation exists in the present case.

14. In view of the aforesaid discussions, this application is **allowed.** It is ordered that judgment of conviction of the appellant dated 30.11.2019 passed by the Court of 21st Additional Session and Special Judge (MP/MLA), Bhopal in Special case (PPM) no.29/2018, shall remain suspended until further orders.

List the appeal for final hearing as per its turn.

C.C. as per rules.

Order accordingly

I.L.R. [2020] M.P. 2476
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice B.K. Shrivastava

M.Cr.C. No. 38669/2019 (Jabalpur) decided on 4 August, 2020

VINOD RAGHUVANSHI ...Applicant

Vs.

STATE OF M.P. & anr. …Non-applicants

***A. Criminal Procedure Code, 1973 (2 of 1974), Section 195 & 340 – Preliminary Inquiry* – Held – Main dispute is attached with a letter alleged to be written by respondent to the Chief Justice praying to list the matter before the Bench other than Justice 'X' – Respondent submitted that petitioner himself wrote the alleged letter with his forged signature – Held – Petitioner was under apprehension that petition will not be decided in his favour, thus he was having the cause to file vakalatnama of relative advocate of the Judge**

or to file forged letter in the name of respondent – Matter being suspicious, Principal Registrar (J) directed to conduct inquiry to ascertain the author of alleged letter and submit the inquiry report – Application allowed.

(Paras 31 to 34)

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 195 व 340 – प्रारंभिक जांच – अभिनिर्धारित – मुख्य विवाद एक पत्र से जुड़ा हुआ है जो कि अभिकथित रूप से प्रत्यर्थी द्वारा मुख्य न्यायाधिपति को यह प्रार्थना करते हुए लिखा गया है कि मामले को 'X' न्यायमूर्ति की न्यायपीठ से भिन्न किसी अन्य न्यायपीठ के समक्ष (लिस्ट) सूचीबद्ध किया जाए – प्रत्यर्थी द्वारा यह निवेदित है कि याची ने स्वयं उसके कूटरचित हस्ताक्षर के साथ अभिकथित पत्र लिखा था – अभिनिर्धारित – याची इस आशंका में था कि याचिका का विनिश्चय उसके पक्ष में नहीं होगा, अतः उसके पास न्यायाधीश के संबंधी अधिवक्ता का वकालतनामा प्रस्तुत करने का अथवा प्रत्यर्थी के नाम से कूटरचित पत्र प्रस्तुत करने का कारण था – मामला संदेहास्पद होने के कारण, प्रिंसिपल रजिस्ट्रार (न्यायिक) को अभिकथित पत्र के लेखक का पता लगाने हेतु जांच संचालित करने तथा जांच प्रतिवेदन प्रस्तुत करने हेतु निदेशित किया गया – आवेदन मंजूर।

***B. Criminal Procedure Code, 1973 (2 of 1974), Section 195 & 340 – Preliminary Inquiry* – Held – Preliminary enquiry is not mandatory but if circumstances required, then before filing complaint, preliminary enquiry can be made.**

(Para 29)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 195 व 340 – प्रारंभिक जांच – अभिनिर्धारित – प्रारंभिक जांच आज्ञापक नहीं है लेकिन यदि परिस्थितियों की आवश्यकता है, तब परिवाद प्रस्तुत करने के पहले, प्रारंभिक जांच की जा सकती है।

***C. Criminal Procedure Code, 1973 (2 of 1974), Section 195(1)(b)(ii) – Scope & Applicability* – Held – Apex Court concluded that Section 195(1)(b)(ii) Cr.P.C. would be attracted only when offence enumerated in said provision have been committed with respect to a document, after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when document was in *custodia legis*.**

(Para 19)

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 195(1)(b)(ii) – विस्तार व प्रयोज्यता – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि दं.प्र.सं. की धारा 195(1)(b)(ii) केवल तब आकर्षित होगी जब कथित उपबंध में प्रगणित अपराध किसी न्यायालय की कार्यवाही में साक्ष्य के रूप में प्रस्तुत किये गये अथवा दिये गये दस्तावेज के संबंध में अर्थात् उस दस्तावेज के विधि अभिरक्षा में रहने के दौरान, कारित किया गया हो।

***D. Criminal Procedure Code, 1973 (2 of 1974), Section 340 – Preliminary Inquiry – Scope & Applicability* – Discussed & Summarized.**

(Para 23)

घ. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 340 – प्रारंभिक जांच – विस्तार व प्रयोज्यता – विवेचित व संक्षिप्त में प्रस्तुत किया गया।

Cases referred:

AIR 1971 S.C. 1935 = 1971 Cr.L.J. 1437 = 1971 (2) SCC 376, AIR 1978 S.C. 290 = 1978 Cr.L.J. 339, 1992 CRI.L.J. 354, AIR 1987 Punj and Hary 19 : 1986 CriLJ 1834, (1998) 2 SCC 493, 1999 CRI.L.J. 4200, AIR 2002 S.C. 236 = 2002 Cr.L.J. 548 = (2002) 1 SCC 253, 2002 CRI.L.J. 4370 = 2002 (3) MPLJ 220, AIR 1998 SC 1121 = 1998 AIR SCW 932, 1996 (3) SCC 533 = 1996 AIR SCW 1850, 2005 CRI.L.J. 2161 = (2005) 4 SCC 370 = 2005 AIR SCW 1929, ILR 2015 M.P. 1099, AIR 2016 S.C. 290, (1979) 4 SCC 482 = AIR 1979 SC 1760, (2002) 1 SCC 253 = AIR 2002 SC 236, 2019 CRI.L.J. 3310 = (2019) 3 SCC 318 = AIR 2019 SC 2679.

Ravinandan Singh with *Swapnil Ganguly*, for the applicant.
Naveen Shukla, G.A. for the non-applicant No. 1/State.
Kishore Shrivastava with *Rahul Diwakar*, for the non-applicant No. 2.

O R D E R

B.K. SHRIVASTAVA, J.:- This order shall govern the disposal of **Interim application No. 1181 of 2020** filed by Respondent No. 2 Shri Ajay Arora [Referred as "Respondent"] **U/s 340 r/w 195 of Cr.P.C.** on 17.01.2020 for the following relief :-

> *"It is therefore prayed that this Honorable Court, may kindly be pleased to allow the instant application and conduct a detailed enquiry with respect to the Sections 205, 206, 209, 463, 465 and 471 of the Indian Penal Code, 1860, against the Applicant and thereafter proceed as per the provisions of Section 340 of the Code of Criminal Procedure, 1973 in the interest of Justice."*

2. Petitioner Shri Vinod Raghuwanshi (refereed as **"Petitioner")** has filed the instant petition No. 38669 of 2019 on 12.09.2019 under section 482 of the Code of Criminal Procedure, 1973 being aggrieved by the order dated 18/07/2019 passed by learned Judicial Magistrate First Class, Bhopal in RT No.5442 of 2008 whereby the court has prima facie found that offence under section 420 and 120-B are made out against the Petitioner and passed the order to frame the charges accordingly. The Petitioner has further assailed order dated 29/08/2019 passed by First Additional Judge to the Court of First Additional Sessions Judge, Bhopal passed in Criminal Revision No.374 of 2019 whereby the order dated 18/07/2019 passed by the learned Judicial Magistrate First Class, Bhopal has been upheld.

3. It will be useful to mention the entire **background of the case** :-

[i]. Respondent No.2 filed a private complaint before the court of learned Judicial Magistrate First Class, Bhopal on 02.02.2008, under Section 200 of the Code of Criminal Procedure, 1973, against the Petitioner and others for taking cognizance of the offences under Section 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860. The learned Court below took cognizance for the aforesaid offences under sections 420 and 120-B of the Indian Penal Code by its order dated 10/04/2008 and registered the Criminal Case No. No.5442 of 2008.

[ii]. Petitioner being aggrieved by the aforesaid order dated 10/04/2008 taking cognizance, preferred a Criminal Revision No.195/2008 before the Sessions Judge. The Respondent No.2 also, preferred Criminal Revision No.216 / 2008 against the same order whereby cognizance under section 420 and 120-B of the Indian Penal Code was taken but cognizance for other offences under sections 467, 468 and section 471 of the Indian Penal Code, was not taken. The 8th Additional Sessions Judge, Bhopal by its common order dated 13/05/2008 dismissed the Criminal Revision No.195/2008 filed by the Petitioner and allowed the Criminal Revision No.216/2008 filed by the Respondent No.2 and directed the court below to reconsider the cognizance for remaining offences.

[iii]. Being aggrieved by the aforesaid order dated 13/05/2008 passed by the learned Eighth Additional Sessions Judge, Bhopal, the Petitioner preferred MCRC No.5521/2008 under section 482 of the Code of Criminal Procedure, 1973, before the High Court. The Court dismiss the aforesaid application by order dated 11/11/2008.

[iv]. Petitioner assailed the aforesaid order dated 11/11/2008 passed by this Court, before the Hon'ble Supreme Court by preferring Special Leave Petition which was registered as Criminal Appeal No.1477/2013. The Hon'ble Supreme Court by its order dated 23/09/2013, dismiss the appeal being devoid of merits and sans substance.

[v]. Thereafter, the Petitioner preferred another application under section 482 of the Code of Criminal Procedure before this High Court which was registered as MCRC No.14715/2013. The said MCRC No.14715/2013 was withdrawn on 16/01/2014 with liberty to file an application under section 197 of the Code of Criminal Procedure. But Petitioner again filed an application before High Court under section 482 of the Code of Criminal Procedure being registered as MCRC No.3020/2014 and sought modification of order dated 16/01/2014 passed in MCRC No.14715/2013. The said order dated 16/01/2014 was recalled by order dated 26/02/2015.

[vi]. Petitioner preferred an application under section 197(1) of the Code of Criminal Procedure before the learned Trial Court on the ground

that the case has been instituted against the Petitioner without obtaining sanction from the State Government. The said application under section 197 Cr.P.C. was dismissed by the learned Judicial Magistrate First Class, Bhopal by its order dated 08/07/2015.

[vii]. The Petitioner assailed the said order dated 08/07/2015 before the High Court by filing MCRC No.12365/2015 under section 482 of the Code of Criminal Procedure. The said MCRC No.12365/2015 was dismissed by a detailed order dated 17/09/2018 passed by Hon'ble Shri Justice "X" .

[viii]. Magistrate recorded the statement with cross examination of Complainant / Respondent in RT No.5442 of 2008 on 29.04.2018 / 05.12.2018 in "evidence before charge". Thereafter, J.M.F.C. heard the arguments upon charge and prima-facie found that offence under section 420 and 120-B are made out against the Petitioner, therefore passed the order on 18.07.2019 to frame the charges under section 420 and 120-B of IPC.

[ix] The Petitioner assailed order dated 18/07/2019 passed by J.M.F.C. Bhopal, before the First Additional Judge to the Court of First Additional Sessions Judge, Bhopal in Criminal Revision No.374 of 2019. The aforesaid court by its order dated 29/08/2019 dismissed the Criminal Revision No.374 of 2019 and upheld the order dated 18/07/2019 passed by the learned Judicial Magistrate First Class, Bhopal. Being aggrieved by the aforesaid orders dated 18/07/2019 and 29/08/2019, the Petitioner has filed the instant application under section 482 of the Code of Criminal Procedure, 1973.

4. **It is submitted by Respondent that** :-

(a) The application under Section 482, MCRC No.12365/2015 was filed through counsel viz. Shri Swapnil Ganguly, Shri Aishwarya Singh and Shri Akshay Pawar. As per the Rules and Listing Scheme / Policy in-vogue in the High Court in criminal matters, if a particular case pertaining to one crime number / regular trial number / Sessions trial number has been decided by a particular bench then all applications and petitions pertaining to the same crime number / regular trial number / Sessions trial number are to be listed before the same bench which has decided the earlier matter. As per the aforesaid Rule/ Scheme/ Policy since the earlier application under Section 482 of the Code of Criminal Procedure MCRC No.12365/2015 filed by the instant Petitioner arising of the same R.T. No.5442/2008, was decided on merits by Hon'ble Shri Justice "X", the instant application under Section 482 of the Code of Criminal Procedure MCRC No.38669/2019 again filed by the Petitioner arising of the same R.T. No.5442/2008 was supposed to be listed before Hon'ble Shri Justice "X".

(b) Since the instant Petitioner did not get a favorable order in MCRC No.12365 /2015, the Petitioner in order to avoid the instant matter being heard by Hon'ble Shri Justice "X" got the instant application filed through his previous counsel **Shri Swapnil Ganguli** who also appeared in MCRC No.12365/2015, but in addition also got the vakalatnama signed by one **Shri Sanjay Shukla** who normally practices in Gwalior and happens to be a distant relative of Hon'ble Shri Justice "X". The vakalatnama was also signed by Shri Aditya Gutpa, K.V.S. Sunil Rao and Ayur Jain Advocates with Shri Sanjay Shukla Advocate.

(c) The instant Petition was filed on 12/09/2019 and as per the prevalent listing scheme the matter was listed for the first time before Hon'ble Shri Justice "X" on 20/09/2019. The matter did not reach on 20/09/2019 and remained Not-Reached in the list. The next computer-generated date in the instant matter was 23/09/2019 but the matter was not listed on 23/09/2019. The Petitioner filed application I.A. No.18023/2019 for appropriate directions on 23/09/2019 with a prayer that since the matter is to be argued by Shri Sanjay Shukla, Advocate, there would be conflict of interest if the matter is heard by Hon'ble Shri Justice "X" and hence the Petitioner prayed for necessary orders / directions to the registry of this Honorable Court for listing the matter before appropriate bench.

(d) The sole intention of the Petitioner in engaging Shri Sanjay Shukla, Advocate and further filing the aforesaid application for appropriate directions was to get the case transferred from the bench of Hon'ble Shri Justice "X". The said submission is further fortified by the fact that on 23/09/2019 itself an application I.A. No.18068/2019 for withdrawal of vakalatnama was filed by Shri Sanjay Shukla. If the application for withdrawal of vakalatnama was to be filed then for what reason application for appropriate directions to list the matter before appropriate bench was filed, is perceivable.

(e) Matter was listed on 24/09/2019 before Hon'ble Shri Justice "X" but again the matter did not reach op (sic : up) to hearing on 24/09/2019 and the matter remained Not- Reached in the list. Then matter was again listed on 27/09/2019 before Hon'ble Shri Justice "X". When the matter was called for hearing, no one was appeared for the Petitioner. The counsel for the Respondent No.2 vehemently raised objection to the conduct of the Petitioner in trying to avoid the bench and opposed the application **I.A. No.18023/2019.** Hon'ble Shri Justice "X" expressed that on one hand the counsel for the Respondent No.2 is opposing I.A. No.18023/2019 for appropriate orders but on the other hand the Respondent No.2 has written letter dated 20/09/2019 to the Honorable Chief Justice for transferring the matter to another bench. When the

counsel for the Respondent No.2 denied that any such letter was written by the Respondent No.2, Hon'ble Shri Justice "X" handed over the letter dated 20/09/2019 addressed to The Hon'ble Chief Justice of M.P. and purportedly signed by **"Ajay Arora".** The counsel for the Respondent No.2 sought a copy of the said letter dated 20/09/2019 in order to verify its veracity from Respondent No.2. On such request the Court asked the Court Reader to give a copy of the said letter dated 20/09/2019 to the counsel for the Respondent No.2. Accordingly, a photocopy of letter dated 20/09/2019 was given to the counsel for the Respondent No.2. The Honorable Court was pleased to grant time to file reply to I.A. No.18023/2019 for appropriate orders and fix the matter for 30/09/2019. Reply to the I.A. No.18023/2019 was filed by the Respondent No.2 on 27/09/2019 and a prayer for initiating contempt proceedings against the Petitioner was also made.

(f) Respondent No.2 was shocked to see copy of the letter dated 20/09/2019 wherein the said letter was written in his name but does not bear his signatures. The Respondent No.2 specifically states that the said letter dated 20/09/2019 has not been written, has not been signed and has not been sent to the Honourable Chief Justice of Madhya Pradesh. Therefore, Respondent No.2 immediately sent the clarification dated 29/09/2019 along with a detailed affidavit dated 29/09/2019 specifically stating the fact that the said letter dated 20/09/2019 was neither written nor signed by the Respondent No.2 and also prayed for an enquiry in the instant matter.

(g) The matter was listed on 30/09/2019 before Hon'ble Shri Justice "X" and the Hon'ble Court deemed it proper to direct the office to list the matter before another bench.

(h) Then matter was listed on 16/10/2019 before Another Bench. Since the Respondent No.2 had clarified that he had not written, signed and sent the letter dated 20/09/2019 and had also sworn an affidavit in this regard, the counsel for the Respondent No.2 made a request to call the said letter regarding objection for hearing the petition before another bench. The said request was not opposed and hence the Hon'ble Court pleased to direct the matter to be listed along with the said letter in week commencing 04/11/2019.

5. It is also submitted by Respondent No.2 that from the aforesaid it is clear that the letter dated 20/09/2019 was prepared and sent to the office of the Chief Justice of Madhya Pradesh to avoid hearing of the instant matter by bench of Hon'ble Shri Justice "X". The said letter dated 20/09/2019 was not prepared and sent by the Respondent No.2 as the Respondent No.2 has no apprehension with respect to the matter being heard by Hon'ble Shri Justice "X" as most of the issued (sic : issues) in the instant Petition has already been answered by Hon'ble Shri

Justice "X" in earlier round of litigation. Further the only beneficiary of the aforesaid letter dated 20/09/2019 is the Petitioner as the Petitioner himself wanted the hearing of the instant application before another bench and for the same purpose the Petitioner had engaged Shri Sanjay Shukla and had also filed an application for appropriate directions to list the matter before another bench. By fabricating the letter dated 20/09/2019, the Petitioner has committed an offence as defined and punishable under Sections 205, 209, 463, 465 and 471 of the Indian Penal Code. Further since the original letter dated 20/09/2019 is not traceable as per the report of the Registrar (Judicial), further offence under section 206 of the Indian Penal Code is made out against the Petitioner. For the reasons stated above, it is expedient in the interest of justice to conduct a detailed enquiry with respect to the offences mentioned herein above and proceed as per the provisions of Section 340 of the Code of Criminal Procedure, 1973.

6. Respondent placed reliance upon :-

[i] *Patel Laljibhai Somabhai Appellant v. The State of Gujarat*, AIR 1971 S.C. 1935 = 1971 Cr.L.J. 1437 =1971(2) SCC 376 (Three Judges),

[ii] *K. Karunakaran Appellant Vs. T. V. Eachara Warrier and another*, AIR 1978 S.C. 290 = 1978 Cr.L.J. 339,

[iii] *Sachida Nand Singh and another Vs. State of Bihar and another*, (1998) 2 SCC 493,

[iv] *Laxminarayan Deepak Ranjan Das Appellant Vs. K. K. Jha and others*,1999 CRI. L. J. 4200,

[v] *Pritish Vs. State of Maharashtra and others*, AIR 2002 S.C. 236 = 2002 Cr.L.J. 548 = (2002) 1 SCC 253,

[vi] *Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another*, 2005 CRI. L. J. 2161 = (2005) 4 SCC 370.

[vii] *Sh. Narendra Kumar Srivastava v. State of Bihar and Ors.* 2019 CRI. L. J. 3310 = (2019)3 SCC 318 = AIR 2019 SC 2679.

7. The petitioner filed the reply of aforementioned I.A. on 10.02.2010 and prayed that the present application under Section 340 Cr.P.C. read with Section 195 Cr.P.C. filed by respondent no.2 is liable to be dismissed with costs because :-

(a) Baseless, false and frivolous allegation made by respondent no.2 against the present petitioner. No credibility could be attached to the allegations made therein because respondent no.2 has track record of filing false and frivolous petitions, which will be evident from judgment / order dated 21.11.2013 (Annexure A-9) passed in W.P. No.20284/2013

filed by respondent no.2 against present petitioner, in which this Hon'ble Court has dismissed the aforementioned writ petition by imposing cost of Rs.25,000/- for concealing vital facts thereby not approaching the court with clean hands.

(b) Application has been filed by respondent no.2 with ulterior motive to delay and obstruct the petitioner from arguing on admission, which will be evident from the record of the case. The present petition was filed on 12.09.2019 and the respondent no.2 entered appearance by filing there Vakalatnama on 25.09.2019 without there being notice to them and thereafter continuously obstructing the argument on admission till date. The petitioner submits that the main aim of the respondent no.2 is to make the present petition infectious (sic : infructuous) as the trial is going on the trial court.

(c) Respondent no.2 is making false allegation of getting bench changed and allegations with respect to offences described in section 205, 206, 209, 463, 465 and Section 471 of the I.P.C. The allegations made in the present application are not only false but without any basis moreover based on his assumption. Allegation made in the present application is not only absurd, false but also illogical and self contradictory as the respondent no.2 on one hand is contending that Shri Sanjay Shukla Advocate is engaged and I.A. no.18023/2019 for appropriate direction was filed by petitioner to get the bench changed whereas on the other hand is also alleging that the alleged letter dated 20.09.2019 was fabricated and sent to get the bench changed.

(d) Petitioner has bonafidly filed I.A. no.18023/2019 disclosing all the facts as soon as it came to the knowledge of the petitioner. Thus, there was no good reason that the present petitioner may submit such alleged letter in the name of respondent no.2 that too in the Office of the Chief Justice. Order sheet dated 27.09.2019 does not disclose any such interaction between the Hon'ble Judge and the counsel for respondent no.2 as alleged in paragraph 19 of the present application. It also does not disclose the existence of any such letter dated 20.09.2019 (Document-3) or the factum of direction of Hon'ble Court directing court master to hand over a photocopy of the alleged letter dated 20.09.2019 to the counsel of the respondent no.2. The order sheet dated 27.09.2019 (Document-3) only discloses that respondent no.2 sought time to file reply to I.A. no.18023/2019. Similarly, the order sheet dated 30.09.2019 (by which the Hon'ble Justice "X" has directed to list the matter before another bench), also does not discloses any factum of any such letter dated 20.09.2019.

(e) For the sake of argument without admitting even if it is believed that the interaction as alleged in para 19 has transpired even then it can't be said that petitioner is the author of the alleged letter dated 20.09.2019.

On bare perusal of the letter dated 20.09.2019 it appears that respondent no.2 is the real author of the letter dated 20.09.2019 and after being confronted by the learned Judge then he may have no other choice but to disown the factum of such letter being sent by him and shift the blame on the petitioner.

(f) Even if as per the report of the Registrar Judicial if any letter dated 20.09.2019 was received in the Office of Hon'ble Chief Justice and if the same is not traceable even then petitioner cannot be assumed to be the author of the said letter and petitioner cannot be blamed if it is not traceable. Since, the respondent no.2 is the author of the letter dated 20.09.2019 it is therefore he is sure that it is the same letter dated 20.09.2019 which was received in the Office of Hon'ble Chief Justice. It appears from the report of the Registrar (Judicial) that he has neither seen the letter dated 20.09.2019 which was received in the Office of Hon'ble Chief Justice nor he has verified that the letter dated 20.09.2019 received in the office of Hon'ble Chief Justice is the same letter dated 20.09.2019 by the respondent no.2. The Respondent in a very reckless manner in order to hide his own mischievous conduct has not only attributed motives to the petitioner but has also made baseless allegations of fabricating letter and in doing so has also indirectly leveled allegations against officials of the Office of Hon'ble Chief Justice as he has alleged in para 30 of the application that "since the original letter dated 20.09.2019 is not traceable as per the report of the Registrar (Judicial), further offence under Section 206 of the Indian Penal Code is made out against the petitioner". The Respondent no.2 should be prosecuted for contempt of court for making allegations without any basis.

8. The petitioner further submits that it appears that the present application under Section 340 of the Criminal Procedure Code has been filed in ignorance of law and the same is not maintainable in the facts and scenario of the case. Section 190 Cr.P.C. provides that a Magistrate may take cognizance of any offence :-

(a) upon receiving a complaint of the facts which constitute such offence,

(b) upon a police report of such facts, and ,

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

Section 195 Cr.P.C. is a sort of exception to this general provision and creates an embargo upon the power of the Court to take cognizance of certain types of offences enumerated therein. The procedure for filing a complaint by the

Court as Contemplated by Section 195 (1) Cr.P.C. is given in Section 340 of Cr.P.C. The petitioner submits that the scope of the preliminary enquiry envisaged in Section 340(1) of the code is to ascertain whether any offence, referred to in Clause (b) of sub-section (1) of Section 195 Cr.P.C., affecting administration of justice has been committed in or in relation to a proceeding in that Court or in respect of a document produced in court or given in evidence in a proceeding in that court. In other words, the offence should have been committed during the time when the document was in custodia legis. The petitioner submits and same can be verified from the record of the case that no such letter dated 20.09.2019 has been filed by the petitioner in the present case. Thus, the letter dated 20.09.2019 was never part of the proceedings or record until it was brought on record by the respondent no.2 along with the present application. Thus, the allegation with respect to commission of offence mentioned in Section 195(1)(b)(i) with respect to any proceeding or document is not only baseless but also preposterous. Similarly, Section 195(1)(b)(ii) Cr.P.C. would be attracted only when the offence enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court. It is nobody's case that any offence as enumerated in Section 195(1)(b) was committed in respect to the said alleged letter dated 20.09.2019 (Document-3) after it had been produced or filed in the present case i.e. MCRC no.38669/2019 before this Hon'ble court. In view of the above submission, the present application under Section 340 Cr.P.C. read with Section 195 of the Cr.P.C. is liable to be dismissed at the threshold as the same is not maintainable.

9. Petitioner placed reliance upon :-

[i] Sardul Singh Vs. State of Hariyana, 1992 Cr.L.J. 354 (P & H),

[ii] Kamalvasini Radheshyam Agrawal Vs. R.D. Agrawal, 2002 Cri.L.J. 4370 (M.P.),and,

also upon Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another, 2005 CRI. L. J. 2161 = (2005) 4 SCC 370 cited by Respondent.

10. As **Section 340** of the Cr.P.C. has an interlinl (sic : interlink) with Section 195 (1) (b) it will be useful to refer to that provision in the present context. The said section reads as follows :-

"340. <u>Procedure in cases mentioned in section 195</u>.-

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section(1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect

of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section(1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.

(4) In this section, "Court" has the same meaning as in section 195."

11. In *Patel Laljibhai Somabhai Appellant v. The State of Gujarat,* AIR 1971 S.C. 1935 = 1971 Cr.L.J. 1437 =1971(2) SCC 376 *(Three Judges)* it has been said that prohibition contained in S. 195 (1) (c) is confined to those cases in which offenees (sic : offences) specified therein were committed by a party to the proceeding in the character as such party. The purpose and object of the Legislature in creating the bar against cognizance of private complaints in regard to the offences mentioned in Section 195 (1) (b) and (c) is both to save the accused person from vexatious or baseless prosecutions. Court said in para 7 :-

"7. The underlying purpose of enacting S. 195 (1) (b) and (c) and S. 476 seems to be to control the temptation on the part of the private parties

considering themselves aggrieved by the offences mentioned in those sections to start criminal prosecutions on frivolous, vexatious or insufficient grounds inspired by a revengeful desire to harass or spite their opponents. These offences have been selected for the court's control because of their direct impact on the judicial process. It is the judicial process, in other words the administration of public justice, which is the direct and immediate object or victim of those offences and it is only by misleading the courts and thereby perverting the due course of law and justice that the ultimate object of harming the private party is designed to be realised. As the purity of the proceedings of the court is directly sullied by the crime, the Court is considered to be the only party entitled to consider the desirability of complaining against the guilty party. The private party designed ultimately to be injured through the offence against the administration of public justice is undoubtedly entitled to move the court for persuading it to file the complaint. But such party is deprived of the general right recognized by S. 190 Cr. P. C. of the aggrieved parties directly initiating the criminal proceedings. The offences about which the court alone, to the exclusion of the aggrieved private parties, is clothed with the right to complain may, therefore, be appropriately considered to be only those offences committed by a party to a proceeding in that court, the commission of which has a reasonably close nexus with the proceedings in that Court so that it can, without embarking upon a completely independent and fresh inquiry, satisfactorily consider by reference principally to its records the expediency of prosecuting the delinquent party. It, therefore, appears to us to be more appropriate to adopt the strict construction of confining the prohibition contained in Section 195 (1) (c) only to those cases in which the offences specified therein were committed by a party to the proceeding in the character as such party. It may be recalled that the superior Court is equally competent under Section 476-A Cr. P. C. to consider the question of expediency of prosecution and to complain and there is also a right of appeal conferred by Section 476-B on a person on whose application the Court has refused to make a complaint under Section 476 or Section 476-A or against whom such a complaint has been made. The appellate Court is empowered after hearing the parties to direct the withdrawal of the complaint or as the case may be, itself to make the complaint. All these sections read together indicate that the legislature could not have intended to extend the prohibition contained in Section 195 (1) (c) Cr. P. C. to the offences mentioned therein when committed by a party to a proceeding in that Court prior to his becoming such party. It is no doubt true that quite often-if not almost invariably-the documents are forged for being used or produced in evidence in Court before the proceedings are started. But that in our opinion cannot be the controlling factor, because to adopt that construction, documents forged

> long before the commencement of a proceeding in which they may happen to be actually used or produced in evidence, years later by some other party would also be subject to Ss. 195 and 476 Cr. P. C. This in our opinion would unreasonably restrict the right possessed by a person and recognized by S. 190 Cr. P. C. without promoting the real purpose and object underlying these two sections. The Court in such a case may not be in a position to satisfactorily determine the question of expediency of making a complaint."

12. In *K. Karunakaran Appellant v. T. V. Eachara Warrier and another,* AIR 1978 S.C. 290 = 1978 Cr.L.J. 339 the Apex court said that at such an enquiry irrespective of the result of the main case, the only question is whether a prima facie case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient in the interest of justice to take such action. The party may choose to place all its materials before the court at that stage, but if it does not, it will not be stopped from doing so later in the trial, in case prosecution is sanctioned by the Court in para 21 and 22 :-

> **"21.** At an enquiry held by the court under Section 340 (1), Cr. P. C. irrespective of the result of the main case, the only question is whether a prima facie case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient in the interest of justice to take such action.
>
> **22.** The party may choose to place all its materials before the court at that stage, but if it does not, it will not be estopped from doing so later in the trial, in case prosecution is sanctioned by the Court."

13. In *Sardul Singh Petitioner v. State of Haryana*, 1992 CRI. L. J. 354, the Punjab & Haryana High Court observed that A Full Bench of aforesaid Court comprising of three Judges in *Harbans Singh v. State*, AIR 1987 *Punj and Hary* 19: (1986 Cri LJ 1834) after elaborate discussion had held that the bar enacted in S. 195 of the Criminal P.C. is applicable to those documents only which are tampered with or fabricated after their production in the Court and not concerning those documents which were fabricated outside the Court but tendered in evidence later on. But the court also said that the ratio of the decision of the above referred Full Bench is under assail before a larger Full Bench of this Court in *Registrar, High Court v. Madan Lal Sharma*, (Criminal Misc. No. 1342-M of 1985). in para 10 the court found that continuance of the present investigation is a clear abuse of the process of the Court and futile exercise as no Court can take cognizance of the above referred offences except on the complaint in writing of the civil Court where such offences were committed. Therefore court queshed (sic : quashed) the proceeding.

14. In *Sachida Nand Singh and another Vs. State of Bihar and another*, (1998) 2 SCC 493, it has been said that no complaint can be made by a court regarding any offence falling within the ambit of Section 195(1)(b) of the Code without first adopting procedural requirements. Forgery of a document if committed far outside the precincts of the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the Court records. Court said :-

> **"10.** The sub-section puts the condition that before the Court makes a complaint of "any offence referred to in clause (b) of Section 195(1)" the Court has to follow the procedure laid down in Section 340. In other words, no complaint can be made by a court regarding any offence falling within the ambit of Section 195(1)(b) of the Code without first adopting those procedural requirements. It has to be noted that Section 340 falls within Chapter XXVI of the Code which contains a fasciculus of "Provisions as to offences affecting the administration of justice" as the title of the Chapter appellate. So the offences envisaged in Section 195(1)(b) of the Code must involve acts which would have affected the administration of justice.
>
> **11.** The scope of the preliminary enquiry envisaged in Section 340(1) of the Code is to ascertain whether any offence affecting administration of justice has been committed in respect of a document produced in Court or given in evidence in a proceeding in that Court. In other words, the offence should have been committed during the time when the document was in custodia legis.
>
> **12.** It would be a strained thinking that any offence involving forgery of a document if committed far outside the precincts of the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the Court records."

15. In reference to S.340 of Cr.P.C., the D.B. of Orrisa High Court in *Laxminarayan Deepak Ranjan Das Appellant v. K. K. Jha and others*, 1999 CRI. L. J. 4200 [Orissa High Court] said in para 3 that :-

> **"3.** The object of the Legislature in enacting Section 340 of the Code was to sweep away the cloud of rulings which threatened to smoother the original enactment (i.e., Section 476(1) and Section 476-A of the 1898 Code) and to lay down a simplified procedure on the lines of the existing procedure as to complaints. There has been complete overhauling of the old provisions, though law substantially remains the same. Section 340 of the Code incorporates following principles :
>
> **(i)** Only cases where Courts, on objective consideration of the facts and circumstances are of honest belief and opinion that

interests of justice require the laying of a complaint, should form subject of an enquiry.

(ii) Conducting preliminary enquiry or dispensing with it is not mandatory, but is discretionary.

(iii) A proceeding under the provision is an independent and different proceeding from that of the original sessions case.

(iv) The proceeding being penal in nature, in accordance with principles of natural justice the accused should be issued show cause notice to afford a reasonable opportunity to establish by adducing oral and documentary evidence that it is not expedient in the interest of justice to prosecute him.

(v) As a condition precedent to filing a complaint; the Court should record a finding that it is expedient in the interests of justice that an enquiry should be made.

(vi) The provision to record a finding is not merely discretionary but is mandatory, for, an appeal lies against the order of the Court.

(vii) The order recording such a finding must be a speaking one supported by valid and justifiable grounds to enable the appellate Court to know the material on which the Court formed the opinion that it was expedient in the interest of justice to launch a prosecution.

(viii) The language recording the finding as contemplated under the provision must be such that it leaves no doubt that it was a fit and proper case.

(ix) It is incumbent on the Court to give a specific finding before making a complaint.

(x) The omission or failure to record a finding that it is expedient in the interests of justice to enquire into the offence is not a mere irregularity curable under Sections 464 and 465 of the Code as it goes to the root of the matter, and the Court will have no jurisdiction to file a complaint without recording such a finding."

16. Further in para 11 of the aforementioned case, the D.B. said that language of the Section means that the offence can be in relation to a proceeding in that Court and which can also be a proceeding under Section 340 of the Code itself and it is discretionary for Court to make a preliminary inquiry and it would depend upon the facts and circumstances of each case whether any preliminary inquiry is to be held or not before making an order :-

> **"11.** There is no restriction contained in the words used "in relation to a proceeding in that Court" so as to relate it to a proceeding otherwise than a proceeding under Section 340 of the Code. The plain and simple language of the Section means that the offence can be in relation to a proceeding in that Court and which can also be a proceeding under Section 340 of the Code itself. It is discretionary for such Court to make a preliminary inquiry and it would depend upon the facts and circumstances of each case whether any preliminary inquiry is to be held or not before making an order. As indicated above, before exercising its discretion to lay a complaint, the Court should find first that it is in the interests of public justice that a complaint should be made and, secondly, that there is a reasonable probability of a conviction resulting from the complaint. In regard to the first point although no time-limit for the institution of such prosecution is laid down in the section yet prompt action is desirable and delay on the part of a party in making his application to move the Court to lay a complaint may, if unexplained be, fatal to the application. When the application is delayed and the delay is not satisfactorily explained, evidence called in support thereof naturally comes under suspicion and the inference arises that the interests of public justice are less likely to be served than the interest of the applicant by the laying of a complaint. Moreover a party, who has been unsuccessful in a case should not remain indefinitely under the threat that an application for his prosecution may be filed, such a weapon is likely to be used for improper purposes. These considerations apply with more force when the application is not founded on materials to be founded on the record of the trial, but on evidence of the additional facts which the applicant alleges to be available. In such cases, strict explanation of the reasons for the delay in making the application is necessary; otherwise it cannot be held that it is in the interest of justice to make a complaint. Although an enquiry under Section 340 of the Code is a preliminary inquiry, the Court may find it necessary to consider and discuss the entire evidence for the purpose of coming to a finding whether the alleged offence was committed or not and may then decide whether it would be expedient in the interest of justice to launch prosecution."

17. A Three Judges Bench of Apex Court in *Pritish v. State of Maharashtra and others***,** AIR 2002 S.C. 236 = 2002 Cr.L.J. 548 = (2002) 1 SCC 253 said in reference to Preliminary inquiry before filing the complaint that opportunity of hearing to would be accused, is not required to be given. Court is under no obligation to afford an opportunity of hearing to accused before filing complaint before Magistrate for initiating prosecution proceedings. Court observed in para 9 :-

> **"9.** Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed."

18. In *Smt. Kamalvasini Agarwal Vs. R. D. Agarwal*, 2002 CRI. L. J. 4370 = 2002(3) MPLJ 220, the suit was filed by landlord for eviction of tenant on ground of bona fide requirements of suit premises. In the Deposition , the tenants witness told regarding availability of alternative accommodation upon the basis of recital in lease deed and map annexed thereto indicating availability of alternative accommodation. The Court said that it cannot be said that the statement has been given without any basis . The Court observed that the witness has given a proper explanation and the ground for his earlier statement. The recital in the lease deed and the map annexed thereto is the basis of his oral evidence indicating alternative accommodation available with the plaintiff. Therefore, his version cannot be said to be without any basis. It cannot be said even, remotely that he has intentionally given any false evidence. Court observed as under :-

> **5**.....It is well settled that a party cannot be permitted to vindicate personal vendetta or to settle his private score. Provision in Section 340 of the Code cannot be allowed to be used for self-aggrandisement. The prosecution for perjury can be directed in the larger interest of the administration of justice. The Court must form an opinion that the

prosecution is "expedient in the interest of justice". This is sine qua non for proceeding to launch a prosecution for perjury. The expression "It is expedient in the interest of justice" involves a careful balancing of many factors. It is only in suitable and glaring cases of deliberate falsehood that such a prosecution should be launched.

6. The Supreme Court has cautioned long back in *Chajoo Ram v. Radhey Shyam,* AIR 1971 SC 1367 : (1971 Cri LJ 1096), that indiscriminate prosecutions under Section 193, I.P.C. resulting in failure are likely to defeat the very object of such prosecution. It has been laid down that the prosecution for perjury should be sanctioned by Courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. .... Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the Court should be satisfied that there is reasonable foundation for the charge. Following this decision the Supreme Court has again observed in *M. S. Ahlawat v. State of Haryana,* (2000) 1 SCC 278 : (2000 Cri LJ 388) : "It is settled law that every incorrect or false statement does not make it incumbent upon the Court to order prosecution, but requires the Court to exercise judicial discretion to order prosecution only in the larger interest of the administration of justice". Recently the Supreme Court in *Pritish v. State of Maharashtra*, (2002) 1 SCC 253 : (2002 Cri LJ 548) has again observed that the Court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into.

7. It has also been observed in *K.T.M.S. Mohd. v. Union of India*, AIR 1992 SC 1831 : (1992 Cri LJ 2781) that it is incumbent that the power given by Section 340 of the Code should be used with utmost care and after due consideration. Such a prosecution for perjury should be taken only if it is expedient in the interest of justice. It was earlier observed by a three-Judge Bench of the Supreme Court in *Chandrapal Singh v. Maharaj Singh*, AIR 1982 SC 1238 : (1982 Cri LJ 1731), that day in and day out in Courts averments made by one set of witnesses are accepted and the counter averments are rejected. If in all such cases complaints under S. 199, I.P.C. are to be filed not only there will open up floodgates of litigation but it would unquestionably be in abuse of the process of the Court."

19. In view of the conflict of language between two decisions of Apex Court each rendered by a Bench of three learned Judges in *Sachida Nand Singh and Anr. v. State of Bihar and Anr.* [AIR 1998 SC 1121= 1998 AIR SCW 932] and *Surjit*

Singh and Ors. v. Balbir Singh [1996 (3) SCC 533 = 1996 AIR SCW 1850], regarding interpretation of Section 195(1)(b)(ii) Cr.P.C. the matter was placed before a five-judge Bench *in Iqbal Singh Marwah v. Meenakshi Marwah,* 2005 CRI. L. J. 2161 = (2005) 4 SCC 370 = 2005 AIR SCW 1929,. After referring to the provisions contained in Sections 190, 195(1)(b)(ii) and 340 Cr.P.C. it was held that the decision in *Sachida Nand*'s case (supra) correctly decided and the view taken is the correct view. Section 195(1)(b)(ii) Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in custodia legis. Court also said that S. 195 is not penal provision therefore rule of strict contruction (sic : construction) does not apply. Section 195(1)(b)(ii) Cr. P. C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in custodia legis. Court observed in para 18, 19 and 20 (of CRI. L. J.) that :-

> **"18.** In view of the language used in Section 340, Cr.P.C. the Court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the Section is conditioned by the words "Court is of opinion that it is expedient in the interest of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(i)(b). This expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in Court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the Court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remedyless. Any interpretation which leads to a situation where a victim of a crime is rendered remedyless, has to be discarded.

19. There is another consideration which has to be kept in mind. Sub-section (1) of Section 340, Cr.P.C. contemplates holding of a preliminary enquiry. Normally, a direction for filing of a complaint is not made during the pendency of the proceeding before the Court and this is done at the stage when the proceeding is concluded and the final judgment is rendered. Section 341 provides for an appeal against an order directing filing of the complaint. The hearing and ultimate decision of the appeal is bound to take time. Section 343(2) confers a discretion upon a Court trying the complaint to adjourn the hearing of the case if it is brought to its notice that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen. In view of these provisions, the complaint case may not proceed at all for decades specially in matters arising out of civil suits where decisions are challenged in successive appellate fora which are time consuming. It is also to be noticed that there is no provision of appeal against an order passed under Section 343(2), whereby hearing of the case is adjourned until the decision of the appeal. These provisions show that, in reality, the procedure prescribed for filing a complaint by the Court is such that it may not fructify in the actual trial of the offender for an unusually long period. Delay in prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost. This important consideration dissuades us from accepting the broad interpretation sought to be placed upon clause (b)(ii).

20. An enlarged interpretation to Section195(1)(b) (ii), whereby the bar created by the said provision would also operate where after commission of an act of forgery the document is subsequently produced in Court, is capable of great misuse. As pointed out in Sachida Nand Singh, after preparing a forged document or committing an act of forgery, a person may manage to get a proceeding instituted in any civil, criminal or revenue court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the Court, where the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one due to which the actual trial of such a person may be delayed indefinitely. Such an interpretation would be highly detrimental to the interest of society at large."

20. In *Shyam Kumar & Ors. Vs. State Of M.P. ,* ILR 2015 M.P. 1099 the court explain the distinction between Sections 340 & 344 and said Section 344 applies to judicial proceedings only whereas section 340 applies to proceedings other than judicial proceedings also. The Court observed :-

> **"8**.....On bare perusal of both these provisions, it is clear that Section 340 of the Code is general provisions which deals with the procedure to be followed in respect of variety of offence affecting the administration of justice which are specified in clause (b) of Section 195(1) of IPC but Section 344 of the Code is restricted in scope of offence falling under Section 193 to 195 of IPC. Similarly, Section 344 of the Code applies only to the judicial proceedings while Section 340 of the Code has wide scope in that it applies to the proceedings other than judicial also. The only qualification being that proceeding must be in relation to the Court.
>
> **9.** Similarly, under Section 340(1) of the Code, the Court has to held a preliminary enquiry before making the complaint while under Section 344 of the Code, Court can try the offender summarily by taking cognizance of the offence provided it gives a reasonable opportunity of showing cause why he should not be punished. For purposes Section 344 of the Code it is necessary for the Court to express an opinion in the judgment or final order itself that the person appearing before it as a witness has initially given false evidence or has intentionally fabricated false evidence. In absence of that, no action can be taken under Section 344 of the Code but the fact establishing falseness of the evidence or brought to the notice of the Court after delivery of judgment or order Section 344 of the Code cannot be applied and it would be open to the Court to take proceeding under Section 340 of the Code. Similarly under Section 340 of the Code, Court may proceed suo motu or on an application while under Section 344 of the Code no application is contemplated. 10. Under Section 344(3) of the Code powers of the Court to make complaint under Section 340 of the Code in respect of cases falling under Section 344 of the Code is not at all affected if the Court does not choose to proceed under Section 344 of the Code....."

21. In *Prem Sagar Manocha v. State (NCT of Delhi),* AIR 2016 S.C. 290 the Apex Court said that *Har Gobind v. State of Haryana[(1979)* 4 SCC 482 = AIR 1979 SC 1760 was a case falling on the interpretation of the pre-amended provision of the CrPC. Court placed reliance on three-Judge Bench case *Pritish v. State of Maharashtra* [(2002) 1 SCC 253 = AIR 2002 SC 236] and said that as per present section 340 of Cr.P.C., it is not mandatory for court to record finding, after preliminary enquiry, regarding commission of offence of perjury. Court observed as under :-

> "12. Section 340 of CrPC, prior to amendment in 1973, was Section 479-A in the 1898 Code and it was mandatory under the pre-amended provision to record a finding after the preliminary inquiry regarding the commission of offence; whereas in the 1973 Code, the expression 'shall' has been substituted by 'may' meaning thereby that under 1973 Code, it

> is not mandatory that the court should record a finding. What is now required is only recording the finding of the preliminary inquiry which is meant only to form an opinion of the court, and that too, opinion on an offence 'which appears to have been committed', as to whether the same should be duly inquired into. We are unable to appreciate the submission made by the learned Senior Counsel that the impugned order is liable to be quashed on the only ground that there is no finding recorded by the court on the commission of the offence. Reliance placed on *Har Gobind v. State of Haryana* [(1979) 4 SCC 482 = AIR 1979 SC 1760] is of no assistance to the appellant since it was a case falling on the interpretation of the pre-amended provision of the CrPC. A three-Judge Bench of this Court in *Pritish v. State of Maharashtra,* (2002) 1 SCC 253 = AIR 2002 SC 236] has even gone to the extent of holding that the proceedings under Section 340 of CrPC can be successfully invoked even without a preliminary inquiry since the whole purpose of the inquiry is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.

22. In *Sh. Narendra Kumar Srivastava v. State of Bihar and Ors.* 2019 CRI. L. J. 3310 = (2019)3 SCC 318 = AIR 2019 SC 2679 the apex court said in para 16 (of CRI.L.J) that The object of this Section is to ascertain whether any offence affecting administration of justice has been committed in relation to any document produced. Court said :-

> **"16.** Section 340 of Cr.P.C. makes it clear that a prosecution under this Section can be initiated only by the sanction of the court under whose proceedings an offence referred to in Section 195(1)(b) has allegedly been committed. The object of this Section is to ascertain whether any offence affecting administration of justice has been committed in relation to any document produced or given in evidence in court during the time when the document or evidence was in custodia legis and whether it is also expedient in the interest of justice to take such action. The court shall not only consider prima facie case but also see whether it is in or against public interest to allow a criminal proceeding to be instituted."

23. Therefore it is the **settelled (sic : settled) position of law about Section 340 of Cr.P.C.** that :-

> **[i]** It is not peremptory that such preliminary inquiry should be held. **'Conducting preliminary enquiry'** or **'dispensing with'** it is not mandatory, but **is discretionary.** It is **discretionary for Court to make a preliminary inquiry** and it would depend upon the facts and circumstances of each case whether any preliminary inquiry is to be held or not before making an order. Even proceedings under Section 340 of CrPC can be successfully invoked even without a preliminary inquiry.

The court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. **Absence of any such preliminary inquiry would not vitiate** a finding reached by the court regarding its opinion.

[ii] What is now required is only recording the finding of the preliminary inquiry which is meant only to form an opinion of the court, and that too, opinion on an offence **'which appears to have been committed',** as to whether the same should be duly inquired into. Since the whole purpose of the inquiry is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.

[iii] It is important to notice that even when the court forms such an opinion it **is not mandatory that the court should make a complaint.**

[iv] Prohibition contained in S. 195 (1) (c) is confined to those cases in which offenees specified therein were committed by a **"party to the proceeding"** in the character as such party.

[v] The private party designed ultimately to be injured through the offence against the administration of public justice is undoubtedly entitled to move the court for persuading it to file the complaint. But such party is deprived of the general right recognized by S. 190 Cr. P. C. of the aggrieved parties directly initiating the criminal proceedings.

[vi] At an enquiry held by the court under Section 340 (1) of Cr. P. C. irrespective of the result of the main case, the only question is whether a prima facie case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient in the interest of justice to take such action.

[vii] The party may choose to place all its materials before the court at that stage, but if it does not, it will not be estopped from doing so later in the trial, in case prosecution is sanctioned by the Court.

[viii] Forgery of a document if committed far outside the precincts of the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the Court records.

[ix] Only cases where Courts, on objective consideration of the facts and circumstances are of honest belief and opinion that interests of justice require the laying of a complaint, should form subject of an enquiry.

[x] As a condition precedent to filing a complaint; the Court should record a finding that it is expedient in the interests of justice that an enquiry should be made. The provision to record a finding is not merely discretionary but is mandatory, for, an appeal lies against the order of the Court.

[xi] The order recording such a finding must be a speaking one supported by valid and justifiable grounds to enable the appellate Court to know the material on which the Court formed the opinion that it was expedient in the interest of justice to launch a prosecution.

[xii] It is incumbent on the Court to give a specific finding before making a complaint. Court should find first that it is in the interests of public justice that a complaint should be made and, secondly, that there is a reasonable probability of a conviction resulting from the complaint.

[xiii] It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.

[xiv] The prosecution for perjury can be directed in the larger interest of the administration of justice. The Court must form an opinion that the prosecution is "expedient in the interest of justice".

24. Photo copy of the disputed letter dated 20.09.2019 has been filed by Respondent No. 2 which is as under : -

"To,

The Hon'ble Chief Justice of M.P.
High Court of M.P.
Jabalpur (M.P.)

Subject: *Serious Conflict of Interest of Hon'ble Justice "X", posted at M.P. High Court, Main Seat at Jabalpur in hearing MCRC No. 38669/2019; Vinod Raghuvanshi Vs. State of M.P. and one another listed before him on 20.10.2019 at item no.176.*

Respected Sir,

My name is Ajay Arora and I am respondent no.2 in MCRC no.38669/2019: Vinod Raghuvanshi Vs. State of M.P. and one another filed before the Hon'ble High Court of M.P., Main Seat at Jabalpur. I wish to bring to your notice that Shri. Vinod Raghuvanshi, petitioner in above referred MCRC u/s 482 Cr.P.C. has engaged one counsel namely Shri Sanjay Shukla : Enrolment no.3203/2004: R/o 3, Jhansi Road, Opp F.C.I. Godown, Gwalior. Shri Sanjay Shukla, Advocate normally practices at Gwalior Bench of M.P. High Court. Shri Sanjay Shukla, Advocate is real brother-in-law (saala) of Hon'ble Justice "X" posted at M.P. High Court, Main seat at Jabalpur. Shri. Vinod Raghuvanshi has engaged Shri. Sanjay Shukla, Advocate and the matter was listed before Hon'ble Justice "X" on 20.10.2019 at item no.176 in order to influence

Hon'ble Justice "X" to get a favorable order. It appears that either registry has deliberately listed above matter before Justice "X", knowing well that Shri Sanjay Shukla, Advocate is real brother-in-law of Hon'ble Justice or Shri Justice "X" has deliberately concealed this material information from the registry of this Hon'ble Court for some ulterior motive best known to him. Infact, it was also the duty of Shri. Sanjay Shukla, Advocate for placing the request before registry for not listing the above matter before Hon'ble Justice "X" disclosing his close relations with Hon'ble Justice. The most shocking part is that Shri Sanjay Shukla, Advocate has also appeared before him at 10:30 AM on 20.10.2019 for mentioning for out of turn hearing at item no.176. Neither Shri Sanjay Shukla prayed for listing of above matter before another bench due to conflict of interest nor Hon'ble Justice "X" recused himself from the matter. Hon'ble Justice Shri "X" has infact agreed to take up item no.176 after bail matters, but fortunately Hon'ble Justice "X" was not able to finish bail matters till 1:30 pm and could not take up item no.176, as he sat for hearing matters in Special Division Bench V & VII from 2:30 PM. This conduct of Hon'ble Justice "X" and Shri. Sanjay Shukla has led to suspicion that something is fishy. The above act amounts to misconduct by Sanjay Shukla Advocate as well as by Hon'ble Justice "X". I am also sending this complaint to State Bar Council of M.P. for taking appropriate disciplinary action against Sanjay Shukla, Advocate for breach of conduct rules. I therefore request your lordship to inquire into the matter and list the above matter MCRC no.38669/2019:Vinod Raghuvanshi Vs. State of M.P. and Others before another Single Bench (Other than Justice "X") of this Hon'ble High Court, Main Seat at Jabalpur, in the interest of justice and fairplay and to avoid serious conflict of interest.

Thanking you, in anticipation

Date: 20-09-2019 *Your's faithfully*

Sd/-

Ajay Arora

23 Zone II, M.P. Nagar, Bhopal

(Respondent no.2: MCRC no.38669/2019: Vinod Raghuvanshi Vs. State of M.P. & Others)"

25. As per Respondent, after getting the photocopy of aforesaid letter he submits a letter of clarification to the letter dated 20.09.2019 with his affidavit which is as under :-

"To,

Hon'ble the Acting Chief Justice
High Court of Madhya Pradesh
Principal Seat at Jabalpur (M.P.)

Through: *The Registrar General High Court of Madhya Pradesh.*
Subject: *Clarification to the letter dated 20.09.2019.*

Sir,

I am in receipt of the letter dated 20.09.2019 through the Court on the same date itself i.e. 27.09.2019 when the matter was listed. I submit that the said letter has neither been written nor signed by me. I am submitting a detailed affidavit so that an enquiry be conducted.

An affidavit is annexed herewith.

Sd/-
Ajay Arora.

AFFIDAVIT

I, ***Ajay Arora*** *S/o Late M.L. Arora, A/a 60 years, Office at 23, Zone II, M.P. Nagar, Bhopal do make on oath and state as under :-*

1. *I submit that I'am the respondent no.2 in MCRC 38669 of 2019. During the course of hearing of the said MCRC 38669 of 2019 my counsel has handed over to me a copy of the letter dated 20.09.2019 said to have been signed by me.*
2. *I specifically state that the said application has neither been submitted by me to the Acting Chief Justice nor the same has been signed by me.*
3. *I specifically state that the said application has been fabricated on my behalf containing my forges signatures.*
4. *I further state that the I have gone through the contents of the said letter and on going through the same it is revealed that it is dated 20.09.2019 whereas on the 1st page of application it is stated that the matter was listed before the Hon'ble Shri Justice R.K. Dubey on 20.10.2019 at Sr. No. 176.*
5. *I submit that it should be enquired as to how the letter reached the Hon'ble Acting Chief Justice on 20.09.2019 whereas the matter was listed on the said date itself on 20.09.2019 at Sr. No. 176.*
6. *I submit that the listing date of 20.10.2019 mentioned on the 1st page of the application is erroneous.*

7. I further submit that I have not raised any doubts about the credibility of Hon 'ble Shri Justice R.K. Dubey and I express my faith and confidence in the Hon'ble Judge.

8. I apprehend that the entire mischief appears to have been done by Mr. Vinod Raghuwanshi who is the petitioner in MCRC 38669 of 2019 so that the matter may be listed before some other bench. According to the practice prevailing the present matter deserves to be heard by Hon'ble Shri Justice R.K. Dubey as in the earlier round of litigation another petition bearing MCRC No.12365 of 2015 arising out of the same case which was filed by the same petitioner has been decided by the same Judge.

9. I submit that such tactics are being commonly adopted by writing letter like the present one which should not be permitted.

10. I submit that a complete enquiry be conducted so as to ascertain the truthfulness of my signatures and the contents of the application.

Sd/-

DEPONENT

VERIFICATION

I, Ajay Arora the above named deponent, do hereby verify that the contents of above paras 1 to 10 have been drafted by me and the same true and correct to my personal knowledge and belief.

Verified and signed on this 29th day of September 2019 at Bhopal.

Sd/-

DEPONENT

26. It is transpired from record that when the matter was listed on 30/09/2019 before Hon'ble Shri Justice "X", the Hon'ble Court deemed it proper to direct the office to list the matter before another bench. Then matter was listed on 16/10/2019 before Another Bench. The counsel for the Respondent No.2 made a request to call the disputed letter. The said request was not opposed by petitioner, hence the Court directed to the Registry to list the matter along with the said letter in week commencing 04/11/2019.

27. Thereafter, matter was listed on 08/11/2019 before this court. In compliance of the earlier order dated 04/11/2019, a note dated 07/11/2019 was written by Dealing Assistant-3 that no such letter dated 16/10/2019 has been received in the Registry. The said note was not verified by the Registrar (Judicial). Therefore, Court by its order dated 08/11/2019 directed the Registrar (Judicial) to

trace out the said letter and also collect information from the Registrar General Office and place the letter dated 20/09/2019 along with record on the next date. The Registrar (Judicial) was also directed to place on record the original letter dated 29/09/2019 submitted by Ajay Arora/ Respondent No.2 before the Registry. The matter was directed to be listed in the week commencing 18/11/2019. Then a report dated 21.11.2019 was submitted by the Registrar (Judicial) verifying the factum of receipt of letter dated 20/09/2019 from the office of the Chief Justice. After perusal of the report, the Registrar (Judicial) again directed on 22.11.2019 to trace out the said letters and place the same with record on the next date i.e. 03/12/2019. Forwarding the information dated 13.11.2019 and 19.11.2019 received from PPS of Hon'ble the C.J., a report was submitted by the Registrar (Judicial) that the letter dated 20/09/2019 is not traceable. Information was received as under :-

> *"Letter dated 29/9/2019 from Shri Ajay Arora of Bhopal was received in the office of undersigned and the same was marked to R (J-II) for necessary action.*
>
> *So far as letter dated 20/9/2019 of Shri Arora is concerned, it does not appear to have been received in this office as the same could not be traced.*
>
> *Sd/-*
> ***13/11/2019"***
>
> ***"19/11/2019***
>
> *With reference to note of receipt Section dated 18/11/2019 stating that letter dated 20/9/2019 was sent to the Secy. of Hon. CJ on 27/9/2019, it is submitted that it is shown to have been received in this office but is not traceable. Or, it is possible that after going through the same it was destroyed on being found worthless, or illegible or anonymous, it being ordinary post dak.*
>
> *Sd/-*
> ***19/11/2019"***

28. It is also appeared from the record that at the time of filing the petition, joint vakalatnama of Shri Swapnil Ganguly and Shri Amit Singh was filed. Thereafter, during pendency of petition another joint Vakalatnama of Shri Swapnil Ganguli, Shri Sanjay Shukla, Shri Aditya Gupta, Shri K.V.S. Sunil Rao and Shri Ayur Jain Advocates was filed. On **23.09.2019** an **I.A. No. 18068/2019** was filed by Shri Sanjay Shukla Advocate **for withdrawal of his Vakalatnama,** stated in **"I *Sanjay Shulkla is appearing on behalf of the petitioner and further wishes to withdraw my vakalatnama from the aforesaid case with the leave of the Hon'ble Court".*** Any reason for withdrawal of vakalatnama was not

mentioned in the aforesaid application. On the same date i.e. **23.09.2019** another **I.A. No. 18023/2019** was also filed by Shri K.V.S. Sunil Rao advocate on behalf of Petitioner Vinod Raghuwanshi for **"Appropriate direction".** Paras 3, 4 and 5 with the prayer clause are important, which are :-

> **"3.** The petitioner submits that neither petitioner nor Shri Sanjay Shukla Advocate were aware on the date of filing of the present petition that the present matter will only be listed before Hon'ble Justice **"X".**
>
> **4.** The petitioner submits that when his counsel Shri Sanjay Shukla Advocate got to know from cause list that the present matter is listed before Hon'ble Justice **"X".** on 20.10.2019 then Shri Sanjay Shukla, Advocate disclosed to the petitioner that he is having close family relations with Hon'ble Justice **"X".,** therefore, as per Rules (i.e. Rules of Professional Standers mentioned in Chapter II, Part VI of the Bar Council of India Rules) framed under Section 49(1) (c) of the Advocates Act, 1961, he cannot appear and plead before Hon'ble Justice **"X".**
>
> **5.** The petitioner submits that since Shri Sanjay Shukla, Advocate has already entered appearance by filing Vakalatnama, acted and filed present petition on behalf of petitioner before this Hon'ble High Court, therefore, if his (Shri Sanjay Shukla Advocate) appearance in the present case before Hon'ble Justice **"X".** is likely to cause any conflict of interest then this Hon'ble Court may kindly pass necessary orders for placing the matter before appropriate bench of this Hon'ble Court."

29. Now we shall consider whether the preliminary inquiry is required or not in this case? As per the established law stated above, the preliminary inquiry is not mandatory but if the circumstances are required, then before filing the complaint the preliminary inquiry can be made. In this case, the main dispute is attached with a letter dated 20.09.2019 alleged to be written by respondent. While the contention of respondent is that he had not written the aforesaid letter. The petitioner himself sent the aforesaid letter under his signature. If the letter has been sent by the petitioner, then definitely he committed offence stated above and the private complaint may be filed against him.

30. It is an admitted position that Petitioner preferred an application under section 197(1) of the Code of Criminal Procedure before the learned Trial Court on the ground that the case has been instituted against the Petitioner without obtaining sanction from the State Government. The said application under section 197 Cr.P.C. was dismissed by the learned Judicial Magistrate First Class, Bhopal by its order dated 08/07/2015. Against the aforesaid order Petitioner filed MCRC No.12365/2015 under section 482 of the Code of Criminal Procedure which was dismissed on merit by order dated 17/09/2018 by Hon'ble Shri Justice **"X".** It is

submitted by the counsel for Respondent that because Hon'ble Shri Justice **"X"** earlier dismissed the **M.Cr.C. No.12365/2015** filed by petitioner by order dated 17.09.2018, therefore, the petitioner was under apprehension that the present petition which has been filed against the order of framing charges, will not be decided in his favour by the aforesaid Bench. During arguments, the respondent draw attention towards Paras 24, 26, 34 and 35 of the aforesaid order, which are as under:-

> **"24.** It appears from the record that learned CJM on the basis of evidence produced by the respondent No.2 in support of his complaint found that other accused persons prepared forged partnership deed dated 06.03.2003 and original partnership deed dated 05.03.2002 was replaced with the forged partnership deed and that forged partnership deed was placed in the Excise office's record and in that act of other co-accused applicant and other co-accused O.P. Sharma and R.K. Goyal were also involved because without the help of applicant and O.P. Sharma and R.K. Goyal, the documents could not have been replaced.
>
> **26.** Thus, it clearly appears that learned Apex Court prima-facie found that either applicant manipulated the Government record for providing undue benefits to the partner of the firm and causing loss to the complainant by replacing the original partnership deed dated 05.03.2002 from the forged partnership deed dated 06.03.2003 in official record which was kept in the Excise office or involved in conspiracy of that crime and facilitated others to do so and this act of the applicant is amounting to misconduct.
>
> **34.** From the judgements of Apex Court as discussed above it transpires that there cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. Question whether a particular act done by a public servant is in discharge of his official duty or not, substantially depends on the facts and circumstances of each case. There must be a coherent nexus between the act complained of as an offence and the discharge of official duty. The act must fall within the scope and range of official duties of the public servant concerned. Where an act is totally unconnected with the official duty of the public servant, there can be no protection under Section 197. The protection under Section 197 can be claimed only when the act of applicant is either within the scope of official duty or in excess of the official duty. The offence must be directly and reasonably connected with official duty. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 CrPC would apply. The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly

connected with his official duties or it was done in the discharge of his official duty or it was so integrally connected with or attached to his office as to be inseparable from it.

35. In this case, the official duty of the applicant was to keep the tender document safe as it was produced by the bidder while applicant acted contrary to this by manipulating that official record, so this act of applicant cannot be said to be done in execution of his official duty or in excess of the official duty. The alleged act of applicant to manipulate the Government record for providing undue benefits to other partners of the firm and causing loss to the respondent no.2 by replacing the original partnership deed dated 05.03.2002 from the forged partnership deed dated 06.03.2003 in official record was totally contrary to his official duties and comes under misconduct and misconduct can never be the part of the official duty. Protection under Section 197 of Cr.P.C. only available to a government when the act of him is either within the scope of official duty or in excess of the official duty. While the alleged act of applicant is totally unconnected with his official duty."

31. Looking to the aforesaid observation of the Court, it can be said that the arguments advanced by respondent having some substance. This petition has been filed against the order of framing of charges. The Court of Hon'ble Shri Justice "X" in Para 24, 26, 34 and 35 of the order dated 17.9.2018 passed in M.Cr.C. No.12365/2015 observed the position of the case. Therefore, this argument having some force that petitioner was under apprehension that the present petition will not be decided in his favour. In the aforementioned situation the petitioner was having the cause to file Vakalatnama of relative advocate of the Judge or to file the forged letter in the name of respondent.

32. It cannot be disputed that the petitioner was having the knowledge that this petition will be listed before the same Judge, who decided earlier petition **M.Cr.C. No.12365/2015** filed by the petitioner. Normally it may be presumed that when a party engages an advocate, at that time the party gives the entire record and information regarding the case, previous history and the Bench before whom the matter is required to be listed or pending. Therefore, it can be said that the Advocate Sanjay Shukla was aware of the fact that the case has been listed before the Bench presided by Hon'ble Shri Justice "X". It is surprising that on 23.09.2019 the aforesaid advocate filed I.A. No.18068/2019 for permission to withdraw his Vakalatnama and on the same date, petitioner filed another application for appropriate direction. If, the application was filed for appropriate direction then the second application for withdrawal of Vakalatnama was not necessary. Both applications have been filed on the same date, therefore, it creates a suspicion.

33. In the aforesaid situation, it will be proper to direct Principal Registrar (Judicial) to make an inquiry to ascertain the fact that who is the author of the aforesaid letter dated **20.9.2019.** Thereafter, the question of filing the private complaint may be considered by this Court.

34. Therefore, the application is **allowed.** Principal Registrar (Judicial) is directed to make an inquiry to ascertain the name of author, who wrote the letter dated **20.09.2019.** Principal Registrar (Judicial) is also directed to make sufficient efforts to trace out the original copy of letter. The Registrar may take the help of handwriting expert and also use the admitted signature of petitioner and respondent available in the record of this case or the previous cases between the parties. Principal Registrar (Judicial) is also directed to submit the aforesaid inquiry report as far as possible within Six months from the order of this Court.

Application allowed