

HIGH COURT OF MADHYA PRADESH : BENCH AT GWALIOR

{SINGLE BENCH BEFORE JUSTICE J.K.MAHESHWARI}

Writ Petition 6117/2015

Shushila Bai & 6 Others

Versus

State of Madhya Pradesh & 4 Others

Shri D.D.Bansal and Shri Rajiv Jain, Advocates for petitioners.

Ms.Nidhi Patankar, Government Advocate for respondent

Nos.1,2,3,5

Shri S.P.Jain, Advocate for respondent No.4.

JUDGMENT

5.12.2017

The petitioners have filed this petition under Article 226 of the Constitution of India seeking the following reliefs:-

"(i) to call entire record pertaining to the land acquisition of the petitioners land situated at Mirjapur, Tahsil and District Vidisha.

(ii) to hold the land acquisition proceedings of land acquired for Krishi Upaj Mandi, Vidisha be lapsed in the light of Section 24(2) and in the light of law laid down by the Hon'ble Supreme Court.

(iii) to consequently quash the land acquisition proceedings, acquiring the land

of petitioners for establishment of Krishi Upaj Mandi Vidisha; and or

(iv) in the alternative direct the respondent authorities to pay the compensation in accordance with the new Act of 2013.

(v) to grant any other relief deemed fit or the petitioners be found entitled to in the interest of justice, equity and good conscience along with costs of litigation."

2. The facts of the case are that the petitioners were the owners of the land of different Khasra bearing Nos.22,23,24,25,30,31/1,31/2 situated at Village Mirjapur of Tahsil and District Vidisha and it would reveal from the following chart:-

Sr. No.	Name of Petitioner	Survey No.	Land Ad-measuring
1	Shushila Bai	30	0.249
2	Dev Kunwar Ben Shah	30	2.530
3	Asharani	31/1	0.958
4	Pratiksha Chawla	22	0.314
5	Vasu Dev	30	0.497
6	Sushil Kumar/Sanjeev Kumar	22	0.313
7	Vaibhav Kumar	31/2	0.627

3. The notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter shall be referred to as the "Old Land Acquisition Act") was issued on 15.12.1995 and the final

notification under Section 6 of the Act was published in the gazette on 10.1.1996 by which the total land of the petitioners pertaining to the chart of the said Khasra numbers of the total area 20.210 hectare situated at Village Mirjapur, Tahsil and District Vidisha was acquisitioned. The final award was passed by the Land Acquisition Officer, Vidisha on 16.8.1999 vide Annexure R/1 determining the compensation to the land holders. It is also not in dispute that Civil Suit No.7A/1999 was filed by the land owner Dev Kunwar Ben Shah (petitioner No.2 herein) seeking the declaration that the notification under Sections 4 and 6 of the old Land Acquisition Act are not valid and the same may be set aside and she be declared the owner of the said land. The said civil suit was dismissed by the 2nd Additional District Judge, Vidisha vide judgment dated 28.4.2000 Annexure P/4 against which First Appeal No.143/2000 was preferred that too was dismissed by this Court vide judgment dated 6.5.2005 holding that the Civil Court do not have the jurisdiction to entertain such suit. Being aggrieved by the same, the petitioner No.2 has preferred S.L.P. No.18763/2005 before the Hon'ble Supreme Court, which was dismissed as withdrawn. Thereafter, the petitioner No.2 filed a Writ Petition No.1523/2006 challenging the land acquisition made by the respondents on various grounds. The said writ petition was

dismissed vide order dated 31.7.2007 against which Writ Appeal No.628/2007 preferred was dismissed vide order dated 10.1.2008. The Special Leave Petition preferred against the order dated 10.1.2008 was also dismissed on 11.7.2008. Thereafter, Writ Petition No.6389/2011 was filed by petitioner No.2 contending interalia that the forcible possession may not be taken from her. The said writ petition was disposed of by this Court vide order dated 23.9.2011 with a direction to decide the question of possession by the competent authority. However, after passing the order by the Collector, District Vidisha on 23.11.2011, Writ Petition No.8060/2011 was filed by the petitioner No.2 challenging the same and also restraining the defendants to not to take forcible possession from her, which was decided by this Court vide order dated 4.4.2012. Against the said order, S.L.P No.18633/2012 was preferred and the same was also dismissed vide order dated 13.7.2012. Thereafter, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter shall be referred to as "Right to Fair Compensation Act") has come into force with effect from 1.1.2014. However, taking the pretext of the provisions of Section 24(2) of the Right to Fair Compensation Act seeking appropriate directions of lapsing of the proceedings of the land acquisition to which the compensation was not paid, this

petition has been preferred alongwith other reliefs.

4. Learned counsel for the petitioners have fairly contended that the possession of the land has been taken on 6.12.2000 and he is pressing upon this petition with respect to the second limb of Section 24(2) of the Right to Fair Compensation Act that in case the compensation has not been paid then such proceedings shall be deemed to have lapsed. In support of the said contention, learned counsel has placed reliance on the judgments of the Hon'ble Supreme Court rendered in the case of **Pune Municipal Corporation Versus Harakchand Mishrimal Solanki & Others** reported in (2014) 3 SCC 183, **Delhi Development Authority Versus Sukhbir Singh & Others** reported in (2016) 16 SCC 258, **Government of NCT of Delhi Versus Manav Dharam Trust & Another** reported in AIR 2017 SC 2450 and the Division Bench Judgment of this Court rendered in the case of **Purushottam Lal & Others Versus State of M.P. & Others** reported in 2016 (1) M.P.L.J 32. Reliance has also been placed on the judgment of the Bombay High Court rendered in the case of **Shri Murlidhar Raghu Jagtap Versus Special Land Acquisition Officer** reported in (2017) 4 AIR Bom R 152 to contend that if the compensation has not been paid to the land owners then the proceedings under the Right to Fair

Compensation Act shall stand lapse. Learned counsel for the petitioners has not pressed the relief of challenging the land acquisition proceedings and confined the arguments to declare the lapsing of the proceedings on account of non-payment of amount of compensation.

5. On the other hand, learned Government Advocate for respondent Nos.1,2,3,5 contends that it is a case wherein the compensation has been determined to the land acquired and their owners were duly informed to receive such amount of compensation. Except the petitioners, most of the persons have received the amount of compensation. Except the petitioner Nos.1 and 2, none of the petitioner has raised any objection with respect to acquisition of their land in question. It is also contended that inspite of receiving the information and notice, they have not collected the amount of compensation though tendered to them. The petitioner No.1 has not challenged the land acquisition proceeding with respect to her land and submitted an application under Section 18 of the Act before the Court of Collector seeking prayer to make the reference to the competent Civil Court. Despite it, no amount of compensation has been received. It is further contended that after making challenge before the Civil Court and

thereafter before this Court in the writ petitions in two rounds of litigation when she remained unsuccessful and now filed this petition. The respondents questioning the conduct of the petitioner No.2 in the matter of filing the litigation and not receiving the amount of compensation said, despite information and its deposit in the Court of Collector in terms of Section 18 of the old Land Acquisition Act no case seeking the benefit of Section 24(2) of the Right to Fair Compensation Act is made out. It is contended that as per the letters Annexures R/1/1 to R/1/7 various informations were sent to receive the compensation but it was not responded so also the cheques were also tendered but not accepted by them, though its non-deposit in the Reference Court is not disputed thus said, after completing all the formalities, the petitioner is not entitled to claim any benefit. By filing the additional return, it is stated by learned Government Advocate for the respondent Nos.1,2,3,5 that out of 22 persons, only the seven petitioners have not received the amount of compensation, therefore, they would not be covered within the word majority of the land holdings, who have not received the amount of compensation. Hence, this petition does not have any merit and it is liable to be dismissed.

6. Learned counsel for respondent No.4 has reiterated all the facts and grounds as stated by learned Government Advocate for respondent Nos.1,2,3,5 and submitted that in the earlier round of litigation either before the Civil Court or before this Court, the petitioner No.2 remained unsuccessful and thereafter filing of this writ petition would not make her entitle to get the declaration of lapsing of the land acquisition proceeding in view of the guideline introduced by the Central Government, however, prayer is made to dismiss the petition.

7. Learned counsel for the respondents contends that Hon'ble the Supreme Court in the case of **Yogesh Neema & Others Versus State of Madhya Pradesh & Others** reported in (2016) 6 SCC 387 referred two issues for determination before the Larger Bench and considering the same, the Division Bench of this Court in **Writ Appeal No.939/2016 (M.P.Housing board Versus State of M.P & Others)** vide order dated 10.8.2017 has admitted the appeal on account of the reference so also review pending before the Larger Bench, therefore, hearing of this case may be deferred till decision by Hon'ble the Supreme Court in the review and the reference.

8. After having heard learned counsel for the parties at

length, first of all, the issue with respect to deferment of hearing raised by learned counsel for the respondents deserves consideration. In this regard, the questions posed for reference in the case of **Yogesh Neema (supra)** to the Larger Bench are relevant, however, reproduced as under:-

"6.1(i) Whether the conscious omission referred to in para 11 of the judgment in *Sree Balaji Nagar Residential Association vs. State of TN*, (2015) 3 SCC 353 makes any substantial difference to the legal position with regard to the exclusion or inclusion of the period covered by an interim order of the Court for the purpose of determination of the applicability of Section 24(2) of the 2013 Act?

6.2(ii) Whether the principle of "actus curiae neminem gravabit", namely act of the court should not prejudice any party would be applicable in the present case to exclude the period covered by an interim order for the purpose of determining the question with regard to taking of possession as contemplated in Section 24(2) of the 2013 Act?"

9. In the present case, the respondents in their return have not raised the said contentions. Insofar the order dated 10.8.2017 passed by the Division Bench of this Court in **M.P.Housing Board's case (supra)** is concerned, in the said case, this Court has deferred the hearing of writ appeal and admitted the same

because of the said reference and review of the judgment of **Pune Municipal Corporation (supra)**. In the said context, it is to be noted here that the review in the case of **Pune Municipal Corporation (supra)** though filed, which has been attached with other cases as per order dated 21.11.2014 of the Apex Court. Thereafter, the Apex Court relying upon the judgment of **Pune Municipal Corporation (supra)** decided not less than fifty cases reiterating the principle as laid down in the case of **Pune Municipal Corporation (supra)**. The Apex Court in the case of **Sukhbir Singh (supra)** has started the judgment in the following words:-

"These two appeals revisit the question of the correct construction of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the 2013 Act"). We are constrained to observe that we are hearing these matters despite the fact that the law has been settled in **Pune Municipal Corporation Versus Harakchand Misirimal Solanki**, which is now *stare decisis* in that it has been followed in a large number of judgments: **Bimla Devi Versus State of Haryana (2014) 6 SCC 583 at Para 3; Union of India Versus Shiv Raj (2014) 6 SCC 564 at Para**

22: Sree Balaji Nagar Residential Association Versus State of T.N. (2015) 3 SCC 353 at Para 1: State of Haryana Versus Vinod Oil and General Mills (2014) 15 SCC 410 at Para 21: Sita Ram Versus State of Haryana (2015) 3 SCC 597 at Paras 19, 21: Ram Kishan Versus State of Haryana (2015) 4 SCC 347 at Paras 8, 9,12: Velaxan Kumar Versus Union of India (2015) 4 SCC 325 at Paras 15,17: Karnail Kaur Versus State of Punjab (2015) 3 SCC 206 at Paras 17,18,23: Rajiv Choudhrie HUF Versus Union of India (2015) 8 SCC 544, 551 (Para 1): Competent Automobiles Company Limited Versus Union of India (2015) 8 SCC 544, 552 (Para 14): Govt. (NCT of Delhi) Versus Jagjit Singh (2015) 8 SCC 544, 554: Karan Singh Versus State of Haryana (2015) 16 SCC 625 at Para 4: DDA Versus Sukhbir Singh (2016) 16 SCC 285: Shashi Gupta Versus State of Haryana (2016) 13 SCC 380."

10. Thus, the Apex Court with respect to the judgment of **Pune Municipal Corporation (supra)** has held that the said judgment is now *stare decisis* followed in large number of the judgments by them. Meaning thereby, as per the judgment of **Sukhbir Singh (supra)** for the case of **Pune Municipal Corporation**

(**supra**), principle of *stare decisis* applies, therefore, there is no reason to defer hearing of this petition. It is relevant to note here that recently also the Apex Court in **S.L.P.C No.25857/2016 (Radha Soami Satsang Beas Versus State of M.P. and others)** decided on **8.8.2017** has relied upon the judgment of **Pune Municipal Corporation (supra)** and reiterated the same principles. More so, the order of the Division Bench is merely an interim order and it is not having an effect of binding precedent, therefore, merely because the reference is pending in the case of **Yogesh Neema (supra)** on the issue not raised in return, would not apply to the facts of the present case and due to attaching the review petition of **Pune Municipal Corporation (supra)** for the Larger Bench, in my considered opinion, the prayer made to defer hearing of the petition is hereby repelled. The said view fortifies from the view taken by the Bombay High Court in the case of **Murlidhar Raghu Jagtap (supra)**.

11. Now it is to be examined that in view of the provisions as contained in Section 24(2) of the Right to Fair Compensation Act, what recourse is permissible in the cases where the land acquisition proceedings have been initiated under the old Land Acquisition Act. In this regard, the provision of Section 24 is

relevant, which is reproduced as under:-

"24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases.- (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),-

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

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

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

12. On perusal of the aforesaid, it is apparent that in case the land acquisition proceedings under the old Land Acquisition Act were initiated and the award has been made, it would be covered under Section 24(1)(a) of the Right to Fair Compensation Act. In case an award has been passed under Section 11 then such proceedings would continue as per the old Land Acquisition Act as if the said Act has not been repealed. Sub-section (2) specifies that if an award has been made five years or more prior to the commencement of the Right to Fair Compensation Act but in case the twin conditions have not been satisfied i.e. of taking over of the physical possession of the land in question, or the compensation has not been paid then such proceedings shall be deemed to have lapsed and the liberty is granted to the State Government that if it so chooses shall initiate the land acquisition proceedings afresh in accordance with the provisions of the Right to Fair Compensation Act. Proviso to Section 24 makes it clear that if the award has been made and compensation in respect of a majority of the land holdings has not been deposited in the account of the beneficiaries then all beneficiaries in the notification

for acquisition under Section 4 of the old Land Acquisition Act shall be entitled to the compensation in accordance with the provisions of the Right to Fair Compensation Act.

13. Considering the provision of Section 24(2) of the Right to Fair Compensation Act, the Apex Court in the case of **Pune Municipal Corporation (supra)** observed that the acquisition under the old Land Acquisition Act be deemed to be lapsed if the compensation has not been paid to the land owners or the amount has not been deposited in the Court as specified in Section 31(2) of the Act. The relevant paragraphs of the said judgment are reproduced as under:-

13. There is amendment in Maharashtra Nagpur (City) in Section 31 whereby in sub-section (1), after the words "compensation" and in sub-section (2), after the words, "the amount of compensation" the words "and costs if any" have been inserted.

14. Section 31 (1) of the 1894 Act enjoins upon the Collector, on making an award under Section 11, to tender payment of compensation to persons interested entitled thereto according to award. It further mandates the Collector to make payment of compensation to them unless prevented by one of the contingencies contemplated in sub-section (2). The contingencies contemplated in Section 31 (2) are: (i) the persons interested

entitled to compensation do not consent to receive it, (ii) there is no person competent to alienate the land, and (iii) there is dispute as to the title to receive compensation or as to the apportionment of it. If due to any of the contingencies contemplated in Section 31(2), the Collector is prevented from making payment of compensation to the persons interested who are entitled to compensation, then the Collector is required to deposit the compensation in the court to which reference under Section 18 may be made.

15. Simply put, Section 31 of the 1894 Act makes provision for payment of compensation or deposit of the same in the Court. This provision requires that the Collector should tender payment of compensation as awarded by him to the persons interested who are entitled to compensation. If due to happening of any contingency as contemplated in Section 31(2), the compensation has not been paid, the Collector should deposit the amount of compensation in the court which reference can be made under section 18.

16. The mandatory nature of the provision in Section 31(2) with regard to deposit of the compensation in the court is further fortified by the provisions contained in Section 32,33 and 34. As a matter of fact, Section 33 gives power to the court, on an application by a person interested or claiming an interest in such money, to pass an order to invest the amount so deposited in such Government or other approved securities and may direct the interest or other proceeds of any such

investment to be accumulated and paid in such manner as it may consider proper so that the parties interested therein may have the benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

17. While enacting Section 24(2), Parliament definitely had in its view Section 31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word “paid” to offered” or “tendered”. But at the same time, we do not think that by use of the word paid, Parliament intended receipt of compensation by the landowners/persons interested. In our view, it is not appropriate to give a literal construction to the expression “paid” used in this sub-section [sub-section (2) of Section 24]. If a literal construction were to be given, then it would amount to ignoring the procedure, mode and manner of deposit provided in Section 31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view, therefore, 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 the contingencies contemplated under Section 31 (2) of the 1894 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.

18. The 1894 Act being an expropriatory legislation has to be strictly followed. The procedure, mode and manner for payment of compensation are prescribed in Part V (Sections 31-34) of the 1894 Act. The Collector, with regard to the payment of compensation, can only act in the manner as provided. It is settled proposition of law (classic statement of Lord Roche in Nazir Ahmad) that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

19. Now, this is admitted position that award was made on 31.01.2008. Notices were issued to the landowners to receive the compensation and since they did not receive the compensation, the amount (Rs 27 crores) was deposited in the Government treasury. Can it be said that deposit of the amount of compensation in the Government treasury is equivalent to the amount of compensation paid to the landowners/persons interested We do not think so. In a comparatively recent decision, this Court in Agnelo Santimano Fernandes, relying upon the earlier decision in Prem Nath Kapur, has held that the deposit of the amount of

the compensation in the sates revenue account is of no avail and the liability of the State to pay interest subsists till the amount has not been deposited in court. (Emphasis Supplied)"

14. In the case of **Bharat Kumar Versus State of Haryana & Another** reported in (2014) 6 SCC 586, the Apex Court has reiterated the same principle of law holding that if physical possession of the land has not been taken and the award has been passed five year prior to the commencement of the Right to Fair Compensation Act, such case would fall within the purview of Section 24(2) of the said Act and the proceeding of the land acquisition was directed to be lapsed setting aside the order of the High Court refusing to grant such relief.

15. In the case of **Bimla Devi Versus State of Haryana** reported in 2015 (1) MPHT 288, the Apex Court has again relied upon the judgment of Pune Municipal Corporation (supra) and explained the meaning of the word "paid", the Apex Court in Paragraph No.17 has observed as under:-

"17.While enacting Section 24(2), Parliament definitely had in its view Section 31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word "paid" to "offered" or "tendered". But at the same time, we do not think that by use of the word

"paid", Parliament intended receipt of compensation by the land owners/persons interested. In our view, it is not appropriate to give a literal construction to the expression "paid" used in this Sub-section (Sub-section (2) of Section 24). If a literal construction was to be given, then it would amount to ignoring procedure mode and manner of deposit provided in Section 31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view therefore, 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 the contingencies contemplated under Section 31(2) of the 1894 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."

16. In the said case, the Apex Court has held that either the amount must be paid or it ought to be deposited in the Reference Court as specified in Section 31(2) of the old Land

Acquisition Act.

17. The Apex Court further relying upon the judgment of **Pune Municipal Corporation (supra)** decided number of cases reiterating same principle and some of them are **Ram Kishan and others Versus State of Haryana and others** reported in (2015) 4 SCC 347: **Radiance Fincap Private Limited and others Versus Union of India and others** reported in (2015) 8 SCC 544: **Soorajmull Nagarmull Versus State of Bihar and others** reported in 2015 (9) Scale 1: **Working Friends Cooperative House Building Society Limited Versus State of Punjab and others** decided on 12.10.2015: **Rattan Singh and others Versus Union of India (UOI) and others** reported in (2015) 16 SCC 342.

18. In the case of **Sukhbir Singh (supra)**, the Apex Court is having an occasion to consider the scope of Section 24(2) of the Right to Fair Compensation Act in the light of the judgment of **Pune Municipal Corporation (supra)**. In the context of the land acquisition proceeding, the Apex Court has considered the scheme of the old Land Acquisition Act and in Paragraph No.9, and observed that the Collector after an inquiry has to make an award specifying the necessary ingredients of Section 11 of the Act. As

soon as the award is made, under Section 12(2) of the Act, the Collector has to give immediate notice of the award to such of the persons interested as are not present personally; if the said provision is read with Section 31 of the Act, it would make clear that under the statutory scheme, the Collector is to tender payment of compensation awarded by him to the persons who are interested and entitled thereto, according to the award, on the date of making the award itself. Meaning thereby, the Collector must be armed with the amount of compensation payable to persons interested as soon as the award is made. Such persons have to be paid the sum mentioned in the award. It is well settled that the award is an offer, which may be accepted or rejected by the claimants on tendering the amount. Thus, it is incumbent on the Collector to make the payment as soon as possible after the award. In case a person interested refuses or does not consent to receive the money payable or there be no person competent to alienate the land or if there is any dispute as to title to receive compensation or its apportionment, **the Collector ought to deposit the amount of compensation in the Reference Court.** It is only after these steps have been taken then the Collector may take possession of the land, which shall vest the land absolutely in the Government free from all encumbrances. In case the said

procedure has not been followed, the interest is payable @ 10% for one year and 15% thereafter. In the said case, the Apex Court has further referred various judgments wherein the said scheme has been adverted to by the Apex Court. Thereafter, reference of Section 24 of the Right to Fair Compensation Act has been considered and in Paragraph No.13, the Apex Court has emphasized the instinct of Section 24(2) and thereafter in Paragraph Nos.14 & 15 referring various paragraphs of the judgment of **Pune Municipal Corporation (supra)** reiterated the same principle as laid down in the said case.

19. This Court is also having an occasion to consider the said issue in the case of **Parasram Pal & another Versus Union of India and others** reported in **2016 (1) MPLJ 649** wherein after understanding the meaning of “offer” “tendered” “paid” in the context of Section 24 of the Right to Fair Compensation Act, held that if the possession has not been taken or the compensation has not been paid even after five year from the date of award passed prior to commencement of the Right to Fair Compensation Act, the land acquisition proceeding shall be deemed to have lapsed. In this view of the matter, the legal position reiterated by various judgments with respect to Section 24(2) of the Right to Fair

Compensation Act is crystallized holding that on the date of commencement of the Right to Fair Compensation Act if the award is passed five year prior from the said date and the compensation has not been paid, the land acquisition proceeding shall be deemed to have lapsed. In addition, as per **Sukhbir Singh (supra)**, for the judgment of **Pune Municipal Corporation (supra)**, the principle of *stare decisis* applies.

20. In the present case, the notification under Section 4 of the old Land Acquisition Act was issued on 15.12.1995 and the final notification under Section 6 of the Act was published in the gazette on 10.1.1996 and the final award was passed by the Land Acquisition Officer, Vidisha on 16.8.1999 vide Annexure R/1 determining the total compensation to the land holders. As per the return filed by the respondent Nos.1,2,3,5/State, it is apparent that except the petitioners, the remaining land owners have received the amount of compensation, however, it is not disputed that the petitioners have not received the amount of compensation. Section 24(2) of the Right to Fair Compensation Act deals with the lapsing of the proceedings and it is having nothing to do with respect to the challenge made earlier and it would not have any impediment in case in the earlier round of litigation, the petitioners

have challenged the notification under Sections 4 and 6 of the old Land Acquisition Act on very many grounds while infact lapsing of the proceedings is different than the challenge made to the land acquisition proceedings. In this regard, the guidance can be taken from the judgment of **Government of NCT of Delhi Versus Manav Dharam Trust (supra)**.

21. The Apex in Paragraph Nos.20,21,22,23 of **Manav Dharam Trust (supra)** has held thus:-

"20.It is also to be specifically noted that the challenge made by the writ petitioners in the miscellaneous application filed by them is not to the acquisition or to the regularity of the process of acquisition including the taking of possession. Their only prayer is for a declaration that the proceedings qua the land referred to in the application have lapsed by virtue of the operation of Section 24(2) of the 2013 Act.

21.All the decisions cited by the learned Senior Counsel appearing for the appellants, no doubt, have categorically held that the subsequent purchasers do not have locus standi to

challenge the acquisition proceedings. But in the present case, the challenge is not to the acquisition proceedings; it is only for a declaration that the acquisition proceedings have lapsed in view of the operation of Section 24(2) of the 2013 Act, and therefore, the ratio in those cases has no application to these cases.

22.It is one thing to say that there is a challenge to the legality or propriety or validity of the acquisition proceedings and yet another thing to say that by virtue of operation of a subsequent legislation, the acquisition proceedings have lapsed.

23.In all the decisions cited by the learned Senior Counsel for the appellants, which we have referred to above, this Court has protected the rights of the subsequent purchaser to claim compensation, being a person interested in the compensation, despite holding that they have no locus standi to challenge the acquisition proceedings."

22. Now reverting to the arguments of learned counsel for the respondents that after acquisition of the land, the construction of Krishi Upaj Mandi Samiti has already been raised, however, in case of lapsing, the said construction is required to be demolished and it will cause serious prejudice to them.

23. Similar issue has been raised and dealt with by the Apex Court in the case of **Delhi Development Authority Versus Kusham Jain and others reported in (2016) 16 SCC 254** in the context of Section 24(2) of the Right to Fair Compensation Act wherein in Paragraph Nos.6,7,8,9,10, the Apex Court has answered the said issue, however, it is reproduced thus:-

"6. The question of deposit in Court arises only in the vent of a contingency as provided under Section 31(2) of the Land Acquisition Act, 1894. Section 31(2) of the Act reads as under:

31. Payment of compensation or deposit of same in Court.-

xxx xxx xxx xxx

(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 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.

7. There is no case for the appellant that any of such contingencies had arisen compelling the Land Acquisition Collector for depositing the amount of compensation in Court. Quite strangely, what is deposited in Court in the year 2013 is the amount in terms of the Award passed in the year 1986, without any interest as provided under the Act for the intervening period. Had there been a deposit in 1986, the land owner could have sought for an investment of the money in interest bearing deposits or other approved securities, as per Section 33 of the 1894 Act. In any case, such deposit in Court which is not contemplated or permitted under Land Acquisition Act, 1894 cannot be treated as a payment of compensation to land owners for the purpose of Section 24(2) of the 2013 Act. The payment of compensation/deposit in court has to be made as per the provisions under the 1894 Act, and, in no other way, as held by this Court in *Pune Municipal Corporation and Anr. Versus Harakchand Misirimal Solanki and Ors.* Reported in (2014) 3 SCC 183. The payment or deposit having not admittedly been done in terms of the 1894 Act, the deeming provision on lapse under Section 24(2) of the 2013 Act has to operate.

8. Shri Sharan submits that the possession

having been taken long back and in some cases, since various developments have also taken place, the appellant- Delhi Development Authority and third parties will be visited with very serious consequences.

9. We do not find any substance in the above submission as well. Section 24(2) itself has given sufficient protection in such cases. In the event of any lapsing of the acquisition proceedings under Section 24(2), it is open to the appropriate Government, if they choose so, to initiate proceedings for acquisition of such land afresh but the only rider is that the acquisition should be in accordance with the provisions under 2013 Act.

10. Therefore, without prejudice to the liberty available to the appellant to initiate steps afresh for acquisition of the subject land under the provisions of the 2013 Act, this appeal is dismissed."

24. In the present case, the relief is pressed upon for declaration of lapsing of the land on account of non-payment of the amount of compensation, which was considered in the case of **Rattan Singh (supra)** wherein the Apex Court has held as under:-

"1. In the current appeals, compensation was neither paid to the appellants nor deposited in the appropriate Court. The retention of it by the Land Acquisition Collector till such time as the appellants made applications for it would not amount to compensation being paid to them. The contention of the respondent is thus entirely erroneous. Since the award predated

the commencement of the 2013 Act by well over five years and compensation has not paid to the appellants, Section 24(2) comes into operation in favour of the appellants. Whether possession was taken by the respondent need not be dilated upon nor need it detain this Court any further. The acquisition is deemed to have lapsed in these circumstances. The respondent may initiate fresh acquisition proceedings in accordance with the provisions of the 2013 Act, if it so wishes.

2. In view of the foregoing, it is not necessary to consider the correctness of the impugned judgment on merits. These appeals are allowed with no orders as to costs."

25. At this stage, it is also relevant to deal the argument of the respondents regarding tender of the amount by way of cheque though not received by the petitioners and the amount remained in the account of the Land Acquisition Officer. The said issue has been considered by a Division Bench of this Court in **Purushottam Lal (surpa)** and the Court has held thus:-

"21. The argument on behalf of the Corporation that the subject land acquisition proceedings have been concluded in all respects under the 1894 Act and that they are not affected at all in view of Section

114(2) of the 2013 Act, has no merit at all, and is noted to be rejected. Section 114(1) of the 2013 Act repeals 1894 Act. Subsection (2) of Section 114, however, makes Section 6 of the General Clauses Act, 1897 applicable with regard to the effect of repeal but this is subject to the provisions in the 2013 Act. Under Section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of 2013 Act and possession of the land is not taken or compensation has not been paid. The legal fiction under Section 24(2) comes into operation as soon as conditions stated therein are satisfied. The applicability of Section 6 of the General Clauses Act being subject to Section 24(2), there is no merit in the contention of the Corporation."

It has been clearly laid down by the Supreme Court in the aforesaid case, that if compensation is not paid or if possession of the land is not taken over and if five years period or more is over, prior to commencement of the Act of 2013, the land acquisition proceedings lapse. Section 31(1) of the Act is also taken note of and it has been clearly held that if compensation is neither paid to the beneficiaries nor deposited in the Court where reference would be met under Section 18, land acquisition proceedings would lapse. It is also held that deposit of the amount as per the award with the treasury of the Government of State Revenue Department is not sufficient compliance. This judgment of the

Supreme Court in the case of *Pune Municipal Corporation (supra)* has been subsequently considered in the case of *Shiv Raj and others (supra)* and after taking note of the said judgment certain other judgments in the case of *Bharat Kumar (supra)* and *Bimla Devi and others (supra)* have been taken note of and in para 26 and 27 the matter has been crystallized in the following manner:-

"26. The objects and Reasons of the 2013 Act and particularly Clause 18 thereof fortify the view taken by this Court in the judgments referred to hereinabove. Clause 18 thereof reads as under:-

"18. The benefits under the new law would be available in all the cases of the land acquisition under the Land Acquisition Act 1894 where award has not been made or possession of land has not been taken." (Emphasis added)."

26. In the case of **Purushottam Lal (supra)**, the similar defence was taken as revealed from Paragraph No.4 and thereafter from Paragraph No.8, the Division Bench of this Court has answered thus:-

"4. Shri Swapnil Ganguly, learned Govt. Advocate refuted the aforesaid contention and argued that as the Housing Board has paid the compensation, no relief can be granted. The Housing Board has filed

a detailed reply to I.A. No. 15129/2014 and from the said reply filed and the documents annexed thereto as Annexure R/1 to R/6, respondents only say that after the award was passed on 30th March, 1999 the Housing Board deposited the amount with the Collector, Bhopal vide various cheques as is indicated in para 2 of the reply and as the compensation has been deposited with the Collector, the petitioners and the appellants should have collected the amount from the Collector. It is indicated in para 4 of this reply that after passing of the award, no efforts were made by the petitioners or the appellants to receive the compensation and the amount remained with the competent authority and it is said that as no reference was also made under Section 18 of the Old Act by the appellants, they cannot make any complaint. It is tried to be indicate by Ku. Anjali Banerjee, learned counsel for the Housing Board, that the provisions of [Section 24\(2\)](#) will not apply in the present case as M.P. Housing Board has already complied with the award passed on 21.3.1999 and deposited the compensation with the Collector.

8. Similar is the view taken by the Supreme Court in the case of **Sharma Agro Industries (supra)** wherein also the principles laid down in the case of **Pune Municipal Corporation (supra)** etc, has been considered and principle reiterated. It is therefore, clear from these judgments and interpretation of [Section 24](#) of the Act of 2013 and implication of [Section 31](#) of

the Act of 1894 that if after passing of the award and five years prior to coming into force of Act of 2013, amount is not paid in accordance to the requirement of law, the entire proceedings lapsed. If aforesaid principle is applied in the present case, we find that award in question was passed on 15.4.1999 and from the averments made by the M.P. State Housing Board in their counter affidavit filed, it is only indicated that the amount of compensation has been deposited with the competent authority namely the Collector, Bhopal. Thereafter, in the additional affidavit filed on 5.10.2015, they only indicate about taking over of possession. However, nothing is said with regard to payment of the compensation to the beneficiaries in accordance to the requirement of [Section 24\(2\)](#). The Supreme Court has clearly laid down the principle that if either of the eventualities contemplated under sub section 2 of Section 24 are in existence, the land acquisition proceedings lapsed. The two eventualities are that possession is not taken over or compensation in accordance to law is not given to the beneficiaries. In this case even though the affidavit filed by the Housing Board indicates that possession is taken over by them and they have entered into some agreement with the contractor for development of the area and have also paid some amount in furtherance thereto but the amount of compensation has not been paid to the beneficiaries in accordance to the requirement of [Section 31](#) of the Land Acquisition Act of 1894. On the contrary, the note

sheet of the Collector dated 17.1.2003 available in the record of W.P. No.2633/2002 filed along with an interlocutory application I.A. No.9867/2015 which was heard by us along with this appeal, goes to show that after the amount of compensation was deposited by the Housing Board with the Revenue Department, namely the Collector on 17.1.2003. It was indicated that the amount has not been paid to the beneficiaries and therefore, in accordance to the provisions of [Section 31](#) of the Act of 1894, the amount should be deposited in the Court where the proceeding under [Section 18](#) are normally held. However, there is no material to show as to when, how and in what manner the amount has been deposited in the Court where the proceeding under [Section 18](#) is maintainable. In spite of granting repeated opportunities respondents have failed to demonstrate before this Court that the amount of compensation as required under law was paid. As held by the Supreme Court mere deposit of the amount in the Government Treasury or with the Revenue Department is not sufficient, it has to be paid to the beneficiaries or deposit in the Court where a reference under [Section 18](#) is normally filed. That being so, we are satisfied that documents overwhelming available on record do demonstrates that inspite of award having been passed more than five years prior to coming into force of the Act of 2013 i.e. w.e.f. 1.1.2014, the award of compensation has not been paid to the beneficiaries as required under law and therefore, in the light

of legal principles laid down by the Supreme Court as referred to herein above, entire proceedings lapsed."

27. In view of the aforesaid, the argument as advanced by learned counsel for the respondents with respect to filing of the civil suit and challenging the notification under Sections 4 and 6 of the old Land Acquisition Act by filing the various writ petitions and tendering the amount of cheque are having nothing to do with the relief claimed in this petition regarding lapsing of the proceedings after commencement of the Right to Fair Compensation Act, in case the amount of compensation has not been paid as per Section 24(2) of the Right to Fair Compensation Act.

28. As discussed in the above referred various precedents, this Court relying upon the judgments of the Apex Court has clarified that the deposit of the amount must be in the Reference Court and mere deposit of the said amount with the Land Acquisition Officer is not sufficient, therefore, the stand taken in the return in this regard is hereby rejected. Under such circumstances, it is apparent that the compensation has not been paid to the petitioners as per the undisputed facts of this case and the plea of deposit of the amount with the Land Acquisition Officer

or the Collector has not been found in conformity to the provisions of the Old Land Acquisition Act and various judgments of the Apex Court, therefore, it is to be held that the proceedings with respect to the land in question belonging to the petitioners pertaining to Khasra Nos.22,23,24,25,30,31/1,31/2 situated at Village Mirjapur of Tahsil and District Vidisha acquisitioned by the State Government vide notification issued under Section 4 of the old Land Acquisition Act on 15.12.1995 and the final notification issued under Section 6 of the Act published in the Gazette on 10.1.1996 shall stand lapsed.

29. At this stage, to advert the argument advanced by learned counsel for respondent Nos.1,2,3,5 relying upon the proviso to Section 24(2) of the Right to Fair Compensation Act; it is seen, the proviso makes it clear that in case where an award has been made and the compensation in respect of majority of the land holding has not been deposited in the account of the beneficiaries then all the beneficiaries specified in the notification for acquisition under Section 4 of the Old Land Acquisition Act would be entitled to the compensation as per the provisions of the Right to Fair Compensation Act. As per the stand taken in the additional return filed by the respondent/State, it is clear that the petitioners do not come within the purview of the majority of the

land holders to whom the amount have not been deposited in their accounts. Thus, looking to the defence taken in the additional return, the proviso cannot be invoked on the basis of the arguments as advanced by learned counsel for the respondent Nos.1,2,3,5 contrary to their own stand.

30. As the petitioners have not pressed the relief of quashing the land acquisition proceedings and merely pressed upon the relief of lapsing as per Section 24(2) of the Right to Fair Compensation Act, therefore, in view of the foregoing discussion, this petition succeeds and is hereby allowed in part to the extent indicated hereinabove. Therefore, it is declared that the proceedings with respect to the land in question belonging to the petitioners pertaining to Khasra Nos.22,23,24,25,30,31/1,31/2 admeasuring 0.249, 2.530, 0.958, 0.314, 0.497, 0.313, 0.627 hectare respectively situated at Village Mirjapur of Tahsil and District Vidisha acquisitioned by the State Government vide notification issued under Section 4 of the old Land Acquisition Act on 15.12.1995 and the final notification issued under Section 6 of the Act published in the Gazette on 10.1.1996 shall stand lapsed.

31. Consequently, this petition succeeds and is hereby

allowed in part in view of the foregoing. In the facts and circumstances of this case, the parties are directed to bear their cost.

(J.K.MAHESHWARI)

JUDGE

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