

**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR  
BEFORE  
HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE**

**Writ Petition No.4708 of 2020**

***SUDHIR KUMAR KHARE***

***Vs.***

***STATE OF MADHYA PRADESH AND OTHERS***

**APPEARANCE**

*Shri Santosh Agrawal - Advocate for the petitioner.*

*Shri K.S. Tomar - Govt. Advocate for the State.*

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*Reserved on* : **09/04/2025**

*Delivered on* : **24/4/2025**

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*This petition having been heard and reserved for orders, coming on for pronouncement this day, the **Hon'ble Shri Justice Milind Ramesh Phadke** pronounced/passed the following:*

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**ORDER**

The present petition under Article 226/227 of the Constitution of India has been filed by the petitioner seeking following reliefs:

*"It is humbly prayed that the writ in the nature of writ of mandamus or certiorari, or any other suitable writ order or direction may kindly be issued by setting aside order Annexure P-1 with further direction to the respondent either to pay the compensation to the petitioner as per Act 2013 against acquisition of land bearing survey no.339//01 ad-measuring area .0.329 hectare situated Civil line*

*Datia or restored the possession of petitioner the with clear approachable path with further direction to make payment of compensation for unauthorized occupation on the such land by police department to petitioner as directed earlier. Any other relief which this Hon'ble Court may deems fit in the facts and circumstances of the case in favour of petitioner."*

2. Short facts of the case are that the petitioner is/was the owner of a land bearing Survey No.339/01, ad-measuring 0.81 hectares situated at Ramnagar, Civil Line, Tehsil Datia, which was forcibly taken by the Police Department without due process of law provided under the Land Acquisition Act. Being aggrieved by the aforesaid illegal action, the petitioner preferred a Writ Petition No.1453 of 1999 and vide order dated 27.03.2003, this Court had held that the respondents since had without following due process of law, forcibly taken possession of the land, therefore, the petitioner will be entitled for mesne profit for unauthorised occupation of his land from the year 1991 on the basis of 10% of the valuation of land which was determined by the respondents at Rs.1,20,512/- and further he would be entitled to the said *mesne* profit till respondents delivered the possession of the land to the petitioner; however, if the respondent's acquire the land, the compensation shall be determined at the market value of the land on the date of acquisition and till the acquisition, he will be entitled for mesne profit @ 10% of valuation determined by the respondents.

3. In compliance of the aforesaid order, a notification of acquisition of the land in question was issued under Section 4(1) of the Land Acquisition Act, 1894 on 02.09.2003 and subsequently, further

notification under Section 6 of the Land Acquisition Act, 1894 was issued on 27.03.2004. A notice to take possession of the land was issued on 19.11.2004 and the possession of the land was taken on 15.11.2005 and he was awarded Rs.22,74,221/- towards land acquisition. According to the petitioner, in spite of passing of Award dated 15.11.2005 in the Land Acquisition Proceedings No.1/A-82/03-04 vide Annexure P/5, the amount of compensation has not been paid to him. Aggrieved by the non-payment of amount, the petitioner preferred a Writ Petition No.4993 of 2006 before this Court.

4. Vide order dated 03.11.2009, this Court had allowed the said petition by issuing following directions :

*"i) That, any proceeding pending before the authority with regard to denotification of the land under Section 48A of the Land Acquisition Act is declared void.*

*ii) The respondents are directed to pay compensation to the petitioner, however, it is open to the respondents to take any recourse of law, if they feel that the compensation is on higher side.*

*iii) The respondents are also free to take any other course, if permissible to them under any other provision of law with regard to return of land to the petitioner.*

*iv) The respondents are granted three months time to follow the directions."*

5. Being aggrieved by the aforesaid order, both the parties had preferred Writ Appeal Nos.117 of 2010 and 190 of 2010 before Division Bench of this Court. Vide order dated 12.02.2015, the Division Bench,

in the light of assurance given by the State that a different land had been given to the petitioner in exchange of the land acquired, dismissed Writ Appeal No.117 of 2010 being rendered infructuous and as a consequence thereof, Writ Appeal No.190 of 2010 was also dismissed as infructuous.

6. Despite of assurance given by the State, the land was not given to the petitioner. Aggrieved, the petitioner preferred a Writ Petition No.729 of 2016 and during the pendency of the said petition, the Additional Collector vide its order dated 29.11.2017 had sent a proposal to the State Government for approval and proper guidance with regard to land of the petitioner. Thereafter, a Review Petition No.280 of 2018 was filed by the State against the order dated 12.02.2015 passed in Writ Appeal No.117 of 2010. Vide order dated 14.09.2018, the said review petition was disposed of by observing and directing as under:

*"Evidently, there is no direction by the Court to settle the dispute by giving land in exchange. It is further borne out from record and the submissions made on behalf of the petitioners/State that the land in question is not required, yet the fact is that it has remained with the Police Department and no compensation in any form has been paid to the respondent, the undisputed owner of the land in question. When we say no compensation in any form, we mean that even for temporary occupation, the compensation is not paid. Thus even if we accept the contention on behalf of the petitioner that erroneous statement was made by the counsel appearing for the*

*State, a restoration of writ appeal will not serve any purpose because sub-section (1) of Section 48 of Land Acquisition Act stipulates that 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.*

*In the present case since the possession of land in question is still with the Police Department, we deem it appropriate in the interest of justice to dispose of the review petition with a direction to settle the claim of the respondent in right earnest in accordance with law and the statement made by the Government Advocate which led to dismissal of appeal will not come in way for settlement of claim of the petitioner, which shall be within three months.*

*True it is that the writ appeal could have been revived but taking into consideration the plight of respondent the owner of the land deprived of the possession since 1999 nor is paid the compensation, the present order is passed to render complete justice."*

7. Alleging willful disobedience of the order dated 14.09.2018 passed in Review Petition No.280 of 2018 preferred by the State, a Contempt Petition No.3540 of 2018 was filed by the petitioner. Vide order dated 15.05.2019, the Division Bench on the response filed by the State stating that an amount of Rs.41,25,000/- was deposited in the account of the petitioner in lieu of compensation of the land in question, disposed of the contempt petition. According to the petitioner, such

amount was calculated as per Award passed under repealed **Land Acquisition Act, 1894** not as per Section 24(2) of the of the **Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013**.

8. Against the order dated 15.05.2019 passed in Review Petition No.894 of 2019, the present petitioner preferred a Special Leave to Appeal (C) No.25238-25239 of 2019 before the Apex Court. Vide order dated 21.10.2019, the Apex Court had dismissed the said SLP by observing as under:

*"We decline to interfere in these Special Leave Petitions.*

*However, we make it clear that if the petitioner has any other remedy, he is free to pursue the same in accordance with law. contentions available to decided on its own merits. All the parties in those proceedings be decided on its own merits.*

*The Special Leave Petitions are dismissed accordingly."*

Hence, the present petition has been filed by the petitioner.

9. Learned counsel for the petitioner while placing reliance on the Sub-section (1) of Section 24 of the Act of 2013, has submitted before this Court that the land acquisition proceedings under Act No.1 of 1894 shall be deemed to have lapsed where no award under Section 11 of the said Land Acquisition Act is made, and all provisions of the Act of 2013 relating to the determination of compensation shall apply; or where an award under Section 11 has been made, that such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the

said Act has not been repealed, but as no award had been passed as per Section 11 of the Act of 1894 and the said Act has been repealed by a new Act called "the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013" w.e.f. 01.01.2014, the amount of award was required to be calculated as per Act of 2013.

**10.** Further while placing reliance on Sub-section (2) of Section 24 of the Act of 2013, it was submitted that 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 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, is required to initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act and as per Proviso thereof, 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 for compensation in accordance with the provisions of the Act of 2013.

**11.** It was further submitted that as it is a settled principle of law that no person can be deprived of the property without authority of law, therefore, the petitioner cannot be deprived of his property in violation of his constitutional right as enshrined under Article 300-A of the Constitution of India.

**12.** It was further submitted that since 26.09.2013 the new Act 2013

has been introduced and Section 24 (2) is applicable and even after passing final award, no compensation has been paid for nearly about 10 years i.e. before coming into force of new Act 2013, hence by virtue of section 24(2), the proceeding under old Act can be said to have lapsed and now, the petitioner is entitled for compensation treating initial notification for acquisition on 01.01.2014 as per the procedure laid down in the Schedule-I of the Act 2013. On the basis of the aforesaid arguments, it was prayed to direct the respondent either to pay the compensation to the petitioner as per the Act of 2013 against acquisition of his land or restore his possession over the land in question.

13. *Per contra*, Shri K.S. Tomar - learned Govt. Advocate for the State had opposed the prayer so made by counsel for the petitioner and has prayed for dismissal of the present petition.

14. Heard counsel for the parties and perused the record.

15. The Apex Court in the matter of **Indore Development Authority vs Manoharlal And Ors. Etc.** reported in **2020 (8) SCC 129**, has overruled the earlier judgment of **Pune Municipal Corp. & Anr vs Harakchand Misirimal Solanki & Ors.** reported in **2014 (3) SCC 183** and has held that satisfaction of either of the conditions, namely, taking possession of the acquired land or payment of compensation to land owners would be sufficient to save the acquisition from being lapsed in terms of Section 24 (2) of the Act of 2013. Relevant para No.366 is explained below:

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

*366.1. 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 the 2013 Act, there is no lapse of+ proceedings. Compensation has to be determined under the provisions of the 2013 Act.*

**366.2.** *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 underSection 24(1) (b) of the 2013 Act under the 1894 Act as if it has not been repealed.*

**366.3.** *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 2013 Act 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*

**366.4.** *The expression “paid” in the main part of Section 24(2) of the 2013 Act does not include a deposit of compensation in court. The consequence of non-deposit is provided in the proviso to Section 24(2) in case it has not been deposited with respect to majority of landholdings then all beneficiaries*

(landowners) as on the date of notification for land acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation under Section 31 of the Land Acquisition Act, 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 2013 Act has to be paid to the “landowners” as on the date of notification for land acquisition under Section 4 of the 1894 Act.

366.5. In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, 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). The landowners 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 2013 Act.

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

**366.7.** *The mode of taking possession under the 1894 Act 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 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).*

**366.8.** *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 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned 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.*

**366.9.** *Section 24(2) of the 2013 Act does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 to a proceeding pending on the date of enforcement of the 2013 Act 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.”*

*(emphasis supplied)*

16. The expression “compensation has not been paid” in Section 24(2) of the 2013 Act and its effect on the subject acquisition, it is necessary to refer to Section 24 which reads as follows:

*“24. (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, 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 holding 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.”*

17. Insofar as Sub-section (1) of Section 24 is concerned, it begins with *non-obstante* clause. By this, Parliament has given overriding effect to this provision over all other provisions of 2013 Act. It is provided in Clause (a) that where the land acquisition proceedings have been initiated under the 1894 Act, but no award under Section 11 is made, then the provisions of 2013 Act shall apply relating to the determination of compensation. Clause (b) of Section 24(1) makes provision that where land acquisition proceedings have been initiated under the 1894 Act and award has been made under Section 11, then such proceedings shall continue under the provisions of the 1894 Act as if that Act has not been repealed.

18. Section 24(2) also begins with *non obstante* clause, which has overriding effect over Section 24(1). Section 24(2) enacts that in relation to the land acquisition proceedings initiated under 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied, viz; (i) physical possession of the land has not been taken or (ii) the compensation has not been paid, such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the appropriate government still chooses to acquire the

land which was the subject matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the 2013 Act. The proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act 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 the beneficiaries specified in Section 4 notification becomes entitled to compensation under 2013 Act.

19. The Supreme Court in the case of **Tukaram Kana Joshi v. MIDC**, reported in **(2013) 1 SCC 353** has held as under :

*“8. The appellants were deprived of their immovable property in 1964, when Article 31 of the Constitution was still intact and the right to property was a part of fundamental rights under Article 19 of the Constitution. It is pertinent to note that even after the right to property ceased to be a fundamental right, taking possession of or acquiring the property of a citizen most certainly tantamounts to deprivation and such deprivation can take place only in accordance with the “law”, as the said word has specifically been used in Article 300-A of the Constitution. Such deprivation can be only by resorting to a procedure prescribed by a statute. The same cannot be done by way of executive fiat or order or administration caprice. In Jilubhai Nanbhai Khachar v. State of Gujarat, it has been held as follows : (SCC p. 627, para 48) “48. In other words, Article 300-A only limits*

*the powers of the State that no person shall be deprived of his property save by authority of law. There [is] no deprivation without [due] sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation.”*

*9. The right to property is now considered to be not only a constitutional or a statutory right but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment, etc. Now however, human rights are gaining an even greater multifaceted dimension. The right to property is considered very much to be a part of such new dimension. (Vide *Lachhman Dass v. Jagat Ram*, *Amarjit Singh v. State of Punjab*, *State of M.P. v. Narmada Bachao Andolan*, *State of Haryana v. Mukesh Kumar and Delhi Airtech Services (P) Ltd. v. State of U.P.*).*

**20.** Further, the Supreme Court in the matter of **B.K. Ravichandra v. Union of India** reported in **(2021) 14 SCC 703** has held as under :

*“35. It is, therefore, no longer open to the State : in any of its forms (executive, State agencies, or legislature) to claim that the law — or the Constitution can be ignored, or complied at its convenience. The decisions of this Court, and the history of the right to*

*property show that though its preeminence as a fundamental right has been undermined, nevertheless, the essence of the rule of law protects it. The evolving jurisprudence of this Court also underlines that it is a valuable right ensuring guaranteed freedoms and economic liberty. The phrasing of Article 300-A is determinative and its resemblance with Articles 21 and 265 cannot be overlooked, they in effect, are a guarantee of the supremacy of the rule of law, no less. To permit the State : whether the Union or any State Government to assert that it has an indefinite or overriding right to continue occupying one's property (bereft of lawful sanction) — whatever be the pretext, is no less than condoning lawlessness. The courts' role is to act as the guarantor and jealous protector of the people's liberties : be they assured through the freedoms, and the right to equality and religion or cultural rights under Part III, or the right against deprivation, in any form, through any process other than law. Any condonation by the court is a validation of such unlawful executive behaviour which it then can justify its conduct on the anvil of some loftier purpose, at any future time, aptly described as a "loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need."*

21. From the aforesaid, it is clear that the right to hold property is not only a Constitutional Right as enshrined under Article 300-A of



Constitution of India but is also a Human Right and no one can be deprived of his property except in accordance with law.

**22.** The Supreme Court in the case of Hari Krishna Mandir Trust Vs. State of Maharashtra and Others reported in (2020) 9 SCC 356 has held as under:-

*“99. In case of dispossession, except under the authority of law, the owner might obtain restoration of possession by a proceeding for mandamus against the Government as held by this Court in Wazir Chand v. State of H.P. [Wazir Chand v. State of H.P., AIR 1954 SC 415 : 1954 Cri LJ 1029] Admittedly, no compensation has been offered or paid to the appellant Trust. As observed by this Court in K.T. Plantation (P) Ltd. v. State of Karnataka [K.T. Plantation (P) Ltd. v. State of Karnataka, (2011) 9 SCC 1 : (2011) 4 SCC (Civ) 414] , even though the right to claim compensation or the obligation of the State to pay compensation to a person who is deprived of his property is not expressly provided in Article 300- A of the Constitution, it is inbuilt in the Article. The State seeking to acquire private property for public purpose cannot say that no compensation shall be paid. The Regional and Town Planning Act also does not contemplate deprivation of a landholder of his land, without compensation. Statutory authorities are bound to pay adequate compensation.*

**100.** *The High Courts exercising their jurisdiction*

*under Article 226 of the Constitution of India, not only have the power to issue a writ of mandamus or in the nature of mandamus, but are duty-bound to exercise such power, where the Government or a public authority has failed to exercise or has wrongly exercised discretion conferred upon it by a statute, or a rule, or a policy decision of the Government or has exercised such discretion mala fide, or on irrelevant consideration.*

*101. In all such cases, the High Court must issue a writ of mandamus and give directions to compel performance in an appropriate and lawful manner of the discretion conferred upon the Government or a public authority.*

*102. In appropriate cases, in order to prevent injustice to the parties, the Court may itself pass an order or give directions which the Government or the public authorities should have passed, had it properly and lawfully exercised its discretion. In Director of Settlements, A.P. v. M.R. Apparao [Director of Settlements, A.P. v. M.R. Apparao, (2002) 4 SCC 638] . Pattanaik, J. observed: (SCC p. 659, para 17)*

*“17. ... One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the*

*rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus, “mandamus” means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (see Kalyan Singh v.*

*State of U.P. [Kalyan Singh v. State of U.P., AIR 1962 SC 1183]). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law.”*

**103.** *The Court is duty-bound to issue a writ of mandamus for enforcement of a public duty. There can be no doubt that an important requisite for issue of mandamus is that mandamus lies to enforce a legal duty. This duty must be shown to exist towards the applicant. A statutory duty must exist before it can be enforced through mandamus. Unless a statutory duty or right can be read in the provision, mandamus cannot be issued to enforce the same.*

**104.** *The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief, questions of fact may fall to be determined. In a petition under Article 226, the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. Reference may be made inter alia to the judgments of this Court in Gunwant Kaur v. Municipal Committee, Bhatinda [Gunwant Kaur v. Municipal Committee, Bhatinda, (1969) 3 SCC 769] and State of Kerala v. M.K. Jose [State of Kerala v. M.K. Jose,*

(2015) 9 SCC 433] . In *M.K. Jose [State of Kerala v. M.K. Jose, (2015) 9 SCC 433]* , this Court held: (SCC pp. 442-43, para 16)

*“16. Having referred to the aforesaid decisions, it is obligatory on our part to refer to two other authorities of this Court where it has been opined that under what circumstances a disputed question of fact can be gone into. In *Gunwant Kaur v. Municipal Committee, Bhatinda [Gunwant Kaur v. Municipal Committee, Bhatinda, (1969) 3 SCC 769]* , it has been held thus: (SCC p. 774, paras 14-16),,*

*14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit-in-reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law.*

*Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.*

*15. From the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due publication of the notification under*

*Section 4 by the Collector.*

*16. In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit-inreply from the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit.””*

**23.** From the aforesaid, it is clear that although the right to claim compensation or obligation of State to pay compensation to a person, who is deprived of his property, is not expressly provided under Article 300-A of the Constitution of India, but it is inbuilt in the Article and the State, who has acquired the private property for public purposes cannot say that no compensation shall be paid. The statutory authorities are bound to pay adequate compensation for illegally dispossessing the petitioner from her private land

**24.** It is well established principle of law that any interpretation which may lead to absurdity should be avoided. The Supreme Court in the matter of **Corporation Bank v. Saraswati Abharansala**, reported in **(2009) 1 SCC 540** has held as under :

*“24. The statute furthermore, it is trite, should be read in a manner so as to do justice to the parties. If it is to be held, without there being any statutory provision that those who have deposited the amount in time would be put to a disadvantageous position and those who were defaulters would be better placed, the same would give rise to an absurdity. Construction of the statute which leads to confusion must be avoided.”*

**25.** The Supreme Court in the matter of **American Home Products Corporation. vs. Mac Laboratories (P) Ltd.**, reported in (1986) 1 SCC 465 has held as under:

*“66.....It is a well-known principle of interpretation of statutes that a construction should not be put upon a statutory provision which would lead to manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly (see: M. Pentiah v. Muddala Veeramallappa). The Division Bench of the Calcutta High Court saw the absurdity, inconvenience and hardship resulting from the construction which was placed by it upon Section 48(2), as is shown by the passages from its judgment reproduced earlier.....”*

**26.** Thus, if the obvious intention of the statute gives rise to obstacles in implementation, the court must do its best to find ways of overcoming those obstacles, so as to avoid absurd results. It is a well-settled principle of interpretation of statutes that a construction should not be put on a statutory provision which would lead to manifest



absurdity, futility, palpable injustice and absurd inconvenience or anomaly.

27. Herein case, the Award has been passed on 15.11.2005 but only in the year 2019, compensation amount of Rs.41,2500/- has been paid which is against the provisions of the Act of 2013 as well as against the law laid down in Para 366.4 of the decision of the **Indore Development Authority (*supra*)**.

28. This Court in the light of aforesaid discussion finds that the impugned order dated 14.09.2019 passed by the respondent authority is *per-se* illegal and accordingly, it is hereby **set aside**. Resultantly, the present petition is **allowed** and the respondents are directed to pay the compensation amount to the petitioner as per the Act of 2013 against acquisition of land in question after adjusting the amount of Rs.41,25,000/- which has already been paid to the petitioner, as is evident from order dated 15.05.2019 passed in Contempt Petition No.3540 of 2018.

29. With the aforesaid observation and directions, the present petition is **disposed of** finally.

(Milind Ramesh Phadke)  
Judge