# The High Court of Madhya Pradesh Bench at Indore

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| Case Number | **WRIT APPEAL NO.1150/2020** |
| Parties Name | Vishnu & Ors.<br>Vs.<br>The State of Madhya Pradesh & Ors. |
| Case Number | **WRIT APPEAL NO.1164/2020** |
| Parties Name | Anitabai & Ors.<br><br>Vs.<br>The State of Madhya Pradesh & Ors. |
| Case Number | **WRIT APPEAL NO.1171/2020** |
| Parties Name | Mohanlal & Ors.<br><br>Vs.<br>The State of Madhya Pradesh & Ors. |
| Case Number | **WRIT APPEAL NO.1174/2020** |
| Parties Name | Mohan & Ors.<br>Vs.<br>The State of Madhya Pradesh & Ors. |
| Case Number | **WRIT APPEAL NO.1175/2020** |
| Parties Name | Kailash & Ors.<br>Vs.<br>The State of Madhya Pradesh & Ors. |
| Case Number | **WRIT APPEAL NO.1201/2020** |
| Parties Name | Deceased Badrilal through L.R. Reshambai & Ors.<br>Vs.<br>The State of Madhya Pradesh & Ors. |
| Date of Judgment | **26/03/2021** |
| Bench | **Division Bench:**<br>Justice Sujoy Paul<br>Justice Shailendra Shukla |
| Judgment delivered by | Justice Sujoy Paul |
| Whether approved for reporting | YES |
| Name of counsel for parties | Shri.K.L. Hardia with Shri Rajiv Jain, learned counsel for appellants. |

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| | Ms.Archana Kher, learned Dy.A.G. for respondent/State.<br>Ms.Mini Ravindran, learned counsel for respondent No.6 |
| Law laid down | **1. <u>Practice and procedure-pleadings and relief claimed:-</u>** The entire edifice of writ petition is based on section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. During oral/ written submissions, land acquisition proceedings are being attacked by contending that notification issued under section 4 and 6 of Land Acquisition Act, 1984 were illegal. In absence of any pleadings and prayer in this regard in the writ petition, oral/written submissions cannot be entertained. More so, when the award passed is also not under challenge.<br><br>**2. <u>Pleadings for the fist time in rejoinder:-</u>** If factual matrix of a case is within the knowledge of the petitioners while filing the petition, the entire necessary facts and grounds must be raised in the petition itself. Allegations made only in rejoinder ordinarily cannot be permitted to be raised.<br><br>**3. <u>Relief not claimed - cannot be granted:-</u>** In absence of any relief claimed challenging the acquisition proceedings and the award, no relief is due based on averments of rejoinder and written submissions.<br><br>**4. <u>Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013:-</u>** If respondents made genuine efforts to deliver the compensation and the appellants have avoided to accept it, no fault can be found in the action of respondents.<br><br>**5. <u>Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 :-</u>** The deeming provisions regarding lapsation can be pressed |

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| | into service if award is passed before 5 years or more from the date Act of 2013 came into being. In the instant case, the award is admittedly passed within 5 years. Hence, section 24(2) of the Act of 2013 cannot be pressed into service.<br><br>**6. <u>Practice and procedure-citing of overruled judgment-deprecated:-</u>** Citing such judgments is an example of falling standard of professional conduct. More so, when curtains are recently drawn on the issue by a constitution bench of the Supreme Court.<br><br>**7. <u>Interpretation of statues - Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013:-</u>** The language of this provision is clear and unambiguous. Deeming clause of lapsation cannot be pressed into service, if award is not passed before 5 years from the date of commencement of the Act of 2013. When the language of a statue is clear and unambiguous, it should be given effect to irrespective of consequences. |
| Significant paragraph numbers | 16, 18, 19, 20 |

**<u>O R D E R</u>**
**(Passed on 26th March, 2021)**

**<u>As per: Sujoy Paul,J.</u>**

In these batch of Writ Appeals challenge is made to the common order passed by learned Single Judge in Writ Petitions No.3250/2017 and other connected matters decided on 2nd November, 2020 whereby the petitions filed by the petitioners/appellants were dismissed. It was held that land acquisition proceedings have not at all lapsed, even if the petitioners have not received the compensation. A specific finding was given in the impugned order that in the present cases, compensation was deposited with the land acquisition officer

and the question of granting relief to the petitioners, especially in the light of the fact that entire project is complete does not arise. The liberty was reserved to the petitioners to receive compensation in accordance with law if not received so far.

**[2]** Shri K.L. Hardia, learned counsel for appellants contended that notification u/S.4 of Land Acquisition Act, 1894 (for short "Act of 1894") was defective. The said notification was issued on 16/2/2007 whereas notification u/S.6 of the said Act was issued on 9/2/2007. By no stretch of imagination, Sec.4 Notification can be issued after issuance of Sec.6 notification. The award passed on 7/3/2009 is liable to be interfered with on this score alone.

**[3]** It is noteworthy that this matter was heard for quite some time on 18/3/2021. Because of paucity of time, to conclude the hearing, with the consent of parties, matter was taken up on 22/3/2021. An amendment application IA No.2749/2021 was filed by Shri Hardia seeking amendment at appellate stage. We are not inclined to entertain amendment application filed at the midst of hearing. More so when the facts and pleadings mentioned in the amendment application are based on factual matrix which were already known to the present appellants during writ proceedings. The appellants did not file amendment application before the writ court and filed this application at appellate stage. In absence of showing any "due diligence" for not filing application at appropriate stage, we find no reason to entertain this application.

**[4]** Shri Hardia, learned counsel submits that the defects in the acquisition proceedings were brought to the notice of learned Single Judge. However, there is no iota of discussion regarding the flaw relating to issuance of Sec.4 and Sec.6 notification. The written submissions filed by the appellants were also not considered by learned Writ Court. A specific ground was taken regarding illegality of

acquisition proceedings in the rejoinder which were also not considered by learned Single Judge.

**[5]** To bolster aforesaid submissions, learned counsel for appellants placed reliance on the judgments of Apex court in ***Kunwar Pal Singh (dead) by L.Rs Vs. State of U.P. & Ors 2007(3) MPLJ 439***, ***Amarnath Ashram Trust Society & another Vs. Governor of Uttar Pradesh & Ors AIR 1998 SC 477***, ***Chaitram Verma & Ors Vs. Land Acquisition Officer, Raipur 1994 JLJ 96***, ***Raghbir Singh Sehrawat Vs. State of Haryana & Ors (2012) 1 SCC 792*** and ***Sunita Agrawal Vs. Bhanwarlal & another*** passed in CA No.301/2021 passed on 1/2/2021.

**[6]** It is contended that in the teeth of sub section 2 of Sec.24 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "Act of 2013") the land acquisition proceedings stood lapsed. The respondents have neither paid the compensation to the present appellants nor taken the possession. Hence, by operation of sub section (2) of Sec.24 of Act of 2013 the award became a nullity. Lastly, it is submitted that respondent No.6 being a beneficiary has no *locus standi* to oppose the present appellants.

**[7]** Per contra, Ms.Archana Kher, learned Dy.A.G and Ms.Mini Ravindran, learned counsel for respondent No.6 supported the impugned order. It is common ground that in view of limited relief claimed in the writ petition, no fault can be found in the impugned order. Appellant cannot be permitted to set up entirely a new case at writ appellate stage. Neither the notification issued u/Ss.4 and 6 nor the proceedings of land acquisition were subject matter of challenge in the writ petition. The award dated 7/3/2009 was also not under challenge. Sec.24 cannot be pressed into service because award is not passed prior to five years from the date of commencement of the Act

of 2013. Indeed, it was passed before four years nine months and 23 days from he date of Act of 2013 came into being.

**[8]** It is submitted that present acquisition is of land for Auto Testing Track popularly known as "National Automative Testing and R & D Infrastructure Project (Project)". Respondent No.6 is beneficiary and is project implementation society. In view of the judgments of Supreme Court in ***Delhi Development Authority Vs. Sukhbir Singh & Ors, (2016) 16 SCC 285***, ***Delhi Development Authority Vs. Bholanath Sharma & Ors. (2011) 2 SCC 54***, ***Trishakti Electron & Industries Ltd. And another Vs. TIL Limited & Ors. (2018) 18 SCC 792*** and ***N. Krishnamachari Vs. Managing Director, APSRTC, Hyderabad & Ors. (1994) 6 SCC 74*** the respondent No.6 falls within the ambit of "person interested". Person for whose benefit the land is being acquired is a "person interested" and is entitled to support the acquisition proceedings. It is further canvassed by learned counsel for respondents that the project is working under the Department of Heavy Industry. The award was passed in 2009. The petitions were filed after considerable long delay. Thus, in view of judgment of Supreme Court reported in ***Aflatoon & Ors. Vs. Lt. Governor of Delhi and Ors. AIR 1974 SC 2077***, ***Swaran Lata and Ors. Vs. State of Haryana & Ors. (2010) 4 SCC 532*** and ***Swaika Properties (P) Ltd & another Vs. State of Rajasthan & Ors. (2008) 4 SCC 695,*** the writ petitions were liable to be dismissed on the ground of delay alone. It is further submitted by learned counsel for respondents that project is now being implemented on 1195 hectare (2950 acre) of land out of which land under litigation in this batch of writ appeals is only 0.623 hectare (1.54 acres) of village Madhupora. The project cost was 1718.00 crores for setting up world class Automative Testing Infrastructure. The said project cost is now increased to Rupees 3727 crores. The cheques were prepared and all efforts were made to handover the cheques of compensation to the

appellants, but they did not accept the same. The letter of Tehsildar dated 30/8/2010 (Annexure R/3) was placed on record. Repeated efforts to provide cheques of compensation to present appellants went in vain. Cheques were again refused on 11/7/2014 (Annexure R/3) by the appellants. On 25/4/2017 public notice was issued in the newspaper requesting the appellants to obtain the said cheques but this effort also could not fetch any result. The respondents supported the impugned order of learned Single Judge.

**[9]** No other point is pressed by learned counsel for parties.

**[10]** We have heard the learned counsel for parties at length and perused the record.

**[11]** The original writ petition filed by the petitioners was amended and the amended relief clause reads as under:-

**7. चाही गई सहायता :–**

याचिकाकर्ता माननीय न्यायालय से निम्नानुसार सहायता चाहता है।

*परंतुक जहां अधिनिर्णय किया गया है तथा बहुसंख्यक भू–धृतियों की बाबत् हिताधिकारियों के खाते में प्रतिकर जमा नही किया गया है, तो उक्त भू–अर्जन अधिनियम की धारा 4 के अधीन अर्जन की अधिसूचना में विनिर्दिष्ट सभी हिताधिकारी, इस अधिनियम के उपबंधो के अनुसार प्रतिकर के हकदार होगे।*

7.1 यह कि, भूमि अर्जन पुर्नवासन ओर पुर्नव्यवस्थापन में उचित प्रतिकर ओर पारदर्शिता का आधिकार अधिनियम, 2013 की धारा 24 (2) उपधारा (1) में कुछ भी अर्न्तविष्ट होते हुए भू–अर्जन अधिनियम 1894 के किसी मामले में जहॉ उक्त धारा 11 के अधीन इस अधिनियम के प्रारंभ की तारिख के 5 वर्ष या उससे अधिक पुर्व अधिनिर्णय किया गया है किन्तु भूमि का वास्तविक कब्जा नही लिया गया या प्रतिकर का संदाय नही किया गया है, वहां उक्त कार्यवाहियों के बारे में यह समझा जायेगा कि वह व्यपगत हो गई है। याचिकाकर्ता के प्रकरण में भू–अर्जन की कार्यवाही व्यपगत हो चुकी है।

7.2 यह कि रेस्पोडेण्ट कमांक 1 से 3 के द्वारा भू–अर्जन प्रकरण क्र. 13/अ–82/2006–2007 का जो अवार्ड दिनांक 7/3/2009 को पारित किया गया है, घोषित मुआवजा राशि का भुगतान 8 वर्षो में याचिकाकर्ता को नही किया गया होने से याचिकाकर्तागणो की भूमि एवं भवन के संबंध में अर्जन की कार्यवाही व्यपगत हो चुकी है।

दिनांक 15.12.2017

*संशोधन धारा 24 (2)की उपधारा 1 ''परंतुक'' जहॉ अधिनिर्णय किया गया है तथा बहुसंख्यक भू–धृतियों की बाबत् हिताधिकायिों के खाते में प्रतिकर जमा नही किया गया है, तो उक्त भू–अर्जन अधिनियम की धारा 4 के अधीन अर्जन*

*की अधिसूचना में विनिर्दिष्ट सभी हिताधिकारी, इस अधिनियम के उपबंधो के अनुसार प्रतिकर के हकदार होगे।*

7.3 यह कि, प्रस्तुत याचिका सहःव्यय स्वीकार की जावे तथा याचिका का समस्त हर्जा–खर्चा रेस्पोडेण्ट से याचिकाकर्ता को दिलाया जावे।

**[12]** A careful reading of averments of writ petition and relief clause shows that no challenge was made to the acquisition proceedings on the basis of any flaw in issuance of notification u/S.4 and Sec.6 of Act of 1894. The learned Single Judge in the impugned order categorically recorded that the main ground of petitioners is that after the award was delivered on 7/3/2009 compensation has not been distributed and, therefore, the land acquisition proceedings have come to an end. In the impugned order this contention of appellants was duly recorded with further finding that prayer was made to declare the proceedings which took place in respect of land acquisition as null and void keeping in view Sec.24(2) of Act of 2013.

**[13]** We find no infirmity in the order of learned Single Judge if land acquisition proceedings was not interfered with on alleged violation of Sec.4 and Sec.6 of Act of 1894. In absence of any pleadings and relief claimed in this regard, no fault can be found in the order of learned Single Judge. Interestingly, in the written submissions filed before the learned Single Judge attack is made to the land acquisition proceedings. In absence of any pleadings and foundation in the writ petitions, acquisition proceedings cannot be called in question by way of oral/written arguments.

**[14]** In ***Gomti Bai Tamrakar Vs. State of M.P. 2008(4) MPLJ 536*** this Court opined as under:-

> "15. The learned counsel for the petitioners has also argued that the order for invoking the urgency clause was passed subsequent to section 6 declaration dated 15-5/2008. A perusal of the writ petition indicates that no such ground has been raised by the petitioners in the writ petition questioning the legality and correctness of the invocation of the urgency clause. Therefore, such an argument raised at the time of final hearing cannot be

> considered since State had no opportunity to respond to the same."
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> (emphasis supplied)

**[15]** After taking note of Supreme Court's judgment in ***B.S.N. Joshi & Sons Vs. Nair Coal Services Ltd (2006) 11 SCC 548***, this Court in ***Nagda Municipality, Naga Vs. ITC Ltd.2007 (3) MPHT 309*** opined that if a point is not pleaded, the High Court should not allow it to be urged during arguments.

**[16]** So far averments of rejoinder is concerned, this is trite that no new plea ordinarily could have been permitted by way of rejoinder. A new case cannot be set up by rejoinder. More so when factual matrix of the case were well within the knowledge of petitioner while filing the main petition. In ***Ashok Lanka Vs. Rishi Dikshit (2006) 9 SCC 90*** the Apex court held as under:-

> "**43.** In the writ petition, the writ petitioners have not disclosed as to how each one of the licensees who had appeared as respondents therein were ineligible or otherwise disqualified and/or did not fulfil the conditions therefor. Had such opportunities been given, the State as also the said respondents could have met the said allegations. Such allegations were made only in the rejoinder. No new plea ordinarily could have been permitted in the rejoinder without the leave of the court. We would not have commented upon this as the High Court does not appear to have placed reliance upon the additional affidavit filed by the State, inter alia, on the ground that the same being a surrejoinder could not have been filed. The High Court's attention was evidently not drawn to the fact that writ petitioners brought on record new facts for the first time in the rejoinder and, thus, the State was entitled to file a surrejoinder controverting the allegations made therein.

**[17]** In ***State of Orissa Vs. Mamata Mohanty (2011) 3 SCC 436*** the Apex Court has held that:-

> **55.** Pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce

> appropriate evidence on the said issue. It is a settled legal proposition that "**as a rule relief not founded on the pleadings should not be granted**". Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. [Vide *Sri Mahant Govind Rao* v. *Sita Ram Kesho* [(1897-98) 25 IA 195 (PC)] ,*Trojan & Co.* v. *Nagappa Chettiar* [AIR 1953 SC 235], *Ishwar Dutt* v. *Collector (L.A.)* [(2005) 7 SCC 190 : AIR 2005 SC 3165] and *State of Maharashtra* v. *Hindustan Construction Co. Ltd.*[(2010) 4 SCC 518 : (2010) 2 SCC (Civ) 207] ]"
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> (emphasis supplied)

**[18]** The Apex Court in the aforesaid case disapproved the order of High Court and opined that the High Court granted relief in some cases which had not even been asked for. In other words it is held that relief claimed and beyond the pleadings should not be granted. Same view is taken in ***M. Siddiq (Ram Janmabhumi Temple-5 J.) V. Suresh Das (2020) 1 SCC 1*** by holding that evidence, it is well settled, can only be adduced with reference to matters which are pleaded in a case and in the absence of an adequate pleading, evidence by itself cannot supply the deficiency of a pleaded case.

**[19]** Pertinently, the learned Single Judge dismissed the writ petitions based on the recent constitution bench judgment reported in ***Indore Development Authority Vs. Manoharlal & ors. (2020) 8 SCC 129***. It was poignantly held that if attempts were made to deliver compensation and claimants failed to receive it, acquisition proceedings will not fail or vanish in thin air. In addition, it was held that the action of taking possession is in consonance with the Constitution bench judgment. No arguments were advanced to attack the said twin findings on which the entire order of learned Single Judge is based. On the contrary, for the purpose of possession, reliance is placed on the judgment of Supreme Court in ***Raghbir***

***Singh Sehrawat Vs. State of Haryana & Ors (2012) 1 SCC 792*** which has been over ruled by Supreme Court in the case of ***Indore Development Authority*** (supra). The Apex Court in ***State of Orissa Vs. Nalinikanta Muduli (2004) 7 SCC 19***, ***D.P. Chadha Vs. Triyugi Narain Mishra & ors. (2001) 2 SCC 221*** *and* ***Lal Bahadur Gautam Vs. State of Uttar Pradesh & Ors. (2019) 6 SCC 441*** took serious note of the practice in citing over ruled judgment and opined that it is an example of falling standard of professional conduct.

**[20]** The entire edifice of writ petition and relief is founded on sub section 2 of Sec.24 of Act of 2013. A plain reading of this provision makes it clear that this deeming provision of lapsation can be pressed into service only when award is passed five years or more prior to the commencement of the Act of 2013. In the instant case, award dated 7/3/2009 was not passed prior to five years from the date of commencement of the Act of 2013. The language of this provision is clear and unambiguous. Deeming clause of lapsation cannot be pressed into service, if award is not passed before 5 years from the date of commencement of the Act of 2013. When the language of a statue is clear and unambiguous, it should be given effect to irrespective of consequences.

**[21]** In view of foregoing analysis, we find no infirmity in the order of learned Single Judge. The appeals are devoid of substance and are hereby **dismissed**.

**[22]** Original order be retained in WA No. 1150/2020 and a copy of this order be kept in the record of connected Writ Appeals.

**(Sujoy Paul)**
**Judge**

**(Shailendra Shukla)**
**Judge**

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