

**HIGH COURT OF MADHYA PRADESH : JABALPUR**  
**{SB : HON'BLE SHRI JUSTICE J.K.MAHESHWARI}**  
**WRIT PETITION No.5022/2015**

1.Parasram Pal  
S/o Late Shri Devi Deen Pal  
Aged about 38 years.

2.Babulal Pal  
S/o Late Shri Devi Deen Pal  
Aged about 52 years.

Both residents of Village Shankargarh  
Tahsil Rajnagar, District Chhatarpur (MP)

**PETITIONERS**

**Versus**

1.Union of India  
Through Archaeological Survey of India  
Through Superintending Archaeologist  
Sub Circle GTB Complex  
T.T.Nagar, Bhopal

2.Collector, Chhatarpur  
Collectorate Office Chhatarpur (MP)

3.Sub Divisional Officer  
Rajnagar Tahsil Office  
Rajnagarh, District Chhatarpur (MP)

**RESPONDENTS**

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**Whether approved for reporting? YES/NO**

Shri Rajendra Mishra, Advocate for petitioners.  
Shri K.N.Pethia, Advocate for respondent No.1/Union of India  
through Archaeological Survey of India  
Shri Sanjay Dwivedi, Deputy Advocate General for  
respondent Nos.2 and 3/State.

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**ORDER**

**{28.10.2015}**

1. Invoking the jurisdiction under Article 226 of the  
Constitution of India and seeking the following reliefs, the

petitioners have filed this petition:-

"1.Call for the record relating to the subject matter of the petition.

2.This Hon'ble Court may further be pleased to quash the impugned acquisition proceedings as they stand lapsed.

3.Any other writ, direction, order which this Hon'ble Court may deem fit and proper may also be granted with cost of the petition.

2. The facts leading to file the present petition are that the petitioners are citizen of India and joint owners of the agricultural land pertaining to Khasra No.497/1 area ad-measuring 5.696 hectare and the residential house situated at Village Lalguvan, Tahsil Rajnagar, District Chhatarpur. The said land was being used for the agricultural purpose as well as for their dwelling use having their residence thereon. The land surrounding to the temple situated in Khajuraho was required to be acquisitioned to which a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter be called as old Land Acquisition Act) was issued as per Annexure P/2. Thereafter, the final notification under Section 6 of the Act was issued in the Gazette Published on 26.9.2003 wherein the land belonging to the petitioners pertaining to Khasra No.497/1 ad-measuring area 5.696 hectare and the residential house situated at Village Lalguvan, Tahsil Rajnagar, District Chhatarpur has been acquisitioned alongwith the land of other holders. A notice under Section 9 of the old Land Acquisition Act was issued for ascertainment of the boundaries, and thereafter the compensation was

determined by the Land Acquisition Officer (in short "LAO") vide award Annexure P/6 passed on 30.11.2004. The amount of the said award was not paid yet to the petitioners, however, as contemplated under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter shall be referred to as 'the Act of 2013'). The proceedings shall be deemed to have lapsed. It is also the contention of the counsel that the possession on the land in question has not been taken by following the procedure established by law and the petitioners are in Actual Physical Possession, therefore also, under the said provisions, the proceedings shall be deemed to have lapsed.

3. It is stated in the petition that the petitioners were filed the Writ Petition No6909/.2008 claiming the writ in the nature of certiorari, mandamus, prohibitory to quash whole of the proceedings of the acquisition of the land of the petitioners pertaining to Khasra No.497/1 ad-measuring area 5.696 hectare and the residential house situated at Village Lalguvan, Tahsil Rajnagar, District Chhatarpur and in alternative also prayed that the Hon'ble Court may please to direct the respondent Nos.3 and 4 to refer the matter to the District Magistrate for determination of compensation. On filing the said writ petition vide order dated 17.2.2009, this Court without commenting on the merits of the case directed to Collector that the application submitted by the petitioners has not been adverted to, however, let it be decided in accordance with law within the time frame. Thereafter, the

order was passed by the Collector on 19.6.2009 Annexure P/14 dealing the issue of refusing to make reference to the Court. Assailing the said order, Writ Petition No.2721/2014 was filed, however, during course of argument, it was submitted that now the Act of 2013 has come into force, and the compensation has not yet paid to the petitioners and the actual physical possession has also not taken by the authorities, however, the said writ petition may be disposed of with liberty to take such plea by filing fresh petition. On 5.2.2015, this Court without commenting on merit disposed of the petition and directed to take recourse afresh , on taking plea under the Act of 2013 as permissible in law. Thereafter, the present petition has been filed asking the benefit of statutory provisions contemplated under Section 24(2) of the Act of 2013 and to seek relief as specified hereinabove.

4. The respondent No.1/Archaeological Survey of India has filed their return interalia contending that after issuance of the final notification under Section 6 of old Land Acquisition Act, the LAO determined the compensation of all the private lands and passed the award as per Annexure R/1/3 on 30.11.2004. In pursuance to the award, the answering respondents have deposited the amount with LAO. The LAO vide letter dated 4.10.2005 sent information to the petitioners and other family members in whose name the acquired land was recorded, for receiving the compensation from the office of Sub Divisional Officer. It is said, the petitioners with the help of the local political persons made a futile attempt to take the land back by using the political pressure on the

revenue authorities and in this regard various letters were written. It is further said that the petitioners slept in a deep slumber for a long time and thereafter filed a writ petition making the false averments stating that the application filed under Section 18 of the old Land Acquisition Act seeking reference has not been decided. However, this Court had passed an order in Writ Petition No.6909/2008 as per Annexure R/1/7 to take appropriate steps. As per the directions issued by this Court, the Collector by passing an order on 19.6.2009 rejected the claim of the petitioners. Thereafter, the petitioners have filed a second Writ Petition No.2721/2014, which was also dismissed by this Court granting liberty to file a fresh writ petition in the light of provisions as contained under the Act of 2013. Challenging the order of Single Bench, he has also filed a Writ Appeal No.111/2015, which was also dismissed, however, the plea as taken and the relief sought cannot be granted in this petition. It is further said that after acquisition possession had taken and answering respondents started the work for conservation, preservation and excavation of monument. But the petitioners forcibly entered in the land acquired, to which a complaint was made to the Tahsildar. The Tahsildar preparing a Panchnama, again delivered the possession vide Annexures R/1/9 and R/1/10. As the petitioners have encroached the land, however, request was made vide Annexure P/12 to remove their re-encroachment. It is contended that the land was required for the purpose of conservation, preservation and excavation of the monument situated in Khajuraho, therefore, the said acquisition

proceedings cannot be ordered to be lapsed. In nutshell, it is urged that the compensation has been deposited by the Archaeological Survey of India with the LAO and the possession has also been taken from the petitioners, therefore, the provision as contained in Section 24 (2) of the Act of 2013 is having no application.

5. The respondent Nos.2 and 3 by filing their reply have interalia contended that the notice was sent to the petitioners under Section 12(2) of the old Land Acquisition Act as per Annexure R/1 and the possession had taken on 7.10.2005 from the petitioners. It is further stated that the petitioners were intimated to collect the compensation from the office of Sub Divisional Officer Rajnagar, District Chhatarpur by issuing a notice Annexure R/1/5 dated 4.10.2005 keeping the treasury cheque ready. But they have not appeared before S.D.O. to receive the compensation, though other land owners, whose lands were acquired, have received the compensation, as determined by LAO. As the vacant possession of the land is with the Archaeological Survey of India and despite the intimation, petitioners have not received the compensation, therefore, the provisions of Section 24(2) of the Act of 2013 shall not attract in the facts referred above, however, this petition may be dismissed.

6. By filling the application (I.A.No.7308/2015) for taking additional facts and the documents on record, the electricity bills of the petitioners' dwelling houses and the agricultural land have been brought on record, however, specifically contended by petitioners that they are in

possession of the land, and residing in their dwelling houses. The respondent No.1 has filed their synopsis/written arguments by I.A.No.11734/2015, as well as the additional arguments reiterating the plea taken in their return. However, in view of the aforesaid, looking to the fact that the possession has already taken from the petitioners by the respondent Nos.1 to 3, therefore, the relief as prayed in this writ petition cannot be directed.

7. After having heard learned counsel for the parties upto a length, it is seen that the Act of 2013 is made applicable with effect from 1.1.2014. However, looking to the facts of this case and also the provisions of the Act, the question cropped up for determination is as to (1) whether in the facts of the present case by following due process of law actual physical possession of the land in question has been taken by the respondent Nos.1 to 3 or the compensation has been paid in view of the provisions as contained in Section 24(2) of the Act of 2013? and (2) whether in the facts of the present case and by virtue of the provisions of Section 24 (2) of the Act of 2013, the land acquisition proceedings would be deemed to be lapsed?

8. In view of the arguments as advanced by learned counsel for the parties and to advert the same, first of all the language of Section 24 of the Act of 2013 is relevant, however, 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 provision 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 provision 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.

9. His Excellency the President of India in Sixty-sixth Year of the Republic introduced the Ordinance No.4 of 2015 "THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY



IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT (AMENDMENT) ORDINANCE 2015" which is published in the gazette extraordinary Part-II Section dated 3.4.2015, whereby the second proviso to Section 24(2) of the Act of 2013 has been aided, which is reproduced as under:-

"Provided further that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a tribunal for taking possession or such period where possession has been taken but the compensation lying deposited in a court or in any designated account maintained for this purpose shall be excluded."

10. It is relevant to note that the said ordinance was passed by the Lok Sabha on 10.3.2015 and thereafter it was published in the gazette subject to approval by the Rajya Sabha and as per the official website of the Parliament, the pre-legislative research indicates that the Joint Parliamentary Committee granted time upto the last day of first week of winter session of 2015 for approval by the Rajya Sabha. It is not in dispute that the winter session is expected from 20<sup>th</sup> November 2016. In reference to Article 123(2)(a) and (3), it is argued that the said ordinance has cease to operate because it has not been approved by both the Houses within a period of six weeks from reassembly of the Parliament met first time in Monsoon Session from July 21<sup>st</sup> to August 13<sup>th</sup> 2015. As the promulgation of second proviso to sub-section (2) of Section

24 of the Act of 2013 has not been approved by both the Houses within the time so specified, therefore, it ceases its effect and become void. In this context, from the Court's point of view, the competence and the power of the Joint Parliamentary Committee to grant time upto the last day of first week of winter session of 2015 has not been brought to the notice, and the winter session has to commence from 20<sup>th</sup> November 2015, therefore, presuming that the said ordinance has now converted into the Bill, came into force, however, proceeded to see the effect of the second proviso and how far it effects the basic provisions of the Act.

11. Bare reading of Section 24 of the Act of 2013, it is clear either sub-section (1) or (2), it starts with *non obstante* clause. As per sub-section (1)(a), it is clear that if no award under Section 11 of the old Land Acquisition Act has been made then all the provisions of this Act relating to the determination of compensation would apply. As per clause (1) (b), it is clear that in case the award has been made then such proceedings shall continue under the provisions of the old Land Acquisition Act as if the said Act has not been repealed. Sub-section (2) of Section 24 applies in a case where the land acquisition proceedings were initiated under the old Land Acquisition Act, and the award was made five year prior or more to the date of commencement of the Act of 2013, and in case (i) the physical possession of the land has not been taken or (ii) the compensation has not been paid then the proceedings taken under the old Land Acquisition Act shall be deemed to have lapsed and the appropriate Government may

be at liberty to take proceedings of land acquisition afresh in accordance with the provisions of the Act of 2013. Meaning thereby if the award is passed prior to five years or more to the date of commencement of this Act i.e. 1.1.2014 and either the physical possession has not been taken or the compensation has not been paid then the proceedings under the old Act would lapse, and the Government would be at liberty to take action afresh in accordance with the provisions of the new Act.

12. The first proviso of the said sub-section (2) makes it clear that after passing the award if compensation in respect of the majority land holders has not been deposited in the account of the beneficiaries then all the beneficiaries specified in the notification in the old Land Acquisition Act shall be entitled to compensation in accordance with the provisions of this Act. The second proviso as promulgated by the ordinance clarifies regarding computation of the period of five years and in what manner the effect of non-implementation of the award be recognized. However, as per the language engrafted therein, it appears that the period referred in sub-section (2) of Section 24 of the Act of 2013 means any period or periods during which the persons for acquisition of the land were held up on account of any stay or injunction issued by any Court or the period specified in the award of a Tribunal for taking possession or such period where the possession has taken but the compensation lying deposited in a Court or in a designated account maintained for this purpose shall be excluded. However, the said proviso clarifies three situations and

excludes the period period during stay or injunction of the Court, or any period specified in the award for taking possession, or where possession taken and compensation lying deposited in the Court or in any designated account for calculating the period of five years. In the said eventualities, the provisions of sub-section (2) of Section 24 of the Act of 2013 would not apply. As observed above, this Court has decided to deal the second proviso on merit, accepting as Section 24(2) is having two proviso, however, presuming it is in existence, its effect has been dealt with in the facts of this case.

13. It is further observed that applicability of the provisions of the old Land Acquisition Act for the purpose of Section 24 of the Act of 2013 has not been disputed looking to the language as specified under Sections 24(1)(a)(b) and 24(2) of the Act of 2013. More so it cannot be objected looking to language of Section 114 repeal and saving by which the old Land Acquisition Act has repealed but by saving clause in sub-clause (2) it is clarified that the said repeal shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 with regard to the Act and Repeals. Clause 6(b) of the General Clauses Act makes it clear that the repeal shall not affect the previous operation of any enactment so repealed or anything duly done or settled thereunder. However, in the context of the contingencies specified under Section 24 of the Act of 2013 for the purpose of the procedure to take possession, for deposit of compensation, the old Land Acquisition Act would apply.

14. In the context of the basic provisions of law as discussed, the interpretation made in this regard by the various pronouncements of the Hon'ble Apex Court or by this Court are required to be referred. In the above context, the basic judgment of the Supreme Court is in the case of **Pune Municipal Corporation and another Versus Harakchand Mishrimal Solanki and others** reported in (2014) 3 SCC 183. In the said case as per Paragraph 6, it was argued on behalf of the land owners that by virtue of Section 24(2) of the Act of 2013, the subject "acquisition" shall be deemed to have lapsed because the award under Section 11 of the old Land Acquisition Act, 1894 is made more than five years prior to the commencement of the Act of 2013 and no compensation has been paid to the land owners, and the amount has not been deposited in the Court by Sub Divisional Officer. In the said context, the Apex Court has referred the provisions of the old Act as well as the new Act, and also interpreted the provisions of Section 24 of the Act of 2013. The relevant paragraphs of the said judgment are reproduced as thus:-

"10. 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 the 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 the 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.

11. Section 24(2) also beings with non *obstante* clause. This provision has overriding effect over Section 24(1). Section 24(2) enacts that in relation to the land acquisition proceedings initiated under the 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<sup>3</sup> in respect of the acquisition initiated under the 1894 Act an award has been made and compensation in respect of a majority of landholdings has not been deposited in the account of the beneficiaries then all the beneficiaries specified in the Section notification become entitled to compensation under the 2013 Act.

12. To find out the meaning of the expression, compensation has not been paid”, it is necessary to have a look at Section 31 of the 1894 Act. The said section, to the extent it is relevant, reads as follows:

**"31. Payment of compensation or deposit of same in court.**-(1) On making an award under Section 11, the Collector shall

tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

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

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.

20. From the above, it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act, It is also admitted position that compensation so awarded has neither been paid to the landowners/persons interested nor deposited in the court. The deposit of

compensation amount in the Government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested. We have, therefore, no hesitation in holding that the Subject land acquisition proceedings shall be deemed to have lapsed under section 24(2) of the 2013 Act. (Emphasis Supplied)

15. In the judgment of **Pune Municipal Corporation (supra)**, the Apex Court has clearly held that the word "paid" cannot be equated with the word "offered" or "tendered". It is also held that for the purpose of Section 24(2) of the Act of 2013, its literal meaning cannot be accepted. In the context of the provisions of Sections 31,32,33 of the old Land Acquisition Act, in any case it would not be out of context, to understand the literal meaning of the words, "Paid" "Deposit" "Offer" "Tender" and the said meaning can be made applicable for the purpose of Section 31 of the old Act.

16. The word "Paid" As per Corpus Juris Secundum Volume LXVII, "paid" defined is to liquidate a liability in cash, given or handed over to discharge an obligation; satisfied by payment, redemption, or sale' settled; discharged; applied given, loaned, or advanced. Prima facie the word "paid" indicates that the obligation has been satisfied, and the demand extinguished. The word "paid" is also defined as meaning receiving pay; compensated; hired. "Paid" has been held to be synonymous with, or equivalent to, "applied". It has been said that there is no substantial difference in meaning of the words "paid" and "satisfied".

As per Law Lexicon Second Edition, 2006 of P.Ramanatha Aiyar's, the word "paid" has been specified. If

debt is "paid" when the contract is performed pursuant to the stipulation made; but if on an agreement something collateral is received in satisfaction although demand is extinguished, the debt, technical speaking is not "paid".

As per Judicial Dictionary Second Edition by Orient Publishing Company, the Supreme Court observed in *J.Dalmia v Commissioner of Income Tax, Delhi* 53 ITR 83 AIR 1964 SC 1866; that the expression "paid" in Section 16(2) of Income Tax Act, 1922 does not contemplate actual receipt of the dividend by the members in general, dividend may be said to be paid within the meaning of Section 16(2) when the Company discharges its liability and makes the amount of dividend unconditionally available to the member entitled thereto. [*Benaras State Bank Ltd v Commissioner of Income Tax UP, AIR 1970 SC 281*]. Meaning thereby in discharge of an obligation, the payment is to be made if it is satisfied or settled then the meaning and purpose of the word "paid" would complete. However, for the purpose of Section 24(2) of the Act of 2013, if the amount of compensation is deposited in the Court, it would be treated as paid.

17. As per the first proviso to sub-section (2) of Section 24 of the Act of 2013, any payment of compensation explaining the majority of land holders has been clarified, however, in the first proviso, it was made clear that the compensation ought to be deposited in the account of beneficiaries or in Court. However, the action towards "paid" would be complete when the compensation awarded has been deposited in the account of beneficiaries or in the Court.

Now in the said context, the meaning of the word "deposit" is to be seen.

18. The word "Deposit" As per Corpus Juris Secundum Volume Twenty-Six A, a deposit has been described as a mere incident of custody, and, in its ordinary signification, implies something more than mere possession. In a particular connection and context, it has been said that the word means more than a delivery for mere inspection; it means the delivery of a book or paper to one entitled to have the official custody thereof, either to be kept or to be redelivered, after it has served its purpose, to one having a right to receive it.

As per the Major Law Lexicon 4<sup>th</sup> Edition 2010 of P.Ramanatha Aiyar's, the word "DEPOSIT" includes and shall be deemed always to have included any receipt of money by way of deposit or loan or in any other form.

As per Judicial Dictionary Second Edition of Orient Publishing Company, the word "deposit" means the money belonging to one can be said to be in "deposit" only with another person or authority. It can never be a "deposit" in the hands of the very person to whom the money belongs. [Joseph v. Official Assignee, AIR 1956 Mad 283 at 284 (FB)]. Meaning whereby the amount of compensation if deposited in the hands of the person to whom it belongs. It would not come within the purview of deposit in the account of beneficiary.

However, in sub-section (2) of Section 24 of the Act of 2013 for the purpose of payment of compensation, its meaning has rightly understood "depositing" in the account

of "beneficiaries".

19. The word "Offer" Corpus Juris Secundum whereby it is defined as to attempt; to attempt to do; to bring to or before; to exhibit; to hold out; to make a proposal to.

As per the Major Law Lexicon 4<sup>th</sup> Edition 2010 of P.Ramanatha Aiyar's, the word "offer" means an offer or, as it is sometimes called, a proposal means the signification by one person to another of his willingness to enter into a contract with him on certain terms. It may be express or may be implied from the conduct of the party. A mere statement of a person's intention or declaration of his willingness to enter into negotiation is not an offer, and cannot be accepted so as to form a binding contract. HALSBURY, 3<sup>rd</sup> Edn, Vol.8 P.69. "An offer is, in effect, a promise by the offeror to do or abstain from doing something, provided that the offeree will accept the offer (and pay or promise to pay the 'price' of the offer. The price, of course, need not be a monetary one. In fact, in bilateral contracts, the mere promise of payment of the price suffices to conclude the contract, while in a unilateral contract, it is the actual payment of the price which is required." P.S.Atyah, An Introduction to the Law of Contract 44 (3d ed.1981).

20. The word "Tender" As per the Major Law Lexicon 4<sup>th</sup> Edition 2010 of P.Ramanatha Aiyar's, the word "tender" is defined to be the offer of money in satisfaction of a debt, by producing and showing the amount to the creditor or party claiming, and expressing verbally a willingness to pay it. Offer; proposal for acceptance; offer to pay a specified sum or do

certain acts; the offering of money or any other thing in satisfaction; or circumspectly to endeavour the performance of a thing as a tender of rent is to offer it at the time and place when and where it ought to be paid. (Termes de la Ley; Tomlin).

As per Black's Law Dictionary Sixth Edition of Henry Campbell Black, the word "tender" means an offer of money. The act by which one produces and offers to a person holding a claim or demand against him the amount of money which he considers and admits to be due, in satisfaction of such claim or demand, without any stipulation or condition. As used in determining whether one party may place the other in breach of contract for failure to perform, means a readiness and willingness to perform in case of concurrent performance by other party, with present ability to do so, and notice to other party of such readiness.

21. In view of the aforesaid, in the context of the provisions of Section 24(2) of the Act of 2013, the word "paid" and "deposited" cannot be synonym to "offered" or "tendered" the amount of compensation to the beneficiaries. Thus, it is clear that in case the award was passed under Section 11 of the old Land Acquisition Act prior to five years or more from the date of commencement of the new Act and if compensation is not paid "depositing" it in the account of the beneficiaries, or in Court, it would not come within the purview of the compensation paid, to follow the procedure under Sections 31,32,33,34 of the old Land Acquisition Act.

22. In the case of **Bharat Kumar Versus State of**

**Haryana and another** reported in (2014) 6 SCC 586, the Apex Court has reiterated the same principle holding that if physical possession of the land had not been taken though award was passed or if the compensation had not been paid, the proceeding initiated under the old Land Acquisition Act would be deemed to have been lapsed. However, such case would fall within the purview of Section 24(2) of the Act of 2013, and with the said observation, the order passed by the High Court refusing to grant the relief was set aside.

23. In the case of **Bimla Devi Versus State of Haryana** reported in 2015 (1) MPHT 288, the Apex Court has relied upon the judgment of **Pune Municipal Corporation (supra)** and explaining the meaning of the word "paid", the Apex Court in Paragraph 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."

24. Thereafter, the Apex Court in a batch of Civil Appeals **Union of India and others Versus Shiv Raj and others** reported in (2014) 6 SCC 564 considering the provisions of Section 24(2) of the Act of 2013, and looking to the proceedings initiated under the old Land Acquisition Act, referring the circular of the Government of India, Ministry of Urban Development, Delhi Division dated 14.3.2014, interpreted that how the period of five year limitation may be made applicable in taking possession and in payment of compensation. However, the Court decided the applicability of the said circular in terms of the judgment of **Pune Municipal Corporation (supra)**, and restated the same principles.

25. In the case of **Sree Balaji Nagar Residential Association Versus State of Tamil Nadu and others** reported in (2015) 3 SCC 353, the Apex Court dealing with the object and intent of legislature while enacting a particular provision held

that the words used in that provision should be applied as assigned from the plain and clear wording used in the provision concerned. It has further been held that if the possession has not been taken over or the compensation has not been paid though award was passed prior to five years or more to the commencement of the Act, the proceedings be deemed to be lapsed. In the said case, the Apex Court again reiterating the principle enumerated in the cases of **Pune Municipal Corporation, Bimla Devi, Shiv Raj (supra)** set aside the judgment of Panjab and Haryana High Court, and held that the acquisition proceedings are deemed to have been lapsed by not taking the physical possession following the mandatory procedure as required under the old Land Acquisition Act.

26. In the case of **Ram Kishan and others Versus State of Haryana and others** reported in (2015) 4 SCC 347, the Apex Court has reiterated the same principle holding that that the proceedings in violation of the provision contemplated under Section 24(2) of the Act of 2013 shall be deemed to be lapsed. In the case of **Velaxan Kumar Versus Union of India and others** reported in (2015) 4 SCC 325, the Apex Court has observed that what would be the manner to take over the possession of the land acquired. After analyzing the facts, the Apex Court observed that if the contention of taking over of the possession raised by the respondents is accepted even then the procedure enshrined to take over the possession has not been followed by the Acquisition Authority by way of preparing a proper Panchnama in presence of the independent witnesses and the land holders, however, the

said procedure is contrary to the principle of law laid down in the case of **Sita Ram Bhandar Society Versus Govt (NCT of Delhi)** reported in (2009) 10 SCC 501. In the said situation, the Apex Court held that the land acquisition proceedings shall be deemed to have lapsed.

27. In the case of **Karnail Kaur and others Versus State of Punjab and others** reported in (2015) 3 SCC 206, the Apex Court has dealt with the second proviso inserted vide amended Ordinance of 2014 and held that it is prospective in operation and the benefit provided under the proviso can not be availed to the Government in the facts of the said case. In the case of **R.Radhakrishnan and others Versus Secretary to Government of Tamil Nadu and others** reported in 2015 (1) Scale 590, the Apex Court has reiterated the same principle considering the effect of the amendment in the Act of 2013.

28. In the case of **Arvind Bansal and others Versus State of Haryana and others** reported in 2015 (3) Scale 200, the Apex Court has narrow down the effect of the second proviso brought by way of the Bill passed by the Parliament waiting assent from Rajya Sabha in the context, considering the various judgments of the Apex Court looking to the provisions of Section 24(2) of the Act of 2013.

29. The Apex Court in the case of **Radiance Fincap Private Limited and others Versus Union of India and others** reported in (2015) 8 SCC 544 has considered the effect and applicability of Section 24(2) of the Act of 2013. The Court has also dealt with the issue of stay granted regarding possession in a judicial proceedings, and emphasized that it may be

excluded looking to the second proviso of amended ordinance, but its operation is prospective. In the case of **Soorajmull Nagarmull Versus State of Bihar and others** reported in 2015 (9) Scale 1 the Court has reiterated the same principle considering the effect of the second proviso to Section 24 of the Act of 2013 and directed to give it effect for the benefit of land owners. In the recent judgment delivered on 12.10.2015 in the case of **Working Friends Cooperative House Building Society Limited Versus State of Punjab and others**, the Apex Court relied upon the judgment of **Pune Municipal Corporation (supra)** and the principle enumerated therein has been considered in the context of the other subsequent judgment and laid down the same principle as specified in the said case.

30. The Division Bench of this Court is having an occasion to consider the said issue in the case of **Purushottam Lal and others Versus State of M.P and others** (Writ Appeal No.305/2007) decided on 15.10.2015 whereby this Court relying upon the judgments in the cases of **Pune Municipal Corporation, Bimla Devi, Shiv Raj ,Sita Ram Bhandar Society (supra)** and in the case of **Sharma Agro Industries Versus State of Haryana** reported in 2015 MPLJ 523 (SC) has held that out of two contingencies i.e. of taking over of the possession or the payment of compensation, if anyone of them is not complied, the provision of Section 24(2) of the Act of 2013 would be applicable and the proceedings would be deemed to be lapse.

31. In addition to the aforesaid, the Apex Court in the

case of **Raghubir Singh Sehrawat Versus State of Haryana and others** reported in (2012) 1 SCC 792 interpreted the word vesting of the land into the Government on taking of the possession. However, while dealing the issue, it is held that taking of possession means to take the actual physical possession and not symbolic or possession on paper.

32. In view of the aforesaid, since the date of commencement of the Act of 2013 till recent pronouncements of the Apex Court on the issues, and also of this Court indicating the manner and purpose of Section 24(2) of the Act of 2013 to which it was brought, it is consistent approach that if the award is passed prior to five years or more from the date of commencement of the Act of 2013, or the possession has not been taken over by following the procedure established by law or the compensation is not paid or deposited in the account of the beneficiaries, or in Court mere "tendering" and "offering" of such compensation or to keep "deposit" in the account of the State Government would not fall within the purview of the compensation "paid" to the beneficiaries even without applying the literal construction of the said word used in the enactment considering the legislative intent to bring such provision.

33. In view of the legal position discussed above, considering either the basic provisions or by various pronouncements, the facts of this case are required to be analyzed. In the present case, it is not in dispute that final notification under Section 6 for acquisition of the land of the petitioners bearing Survey No.497/1 Khasra No.497/1 area ad-

measuring 5.696 hectare and the residential house situated at Village Lalguvan, Tahsil Rajnagar, District Chhatarpur was issued on 26.9.2003. It is also not in dispute that the award was passed under Section 11 on 30.11.2004. The said land was acquisitioned by respondent Nos.2 and 3 for the use of respondent No.1 indicating the public purpose. After passing the award, it is also not in dispute that the compensation was tendered by respondent No.1 to respondent Nos.2 and 3, but it has not been paid to the petitioners or deposited in their account or in Court as defined under Section 18 of the old Act. It is said by respondent No.1 that he had tendered the amount of compensation to respondent Nos.2 and 3, however, it is their duty to pay the said amount to beneficiaries, therefore, sub-section (2) of Section 24 of the Act of 2013 would not attract; while the respondent Nos.2 and 3 have contended that they have offered the amount for payment issuing a notice to the land owners which was not accepted by them, however, the provisions of Section 24(2) of the Act of 2013 would not attract in this case. Looking to the said undisputed facts, it is clear that on the date of commencement of the Act of 2013 i.e.1.1.2014 from the date of passing of the award, the period of more than five years was elapsed. Sub-section (2) of Section 24 of the Act of 2013 contemplates two contingencies, indicating (1) the physical possession of the land has not been taken over or (2) the compensation has not been paid then such acquisition proceedings shall be deemed to have lapsed. Looking to the document available on record, after passing the award on 30.11.2004, the notice was sent to the

petitioners offering the said amount to receive the same but the amount so determined insofar as it relates to the petitioners are concerned has not been deposited either in their account, or in the Court to follow the procedure prescribed under Sections 31,32,33 of the old Land Acquisition Act. It has also not been brought to the notice of this Court that after acquisition of the proceedings, any designated account to pay the compensation to the beneficiaries has been opened and the amount has been deposited therein to attract the second proviso brought by ordinance. In that view of the matter, it is concluded that the award was passed more than five years prior to the date of commencement of the Act of 2013 and the said amount has not been paid or deposited by the Land Acquisition Officer to the beneficiaries, to observe the requirement of Section 24(2) of the Act of 2013 and the amended ordinance. Thus, the proceedings of the land acquisition would lapse so far as it relates to the petitioners are concerned.

34. Now reverting to the issue of delivery of possession of the petitioners, the documents produced are relevant to be noticed, to qualify the requirement for delivery of possession after issuing the final notification and passing the award satisfying the compliance of Section 16 of the old Land Acquisition Act. As per the return filed by the respondent Nos.1 to 3, the only document Annexure R/1 has been filed by the respondent Nos.2 and 3, acknowledged by the respondent No.1 which is being reproduced as under:-

कार्यालय राजस्व निरीक्षक मंडल राजनगर, तहसील राजनगर

दिनांक 31.07.14

प्रति,  
तहसीलदार महोदय,  
तहसील राजनगर

विषय :- खजुराहो स्थित विस्व धरोहर स्मारकों के आसपास  
की अर्जित भूमि को खाली कराये जाने बावत।

संदर्भ :- अनु. अधि. महो. राजनगर का पत्र क्रमांक 628/अ.वि.  
दिनांक 22.06.12 एवं आदेश दिनांक 30.07.14.

संदर्भित पत्र में विस्व धरोहर स्मारकों के आस पास निम्न लिखित योजना हेतु अर्जित की गई भूमि को खाली कराने हेतु खसरा नं. 497/1 रकवा 5.696 हेक्टर स्थित ग्राम ललूगवां जो कि पूर्व में भू-अर्जन की जा चुकी है। स्थल पर घनश्याम, मलखान, बाबूलाल, परसराम, परमलाल तनय देवीदीन पाल निवासी खजुराहो द्वारा पुरातत्व की भूमि पर कब्जा किया हुआ है स्थल पर तहसीलदार महो. राजनगर नायब तहसीलदार महो. राजनगर पटवारी मौजा राजनगर एवं खजुराहो व पुरातत्व के अधिकारी कर्मचारियों द्वारा संयुक्त रूप से उनको समझाइस दी गई पश्चात् पुरातत्व विभाग द्वारा तभी से गढ़वा किये जाकर सीमेन्ट के पिलर खड़े कर लिये हैं। अनावेदको द्वारा रहायसी मकान अधिग्रहण से पूर्व में गिरे होने से एवं वर्षा का मौसम होने से 0.350 हेक्टर रकवा मकानों का (आबादी) खाली नहीं कराया जा सका। भूमि ख.नं. 484/2 485 रकवा क्रमशः 0.526, 0.340 हेक्टर पर किशोरी S/o दल्लू कुशवाहा द्वारा कच्चा मकान बनाकर एवं बगीचा गनाकर पुरातत्व विभाग की भूमि पर कब्जा किया गया है। जिसमें पटवारी द्वारा अतिक्रमण प्रकरण दर्ज किया जाकर भूमि खाली कराने की न्यायालयीन प्रक्रिया जारी है।

प्रतिवेदन प्रस्तुत है।

संलग्न -1 स्थल पंचनामा।

35. Bare reading of the aforesaid, it merely refers, that on 7.10.2005 the possession of the land in question in the present petition has been delivered to the respondent No.1. No document has been brought on record indicating the fact that after acquisition and passing of the award, any notice was issued and served on the land owners. Nothing has been brought on record indicating the fact that in presence of the



land owners and before the independent witnesses, possession has been taken from them, and thereafter, possession was delivered to the Archaeological Survey of India. In absence of the document of taking over of the possession from the land holders plea of following the procedure is of no consequence and by the said document, it cannot be presumed that the actual physical possession had been taken over from the land owners following the procedure prescribed, and then delivered to the respondent No.1. By filing the various other documents by respondents, it is said that initially the possession was taken by the respondent No.1 but later petitioners have encroached upon the said land, therefore, again the proceedings were initiated to take possession. On perusal of the documents, as referred in the return, those are after the date 1.1.2014, i.e. commencement of the Act of 2013 in any case if possession has not been taken as per procedure in first time, taking plea of encroachment is of no help to them. Thus, looking to the documents brought by the respondents, which is discussed hereinabove, it is apparent that actual physical possession of the land following the procedure has not been taken over by the respondents. However, as per the judgment of **Velaxan Kumar (supra)**, the plea of taking over of the possession is of no help to the respondents.

36. It is also relevant to observe that, when first Writ Petition No.6909/2008 was filed on 16.6.2008 challenging the acquisition proceedings and in alternative making request to refer it to the Court, it is to be noted here that stay was not

granted in the said case by this Court. After decision of the Collector, refusing to make reference, without deciding the issue of validity of acquisition, subsequent Writ Petition No.2721/2014 was filed on 12.2.2014 wherein also at admission stage stay was not granted, and it was decided vide order dated 5.2.2015 directing the petitioners to take recourse of law in the context of the Act of 2013. But while passing the final order on 5.2.2015, this Court directed to maintain status-quo as it exists today. Thereafter, the present writ petition has been filed wherein the stay is in operation. In view of the aforesaid, it is clear that after acquisition of the proceedings and filing the said two writ petitions, there was no stay. The stay was only granted on 5.2.2015 after commencement of the Act of 2013. However, the order of stay of possession as directed by this Court would not have any relevance even for the purpose of second proviso of Section 24(2), brought by amendment.

37. In view of the foregoing discussion, in my considered opinion, both the contingencies specified under Section 24(2) of the Act of 2013 either of delivery of possession excluding the period of stay or the compensation paid by depositing it in the account of the beneficiaries or in Court has not been satisfied, bringing any material. In absence thereto, in view of the legal position discussed by various pronouncements, in my considered opinion, it is to be held that the contingencies specified under Section 24(2) of the Act of 2013 have not been satisfied by the respondents. Therefore, the land acquisition proceedings insofar as it relates to the agricultural land pertaining to Khasra No.497/1 area ad-

measuring 5.696 hectare and the residential house situated at Village Lalguvan, Tahsil Rajnagar, District Chhatarpur would be deemed to be lapsed. Thus, both the questions are answered in favour of petitioners. Consequently, all the interlocutory applications filed by the parties shall be treated to be disposed of.

38. Accordingly, the writ petition is hereby allowed and the land acquisition proceedings so far as it relates to the land in question shall stand lapsed. In the facts and circumstances of the case, the parties shall bear their own costs.

39. At this stage, Shri K.N.Pethia, learned counsel for respondent No.1/Archeological Survey of India has made a reasonable request that in the context of the letter and spirit as per the provisions of Section 24(2) of the Act of 2013, the State Government may be granted liberty to initiate the fresh acquisition proceedings. However, as prayed they are at liberty to take recourse of law as specified under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

**(J.K.MAHESHWARI)**  
**JUDGE**

amit

