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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ON THE 26th OF JUNE, 2023

WRIT PETITION No. 5668 of 2017

BETWEEN:-

1. **BABU LAL (DIED) THROUGH LRS. PREM NARAYAN S/O LATE BABU LAL, AGED ABOUT 48 YEARS, VILLAGE BARKHEDI KALA TEH. HUZUR DISTT. BHOPAL (MADHYA PRADESH)**
2. **RAM CHARAN S/O LATE BONDER, AGED ABOUT 65 YEARS, VILLAGE BARKHEDI KALA TEH. HUZUR DISTT. BHOPAL (MADHYA PRADESH)**
3. **KASHI RAM S/O LATE DEVAJI, AGED ABOUT 70 YEARS, VILLAGE BARKHEDI KALA TEH. HUZUR DISTT. BHOPAL (MADHYA PRADESH)**
4. **GENDA LAL S/O BATAN LAL, AGED ABOUT 52 YEARS, VILLAGE BARKHEDI KALA TEH. HUZUR DISTT. BHOPAL (MADHYA PRADESH)**
5. **NARAYAN SINGH S/O LATE KACHHU LAL, AGED ABOUT 60 YEARS, VILLAGE BARKHEDI KALA TEH. HUZUR DISTT. BHOPAL (MADHYA PRADESH)**
6. **ARJUN SINGH S/O LATE BHURAJI, AGED ABOUT 38 YEARS, VILLAGE BARKHEDI KALA TEH. HUZUR DISTT. BHOPAL (MADHYA PRADESH)**
7. **SHYAMLAL S/O LATE MITTU LAL, AGED ABOUT 40 YEARS, VILLAGE BARKHEDI KALA TEH. HUZUR DISTT. BHOPAL (MADHYA PRADESH)**

....PETITIONERS

(BY SHRI AJAY PAL SINGH - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THR. PRINCIPAL SECRETARY DEPARTMENT OF REVENUE MANTRALAYA, VALLABH BHAWAN (MADHYA PRADESH)**

2. COLLECTOR BHOPAL DISTT. BHOPAL (MADHYA PRADESH)
3. LAND ACQUISITION OFFICER BHOPAL DISTT. BHOPAL (MADHYA PRADESH)
4. PRINCIPAL REGIONAL ENGINEERING COLLEGE SHYAMLA HILLS BHOPAL (MADHYA PRADESH)

....RESPONDENTS

*(BY SHRI G.P. SINGH - GOVERNMENT ADVOCATE FOR STATE)
(SHRI SANJAY K. AGRAWAL - ADVOCATE WITH SHRI ASHISH GIRI -
ADVOCATE FOR RESPONDENT NO.4.)*

This petition coming on for admission this day, the court passed the following:

ORDER

This writ petition is filed challenging award dated 27.01.1968, Annexure P-6, passed by the Land Acquisition Officer, Bhopal with the powers of the Collector under Section 3(c) of the Land Acquisition Act in Case No.8/LA/66-67 (The Principal Regional College of Education, Bhopal Vs. Bhoora s/o Chhotteram and Others, Residents and Cultivators of Village Berkhedhi Kalan, Tehsil Hazur and Another). सत्यमेव जयते

It is submitted that a notification was issued on 08.11.1965, Principal, Regional College of Education, Shimla Hills, Bhopal had requested the Government of Madhya Pradesh to acquire 71.20 acres of private land of Village Sivaniya Gond and village Barkhedhi and to transfer government lands measuring 84.39 acres for their agriculture farm.

The Government of Madhya Pradesh vide memo dated 19.11.1965 asked the Collector to send proposals for acquisition of private lands.

After conduct of preliminary enquiry, Collector had sent a proposal to the Government of Madhya Pradesh to acquire 65.51 acres of private land of

village Sewaniya Gond (41.64 acres) and Berkhedi Kalan (23.87 acres) for the purpose cited above.

A notification under Section 4(i) of the Land Acquisition Act was issued on 18.10.1966 which was published in Madhya Pradesh Rajpatra Part-I dated 30.12.1966 to acquire the land of both the villages measuring 65.51 acres.

Since possession of the land was urgently required, therefore, provisions of Section 17 were applied and an enquiry under Section 5-A was waived. A declaration under Section 6 of the Act was issued on 01.02.1967 which was published on 04.08.1967 and thereafter impugned award was passed. Reading from the award it is pointed out that on the internal page of the award it is mentioned that possession over the land of Bhoora and Others could not be taken as the land was brought under cultivation and crop was standing. It is submitted that it was mentioned in the award itself that now the possession will be taken over as soon as the Rubi Crops standing on the lands are harvested, and delivered to the Principal.

Reading from this award it is submitted that possession of the land in question which was acquired from the predecessors of the petitioners was never taken and they were in cultivating possession of the said land till year 2016-17.

To buttress his claim attention is drawn to the communication which was made by the Administrative Officer of the respondent No.4 Institute to the SHO, Police Station Ratibad, Bhopal to point out that this communication dated 21.05.2017 is a direct testimony of the fact that petitioners were in possession of the said land till 2017.

Placing reliance on these facts it is submitted that in terms of the provisions contained in Section 24(2) of the Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, since physical possession of the land was not taken, therefore, the proceedings are deemed to have lapsed and thus petitioners are entitled to get back their land. It is submitted that petitioners belong to under privilege section of the society. They are in fact members of the Scheduled Caste category and they could not have been divested of their land.

It is further submitted that in fact the land which was acquired for respondent No.4 was never put to any use, inasmuch as, Barkatullah University to which respondent No.4 is affiliated never runs any course in agriculture and no student has taken admission in the course of agriculture for over so many years. It is submitted that though respondents have filed certain curriculum along with their return as Annexure R-4/8 but till date they have not given admission to any student and, therefore, the purpose for which land was acquired has lapsed and thus land should be return back to the petitioners.

Reliance is placed on the judgment of Supreme Court in **Indore Development Authority Vs. Manoharlal and Others, (2020) 8 SCC 129**. Reading from para 4, 5, 12, 53, 54, 55 and 135, it is submitted that the purpose for which land was acquired has since lapsed, therefore, land should return back in favour of the petitioners.

Reliance is placed on the judgment of Supreme Court in **Udar Gagan Properties Limited Vs. Sant Singh and Others, (2016) 11 SCC**.

Placing reliance on paragraphs 3, 16, 23, 24, 29 and 30, it is pointed out that in para 29, it is held by the Supreme Court that once release of land under acquisition is found to be mala fide or arbitrary exercise of power, acquisition of land of released land stands revived. It is submitted that since land acquired

has not been put to the use for which it was acquired, the purpose of land acquisition is vitiated and the land stands revived in favour of the land oustees.

Reliance is also placed on the judgment of Supreme Court in **Royal Orchid Hotels Limited Vs. G. Jayarama Reddy and Others, (2011) 10 SCC 608**. Reading from Placitum-B, it is pointed out that High Court and Supreme Court is vested with the discretion to condone the delay. It is held that there is no hard and fast rule and no straitjacket formula for deciding question of delay/laches and each case is to be decided on its own facts.

Reading from these judgments it is submitted that two issues emerge for consideration namely, whether the acquisition had lapsed for not putting the land acquired to the used for the purpose it was acquired and, secondly, whether the award lapsed for the reason that possession of the land in question remained vested in the petitioners till 2016-17 and, therefore, provisions of section 24(2) of the Act of 2013 will come into play.

Shri Sanjay K. Agrawal, learned counsel for the respondent no.4 submits that answer to both the issues raised by the petitioners are to be found in the judgment of **Indore Development Authority (supra)** on which reliance is placed by the petitioners himself. It is submitted that the words used in Section 24(2) of the Act of 2013 are 'or'. It is submitted that two conditions are necessary before any land acquisition proceedings can deem to have lapsed. First condition is that compensation should not have been paid and second condition is that possession should not have been taken. Hon'ble Supreme Court in case of **Indore Development Authority (supra)** while answering this has held that the words 'or' used in Sub-section (2) of Section 24 of the Act of 2013 are disjunctive and not conjunctive.

It is further submitted that in the present case admittedly compensation

was accepted by the claimants, therefore, in absence of fulfillment of the twin conditions for an award to lapse, award will not lapse automatically.

Reading from para 366.7 of the judgment in **Indore Development Authority (supra)**, it is pointed out that once possession was taken as is evident from R-4/6, then in absence of any particular method being prescribed for drawing of inquest report/memorandum, possession will deemed to have taken and land will stand vested in the State as there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).

It is also submitted that there is no provision of automatic or deemed lapse of the acquisition proceedings under the Act of 1894. In fact, Section 101 of the Act of 2013 has a provision for return of unutilized land but that too is restricted to the lands which have been acquired under the provisions of 2013 Act and proposition has been clarified by the Supreme Court in **Indore Development Authority (supra)** in para 364. Thus, reading from the judgment of **Indore Development Authority (supra)** itself. It is submitted that since there is no provision for return of land under the Act of 1894 and land in question was admittedly not acquired under the Act of 2013, therefore, provisions of Section 101 will not be applicable.

It is further submitted and reading from Annexure R-4/8, there are courses in agriculture for which land is being utilized and once land has vested in favour of the respondents then it cannot be returned.

After hearing learned counsel for the parties and going through the record, certain facts are crystal clear, namely, there is no dispute that compensation as was ascertained by the Land Acquisition Officer was paid to

the claimants i.e. the petitioners. Physical possession was taken over by the State Authorities on 19.04.1968 vide order Annexure R-4/6. Thirdly, petitioners were keeping silent since 1968 till 2014 i.e. for long 46 years they did not bother to raise any issue in regard to land so acquired.

As far as power to take possession is concerned, Section 16 of the Land Acquisition Act, 1894 deals with the power.

Law in regard of divesting of acquired land is very clear as held in case of **V. Chandra Sekaran & Anrs. Vs. Administrative Officer & Ors, 2012 (9) JT 260**, wherein it is held that once the land is acquired and it vests in the State, free from all encumbrances, it is not the concern of the land owner, whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes *persona non-grata* once the land vests in the State. He has a right to only receive compensation for the same, unless the acquisition proceeding is itself challenged.

Thus, in view of the said judgment in case of **V. Chandra Sekaran (supra)**, petitioner, *prima facie* has no locus. Even otherwise, Section 18 of the Act of 1894 has a provision for making a reference to the Court and prescribes the procedure thereon. Admittedly, petitioners' counsel submits that no reference was made in time to the competent authority till representation was made by the petitioners vide Annexure P-9, P-10 and P-11 to the Collector.

Law laid down by Supreme Court in case of **Udar Gagan Properties Limited (supra)** is concerned, then it is evident that facts of that case are different. In that case land was acquired by the Government for the purposes of development authority namely HDRUA. That land was subsequently sought to be transferred in favour of a builder. Under said facts and circumstances, Hon'ble Supreme Court in para 29 observed that once release of land under

acquisition is found to be malafide or arbitrary exercise of power, acquisition of released land stands revived. However, in the present case, facts are different, there is no release of the land after acquisition in favour of any third party or a new beneficiary. Land was admittedly acquired for the purposes of respondent No.4 and it continues to remain vested in favour of respondent No.4. Therefore, judgment in case of **Udar Gagan Properties Limited (supra)** has no application to the facts of the present case.

It is true that in matter of real hardship courts are required to balance the equities specially the writ Court. Thus, there cannot be any hard and fast rule and no straitjacket formula for deciding question of delay and laches and each case is to be decided on its own facts as held by Supreme Court in **Royal Orchid Hotels Limited**, but in the present case, facts are different. Land was acquired from the forefathers of the petitioners in the year 1968 when award was passed. They maintained study silence for long 46 years and after accepting compensation which was paid in time and memo of possession which admittedly bears their thumb impression, which was drawn on 19.04.1968, now after lapse of 46 years a dispute is being raised that their thumb impressions were not identified by proper persons at the time when possession was taken, therefore, it cannot be said that possession was ever taken from the petitioners.

Though this argument is not at all attractive or legal but even for the sake of argument and for a second if this argument is taken into consideration then also in terms of the judgment of Indore Development Authority since admittedly there is no dispute as to payment of compensation and Hon'ble Supreme Court has held that use of word 'or' is disjunctive, and has clarified this fact in para 366.3 in the following terms namely, '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'.

Thus, even hypothetically examining the fact situation there is no lapse of the earlier proceedings and award shall remain intact in terms of the decision of Hon'ble Supreme Court. Thus, provisions of Section 24(2) of the Act of 2013 are not attracted to the facts and circumstances of the present case. Similarly, there is no provision for return of land under the Act of 1894, and State after acquisition or its instrumentality became absolute owner and the land oustee/ the person from whom land was acquired has become *persona non-grata*, petitioners have no locus to challenge the land acquisition proceedings or the award at this distance of time. Thus, petition is devoid of merit, deserves to be dismissed and is hereby dismissed.

(VIVEK AGARWAL)
JUDGE

Tabish