

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 9308 of 2017**

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DECEASED CHATRUBHAI FAKIRBHAI

Versus

STATE OF GUJARAT & ORS.
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Appearance:

MR MD VAKIL(1062) for the Petitioner(s) No. 1

MS HETAL PATEL, AGP for the Respondent(s) No. 1,2

MR HS MUNSHAW(495) for the Respondent(s) No. 3
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CORAM:HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE

SUNITA AGARWAL

and

HONOURABLE MR.JUSTICE D.N.RAY

Date : 13/04/2026**ORAL ORDER****(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)**

1. We may note, at the outset, that at the time when the issue pertaining to the scope of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the Act, 2013') was subject matter of consideration before the Constitution Bench of the Apex Court in **Indore Development Authority v.s. Manoharlal and Ors. [(2020) 8 SCC 129]** and the decision of three judge bench in **Pune Municipal Corporation and Anr. v.s. Harakchand Misirimal Solanki and Ors. [2014 (3) SCC 183]** was holding the field, the present petition is filed with the following prayers:-

“(A) Be pleased to allow this petition

(B) Be pleased to issue a writ of mandamus or any other appropriate writ order, or direction in the nature of mandamus for directing the respondents authorities to set-aside and to struck down the Notification, declaration and award passed in L.A.Q. case No. 2/96 on dt. 14-06-2000 in respect of agricultural Land bearing survey No. 523/ Paikee of admeasuring 0-03-92 sq. mtr of acquired Land situate at Vill. Bhandariya Tal. Bhavnagar, Dist. Bhavnagar and also directed to the respondents for making the procedure for lapse of the Land Acquisition proceeding initiated under the said award u/s 11 of the Act in LAQ case No 2/96 in respect of acquired Land in Question of petitioner in the interest of justice and in terms of section 24(2) of the New Act, 2013.

(C) During the pendency of this petition, be pleased to restrain the respondents authorities or any other Private agency to take the physical possession of the acquired Lands in Question from the Law full custody of the petitioner.

(D) Be pleased to grant other and further relief as deems fits and proper in the interest of justice.”

2. The Constitution Bench in **Indore Development Authority (supra)** has rendered a decision on 06.03.2020 overruling **Pune Municipal Corporation (supra)** and all other decisions wherein **Pune Municipal Corporation (supra)** has been followed. The ratio of the decision in **Indore Development Authority (supra)** summarized in Paragraph No. ‘366’ reads as under:-

“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 under Section 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 applies 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.”

3. A reading of the judgment of the Apex Court in the **Indore Development Authority (supra)** and the final directions issued therein makes it clear that the concept of deemed lapse of the land acquisition proceedings under Section 24(2) of the Act, 2013 would be attracted only in a case where neither possession of the land has not been taken nor compensation has been paid. In case, where possession has been taken and compensation has not been paid, there is no lapse. Similarly, if compensation has been paid, possession has not been taken, then there is no lapse.

4. It is clarified by the Apex Court therein that in case a person has been tendered the compensation as provided under Section 31(1) of the Land Acquisition Act, 1894, (hereinafter referred to as ‘the Act, 1894’), it is not open for him to claim that the acquisition has lapsed under Section 24(2) of the Act, 2013 due to non-payment or non-deposit of compensation in Court. The obligation to pay is complete by tendering the amount under Section 3(1) of the Act, 1894. The land owners 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 Act, 2013.

5. Further, on the question of possession, it is held by the Apex Court that the mode of taking possession under the Act, 1894 and as contemplated under Section 24(2) of the Act, 2013, is by drawing of inquest report / memorandum. Once award has been passed and upon taking possession under Section 16 of the Act, 1894, the land vests with the State and there is no divesting provided under Section 24(2) of the Act, 2013. Meaning thereby, that once possession has been taken there is no lapse under Section 24(2) of the Act, 2013.

6. Lastly, it is held by the Apex Court that the provisions of Section 24(2) of the Act, 2013 providing for deemed lapse of proceedings are applicable in case of failure by the authorities due to their inaction to take possession and pay compensation for 5 years or more before the Act, 2013 came into force, in a proceeding for land acquisition pending with the authority concerned as on 01.01.2014. It is also clarified therein that Section 24(2) of the Act, 2013 does not give rise to a new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 of the Act, 2013 applies to a proceeding pending on the date of enforcement of the Act, 2013 i.e. 01.01.2014 and it will not revive stale and time barred claims and does not reopen concluded proceedings. It does not allow the land owners to question the legality of the mode of taking possession to reopen proceedings or the mode of deposit of compensation in the treasury instead of Court to invalidate acquisition.

7. In light of the law laid down by the Apex Court, coming to the facts of the present case, as stated in the writ petition, pertinent is to note that the land acquisition proceeding in the present matter was conducted by the notifications published on 30.04.1997 and 17.06.1998 under Sections 4 and 6; respectively of the Act, 1894. The award in LAQ Case No.2 of 1996 was declared on 14.06.2000 under Section 11(1) of the Act, 1894. Only this much is stated by the petitioner in the writ petition that the petitioner had not preferred any reference application under Section 18 of the Act, 1894. However, with regard to the payment of compensation and taking of possession of the land in question, averments in Paragraph No. '3' are vague, which reads as under:-

"3. That the compensation as awarded by the Land Acquisition officer U/s. 11(1) of the old Act was not paid or tendered to the petitioner still to-day, and same compensation was not deposited in the govt. treasury / or in the court. And that facts was not intimated by the res No. 2 and by res No. 3 to the petitioner either by orally or in written. And the petitioner is in actual, physical and vacat and peaceful possession of the acquired Land in Question at present also. And respondents have not taken even paper possession thereof. Also the physical possession and paper possession of the acquiring Department was also not reflected in the revenue records."

8. The contention in the writ petition that the compensation has neither been paid to the petitioner nor deposited in the Government Treasury or in the appropriate Court are too vague to accept, to apply deeming lapse, inasmuch as, there is no whisper about any notice having

been issued to the petitioner / persons interested under Section 12(2) of the Act, 1894. The writ petition is silent about the petitioner having participated in the proceedings for making of the award. There is also a silence about the possession of the land in question having been taken by the appropriate Government before the present petition was presented on 07.04.2017. It seems that much after the conclusion of the acquisition proceedings under the Act, 1894 the petitioner herein came up to revive his claims on the premise of the proceedings having been lapsed in view of Section 24(2) of the Act, 2013, came into force on 01.01.2014.

9. Taking note of the above, suffice it to say that Section 24(2) of the Act, 2013 is a transitory provision which has been incorporated in the Act, 2013 enforced w.e.f. 01.01.2014, for smooth transition and completion of such acquisition, which were initiated under the Act, 1894 but had not been concluded prior to 01.01.2014. A reading of Section 24(1)(a) of the Act, 2013 makes it clear that if no award is made under Section 11 of the Act, 1894, then for determination of compensation, the provisions of the Act, 2013 would apply. Section 24(1)(b) of the Act, 2013 further provides that if an award is made under Section 11 of the Act, 1894 then the proceedings, if pending, shall continue under the provisions of the Act, 1894 as if the said Act has not been repealed.

10. Sub Section (2) of Section 24 of the Act, 2013 is in the nature of exception and is attracted only in a case where both the physical possession of the acquired land has not been taken and the compensation has not been paid. As noted

hereinbefore, in a case where compensation has been paid but possession has not been taken, there is no lapse. Similarly, in a case where possession has been taken by adopting approved mode of taking possession such as drawing of panchnama / inquest but compensation has not been paid, the land acquisition proceedings initiated under the Act, 1894 would not lapse.

11. Section 12(2) of the Act, 1894 providing for notice of the award to be issued by the Collector is to tender compensation to such of the persons interested who are not present personally or by their representatives at the time of making of the award. Section 16 of the Act, 1894 empowers the Collector to take possession of the land, after an award under Section 11 of the Act, 1894 is made and upon taking possession, the acquired land it vests absolutely with the appropriate Government free from all encumbrances.

12. As held by the Apex Court in **Indore Development Authority (supra)** mode of taking possession by drawing of panchnama / inquest memo is an approved mode of taking possession in terms of Section 16 of the Act, 2013. Thus, in a case where panchnama is drawn by the Collector for taking paper possession of the acquired land, physical possession would have no relevance, inasmuch as, at times the land owners resist taking physical possession of the acquired land.

13. Be that as it may, in the instant case, for the silence on the part of the petitioner about the mode of taking possession and the notice issued under Section 12(2) of the Act, 2013

tendering compensation, it is clear that the acquisition proceedings of the land in question initiated under the Act, 1894, had been concluded to its logical end and the land in question vest absolutely with the State Government free from all encumbrances. As there is no divesting of the acquired land under Section 24(2) of the Act, 2013, there is no question of lapse.

14. The present petition is accordingly, dismissed in terms of the decision of the Apex Court in **Indore Development Authority (supra)**, noticing that stale claims made by the petitioner cannot be revived to consider the prayers for deemed lapse of concluded acquisition.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

SHRIJIT PILLAI