

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 10655 of 2017**

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THAKORBHAI RAMUBHAI PATEL & ORS.

Versus

OFFICER ON SPECIAL DUTY (LAND ACQUISITION) & ORS.

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Appearance:

MS AISHWARYA GUPTA for MR AJ YAGNIK(1372) for the
Petitioner(s) No. 1,2,3

DS AFF.NOT FILED (N) for the Respondent(s) No. 4

MR SANJAY UDHWANI, ASSISTANT GOVERNMENT
PLEADER for the Respondent(s) No. 1

MR RD DAVE(264) for the Respondent(s) No. 2

NOTICE SERVED BY DS 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 JUDGMENT

(PER : HONOURABLE THE CHIEF JUSTICE MRS.
JUSTICE SUNITA AGARWAL)

1. Ms. Ashwairya Gupta holding brief of Mr. A.J. Yagnik, learned advocate has put in appearance for the petitioners.

2. Mr. R.D. Dave, learned advocate appearing for respondent No.2 -GIDC is present and would submit that the present petition is liable to be dismissed in view of the decision of the Apex Court in **Indore Development**

Authority Vs Manoharlal and Ors. [(2020) 8 SCC 129], inasmuch as, the factual statements made on record would demonstrate that the land acquisition proceedings were brought to its logical end much prior to the enforcement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (*hereinafter referred to as 'the Act' 2013*) with effect from 01.01.2014

3. The Constitution Bench in ***Indore Development Authority (Supra)*** has rendered a decision on 06.03.2020 overruling ***Pune Municipal Corporation and Anr. Vs. Harakchand Misirimal Solanki and Ors. [(2014) 3 SCC 183]*** 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."

4. 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.

5. 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.

6. 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.

7. 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.

8. In light of the law laid down by the Apex Court, coming to the factual aspect of the matter, it may be noted that the land in question was acquired for Hazira Water Project by respondent no.2 - GIDC vide notifications published under the Act' 1894. The award dated 26.06.1990 was published under Section 11(1) of the Act' 1894. It is contended in the writ petition itself that the petitioner lodged their objections before the respondent No.1 namely, the Land Acquisition Officer, GIDC, about the fact that the land in question is the only source of the income for the petitioners and the

petitioners being agriculturists would be deprived of their livelihood.

9. The statement in the writ petition is that for more than 25 years, after acquisition, possession of the land in question is still with the petitioners and they are cultivating the same for their livelihood and have also utilized the land in question for non-agricultural purposes. Some photographs, bills of market committee and receipt of municipal taxes have been filed with the writ petition to assert that the petitioners are still occupying the land in question. It is also stated that a reference under Section 18 of the Act' 1894 has been filed before the competent Court which was registered as LAR No.52 of 1993 on 17.06.1993 and was pending consideration.

10. It is submitted that in the year 2015 the land owners of the adjacent plot No.16 had preferred a writ petition seeking declaration that the acquisition of their land had lapsed in view of Section 24(2) of the Act' 2013 and the said petition was disposed of vide judgment and order dated 01.03.2016 holding that the acquisition had been lapsed in view of Section 24(2) of the Act' 2013. The judgment and order dated 01.03.2016 passed in the Special Civil Application No.4834 of 2015 has been placed on record.

11. The respondent No.2 in its affidavit-in-reply dated 29.07.2017 has brought on record a copy of the possession receipt of Block Nos.2/A and 26/A of village Asarma, surrounding the land in question bearing Block No.10 admeasuring 0-71-83 sq meters situated at village Asarma,

Taluka Choryasi, District Surat, to demonstrate that the possession of all lands including the surrounding lands had been taken on an around 18.10.1995.

12. In another affidavit dated 28.08.2017 of respondent No.2, it is stated that land acquisition award dated 26.06.1990 had been passed with respect to the land in question namely, Block No.10 admeasuring 7183 sq meters situated at village Asarma, Taluka Choryasi, District Surat. The notifications under Sections 4 and 6 dated 23.08.1988 and 18.08.1989 and a public notice under Section 9 was issued on 20.10.1989. Pursuant to the award dated 26.06.1990, a notice dated 19.10.1992 was issued to the land holders / petitioners intimating them to collect the compensation amount. It is contended in the affidavit that inspite of due notice, the petitioner did not turn up either to receive compensation or to raise any objection against the quantum of compensation.

13. The advocate of the petitioner had applied for copy of the award vide letter dated 06.11.1992, which was duly supplied. The copy of the letter dated 06.11.1992 along with endorsement of the receipt of the award supplied to the learned advocate for the petitioner is also appended as Annexure 'R-3' to the affidavit dated 28.08.2017.

14. It is further stated therein and also admitted by the petitioner that the Land Acquisition Reference, being LAR No.52 of 1993 has been filed which was pending before the Civil Court. The contention therein is that most of the record of the Special Land Acquisition Officer were destroyed during

the floods in the year 2006 and, as such, it is not possible to bring the Rojkam on record with respect to the land of Block No.10 belonging to the petitioners herein.

15. We may note that no rejoinder affidavit to contradict the statements made in the affidavit of the respondent No.2 has been filed. Even otherwise from the statement made in the writ petition itself, it is evident that the award for compensation of the land in question was declared as early as in the year 1990. As per the statement made by the respondent No.2 - GIDC in its affidavit, the possession of the lands in question was taken in the year 1995. The petitioners had received the copy of the award in the year 1992 through their advocate and filed a reference seeking for enhancement of compensation, which was duly registered before the competent Court in the year 1993.

16. For the said fact, the present petition presented on 25.04.2017 based on the decision of this Court passed on 01.03.2016 in Special Civil Application No.4834 of 2015 cannot be entertained in view of the decision of the Constitution Bench in ***Indore Development Authority (Supra)***.

17. It seems that the present petition was entertained because of the previous pronouncements of this Court, but with the decision of the Apex Court in ***Indore Development Authority (Supra)*** the cloud has been cleared and as has been held therein, stale claims and concluded land acquisition proceedings cannot be revived under the garb of the

provisions of Sub-Section (2) of Section 24 of the Act' 2013, the present petition is liable to be dismissed. Dismissed, accordingly No order as to costs

(SUNITA AGARWAL, CJ.)

(D.N.RAY, J.)

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