



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C)/24/2021

Matheim Linggi
S/O SHRI GINKO LINGGI, RESIDENT OF VILLAGE MAYU-II, PO/PS ROING,
DISTRICT LOWER DIBANG VALLEY, AP.

2: RUNA ELAPRA

Age:

Occupation :

S/O SHRI KHIPA ELAPRA

PERMANENT RESIDENT OF VILLAGE ALINEY

PO/PS ANINI

DIST. DIBANG VALLEY

AP.

3: NOTI LINGI

Age:

Occupation :

S/O SHRI DATO LINGI

PERMANENT RESIDENT OF VILLAGE CHIMIRI

PO/PS ROING

DIST. LOWER DIBANG VALLEY

AP.

4: EMOKO PULU

Age:

Occupation :

S/O SHRI NASO PULU

A PERMANENT RESIDENT OF VILLAGE CHIDU

PO/PS ROING DISTRICT LOWER DIBANG VALLEY

AP.

5: RITIGE MIHU

Age:

Occupation :

S/O LT. ATHRO MIHU
PERMANENT RESIDENT OF VILLAGE ROING
PO/PS ROING
DISTRICT LOWER DIBANG VALLEY
AP.

6: KAMURI ELAPRA

Age:

Occupation :

W/O SHRI JEMETA ELAPRA
PERMANENT RESIDENT OF VILLAGE IDULIL
PO/PS ROING
DIST. LOWER DIBANG VALLEY
AP.

7: MUBA ELAPRA

Age:

Occupation :

S/O SHRI JEMETA ELAPRA
PERMANENT RESIDENT OF VILLAGE IDULIL
PO/PS ROING DISTRICT LOWER DIBANG VALLEY
AP

8: JAI ELAPRA

Age: 0

Occupation :

S/O SHRI JEMETA ELAPRA
PERMANENT RESIDENT OF VILLAGE IDULIL
PO/PS ROING DISTRICT LOWER DIBANG VALLEY
AP

VERSUS

THE LAND ACQUISITION COLLECTOR/DEPUTY COMMISSIONER
ROING PO/PS ROING, DIBANG VALLEY DISTRICT ROING, AP.

2: THE SECRETARY LAND MANAGEMENT

Age: 0

Occupation :

GOVT. OF AP
ITANAGAR.

3: THE CHIEF MANAGING DIRECTOR

Age: 0

Occupation :

NATIONAL HYDROELECTRIC POWER CORPORATION LIMITED (NHPC

LTD.) (A GOVT. OF INDIA ENTERPRISE) NHPC OFFICE COMPLEX
SECTOR-33
FARIDABAD.

4:THE EXECUTIVE DIRECTOR

Age: 0

Occupation :

NHPC ROING

PO/PS ROING

LOWER DIBANG VALLEY DISTRICT ROING

AP.

Advocate for the petitioner : Mr. R. Saikia;

For the respondent No. 1 : Mr. I. Riram, Addl. Sr. Govt.

For the respondent No. 2 : Mr. D. Kamduk;

For the respondents No.3 & 4 : Mr. P.K. Tiwari, Sr. Advocate

:::BEFORE:::

HON'BLE MR. JUSTICE ROBIN PHUKAN

Date of hearing : **20.12.2023**

Date of Judgment : **20.03.2024.**

JUDGMENT (CAV)

Heard Mr. R. Saikia, learned counsel for the petitioner and Mr. P.K. Tiwari, learned Senior Counsel, assisted by Mr. K. Saxena, learned counsel for the respondent Nos. 3 and 4 and Mr. I. Riam, learned Addl. Sr. Govt. Advocate for the respondent No.1 and Mr. D. Kamduk, learned counsel for the respondent No. 2.

2. In this writ petition, under Article 226 of the Constitution of India, eight petitioners have prayed for issuing direction to the respondent authorities, more particularly, the respondent No.1, the Land Acquisition Collector/Deputy Commissioner, Roing, Lower Dibang Valley District, to grant solatium @ 100% of the compensation amount and 12% interest per annum with effect from 10.08.2017 to 10.10.2018, under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, in terms of award dated 28.03.2013.

3. The background facts, necessary for proper appreciation of the dispute in the case in hand, are adumbrated here in below:-

“The respondent No.1 had acquired a plot of land measuring 51.38 hectares in Chimiri village and another plot of land measuring 48.73 hectare in New Apali village (Pathar Camp), belonging to the petitioners in connection with Dibong Valley Multipurpose Project, under the Land Acquisition Act 1894 for construction of office building, staff quarter, store buildings, labour camp etc. Then after compliance of all formalities, the respondent No.1 had passed award dated 28.03.2013, for a sum of **Rs. 15,88,78,461/-** in respect of both the plot of land. And the said award was approved by the Govt. vide letter dated 03.07.2013. But, no compensation was paid to the petitioners despite filing of several representations by them. As the representations have failed to evoke any response from the respondents, the petitioners have filed one Writ Petition, being W.P.(C) No. 645(AP)/2017, before this Court. Then vide judgment and order dated 23.01.2018, this court was pleased to

direct the respondent No. 3 & 4 to pay compensation amount along with interest as worked out and conveyed through his last letter dated 23.09.2016, and notified by the respondent No.1, within a period of six months of receipt of certified copy of the judgment and order. Then pursuant to the order dated 23.01.2018, the revised compensation amount i.e. **Rs. 24,66,58,811/-** was disbursed and deposited in the account of the petitioners on 11.10.2018, however, with only 30 % solatium. Whereas, in the same project in Anini, where also land has been acquired under Land Acquisition Act 1894, however, assessment and calculation of compensation for the land acquisition has been done in terms of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 including solatium and interest. Again, in Roing, in connection with same project 100% solatium along with 12 % interest per annum with effect from 10.08.2017 to 10.10.2018 were paid to the land owners which is in sheer discrimination. Therefore, the petitioner approached this Court for issuing of a writ in the nature of certiorari or mandamus or any other appropriate writ or to pass any other order as deemed fit and proper.”

4. The respondents No. 3 & 4, on receipt of notice, entered appearance and submitted affidavit-in-opposition denying the averments made in the writ petition. It is stated that :-

- (i) Pursuant to the judgment and order dated 23.01.2018, in WP (C) No. 645(AP) 2017, the respondent No.1 had

calculated revised compensation of Rs. 24,66,58,811/ and paid the same on 11.10.2018, and as such, the said judgment order, had attained finality and as such there arose no cause of action for filing the present petition;

- (ii) That, as the issue raised in this petition was directly and substantially was in issue in WP (C) No. 645(AP) 2017, between the same parties, and the petitioners have failed to raise such issue in the previous writ petition, the present petition is barred by doctrine of waiver, acquiescence and constructive res-judicata and such it is liable to be dismissed;
- (iii) That, the present writ petition is barred by limitation as it has been filed approximately seven years after the award was passed under the Land Acquisition Act, and compensation was paid as per order of this court dated 23.01.2018, whereas, solatium is being demanded in terms of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and as such the petition is liable to be dismissed;
- (iv) That, the award cannot be subjected to the provision of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as it was made under the provision of Land Acquisition Act;
- (v) That, the respondent No.3 and 4 have not acquired the land rather it was respondent No.1, who had acquired the land and as such no direction can be issued to the respondent No. 3 &

4 to pay solatium @ 100% and 12% interest per annum from 10.08.2017 to 10.10.2018 on the award dated 28.03.2013, and that the petitioners have no locus standi;

(vi) That, in an award, made under Land Acquisition Act 1894, 100% solatium cannot be awarded and as such the grievance of the petitioner could be the subject matter of an appeal under section 54 of the Land Acquisition Act 1894 with in the period of limitation and having not done the same they cannot maintain a writ petition;

(vii) That a writ petition, only for claiming interest is not maintainable and that the respondent No.2 had included the interest in the award as per direction of this court in dated 23.01.2018, in WP (C) No. 645(AP) 2017, and as the amount has already been paid by the respondent No.3 & 4, no cause of action survived and therefore, the respondents prayed for dismissing the writ petition.

5. The respondent No.1 has also filed affidavit in opposition denying some of the averments made in the petition. It is stated that pursuant to the judgment and order dated 23.01.2018, in WP (C) No. 645(AP) 2017, it had calculated revised compensation of Rs. 24,66,58,811/ and paid the same to the petitioners on 11.10.2018. It is also stated the award was made under Land Acquisition Act as the proceeding under the said Act was not lapsed. It is stated that the award was made as per the provision of the Land Acquisition Act, 1894 prior to adoption of the Right to Fair Compensation and Transparency in Land Acquisition,

Rehabilitation and Resettlement Act, 2013. It is further stated that the petitioners have failed to establish a prima-facie case and therefore, it is contended to dismiss the petition.

6. Mr. R. Saikia, learned counsel for the petitioner, has mainly advanced two fold arguments. **Firstly**, Mr. Saikia submits that while acquiring the land of the petitioners for the Dibang Valley Multipurpose Project, respondent No.1 had passed award dated 28.03.2013, for a sum of **Rs. 15,88,78,461/-** in respect of both the plot of land and the said award was approved by the Govt. on 03.07.2013. But, no compensation was paid to the petitioners despite filing of several representations by the petitioners and then the petitioners have filed one Writ Petition, being WP (C) No. 645(AP) 2017, wherein vide judgment and order dated 23.01.2018, this court was pleased to direct the respondent No. 3 & 4 to pay compensation, with interest, within a period of six months of receipt of certified copy of the judgment and order and thereafter, pursuant to the order dated 23.01.2018, the revised compensation amount i.e. **Rs. 24,66,58,811/-** was disbursed and deposited in the account of the petitioners on 11.10.2018, however, with only 30% solatium. Mr. Saikia has pointed out that as more than five years elapsed after the award has been passed and the payment has not been made the petitioners are entitled to compensation in accordance with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in view of the proviso to section 24(2) of the said Act. **Secondly**, Mr. Saikia submits that the petitioners have been discriminated by the authority as in the same project in Anini, where also land has been acquired under Land

Acquisition Act 1894, however, assessment and calculation of compensation for the land acquisition has been done in terms of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 including solatium and interest. Again, in Roing, in connection with same project 100% solatium along with 12 % interest per annum with effect from 10.08.2017 to 10.10.2018, were paid to the land owners. Mr. Saikia has referred following case laws in support of his submission:-

- (i) Indore Development Authority vs. Manaharilal And Another** reported in **(2020) 8 SCC 129;**
- (ii) Sree Balaji Nagar Residential Association vs. State of Tamil Nadu And Others,** reported in **(2015) 3 SCC 353;**
- (iii) Pune Municipal Corporation And Another vs. Harachand Misirimal Solanki And Others** reported in **(2014) 3 SCC 183;**

7. Whereas, Mr. Tiwari, the learned Sr. Counsel submits that the petition is not maintainable. Mr. Tiwari has pointed out that the acquisition process was started under the Land Acquisition Act, 1894 not under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, where there is no provision for payment of solatium @ 100%, and the said acquisition process did not lapse. Referring to two decisions of Hon'ble Supreme Court in **State of U.P. vs. Nawab Hussain** reported in **(1977) 2 SCC 806;** and **Forward Construction Co. vs. Prabhat Mandal (Regd.),** reported in **(1986) 1 SCC 100,** Mr. Tiwari further submits that the

principle of res-judicata is applicable in writ proceeding also and as the issue raised in this petition was directly and substantially was in issue in WP (C) No. 645(AP) 2017, wherein the parties were same, and the petitioners have failed to raise such issue in the previous writ petition, the present petition is barred by doctrine of waiver, acquiescence and constructive res-judicata. It is the further submission of Mr. Tiwari that the present writ petition is barred by limitation as it has been filed approximately seven years after the award was passed under the Land Acquisition Act, and compensation was paid as per order of this court dated 23.01.2018. Mr. Tiwari further submits that in view of the judgment and order dated 23.01.2018, in WP (C) No. 645(AP) 2017, compensation of Rs. 24,66,58,811/- was paid to the petitioners on 11.10.2018, and as such, the said judgment order, had attained finality and as such there arose no cause of action for filing the present petition and that a writ petition claiming only interest is not maintainable and therefore, Mr. Tiwari has contended to dismiss this petition.

8. In reply to the submission of Mr. Tiwari, Mr. R. Saikia, learned counsel for the petitioner submits that in view of a decision of Division Bench of this court in **Young Lai Association And Anr. vs. State of Mizoram And Ors.** reported in **(2017) 4 GLR 134**, writ petition claiming interest and solatium is maintainable.

9. In view of the pleading of the respective parties and also in view of the submissions of their learned Advocates, the issues, to be answered by this court are formulated as under:-

- (i) whether, the acquisition processed had lapsed under

section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, on account of nonpayment of compensation to the petitioners and on account of the physical possession of the land has not been taken, and on such count the petitioners are entitled to 100% compensation ?

- (ii) whether the petition is barred by the doctrine of waiver, acquiescence and constructive res-judicata ?
- (iii) whether, the petitioners have been discriminated by the authority as in the same project in Anini, where also land has been acquired under Land Acquisition Act 1894, assessment and calculation of compensation for the land acquisition has been done in terms of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 including solatium and interest ?

10. I have carefully gone through the pleadings of the parties and the documents enclosed therewith and also gone through the case laws referred by learned Advocates of both sides.

11. Before a discussion directed to the issues raised in this petition it would be appropriate to understand the provision of section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The section read 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,

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions 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 provisions 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.

12. In the case in hand, the relevant provision is 24(2). This section and its proviso, and also when the acquisition process will lapse, has

been aptly dealt with by a Constitutional Bench of Hon'ble Supreme Court in the case of **Indore Development Authority (supra)** and held 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.

13. Now, adverting to the factual matrix of the case in hand, I find from the record that the acquisition process of the land of the petitioners was initiated on 26.07.2010, under the Land Acquisition Act 1894. The chronology of events, that took place in the process of acquisition, is being described as under:-

DATES	EVENTS IN THE ACQUISITION PROCESS
26.07.2010	Preliminary Notification, u/s 4(1) of the Land Acquisition Act, 1894 was issued for acquisition of 51.38 Ha land at Chimiri village and 48.73 Ha at New Ahali (Pathar Camp) in the Lower Dibang Valley district for the purpose of construction of Staff Quarters, Offices, etc. of NHPC Ltd. for Dibang Valley Multipurpose Project.
04.04.2011	The Commissioner, Land Management, Govt. of Arunachal Pradesh had issued a Final Notification, u/s 6(1) of the 1894 Act.
23.09.2011	Public Notice was issued, u/s 9(1) of the 1894 Act, by the Deputy Commissioner, Lower Dibang Valley.
28.03.2013	An award of Rs.15,88,78,461/-, was passed by the Deputy Commissioner, Lower Dibang Valley and out of the said sum, a sum of Rs.9,33,27,491.00 was made for acquiring 51.38 Ha land at Chimiri village and Rs.6,55,50,970.40 was made for acquiring 48.73 Ha land at Pathar Camp.
22.04.2013	Deputy Commissioner, Lower Dibang Valley had forwarded the award to the Secretary (Land Management).
03.07.2013	Govt. of Arunachal Pradesh had conveyed its approval of the award to the Deputy Commissioner, Lower Dibang Valley, Roing.
10.07.2013	Deputy Commissioner, Lower Dibang Valley, Roing had passed the order, directing the General Manager, NHPC Ltd. to deposit the awarded amount in the office of the Deputy Commissioner, Lower Dibang Valley, Roing for disbursement.
17.03.2016	The Deputy Commissioner, Lower Dibang Valley, Roing had computed the interest on the compensation, as per Section 34 of the Land Acquisition Act, 1894 @ of 9% from 10.07.2013 to 09.07.2014 and @ 15% from 10.07.2014 to 09.07.2015 and further @ 15% w.e.f. 10.07.2015 to 09.03.2016, thus, making NHPC liable

	to pay total amount of Rs.21,28,97,135/-.
23.09.2016	Deputy Commissioner, Lower Dibang Valley, Roing had sent a reminder to NHPC along with the additional interest on the amount not paid till 09.09.2016, thus, taking the total amount to Rs.22,48,13,022/-.
24.08.2017	The petitioners have filed WP(C) No.645(AP)/2017 (<i>Matheim Linggi & Ors. vs. The State of Arunachal Pradesh & Ors.</i>) seeking payment of compensation of Rs.22,48,13,022/-.
23.01.2018	This Court was pleased to allowed the writ petition directing payment of the compensation along with the interest as worked out and conveyed through the letter dated 23.09.2016, of the Deputy Commissioner Lower Dibang Valley within 6(six) months from the date of receipt of a certified copy of the order.
09.10.2018	Since NHPC could not pay the compensation within 6(six) months from the date of receipt of the certified copy of the judgment and order, the Deputy Commissioner, Lower Dibang Valley, Roing had calculated the additional interest and directed the NHPC to pay the revised compensation of Rs.24,66,58,811/-.
10.10.2018	NHPC had paid the revised amount of Rs.24,66,58,811/-.
30.08.2019	Certificate of payment in respect of 51.38 Ha of land at Chimiri, District Lower Dibang Valley for which compensation of Rs.13,76,89,193/- was paid by NHPC. Mutation certificate in respect of the above was also issued. NHPC was handed over the possession of the above land, i.e. 51.38 Ha of land at Chimiri.
28.01.2021	WP(C) No.24(AP)/2021 was instituted for direction to impose solatium equivalent to 100% of the compensation amount and 12% interest per annum w.e.f. 10.08.2017 to 10.10.2018 under Section 30(3) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 with a further direction to NHPC to pay the said revised amount.
30.03.2021	Certificate of payment in respect of 47 Ha of land at Pathar camp in Lower Dibang Valley district for which NHPC paid the compensation of Rs.9,59,90,420/-. Mutation certificate in respect of the above land was also issued. NHPC was handed over the possession of the above land, i.e. 47 Ha of land at Pathar Camp.

14. From the chronology of events, as discussed herein above, it becomes apparent that the payment has been tendered to the petitioners on 10.10.2018 and possession of a plot of land measuring 51.38 Ha at Chimiri was handed over to the respondent No.3 and 4 (NHPC) on 30.08.2019. However, it appears that possession in respect of the other plot of land at Pathar Camp was handed over to the NHPC on 30.03.2021. But, it appears that in respect of both the plot of land revised compensation of Rs. 24,66,58,811/ was paid on 10.10.2018, as it appears from the pleading of the respondent No.3 & 4 (Para-4.1), factum of which is not disputed by petitioners.

15. The Constitution Bench of Hon'ble Supreme Court in **Indore Development Authority's case (supra)** has opined that satisfaction of either of the conditions, namely either taking possession of the acquired land or payment of compensation to the landowners would be sufficient to save the acquisition from being lapsed in terms of Section 24(2) of the 2013 Act.

16. But, while dealing with the issue of possession in the case of **Delhi Development Authority vs. Anita Singh & Ors, Civil Appeal No. 2994 of 2023** Hon'ble Supreme Court in para No.11 held as under:-

"11. The issue as to what is meant by "possession of the land by the State after its acquisition" has also been considered in Indore Development Authority's case (supra). It is opined therein that after the acquisition of land and passing of award, the land vests in the State free from all encumbrances. The vesting of land with the State is with possession. Any person retaining the possession thereafter has to be treated trespasser. When large chunk of land is acquired, the State is

not supposed to put some person or police force to retain the possession and start cultivating on the land till it is utilized. The Government is also not supposed to start residing or physically occupying the same once process of the acquisition is complete. If after the process of acquisition is complete and land vest in the State free from all encumbrances with possession, any person retaining the land or any re-entry made by any person is nothing else but trespass on the State land. Relevant paragraphs 244, 245 and 256 are extracted below:

"244. Section 16 of the Act of 1894 provided that possession of land may be taken by the State Government after passing of an award and thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of urgency in Section 17(1). The word "possession" has been used in the Act of 1894, whereas in Section 24(2) of Act of 2013, the expression "physical possession" is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2) requires actual physical possession to be taken, not the possession in any other form. When the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances.

245. The question which arises whether there is any difference between taking possession under the Act of 1894 and the expression "physical possession" used in Section 24(2). As a matter of fact, what was contemplated under the Act of 1894, by taking the possession meant only physical possession of the land. Taking over the possession under the Act of 2013 always amounted to taking over physical possession of the land. When the State Government acquires land and draws up a memorandum of taking possession, that

amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any re-entry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc., is deemed to be the trespasser on land which in possession of the State. The possession of trespasser always inures for the benefit of the real owner that is the State Government in the case. xxxx

256. Thus, it is apparent that vesting is with possession and the statute has provided under Sections 16 and 17 of the Act of 1894 that once possession is taken, absolute vesting occurred. It is an indefeasible right and vesting is with possession thereafter. The vesting specified under Section 16, takes place after various steps, such as, notification under Section 4, declaration under Section 6, notice under Section 9, award under Section 11 and then possession. The statutory provision of vesting of property absolutely free from all encumbrances has to be accorded full effect. Not only the possession vests in the State but all other encumbrances are also removed forthwith. The title of the landholder ceases and the state becomes the absolute owner and in possession of the property. Thereafter there is no control of the landowner over the property. He cannot have any animus to take the property and to control it. Even if he has retained the possession or otherwise trespassed upon it after possession has been taken by the State, he is a trespasser and such possession of trespasser ensures for his benefit and on behalf of the owner." (emphasis supplied)

17. Thus, drawing premises from the illuminating discourse, it can safely be concluded that after the acquisition of land and passing of award, the land vests in the State free from all encumbrances. The vesting of land with the State is with possession and any person retaining the possession thereafter has to be treated as trespasser.

18. It also appears that, preliminary Notification, u/s 4(1) of the Land Acquisition Act, 1894 was issued for acquisition of 51.38 Ha land at Chimiri village and 48.73 Ha at New Apali village (Pathar Camp) in the Lower Dibang Valley district for the purpose of construction of Staff Quarters, Offices, etc. of NHPC Ltd. for Dibang Multipurpose Project was issued on **26.07.2010**. Thereafter, the Commissioner, Land Management, Govt. of Arunachal Pradesh had issued a Final Notification u/s 6(1) of the 1894 Act on **04.04.2011**, and thereafter, public Notice was issued u/s 9(1) of the 1894 Act by the Deputy Commissioner, Lower Dibang Valley, on **23.09.2011** and an award of Rs.15,88,78,461/-, was passed by the Deputy Commissioner, Lower Dibang Valley, Roing and out of the said a sum of Rs.9,33,27,491.00 was made for acquiring 51.38 Ha land at Chimiri village and Rs.6,55,50,970.40 was made for acquiring 48.73 Ha land at Pathar Camp on **28.03.2013**. If, after the acquisition of land and passing of award, the land vests in the State free from all encumbrances and the vesting of land with the State is with possession and in view of the payment of compensation having been made on 10.10.2018, in terms of section 31(1) of the Land Acquisition Act 1894, to all the petitioners, and possession of one plot of land having been vested with the Land Acquisition Authority and handed over to the NHPC on 30.08.2019, can it be said that the acquisition process

had lapsed.

19. This question stands answered in para No. 366.5 and 366.7, in the case of **Indore Development Authority (supra)** where in (paragraph No. 366.6) it has been held that if 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. And in paragraph No. 366.7, it has been held that once possession has been taken there is no lapse under Section 24(2).

20. This being the legal and fateful position, in the case in hand none of the aforesaid two conditions, as mentioned by Hon'ble Supreme Court in **Indore Development Authority (supra)** can be said to be satisfied with. Moreover, in paragraph No. 366.9 of the decision in **Indore Development Authority (supra)**, it is stated that 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 and it does not reopen concluded proceedings.

21. Thus, this court is of the considered opinion that the issue No.(i), as formulated herein above, that whether, the acquisition processed had lapsed under section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, on account of nonpayment of compensation to the petitioners and they are entitled to 100% compensation, has to be answered in negative. And accordingly, the same stands answered. I have

considered the submission of Mr. Saikia, learned counsel for the petitioners and I find the same bereft of merit and the case laws referred by him also would not advance his case in anyway. It is to be noted here that the decision in **Pune Municipal Corporation (supra)** and **Sree Balaji Nagar Residential Association (supra)** stands overruled in the case of **Indore Development Authority (supra)**.

22. In view of above decision on issue No.(i), the other issues, so formulated, become more or less academic. Notwithstanding, an endeavour is being made to answer the same as under.

23. There is no quarrel at the bar that the principle of res-judicata is applicable in writ proceeding also. This proposition of law is well settled in catena of decisions, including the cases **Nawab Hussain (supra)** and in **Forward Construction Co. (supra)**. It is to be noted here that the Explanation IV to Section 11 CPC provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

24. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. But, where a matter has been constructively in issue, it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided.

25. In the case in hand the prayer is being made for granting 100% solatium and 12 % interest per annum under the RFCT & LARR Act,

2013. The issue of acquisition proceeding being lapsed under proviso to section 24(2) of the said Act is also being canvassed. Whereas, in the Writ proceeding No. WP(C) No.645(AP)/2017 (Matheim Linggi & Ors. vs. The State of Arunachal Pradesh & Ors.) the prayer was for seeking payment of compensation of Rs.22,48,13,022/-, as determined by the Deputy Commissioner, Lower Dibong Valley District, Roing. In the given facts and circumstances of the case in hand, it cannot be said that matter of present proceeding has been directly and substantially in issue in WP(C) No.645(AP)/2017, though constructively it may be and issue and therefore, it cannot be said to have been actually heard and decided. Thus, there is absolutely no force in the submission of Mr. Tiwari, the learned counsel for the respondent No.3 & 4. Thus, issue No. (ii) is answered accordingly.

26. Now, coming to the last issue i.e. the issue of discrimination, as raised by the petitioner, I find from the Annexure-I(A),I(B) and (I(C) of the additional affidavit of the petitioners that in the same project in Anini, where also land has been acquired under Land Acquisition Act 1894, assessment and calculation of compensation for the land acquisition has been done in terms of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 including solatium and interest. It also appears that said awards were passed on 15.05.2018, 06.11.2018 and on 07.09.2018. But, notably the award of the case in hand was passed on 28.03.2013, when the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 was not enacted.

27. It is to be noted here that the said Act came into force with effect

from 01.01.2014. And in the Annexure VII, of the petition, it has been clarified by the Government of Arunachal Pradesh that where land acquisition has been initiated under Land Acquisition Act, 1894 and no award has been passed, the said proceeding shall not nullify and shall remain valid except that the quantum of compensation shall be determined on the basis of the new Act. And the said clarification was made based upon section 24(1)(a) of RFCT & LARRA, 2013, which provides that where no award has been made then the provision of the RFCT & LARRA, 2013, relating to determination of compensation shall apply. Therefore, it cannot be said that there is any substance in the issue of discrimination so raised in the present petition. The issue No. (iii) is decided accordingly.

28. In the result I find this writ petition devoid of merit and accordingly, the same stands **dismissed**. The parties have to bear their own cost.

JUDGE

Comparing Assistant