

1. SINGLE BENCH

IN THE HIGH COURT OF JUDICATURE AT BILASPUR,
CHHATTISGARH

Writ Petition No. 1934 of 2006

PETITIONER:

Om Prakash Agrawal,
S/o Late Shri R.R. Agrawal,
Aged about 50 years,
R/o Om Kutir, Civil Lines,
Raipur, Tehsil & District: Raipur
Chhattisgarh.

PR. No. 1989/06
Presented by Shri. Suraph Shrinani
dated 12/4/06

- Versus -

RESPONDENTS:

1. State of Chhattisgarh,
Through the Secretary,
Department of Revenue,
Mantralaya, D.K.S. Bhawan,
Raipur, Chhattisgarh.
2. Collector, Collectorate,
Raipur, Chhattisgarh.
3. Sub Divisional Officer/
Land Acquisition Officer,
Collectorate, Raipur,
Chhattisgarh.
4. Officer In-charge,
Land Acquisition Branch,
Collectorate, Raipur,
Chhattisgarh.
5. Pt. Ravi Shankar University,
Through the Registrar,
Pt. Ravi Shankar University,
Bhilai Road, Raipur,
Chhattisgarh.



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WRIT PETITION UNDER ARTICLE 226/227 OF THE
CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE
WRIT/WRITS, DIRECTIONS ETC., IN THE NATURE OF
MANDAMUS, CERTIORARI AND/OR ANY OTHER SUITABLE
WRIT OF LIKE NATURE

AFR
(197)
8/8/15
HIGH COURT OF CHHATTISGARH AT BILASPUR

(Hon. Mr. Justice Pritinker Diwaker)

Writ Petition No. 1934 of 2006

PETITIONER

Om Prakash Agrawal

VERSUS

RESPONDENTS

State of CG and others

Shri Sourabh Sharma and Shri Tarkeshwar Nande
counsel for the petitioner.

Shri Gary Mukhopadhyaya PL for the respondents 1
to 4/State.

Shri R.K. Kesharwani counsel for respondent No.5.

Writ Petition No. 4605 of 2006

PETITIONERS

Arun Kumar Agrawal and others

VERSUS

RESPONDENTS

State of CG and others

Shri Sourabh Sharma and Shri Tarkeshwar Nande
counsel for the petitioners.

Shri Gary Mukhopadhyaya PL for the respondents 1
to 3/State.

Shri R.K. Kesharwani counsel for respondent No.4.

Writ Petition (C) No. 5846 of 2006

PETITIONER

Dr. P.C. Agrawal

VERSUS

RESPONDENTS

State of CG and others

Shri Sourabh Sharma and Shri Tarkeshwar Nande
counsel for the petitioner.

Shri Gary Mukhopadhyaya PL for the respondents 1
to 3/State.

Shri R.K. Kesharwani counsel for respondent No.4.

**WRIT PETITIONS UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA**

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ORDER
(15.6.2015)

Since challenge in all the above-mentioned petitions is to one and the same notification dated 20.1.2006 issued under Section 4 (1) of the Land Acquisition Act published in the official gazette on 3.2.2006; the order passed on 4.3.2006 by the Land Acquisition Officer in Revenue Case No. 7A-82 Year 2005-2006 as well as the notification published on 14.3.2006 under Section 6 of the Land Acquisition Act, they are disposed of by this common order.

2. Challenge to the aforesaid notifications and the order is mainly on the ground that the procedure laid down under the Land Acquisition Act, in particular compliance of Section 5-A (1 & 2), has not been followed properly by the State authorities. Another ground raised by the petitioners in their respective petitions is that the order impugned has been passed in arbitrary exercise of the power by the Land Acquisition Officer without complying the principles of natural justice.

3. In all the three petitions proceedings were drawn under the Land Acquisition Act 1894 and interim orders regarding maintenance of *status quo* by the parties in respect of land in question were also passed. During pendency of writ petitions the Central Government has enacted the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

Resettlement Act, 2013 (30 of 2013) (hereinafter referred to as the new Act") which was made applicable with effect from 1.1.2014.

4. Before harping upon the pros and cons of the matter, counsel for the petitioners has raised purely a question of legal implication that as neither the possession has been obtained from the petitioners nor they have received any compensation, in view of the provisions contained in Section 24 (2) of the New Act the land acquisition proceedings would lapse and the award can not be acted upon. Placing reliance on order dated 9.2.2015 passed by this Court in **WPC No. 3908 of 2008 (Budru Kashyap v. State of Chhattisgarh and others)** and other connected matters counsel for the petitioners submits that as more than five years have already rolled by and neither the possession of the land in question has been given to respondent – University nor the petitioners have received any compensation, land acquisition proceedings would lapse and no further action can be taken against the petitioners. Fortifying his stand, further reliance is placed on the decisions of the Apex Court in the matter of **Ram Kishan & others v. State of Haryana & others** reported in 2014 AIR SCW 6929, in the matter of **Pune Municipal Corporation and another v. Harakchand Misirimal Solanki and others** reported in (2014) 3 SCC 183, in the matter of **Union of India and others v. Shiv Raj and others** reported in (2014) 6 SCC



564, in the matter of **Bimla Devi and others v. State of Haryana and others** reported in (2014) 6 SCC 583, in the matter of **Bharat Kumar v. State of Haryana and another** reported in (2014) 6 SCC 586, in the matter of **Prahlad Singh and others v. Union of India and others** reported in (2011) 5 SCC 386, in the matter of **M/s Radiance Fincap (P) Ltd. And others v. Union of India and others** reported in 2015 (1) SCALE 677, in the matter of **Karnail Kaur & others v. State of Punjab and others** reported in 2015 Law Suit (SC) 50, in the matter of **Garikapati Veeraya v. N. Subbiah Choudhary and others** reported in AIR 1957 SC 540, in the matter of **Shyam Sunder and others v. Ram Kumar and another** reported in (2001) 8 SCC 24, in the matter of **K.S. Paripoornan v. State of Kerala and others** reported in (1994) 5 SCC 593 and in the matter of **Hitendra Thakur and others v. State of Maharashtra and others** reported in (1994) 4 SCC 602.

5. According to the counsel for the petitioners the order passed by this Court in a batch of writ petitions dated 9.2.2015 has never been assailed by either of the parties either before the Division Bench by way of writ appeal or before the Apex Court and since the same has attained finality, these petitions can also be disposed of in the same terms.

6. While hearing present writ petitions, on 10.9.2014 this Court directed the respondents to file affidavit indicating as to who is in



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possession of the land in question and whether any amount has been paid to the petitioners as compensation and pursuant to said direction affidavit dated 20.1.2015 has been filed by the State Government categorically stating in paragraph No. 7 that neither any compensation has been paid to the petitioners nor possession of the land has been given to respondent – University. This apart, even the University has also admitted this factual aspect of the matter.

7. Counsel for the respondents while admitting the aforesaid factual and legal position submit that as the amount has already been deposited by the University before the State Government, present petitions in their present form are not maintainable and are liable to be dismissed. They submit that except petitioners, all other land owners have accepted the compensation having given the possession of the land in question to respondent – University.

8. Heard counsel for the parties and taken note of the documents on record.

9. Section 24 of the new Act reads thus:

"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 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."

10. Sub-section (2) of Section 24 of the new Act, quoted above, makes it explicit that where an award under the old Act has been made five years or more, prior to the commencement of the new 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 contained in the new Act.

11. On several occasions the Apex Court in various pronouncements has made it clear that if physical possession of the land has not been taken from the land owners, that more than five years have elapsed after making award and that compensation has not been received by the land owners, then the land acquisition proceedings would be deemed to have lapsed. Taking support from those judicial pronouncements, this Court has also passed an order dated 9.2.2015 in batch of writ petitions which has attained finality having not been assailed either by way of writ appeal before Division Bench or special leave petition before the Apex Court.

12. Since this Court has already dealt with all the aspects of the matter while deciding the batch of writ petitions and based its findings on several decisions of the Apex Court, making any addendum thereto at the cost of repetition would be a futile exercise and therefore it is sidetracked.

13. Accordingly, in terms of the order dated 9.2.2015 passed by this Court in batch of petitions taking support of the various



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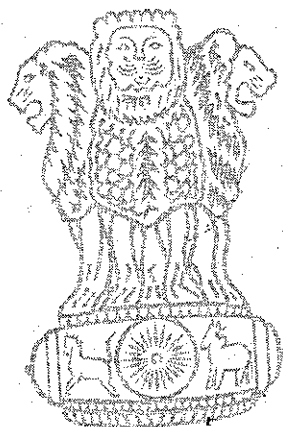
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pronouncements of the Apex Court, these petitions are also allowed.

14. It is made clear that the respondent – University, if so desires, may proceed to acquire the land of the petitioners as per the provisions enshrined in the new Act.

Sd/-
Pritinker Diwaker
Judge

CHHATTISGARH HIGH COURT



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