

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

WA.NO. 1061 OF 2015 () IN WP(C).2974/2015

AGAINST THE ORDER/JUDGMENT IN WP(C) 2974/2015 OF
HIGH COURT OF KERALA

APPELLANT(S) - PETITIONERS:

1. A.X.GILBERT, S/O.XAVIER, AGED 57 YEARS,
ANJIPARAMBIL HOUSE, CBI ROAD, KALOOR ROAD,
ERNAKULAM, PIN - 682 017.
2. A.X.EDWIN, S/O.XAVIER, AGED 57 YEARS,
ANJIPARAMBIL HOUSE, CBI ROAD, KALOOR ROAD,
ERNAKULAM, PIN - 682 017.
3. ABRAHAM GODFREY, S/O.XAVIER, AGED 60 YEARS,
ANJIPARAMBIL HOUSE, CBI ROAD, KALOOR ROAD,
ERNAKULAM, PIN - 682 017.
4. A.X LESLIE, S/O.XAVIER, AGED 63 YEARS,
ANJIPARAMBIL HOUSE, CBI ROAD, KALOOR ROAD,
ERNAKULAM, PIN - 682 017.
5. SANTHOSH XAVIER, S/O.XAVIER,
ANJIPARAMBIL HOUSE, CBI ROAD, KALOOR ROAD,
ERNAKULAM, PIN - 682 017.
6. JUDE XAVIER, S/O.XAVIER,
ANJIPARAMBIL HOUSE, CBI ROAD, KALOOR ROAD,
ERNAKULAM, PIN - 682 017.

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7. FRANKLIN CHELLATH, S/O.XAVIER, AGED 57 YEARS,
ANJIPARAMBIL HOUSE, CBI ROAD, KALOOR ROAD,
ERNAKULAM, PIN - 682 017.

BY ADVS.SRI.P.B.KRISHNAN
SRI.P.B.SUBRAMANYAN
SRI.SABU GEORGE
SRI.P.M.NEELAKANDAN

RESPONDENT(S) - RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY ITS SECRETARY,
LOCAL ADMINISTRATION AND TOWN PLANNING DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.
2. GREATER COCHIN DEVELOPMENT AUTHORITY,
REPRESENTED BY ITS SECRETARY,
KADAVANTHARA, PIN 682 020.
3. SPECIAL TAHSILDAR (LA), GREATER COCHIN
DEVELOPMENT AUTHORITY,
KADVANTHARA, PIN 682 020.

BY GOVERNMENT PLEADER SHRI P.I. DAVIS.
BY ADVOCATE SHRI C.A. MAJEED, SC FOR GCDA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
11.06.2015, THE COURT ON 19-06-2015 DELIVERED THE FOLLOWING:

WA.NO. 1061 OF 2015

ANNEXURE-A BALANCE STATEMENT OF ACCOUNT IN L.A.R.
NO.274 OF 1990 ON THE FILE OF THE PRINCIPAL SUB JUDGE,
KOCHI, DATED 08.06.2015.

ANNEXURE-B BALANCE STATEMENT OF ACCOUNT IN L.A.R.
NO.275 OF 1990 ON THE FILE OF THE PRINCIPAL SUB COURT, KOCHI
DATED 08.06.2015.

“C.R.”

ASHOK BHUSHAN, C.J.

and

A.M. SHAFFIQUE, J.

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W.A. No.1061 of 2015

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Dated this the 19th day of June, 2015

J U D G M E N T

Ashok Bhushan, C.J.

This Writ Appeal has been filed against the judgment dated 06.04.2015 passed by the learned Single Judge in W.P(C) No.2974 of 2015 by which judgment the Writ Petition filed by the petitioners has been dismissed.

2. Brief facts giving rise to this Writ Appeal are: Land acquisition proceedings were initiated for acquiring land of the petitioners situated in Elamkulam Village for town planning scheme. Notification under Section 4 of the Land Acquisition Act, 1894 (for short, “the 1894 Act”) and declaration under 6 of the said Act were issued. Possession of petitioners' land was taken by the State.

Awards under Section 11 of the 1894 Act were passed on 16.05.1989 being award Nos.6 and 7 of 1989. Petitioners made an application for a reference under Section 18 of the 1894 Act for enhancement of compensation on which L.A.R. Nos.274 and 275 of 1990 were registered. The Sub Court decided the LARs and granted enhanced compensation to the petitioners. Aggrieved, petitioners challenged the order passed by the reference court in this Court. This Court decided the appeal by reducing the amount to some extent. Petitioners filed Special Leave Petition against the said order before the Supreme Court which was dismissed on 14.07.2003. Petitioners received the compensation which was awarded by the Collector under Section 11 of the 1894 Act. Petitioners had made applications in the executing court being E.A. Nos.120 and 121 of 2001 for payment of enhanced compensation. Two other applications were filed before the executing court, E.A.

Nos.504 and 505 of 2004. The executing court dismissed the applications filed by the petitioners on 11.04.2008 against which order petitioner filed W.P(C) No.18437 of 2008 which was dismissed by this Court on 30.11.2010. This Court while dismissing the Writ Petition clearly recorded a finding that the petitioners have received the compensation awarded by the District Collector as well as the compensation enhanced by the reference court. Petitioners also filed Original Petitions and Writ Petitions in this Court challenging the acquisition proceedings which were decided against the petitioners.

3. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, "the 2013 Act") was enforced with effect from 01.02.2014 by repealing the 1894 Act. After commencement of the 2013 Act petitioners claim to have filed application before the Secretary to

Government, Local Administration stating that acquisition under award Nos.6 and 7 of 1989 be declared as lapsed since petitioners were not fully paid the compensation as awarded to them. The said application is claimed to be submitted by the petitioners on 05.05.2014 with a reminder on 08.10.2014. Petitioners thereafter filed the Writ Petition praying for the following reliefs:

i) Declare that the land acquisition proceedings covered by award No.6 of 1989 and 7 of 1989 passed by Respondent No.3 with respect to the lands owned by the petitioners have lapsed and restore possession of the lands covered thereunder to the petitioners.

ii) In the alternative, issue a Writ of mandamus or any other order or direction in the nature thereof directing respondent Nos.1 and 2 to take out acquisition proceedings afresh and pass an award under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) with respect to the properties covered by award Nos.6 of 1989 and 7 of 1989 passed by respondent No.3.

iii) Issue a Writ of mandamus or any other order or direction in the nature thereof directing respondent No.1 to consider Ext.P3 after affording an opportunity of hearing to the petitioners.”

4. In the Writ Petition counter affidavit was filed by the 2nd respondent where the 2nd respondent has categorically pleaded that the amount of compensation has already been received by the petitioners including the amount payable on the basis of the order of the reference court. Details of payment were stated in the counter affidavit. Judgment of this Court dated 30.11.2010 in W.P(C)No.18437 of 2008 rejecting the application of the petitioners filed against the order of the executing court was also brought on record.

5. Learned Single Judge dismissed the Writ Petition observing that necessary details have not been brought on record by the petitioners and the petitioners are also guilty of suppression of material facts regarding the earlier litigation. Learned Single Judge

further observed that petitioners have admittedly pocketed a sizeable amount of compensation and hence petitioners cannot invoke the provisions of Section 24(2) of the 2013 Act. Challenging the aforesaid judgment of the learned Single Judge this Writ Appeal has been filed.

6. Shri P.B. Krishnan, learned counsel for the petitioners submitted that the learned Single Judge did not appreciate the ground of challenge in the Writ Petition. It is submitted that petitioners have filed the case only on the basis of new rights which accrued to them by virtue of Section 24(2) of the 2013 Act. It is submitted that although compensation awarded by the Land Acquisition Officer by award Nos.6 and 7 of 1989 were paid to the petitioners, petitioners were not fully paid the compensation as enhanced by the Court. It is submitted that compensation referred to under Section 24(2) of the 2013 Act is full compensation which is

payable to land owner as per the 1894 Act. It is submitted that the litigation pertaining to the challenge to the land acquisition proceeding was not relevant, hence the learned Single Judge erred in observing that the petitioners concealed material facts. It is submitted that petitioners filed execution application Nos.34 and 35 of 2015 before the executing court. It is submitted that along with I.A. No.727 of 2015 in this appeal the petitioners have brought on record the statements of account in L.A.R. Nos.274 ad 275 of 1990. It is submitted that a report be called for from the executing court whether any amount is still due to the petitioners or not. It is submitted that in view of the fact that the entire compensation to which petitioners were entitled as enhanced by the civil court having not been paid, the entire land acquisition proceeding has lapsed and the learned Single Judge committed error in not granting the reliefs as prayed for.

7. Learned counsel appearing for the second respondent Corporation submitted that petitioners have received the entire compensation as awarded by the Special Land Acquisition Officer and also the enhanced compensation as awarded by the reference court. It is submitted that in the affidavit filed by the Corporation details of payment of entire compensation as per the reference court order has been stated with details. It is submitted that this Court in the judgment in W.P(C) No.18473 of 2008 has held that the petitioners have received the entire compensation including the enhanced compensation hence the present case is nothing but abuse of process of court and deserves to be dismissed with costs. It is submitted that the fact that the petitioners at any point of time after receiving the entire compensation has not raised any grievance that they were not paid the compensation fully speaks for itself. First time in the Writ Petition, petitioners

are raising wholly, frivolous and false grievance.

8. Learned Government Pleader refuting the submissions of the learned counsel for the appellants submitted that the petition is liable to be dismissed since petitioners did not give details of the payment of compensation which according to the petitioners was subject matter of the issue in the Writ Petition. It is submitted that petitioners had not come with clean hands and in the Writ Petition petitioners concealed material facts including the details regarding receipt of compensation. It is submitted that the compensation which is contemplated under Section 24(2) is compensation which is payable consequent to the award under Section 11 of the 1894 Act and enhanced compensation is wholly irrelevant for the purpose.

9. Learned counsel for the parties have relied on several judgments which shall be referred to while considering the submissions in detail.

10. We have considered the rival submissions and perused the records.

11. From the submissions made by the learned counsel for the petitioners and the pleadings, it is an admitted fact that as far as compensation which was payable to the petitioners in pursuance of award Nos.6 and 7 of 1989 has been received by the petitioners. The petitioners' contention is that they have not been paid the entire compensation as enhanced by the reference court and modified by this Court and the Supreme Court. Thus there is no case of the petitioners that the amount awarded under award Nos.6 and 7 of 1989 which was an award under Section 11 of the 1894 Act have not been received by them. Thus the legal issue which has arisen in the present appeal is as to whether the word 'compensation' referred to in Section 24(2) of the 2013 Act is the compensation awarded under Section 11 of the 1894 Act or shall also include the

compensation enhanced by the reference court/High Court/Apex Court.

12. On the factum of payment of enhanced compensation also the case of the respondents is categorical that the entire payment has been received by the petitioners consequent to the enhancement by the reference court/High Court/Supreme Court. It is to be noted that determination of the compensation attained finality after dismissal of the Special Leave Petition by the Apex Court on 14.07.2003. After that the respondents made payment of entire enhanced amount in the year 2004. In this context details have been mentioned in paragraphs 4 and 5 of the counter affidavit of respondent No.2 and relevant materials have been brought on record as Ext.R2(a). Exhibit R2(a) indicated that enhanced compensation based on LAR No.274 of 1990 of Rs.17,58,906/- was paid which payment is not denied by the petitioners anywhere.

Enhanced payment in LAR No.275 of 1990 is Rs.6,81,134/- which included income tax was also paid as detailed in paragraph 5 of the counter affidavit. The said amount was directed to be paid from the amount which was deposited in this Court details of which have already brought on record.

13. Pleadings in the Writ Petition are sketchy regarding payment of compensation. Petitioners have neither given details of the amount received nor proceedings undertaken by them for recovery of the amount. Furthermore against the orders passed by the Sub Court in E.P. Nos.120 and 121 of 2001 and E.A. Nos.504 and 505 of 2004 dated 11.04.2008 W.P(C) No.18437 of 2008 was filed by the petitioners which Writ Petition was dismissed by judgment dated 30.11.2010. In paragraph 1 of the judgment, the following was stated:

"This petition filed under Article 227 of the

Constitution is in challenge of Exts.P1 and P2, orders dated April 11, 2008 on E.A. Nos.504 of 2004 and 505 of 2004 in E.P. Nos.120 of 2001 and 121 of 2001 in L.A.R. No.274 of 1990 and 275 of 1990 of the court of learned Sub Judge, Kochi. Property which originally stood in the name of predecessor-in-interest of petitioners was acquired by the Government for the purpose of respondent No.2, the Greater Cochin Development Authority. The Land Acquisition Officer awarded compensation to the land owner. Petitioners sought a reference of the matter to the civil court which enhanced the compensation. There was an appeal to this Court and the Supreme Court. Supreme Court did not interfere in the matter. Compensation awarded by the Land Acquisition Officer and enhanced by the court was received by the petitioners....."

14. After dismissal of the Writ Petition and findings of the High Court that compensation awarded by the Special Land Acquisition Officer and enhanced by the court received by the petitioners, petitioners cannot be allowed to raise the issue of non-receipt of the enhanced compensation. The fact that after receipt of the enhanced compensation in the year 2004 there is no

material to indicate that petitioners ever raised issue of non-payment of full compensation to them. It was only after enforcement of the 2013 Act with effect from 01.01.2014 that the petitioners appears to have sent representation and thereafter filed the Writ Petition claiming the benefit under Section 24(2) of the Act. We are thus satisfied that no error was committed by the learned Single Judge in dismissing the Writ Petition.

15. Shri P.B.Krishnan, learned counsel for the appellant during his submissions emphasised that the word 'compensation' used under Section 24(2) of the 2013 Act means and includes the entire compensation including the enhanced compensation, hence we proceed to examine the legal issue.

16. The 2013 Act was enacted as an enactment to ensure a humane, participative, informed and transparent process for land acquisition and to provide just and fair compensation to the affected families

whose land has been acquired or proposed to be acquired or affected by such acquisition and make a provision for rehabilitation and resettlement. The 2013 Act indicate several important changes in the procedure for land acquisition. In the present case we are concerned with Section 24(2) of the 2013 Act which contains the heading "Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases". Section 24(2) provided that where the award under Section 11 of the 1894 Act has been made 5 years or more prior to the commencement of the 2013 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. Sections 24(1) and Section 24(2) which are relevant for the case are quoted below:

"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 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 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."

17. Section 24(2) thus enumerates the following conditions for acquisition proceedings being deemed to have elapsed, i.e., (i) award under Section 11 of the 1894 Act made five years or more prior to the commencement of the 2013 Act, i.e., 5 years prior to 01.01.2014, i.e., prior to 01.01.2009 (ii) physical possession of the land has not been taken or compensation has not been paid. In the present case award was made more than 5 years before the commencement of the 2013 Act and the legal ground urged by the petitioners is that enhanced compensation has not been paid.

18. The first condition for deemed lapse of the acquisition proceeding is that the award under Section 11 of the 1894 Act has been made 5 years or more prior

to the commencement of the 2013 Act. Section 11 of the 1894 Act is quoted below:

"11. Enquiry and award by Collector:- (1) On the day so fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under Section 9 to the measurements made under Section 8, and into the value of the land and at the date of the publication of the notification under Section 4, sub-section (1) and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of

- (i) the true area of the land;*
- (ii) the compensation which in his opinion should be allowed for the land; and*
- (iii) the apportionment of the said compensation shall among all the persons known or believed to be interested in the land, of whom, or of whose claims he has information, whether or not they have respectively appeared before him.*

Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise

in this behalf.

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class as the appropriate Government may specify in this behalf.

(2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in this land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not, in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(4) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under sub-section (2) shall be liable to registration under that Act."

Thus the provision contemplates that although award

has been made five years before commencement of the Act physical possession has not been taken or compensation has not been paid. Whether the word “compensation” used under Section 24(2) is a compensation consequent to award under Section 11 of the 1894 Act or shall also embrace in itself the compensation consequent to the order of the reference court under Section 18 of the 1894 Act or any enhancement made by the High Court/Supreme Court? Section 24(2) creates a legal fiction by deeming lapse of the acquisition proceeding on fulfillment of certain conditions. What are the purpose and object for the deeming provision has to be found out to know the object and purpose of enacting such provision.

19. Legal fiction is created by the Legislature to attain a particular object. The Concept of legal fiction came up for consideration in **State of U.P. v. Hari Ram** ([2013] 4 SCC 280). The following was laid down

in paragraph 18, 19, 20, 22 and 23:

"18. Legislature is competent to create a legal fiction, for the purpose of assuming existence of a fact which does not really exist. Sub-section (3) of S.10 contained two deeming provisions such as "deemed to have been acquired" and "deemed to have been vested absolutely". Let us first examine the legal consequences of a 'deeming provision'. In interpreting the provision creating a legal fiction, the Court is to ascertain for what purpose the fiction is created and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. This Court in Delhi Cloth and General Mills Company Limited v. State of Rajasthan, 1996 (2) SCC 449 held that what can be deemed to exist under a legal fiction are facts and not legal consequences which do not flow from the law as it stands.

19. James Lords Justice in Ex - parte, Walton, In re, Levy, 1881 (17) Chance. D. 746 speaks on deeming fiction as:

"When a statute enacts that something shall be deemed to have been done, which in fact and in truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to".

20. *In Szoma v. Secretary of State for the Department of Work and Pensions*, 2006 (1) All E.R. 1

"25. court held, it would be quite wrong to carry this fiction beyond its originally intended purpose so as to deem a person in fact lawfully here not to be here at all. The intention of a deeming provision, in laying down a hypothesis is that the hypothesis shall be carried so far as necessary to achieve the legislative purpose but no further. (see also *DEG Deutsche Institutions and Another v. Kosby*, 2001 (3) All E.R. 878.

22. This Court in *S. Gopal Reddy v. State of U.P.*, 1996 (4) SCC 596 held:

"it is well known rule of interpretation of statutes that the text and the context of the entire Act must be looked into while interpreting any of the expressions used in a statute. The Courts must look to the object, which the statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary."

23. In *Jugal Kishore Saraf v. M/s Raw Cotton Co. Ltd.*, AIR 1955 SC 376, Justice S.R. Das stated:

"The cardinal rule of construction of statutes is to read the statute literally that is, by giving to the words used by legislature their ordinary natural and

grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation."

20. Section 24(2) is a beneficial legislation which has been engrafted in the Act to benefit the land owner whose land has been acquired and award has been passed more than five years back and the possession was not taken or compensation was not paid. The fact that Legislature thought that period of five years is quite enough for the acquiring body and taking physical possession and making payment of compensation and in the event either the possession has not been taken or compensation has not been paid, it is clear that the acquiring body is either not interested in acquisition or negligent in its statutory duties.

21. It is relevant to note that Section 24(2) refers

to award under Section 11 of the 1894 Act and taking of physical possession or payment of compensation is both consequent to the award. Purpose and object of Section 24(2) of the 2014 Act came up for consideration before the Division Bench of the Allahabad High Court of which one of us (Justice Ashok Bhushan) was a member. The Division Bench made the following observations:

"In the present case, what is the object and purpose of legal fiction provided for by the legislature under Section 24(2) of the Act, 2013 is to be considered. Sub-section (2) of Section 24 of the Act, 2013 is applicable only where an award under Section 11 has been made five years or more prior to the commencement of this Act. The Act, 2013 commences from 01/1/2014. Thus, sub-section (2) of Section 24 of the Act, 2013 shall apply only when the award was made on or before 01/1/2009. The deeming fiction was created with the object that in those acquisitions where even after the award which has been delivered five years ago, neither the possession has been taken nor the compensation has been paid the acquisition be deemed to have

lapsed. The legal fiction created under sub-section (2) of Section 24 of the Act, 2013 is a beneficial legislation which has been intended to extend the benefit to the land owners who have not been intended to extend the benefit to the land owners who have not been paid the compensation even after five years of passing of the award or from whom the possession has not been taken even after five years of expiry of the award. The object is clear that if the possession is not taken even after five years of the expiry of the award there is every presumption that the land is not required for the purpose for which it was acquired. We are thus of the view that sub-section (2) of Section of the Act, 2013 shall become applicable creating a deeming fiction when the award is made on 01/01/2009 or five years before and neither the physical possession of the land has been taken nor the compensation has not been paid to the land owners. At this juncture, we may also note that sub-section (2) of Section 24 of the Act, 2013 uses the words "possession of the land has not been taken." Use of the words "possession of the land has not been taken" which is present perfect continuous tense is for a purpose and object, which indicates that the position which became sometimes past is still continuing thus the non-taking of physical possession as well as the non-payment of

compensation has to be continuing on the date when the Act, 2013 was enforced i.e., on 01/1/2014."

22. Entitlement of compensation of land owner arises only after award is given under Section 11. Compensation which was referred to under Section 24 (2) is clearly compensation which is to be paid to the land owners consequent to the award. The period of five years was thought sufficient period during which compensation under award should be paid failing which the entire acquisition proceeding is deemed to have lapsed. The payment of compensation thus is clearly linked with award under Section 11. The word 'compensation' used in Section 24(2) does not embrace in itself any compensation which is subsequently awarded on a reference under Section 18. Award by the reference court under Section 18 is different award and payment of enhanced compensation under Section 18 is not contemplated under Section 24(2). Reason for putting the above interpretation to compensation used

in Section 24(2) is also clearly indicated from other provisions of the Act. Section 11 is in Part II of the 1894 Act whereas Part III of the Act begins with Section 18 which provides for reference to court. Reference to court under Section 18 can be made by any person interested who has not accepted the award and objects to the amount of compensation. After reference application is made under Section 18, Collector has to send a statement under Section 19. Section 23 contains the matters to be considered in determining compensation by the court and Section 26 refers to the form of award which has to be given by the court. Section 26 is quoted below:

*"26. **Form of awards.**- (1) Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section (1) of Section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.*

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2) and section 2, clause (9), respectively, of the Code of Civil Procedure, 1908 (5 of 1908)."

Thus award which is made by court on a reference under Section 18 is a different award under Chapter III and cannot be said to be included in word 'compensation' used in Section 24(2).

23. Section 31 of the 1894 Act reinforces our view. Section 31 deals with the payment of compensation. On making an award under Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested and entitled and in case the person interested does not receive it, the Collector shall deposit the amount of compensation in the court where the reference under Section 18 has been made. Section 31(1) and (2) are quoted as follows:

"31. Payment of compensation or deposit of same in Court.- (1) On making an award

under Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under Section 18 would be submitted.

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount.

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto:"

24. Thus Section 31 contains a statutory provision for making payment by the Collector

consequent to award under Section 11. From the above it is clear that payment of compensation under Section 18 was never contemplated under Section 24(2) of the 2013 Act. There is one more reason for accepting the above interpretation. When a reference is made to court by a person for enhancement of compensation it is uncertain as to during which period the court shall determine the case and make an award. As noted above a period of five years or more has been contemplated sufficient period for the State to pay compensation awarded under Section 11 and also to take possession and in the event, the State lapse in the above duty it has to pay price for its lapse, which is the lapse of the entire acquisition whereas after a reference under Section 18, giving the award under Section 26 is in the hand of civil court which may or may not give the award in a reasonable time. Further the award given under Section 26 can be challenged in the High Court and

Supreme Court which may take own time in finalising the compensation. In the event it is to be held that the word 'compensation' used in Section 24(2) of the 2013 Act embraces in itself the compensation determined under Section 18 or the compensation determined by the High Court and Supreme Court then the acquisition may lapse in the event of any of above determination has not been taken place, which shall be penalising the State for no lapse on its part, which can never be the intention of the Legislature. Thus Section 24(2) contemplated the compensation as determined under Section 11 and no more.

25. Section 24(2) of the 2013 Act came up for consideration before the Apex Court in a large number of cases. For the purpose of the present case it is useful to note a few of them.

26. In **Pune Municipal Corpn. Harakchand Misirimal Solanki** ([2014] 3 SCC 183) question raised

was that compensation has not been paid although award was delivered 5 years and more, hence the acquisition shall stand lapsed under Section 24(2) of the 2013 Act. The Apex Court noted two contingencies which need to be satisfied for applicability of Section 24 (2) in paragraph 11. The Apex Court also noticed Section 31 of the 1894 Act which enjoins upon the Collector on making award to tender payment of compensation. The following was laid down in paragraphs 11, 14 and 17:

11. S.24(2) also begins with non - obstante clause. This provision has overriding effect over S.24 (1). S.24(2) enacts that in relation to the land acquisition proceedings initiated under 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied, viz; (i) physical possession of the land has not been taken or (ii) the compensation has not been paid, such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the appropriate government still chooses to acquire

the land which was the subject - matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the 2013 Act. The proviso appended to S.24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act 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 the beneficiaries specified in S.4 notification become entitled to compensation under 2013 Act.

14. S.31(1) of the 1894 Act enjoins upon the Collector, on making an award under S.11, to tender payment of compensation to persons interested entitled thereto according to award. It further mandates the Collector to make payment of compensation to them unless prevented by one of the contingencies contemplated in sub-section (2). The contingencies contemplated in S.31(2) are: (i) the persons interested entitled to compensation do not consent to receive it (ii) there is no person competent to alienate the land and (iii) there is dispute as to the title to receive compensation or as to the apportionment of it. If due to any of the contingencies contemplated in S.31(2), the Collector is prevented from making payment of compensation to the persons interested who are entitled to compensation, then the Collector is required to

deposit the compensation in the Court to which reference under S.18 may be made.

17. While enacting S.24(2), Parliament definitely had in its view S.31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word "paid" to "offered" or "tendered". But at the same time, we do not think that by use of the word "paid", Parliament intended receipt of compensation by the landowners / persons interested. In our view, it is not appropriate to give a literal construction to the expression "paid" used in this sub-section (sub-section (2) of S.24). If a literal construction were to be given, then it would amount to ignoring procedure, mode and manner of deposit provided in S.31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view, therefore, that for the purposes of S.24(2), the compensation shall be regarded as "paid" if the compensation has been offered to the person interested and such compensation has been deposited in the Court where reference under S.18 can be made on happening of any of the contingencies contemplated under S.31(2) of the 1894 Act. In other words, the compensation may be said to have been "paid" within the meaning of S.24

(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in Court and made that amount available to the interested person to be dealt with as provided in S.32 and S.33.”

In the aforesaid case amount was not deposited in the court (reference court) rather the amount was deposited in the Government Treasury and the court held that amount shall not be treated to be paid. In the above circumstances the court held that acquisition proceedings deemed to have elapsed. The Apex Court while considering Section 24(2) in **Bharath Kumar v. State of Haryana** ([2014] 6 SCC 586) held that the said provision is a beneficial provision. In the above case award under Section 24(2) was referred to be an award by the Land Acquisition Collector under Section 11 which is clear from paragraphs 6 and 7.

27. The judgment of the Apex Court in **Union of India v. Shiv Raj** ([2014] 6 SCC 564) had also considered Section 24(2). The Apex Court in the above

case has noted the Circular of the Ministry of Urban Development clarifying certain issues. In the clarification also it was mentioned that provision of Section 24(2) has been passed with the object to benefit the land owners. It is useful to quote paragraph 25 of the judgment which is to the following effect:

"25. In order to clarify the statutory provisions of the Act 2013 with respect to such lapsing, the Government of India, Ministry of Urban Development, Delhi Division, came up with a circular dated 14.3.2014 wherein on the basis of the legal opinion of the Solicitor General of India, it has been clarified as under:

"3. Interpretation of five years period:

"With regard to this issue viz., interpretation of five years period two situations have been envisaged in cases where the acquisition has been initiated under the Land Acquisition Act, 1894 viz., (1) parties whose lands have been acquired have refused to accept the compensation and (2) parties whose lands have been acquired having just parted with physical possession of the land. However, in both the above

situations, as on 1.1.2014, the period of 5 years would not have ended and in such cases, the advisory seeks to clarify that the new law shall apply only if the situation of pendency continues unchanged for a period that equals to or exceeds five years. In my view, it should be further clarified that in none of the cases the period of five years would have elapsed pursuant to an award made under S.11 from the date of commencement of the Act and that the benefit of S.24(2) will be available to those cases which are pending and where during pendency, the situation has remained unchanged with physical possession not being handed over or compensation not having been accepted and the period equals to or exceeds five years.

4. Limitation:

As regards this item relating to the period spent during litigation would also be accounted for the purpose of determining whether the period of five years has to be counted or not, it should be clarified that it will apply only to cases where awards were passed under S.11 of the Land Acquisition Act, 1894, 5 years or more prior to 1.1.2014 as specified in S.24(2) of the Act, to avoid any ambiguity. Since this legislation has been passed with the objective of

benefiting the land - losers, this interpretation is consistent with that objective and also added as a matter of abundant caution that the period spent in litigation challenging an award cannot be excluded for the purpose of determining whether the period of five years has elapsed or not. If the possession has not been taken or compensation has not been paid due to the challenge to the land acquisition proceedings, the pendente lite period will be included to determine the five year period and including such period if the award was made five years or more prior to the commencement of the Act, then the said acquisition proceedings will be deemed to have elapsed and fresh proceedings, if so desired, will have to be initiated in accordance with the new Act."

28. Learned counsel for the petitioner has referred to the judgment of the Apex Court decided on 10.12.2014 in I.A. No.4 of 2014 in Civil Appeal No.8785 of 2013 (**Rajiv Chowdhrie Huf v. Union of India**) where neither possession was taken nor compensation was paid hence the acquisition was held to be lapsed. To the similar effect is another judgment of the Apex Court in Civil Appeal No.10954 of 2010 (**Velaxan**

Kumar v. Union of India & Ors.) decided on 11.12.2014 wherein also the same proposition is reiterated.

29. In view of the law laid down by the Apex Court as noted above, it is clear that on fulfillment of the conditions as noted in Section 24(2) of the 2013 Act, proceedings shall be deemed to be lapsed. But as noted above in the present case even the petitioner does not dispute that compensation as awarded under award Nos.6 and 7 of 1989 by the Special Land Acquisition Officer on 16.05.1989 was received by the petitioners. Petitioners has raised the issue of non-payment of compensation in full consequent to enhancement of compensation by the reference court/High Court/Supreme Court.

30. In view of the foregoing decision, we are of the view that “compensation” referred to under Section 24(2) is the compensation which is awarded under

Section 11 of the 1894 Act. Thus the submission raised by the learned counsel for the petitioner for applicability of Section 24(2) of the 2013 Act in facts of the present case has no substance.

In the result, the Writ Appeal is dismissed.

**ASHOK BHUSHAN,
CHIEF JUSTICE.**

**A.M. SHAFFIQUE,
JUDGE.**

VSV