

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. Civil Writ Petition No.6652 of 2014 (O&M)
RESERVED ON: 01.05.2015
DATE OF DECISION: 29.05.2015

Sunita Sahrawat and othersPetitioners
versus

State of Haryana and othersRespondents

2. Civil Writ Petition No.2126 of 2015 (O&M)

Shakuntla Yadav, etc.Petitioners
versus

State of Haryana and othersRespondents

3. Civil Writ Petition No.21500 of 2014 (O&M)

Kanshi RamPetitioner
versus

State of Haryana, etc.Respondents

CORAM:- HON'BLE MR. S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Puneet Bali, Senior Advocate with
Mr. Hittan Nehra, Mr. Parveen Jain,
Ms. Neha Sonawane and Ms. Monika Thakur,
Advocates for the petitioners in CWP
No.6652 of 2014

Mr. Aashish Chopra, Advocate the petitioners
in CWP No.2126 of 2105

Mr. R.S. Rai, Senior Advocate with
Mr. Gaurav Mohunta and Ms. Ankur Berry,
Advocates for the petitioner in CWP-21500-2014

Mr. Amar Vivek, Additional Advocate General,
Haryana and Ms. Palika Monga, Deputy Advocate
General, Haryana

Mr. Ajay Nara, Advocate for HUDA

S.J. VAZIFDAR, ACTING CHIEF JUSTICE:

Some of the issues that fall for consideration in these writ petitions are common. The writ petitions are, therefore, disposed of by this common order and judgment.

2. There are, we are informed, over a thousand similar petitions. We, however, decided to hear only three of them leaving it to the parties to obtain orders in the other petitions in accordance with the directions issued in this judgment. It was agreed before us that a finding on facts as to whether the proceedings have lapsed or not in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereafter called "the RFCT Act") ought not to be given in these writ petitions, but that, based on our finding on the various contentions, the authorities would decide each case on its own merits. To enable the authorities to do so the Government has set up High Level Committees by issuing a notification which we will refer to at the end. We have, therefore, decided the above petitions where the issues decided in this judgment arise. The parties may obtain appropriate orders from the other Benches as per the roster in accordance with this judgment.

3. The main question in these petitions is whether the proceedings for the acquisition of land under the Land Acquisition Act, 1894 (hereafter referred to as "the L.A. Act") have lapsed in view of the provisions of Section 24(2) of the RFCT Act. The effect of an amendment by the addition of a second proviso to Section 24(2) also arises for consideration.

The respondents contended that the petitions are liable to be dismissed as the petitioners have not sought a declaration that the proceedings under the L.A. Act have lapsed in view of the provisions of Section 24(2) of the RFCT Act. The respondents also contended that some of the petitioners had challenged the acquisition proceedings under the L.A. Act unsuccessfully right up to the Supreme Court. According to them, such petitioners are, therefore, not entitled to seek any reliefs in view of or in accordance with the provisions of Section 24(2) of the RFCT Act. We have not accepted either of these contentions.

The scope and interpretation of Section 24(2) itself falls for consideration in several respects. The first is whether the two contingencies mentioned therein operate independently or jointly. It is also necessary to consider as to when it can be said that physical possession of the land has not been taken. It is further necessary to consider as to when the compensation can be said not to have been paid. The respondents also

contended that the period of five years mentioned in Section 24(2) of the RFCT Act must exclude the period during which the respondents were restrained by an order of a Court or Tribunal from taking any steps in furtherance of the acquisition proceedings. Lastly, the effect of the second proviso introduced by clause-6 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014, falls for consideration. These issues regarding the scope and interpretation of Section 24(2) of the RFCT Act have been answered by the judgments of the Supreme Court in favour of the petitioners.

FACTS.

4. In all the writ petitions, the petitioners have sought similar reliefs. The petitioners have sought a writ of mandamus directing the respondents not to act upon the notifications issued under Sections 4 and 6 of the L.A. Act in respect of their lands and an order restraining the respondents from interfering with their peaceful possession thereof. The reliefs are sought on the basis that the acquisition proceedings have lapsed in view of Section 24(2) of the RFCT Act. In CWP No.2126 of 2015, the petitioners have, in the alternative, also sought a writ of certiorari quashing the notifications.

5. For the purpose of this judgment, it is sufficient to refer to the facts in CWP No.6652 of 2014 and CWP No.2126 of 2015 only briefly.

6(A) In CWP No.6652 of 2014, the petitioners bought the land admeasuring about 8167.50 square yards on 20/21st April, 2014 with a view to putting up a hotel thereon. The petitioners were in the process of applying for a change of land user in respect of the said land.

On 20th June, 2005, a notification under Section 4 was issued under the L.A. Act stating that various parcels of land including the petitioners' land were required for a public purpose, namely, for the development and utilization thereof for residential, commercial and institutional sectors in Gurgaon. On 19.07.2005, the petitioners filed their objections under Section 5-A of the L.A. Act which were not accepted. A notification under Section 6 of the L.A. Act was issued on 19.06.2006. In view thereof, the petitioners' application for the change in land user (CLU) was disposed of by a letter dated 01.05.2006 of the Director, Town & Country Planning, stating that the same could be allowed in the event of the land being released from acquisition. The petitioners filed an application dated 13.07.2006 for release of the land from acquisition. They contended that the adjoining land had been ordered to be released on 23.05.2006. The petitioners also relied upon the fact that various other lands mentioned in the said notification had been released. The application was obviously not granted as on 22.07.2007, an award was made.

The petitioners, however, contend that they have not received the compensation thereunder and that they continue to remain in possession.

(B) (i) The petitioners filed CWP No.2067 of 2007, which was dismissed by an order and judgment of the Division Bench of this Court dated 27.03.2012. The Division Bench noted that the notifications had also been challenged in CWP No.2779 of 2007 which was dismissed and an SLP against that order was dismissed on 01.10.2010.

(ii) The petitioners' Review Petition No.545 of 2012 was also dismissed by this Court on 26.04.2013. The petitioners then filed SLP (Civil) No.14798 of 2013, which was dismissed by an order of the Supreme Court dated 26.08.2013. The Supreme Court, however, granted the petitioners liberty to take recourse to any other remedy available to them in law.

7. The RFCT Act came into force on 01.01.2014. It is on the basis of the provisions of this Act that the petitioners seek the reliefs in the present writ petition which was filed on 03.04.2014.

8. In CWP No.2126 of 2015, the two petitioners claim to have acquired the ownership of a 18/36th share of land and a 3/36th share in the land, which is the subject matter of the writ petition. A notification dated 27.01.2003 was issued under Section 4 of the L.A.

Act for the purpose of development and utilization of the area in the residential and commercial sectors at Rewari in the State of Haryana. On 25th February, 2003, the petitioners filed their objections which were not accepted. On 23.01.2004, a notification was issued under Section 6 of the L.A. Act in respect of various lands including the petitioners' land. On 20.01.2006, an award was made. The petitioners filed a representation seeking the release of their land from acquisition which has not been decided to date. As we mentioned earlier, the RFCT Act came into force on 01.01.2014. On 05.02.2015, the petitioners filed the present petition seeking reliefs based on the provisions of this Act.

9. The petitioners in all the writ petitions contend that despite the proceedings having been initiated under the L.A. Act, the possession of the lands has not been taken. They claim to have remained in possession throughout. They further claim that compensation even as per the award has not been paid.

STATUTORY PROVISIONS.

10(A) Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, reads 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, 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 landholdings 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."

(B) On 31.12.2014, the President of India promulgated the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014. Clause-6 thereof which amended sub-section (2) of Section 24 of the RFCT Act reads as under:-

"6. In the principal Act, in section 24, in sub-section (2), after the proviso, the following proviso shall be inserted, namely:-

"Provided further that in computing the period referred to in this sub-section any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a Tribunal for taking possession or such period where possession

has been taken but the compensation lying deposited in a court or in any account maintained for this purpose shall be excluded."

11. As we mentioned earlier, the petitioners contend that in view of the provisions of Section 24(2) of the RFCT Act, the acquisition proceedings initiated under the L.A. Act have lapsed. They further contend that the amendment does not affect their right in any manner whatsoever. It will be necessary, therefore, first to see the effect of the Act and then to see the effect of the ordinance upon the rights, if any, acquired under the RFCT Act.

EFFECT OF THE PETITIONERS NOT SEEKING A DECLARATION THAT THE PROCEEDINGS UNDER THE L.A. ACT HAVE LAPSED.

12. The respondents firstly contended that the petitioners had not sought a declaration that the proceedings under the L.A. Act have lapsed and that the writ petitions are liable, therefore, to be dismissed.

13. Even if we had accepted this submission, which we have not, we would have permitted the petitioners to amend the writ petition by seeking such a declaration. The infirmity, if any, would have been rectified by as simple an expedient as that. An infirmity, however, it is not. The petitioners have sought a writ directing the respondents not to act upon the notifications under Sections 4 and 6 of the L.A. Act as the same had lapsed in view of Section 24(2) of the RFCT Act. The prayer is sufficient, therefore, to seek the relief claimed

without a separate prayer seeking a declaration that the proceedings have lapsed. A direction having been sought on the basis that the proceedings have lapsed is sufficient even if the petitioners have merely sought an order quashing the notifications and proceedings under the L.A. Act without anything more. The relief cannot be refused merely because a declaration that the proceedings have lapsed in view of the RFCT Act has not been sought. The reliefs can be granted only upon the Court coming to the conclusion that the proceedings have lapsed.

14. Moreover, under sub-section (2) of Section 24 of the RFCT Act the proceedings shall be deemed to have lapsed in the circumstances stipulated therein. It is sufficient for the petitioners, therefore, to establish that the circumstances stipulated in Section 24(2) of the RFCT Act exist. Upon their doing so, they are entitled to the benefits of the deeming provision. It is sufficient then for them to merely seek the reliefs consequent upon the lapsing of the proceedings under the L.A. Act.

15. Mr. Bali relied upon judgments of the Supreme Court in *Yusufbhai Noormohmed Nendoliya vs. State of Gujarat and another*, (1991) 4 Supreme Court Cases 531 and in *State of U.P. and others vs. Rajiv Gupta and another*, (1994) 5 Supreme Court Cases 686 and upon a judgment of a Division Bench of the Bombay High Court in

Mrs. Margarida Gomes Pereira vs. State of Goa and others, AIR 1998 Bombay 327. These judgments, however, do not deal specifically with this issue. The issue as to the requirement of a declaration was neither raised nor decided in these judgments.

16. Mr. Amar Vivek, learned Additional Advocate General appearing on behalf of the State of Haryana contended that it was necessary for the petitioners to seek such a declaration as it would enable the Government to ascertain the state of the land, namely, whether possession was with the landlord or with the acquiring body or whether anything else has been done by the Government or the acquiring body in respect thereof.

17. We do not see how this aspect reflects upon the maintainability of the writ petition which does not seek a declaration that the proceedings under the L.A. Act have lapsed in view of the provisions of the RFCT Act. These questions would have to be decided as issues of fact necessary to determine whether the proceedings have lapsed in view of Section 24(2) of the RFCT Act. They are not relevant while considering the law or pleadings.

18. The contention that the writ petitions are liable to be dismissed on account of the petitioners not having sought a declaration that the proceedings under the L.A. Act have lapsed is, therefore, rejected. We

reiterate that even assuming that this was a technical defect, it could have been rectified by the simple expedient of an amendment by introducing a prayer for such a declaration. The facts in support of the prayer have, in any event, been pleaded.

EFFECT OF THE EARLIER WRIT PETITIONS HAVING BEEN DISMISSED.

19. It was then contended on behalf of the respondents that the challenge to the acquisition proceedings having failed in the earlier rounds of litigation, the present petitions are not maintainable.

20. As we mentioned earlier, in CWP No.6652 of 2014, the acquisition proceedings under the L.A. Act had been challenged unsuccessfully up to the Supreme Court. The Supreme Court, however, in the order dated 26.08.2013 while dismissing the SLP granted the petitioners liberty to take recourse to any other remedy available to them in law.

21. Even if the petitioners had not been granted liberty, it would have made no difference. In the earlier writ petitions, the petitioners/their predecessors-in-title had challenged the acquisition proceedings under the L.A. Act on the basis of the provisions of that Act. This is obvious as the RFCT Act came into force only thereafter on 01.01.2014. There could, therefore, be no question of the petitioners having invoked or relied upon the provisions of the RFCT

Act in the earlier proceedings. If the circumstances prescribed in Section 24(2) of the RFCT Act exist, a party is entitled to the benefit of the consequence stipulated therein, namely, lapsing of the acquisition proceedings initiated under the L.A. Act. A party having adopted proceedings to challenge the acquisition or not would make no difference. The section does not differentiate between a party who may have adopted proceedings to challenge the acquisition proceedings under the L.A. Act on the one hand and those who had not adopted such proceedings on the other. We see no reason to differentiate between such parties especially in the absence of such a provision in the Act. If the legislature had intended differentiating between parties on that basis, it would have provided so clearly, if not expressly. Our attention has not been invited to any provision which would require such a distinction being made by necessary intendment or even impliedly.

22. Mr. Bali's reliance upon the judgment of the Supreme Court in *Laxman Pandya and others vs. State of Uttar Pradesh and others*, (2011) 14 Supreme Court Cases 94 is well founded. The judgment virtually concludes the matter in his favour and militates against the respondents' submission. The Supreme Court held:

"19. We are also of the view that dismissal of CMWP No. 1769 of 1982 and CMWP No. 14885 of 1982 should not have affected adjudication of the writ petitions filed in 2000 because the two sets of writ petitions were based on different causes. In the first

batch of writ petitions, the appellants had questioned the notification issued under Section 4(1) read with Section 17 and the declaration issued under Section 6(1) read with Section 17. In those petitions, they neither had the opportunity nor could they claim that the acquisition will be deemed to have lapsed due to non-compliance with Section 11-A because by the time the writ petitions were filed, Section 11-A had not even been enacted. Thus, dismissal of the writ petitions filed in 1982 for default or otherwise did not operate as a bar to the filing of fresh writ petitions in 2000 for grant of a declaration that the acquisition proceedings will be deemed to have lapsed due to non-passing of an award within the period prescribed under Section 11-A. Once the writ petitions filed in 1982 were dismissed, the stay order passed by the High Court stood automatically vacated and there was no impediment in the passing of award, which the competent authority failed to do for more than ten years in the first case and more than three years in the second case. The possession of the acquired land also continued with the appellants till May 2000 when attempts were made to dispossess them. Therefore, the conclusion recorded by the High Court that the land stood vested in the State is clearly erroneous."

23. The situation is almost identical to the case before us. In fact, in the above petitions, the right arises from an altogether new and different Act and in an independent provision. In the case before the Supreme Court, the parties were held to be entitled to the benefit of the provisions of Section 11-A as it had been enacted after the parties had challenged the acquisition proceedings on a different basis in the earlier proceedings. Similarly, in the case before us, Section 24(2) of the RFCT Act was enacted after the petitioners' had filed the writ petition to challenge the acquisition proceedings under the L.A. Act. The dismissal of the petitioners' writ petition challenging the acquisition proceedings under the L.A. Act does not bar the

maintainability of the present writ petitions the reliefs in which are founded upon a subsequent enactment, namely, the RFCT Act and in particular Section 24(2) thereof.

24. The challenge in the earlier writ petitions to the acquisition proceedings themselves under the L.A. Act was founded upon a challenge to the validity of those proceedings on various grounds. It was necessary for the petitioners in those proceedings to establish an infirmity in the acquisition proceedings themselves. The present writ petitions are on an entirely different basis. They do not merely challenge the proceedings on the basis of any infirmity in the acquisition proceedings under the L.A. Act. The present petitions go much further and are founded on an entirely different basis and cause of action. They are founded upon the existence of the circumstances stipulated in sub-section (2) of Section 24 of the RFCT Act, namely, the physical possession of the land not having been taken or the compensation not having been paid. The right conferred by Section 24(2) of the RFCT Act is not based on any infirmity in the acquisition proceedings under the L.A. Act. It arises on account of a statutory provision viz. Section 24(2) of the RFCT Act and is based upon the existence of the two contingencies stipulated therein.

25. The contention that the present writ petitions are not maintainable in view of dismissal of the earlier

writ petitions in respect of the same acquisition proceedings is, therefore, rejected.

26. Mr. Bali's reliance upon the judgment of the Supreme Court in *Surjit Kaur vs. State of Haryana, Civil Appeal (S) No.8104 of 2014 dated 22.08.2014* is well founded, as an almost identical situation had arisen in that case. The petitioners' writ petition challenging the acquisition proceedings under the L.A. Act had been dismissed. The Supreme Court upheld the order of dismissal. The Supreme Court, however, noted the contention on behalf of the petitioner/appellant based on Section 24 of the RFCT Act. The factual position was denied by the respondents. The Supreme Court observed that the High Court did not have any occasion to examine whether the proceedings already initiated had lapsed on account of the provisions of Section 24(2) of the RFCT Act as that Act came into force only subsequently, whereas, the judgment impugned before the Supreme Court was delivered earlier on 15.05.2006. The Supreme Court held as under:-

"..... . Be that as it may, the new act having come into force during the pendency of these proceedings, we see no reason why the effect of Section 24 cannot be examined by the High Court. That is because certain factual aspects may also have to be examined especially regarding the alleged non-payment of compensation and non-taking over of possession from the appellants. We are therefore of the view instead of this Court examining the issues itself it would be better if the matter is remitted back to the High Court to examine the said aspect and to pass an appropriate order in accordance with law.

In the result, we affirm the order passed by the High Court holding that the acquisition proceedings under the Land Acquisition Act, 1894 have been properly concluded but remit the matter back to the High Court to examine the limited question whether the said proceedings have lapsed on account of the provisions of Section 24 of the new land acquisition Act. The parties are free to file additional affidavits and documents before the High Court to enable the High Court to undertake that exercise. We further direct that status quo as it exists today in regard to the disputed property shall be maintained by the parties, pending disposal of the matter by the High Court.

The appeals are disposed of accordingly.
No costs."

The judgment is a complete answer to the respondents' contention that the dismissal of the earlier writ petitions bars the maintainability of the present writ petitions. Had it been otherwise the Supreme Court would never have remitted the matter to the High Court to examine the case under Section 24(2) of the RFCT Act.

27. We have deliberately not referred to the judgment of a Full Bench of this Court and of a Division Bench of this Court, as the Full Bench judgment itself and not merely the order has been stayed by an order of the Supreme Court dated 14.05.2015 in Civil Appeal No.10812 D of 2015. This question, however, is, in any event, answered in favour of the petitioners in view of the aforesaid judgments of the Supreme Court in *Laxman Pandya and others vs. State of Uttar Pradesh and others* (*supra*) and in *Surjit Kaur vs. State of Haryana* (*supra*).

ANALYSIS OF SECTION 24(2).

28. This leads to a consideration of sub-section (2) of Section 24 of the RFCT Act. Each of these

contingencies raises further questions, the answers to which would establish whether the contingencies mentioned in sub-section (2) of Section 24 of the RFCT Act exist.

ACQUISITION PROCEEDINGS LAPSE EVEN IF ONE OF THE CONTINGENCIES MENTIONED IN SECTION 24(2) EXISTS.

29. The first question is whether under Section 24(2) of the RFCT Act, acquisition proceedings lapse upon the existence of only both or either of the contingencies stipulated therein, namely, physical possession of the land not having been taken or the compensation not having been paid. The connected question in each case, therefore, is when can each of these contingencies be said to exist - when can physical possession be said to have been taken and when can compensation be said to have been paid. The further question is whether while computing the period of five years mentioned in Section 24(2) the period during which a stay of the acquisition proceedings operated is to be excluded.

30. It has now been conclusively held that the proceedings are deemed to have lapsed if either of the contingencies mentioned therein exists. In *Pune Municipal Corporation and another vs. Harakchand Misirimal Solanki and others*, (2014) 3 Supreme Court Cases 183, the Supreme Court held:-

"10. Insofar as sub-section (1) of Section 24 is concerned, it begins with non obstante

clause. By this, Parliament has given overriding effect to this provision over all other provisions of the 2013 Act. It is provided in clause (a) that where the land acquisition proceedings have been initiated under the 1894 Act but no award under Section 11 is made, then the provisions of the 2013 Act shall apply relating to the determination of compensation. Clause (b) of Section 24(1) makes provision that where land acquisition proceedings have been initiated under the 1894 Act and award has been made under Section 11, then such proceedings shall continue under the provisions of the 1894 Act as if that Act has not been repealed.

11. Section 24(2) also begins with non obstante clause. This provision has overriding effect over Section 24(1). Section 24(2) enacts that in relation to the land acquisition proceedings initiated under the 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 Section 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 landholdings has not been deposited in the account of the beneficiaries then all the beneficiaries specified in the Section 4 notification become entitled to compensation under the 2013 Act."

WHEN CAN IT BE SAID THAT COMPENSATION HAS NOT BEEN PAID?

31. The next question is when compensation can be said to have been paid or, correspondingly, when can it be said that, to use the words of Section 24(2) of the RFCT Act, "the compensation has not been paid". The respondents contend that payment having been made even to the Government treasury is sufficient. The petitioners, however, contend that the expression

compensation can be said to have been paid only if it has been paid to the land-owners/persons interested or has been deposited in the Court. The petitioners contend that the deposit of compensation in the Government treasury is of no avail and cannot be held to have been paid as contemplated in sub-section (2) of Section 24 of the RFCT Act.

32. In *Pune Municipal Corporation and another vs. Harakchand Misirimal Solanki and others (supra)*, the Supreme Court held:-

"12. To find out the meaning of the expression, "compensation has not been paid", it is necessary to have a look at Section 31 of the 1894 Act. The said section, to the extent it is relevant, reads 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:"

13. There is amendment in Maharashtra-Nagpur (City) in Section 31 whereby in sub-section (1), after the words "compensation" and in sub-section (2), after the words, "the amount of compensation", the words "and costs if any" have been inserted.

14. Section 31(1) of the 1894 Act enjoins upon the Collector, on making an award under Section 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 Section 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 Section 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 Section 18 may be made.

15. Simply put, Section 31 of the 1894 Act makes provision for payment of compensation or deposit of the same in the court. This provision requires that the Collector should tender payment of compensation as awarded by him to the persons interested who are entitled to compensation. If due to happening of any contingency as contemplated in Section 31(2), the compensation has not been paid, the Collector should deposit the amount of compensation in the court to which reference can be made under Section 18.

16. The mandatory nature of the provision in Section 31(2) with regard to deposit of the compensation in the court is further fortified by the provisions contained in Sections 32, 33 and 34. As a matter of fact, Section 33 gives power to the court, on an application by a person interested or claiming an interest in such money, to pass an order to invest the amount so deposited in such Government or other approved securities and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider proper so that the parties interested therein may have the benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

17. While enacting Section 24(2), Parliament definitely had in its view Section 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 Section 24]. If a literal construction were to be given, then it would amount to ignoring the procedure, mode and manner of deposit provided in Section 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 Section 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 Section 18 can be made on happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act. In other words, the compensation may be said to have been "paid" within the meaning of Section 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 Sections 32 and 33.

18. The 1894 Act being an expropriatory legislation has to be strictly followed. The procedure, mode and manner for payment of compensation are prescribed in Part V (Sections 31-34) of the 1894 Act. The Collector, with regard to the payment of compensation, can only act in the manner so provided. It is settled proposition of law (classic statement of Lord Roche in *Nazir Ahmad* [*Nazir Ahmad v. King Emperor*, (1935-36) 63 IA 372 : (1936) 44 LW 583 : AIR 1936 PC 253 (2)]) that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

19. Now, this is admitted position that award was made on 31-1-2008. Notices were issued to the landowners to receive the compensation and since they did not receive the compensation, the amount (Rs 27 crores) was deposited in the Government treasury. Can it be said that deposit of the amount of compensation in the Government treasury is equivalent to the amount of compensation paid to the landowners/persons interested? We do not think so. In a comparatively recent decision, this Court in *Agnelo Santimano Fernandes* [*Ivo Agnelo Santimano Fernandes v. State of Goa*, (2011) 11 SCC 506 : (2011) 4 SCC (Civ) 268] , relying upon the earlier decision in *Prem Nath Kapur* [*Prem Nath Kapur v. National Fertilizers Corpn. of India Ltd.*, (1996) 2 SCC 71] , has held that the deposit of the amount of the compensation in the State's revenue account is of no avail and the liability of the State to pay interest subsists till the amount has not been deposited in court." (emphasis supplied)

33. This judgment has been followed by the Supreme Court including in *Union of India and others vs. Shiv Raj and others*, (2014) 6 Supreme Court Cases 564.

34. It will be necessary, therefore, in each case to ascertain whether the compensation has been paid to the land-owners/persons interested or deposited in a Court or not. If it has not been paid at all or even if it has been deposited only in the Government treasury and not in Court, it must be held that "the compensation has not been paid" within the meaning of that expression in Section 24(2) of the RFCT Act.

WHEN CAN IT BE SAID THAT PHYSICAL POSSESSION OF THE LAND HAS NOT BEEN TAKEN?

35. The next question is when can possession be said to have been taken. In other words, when can it be said that "physical possession of the land has not been taken" within the meaning of that expression in Section 24(2) of the RFCT Act. It was well settled even under the L.A. Act that the land sought to be acquired would vest absolutely in the Government free from all encumbrances only upon the actual possession thereof being taken. Symbolic possession is not sufficient. The further question is how actual possession is taken or deemed to have been taken.

36. In *Prahlad Singh and others vs. Union of India and others*, (2011) 5 SCC 386, the Supreme Court reviewing several cases held:-

"12. The learned counsel appearing for the State could not draw our attention to any material to show that actual and physical possession of the acquired land had been taken by the State authorities. He, however, argued that by virtue of Section 16 of the Act the acquired land will be deemed to have vested in the State Government because the Land Acquisition Collector has passed the award on 25-6-2004.

13. We have given our serious thought to the entire matter and carefully examined the records. Section 16 lays down that once the Collector has made an award under Section 11, he can take possession of the acquired land. Simultaneously, the section declares that upon taking possession by the Collector, the acquired land shall vest absolutely in the Government free from all encumbrances. In terms of the plain language of this section, vesting of the acquired land in the Government takes place as soon as possession is taken by the Collector after passing an award under Section 11. To put it differently, the vesting of land under Section 16 of the Act presupposes actual taking of possession and till that is done, legal presumption of vesting enshrined in Section 16 cannot be raised in favour of the acquiring authority. Since the Act does not prescribe the mode and manner of taking possession of the acquired land by the Collector, it will be useful to notice some of the judgments in which this issue has been considered.

14. In *Balwant Narayan Bhagde v. M.D. Bhagwat* [(1976) 1 SCC 700] Bhagwati, J. (as he then was), speaking for himself and Gupta, J. disagreed with Untwalia, J. who delivered a separate judgment and observed: (SCC pp. 711-12, para 28)

"28. ... We think it is enough to state that when the Government proceeds to take possession of the land acquired by it under the Land Acquisition Act, 1894, it must take actual possession of the land, since all interests in the land are sought to be acquired by it. There can be no question of taking 'symbolical' possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land. How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of

the land admits of. There can be no hard-and-fast rule laying down what act would be sufficient to constitute taking of possession of land. We should not, therefore, be taken as laying down an absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise would be sufficient to constitute taking of possession of land in every case. But here, in our opinion, since the land was lying fallow and there was no crop on it at the material time, the act of the Tahsildar in going on the spot and inspecting the land for the purpose of determining what part was waste and arable and should, therefore, be taken possession of and determining its extent, was sufficient to constitute taking of possession. It appears that the appellant was not present when this was done by the Tahsildar, but the presence of the owner or the occupant of the land is not necessary to effectuate the taking of possession. It is also not strictly necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken at a particular time, though it may be desirable where possible, to give such notice before possession is taken by the authorities, as that would eliminate the possibility of any fraudulent or collusive transaction of taking of mere paper possession, without the occupant or the owner ever coming to know of it."

(emphasis supplied)

15. In *Balmokand Khatri Educational and Industrial Trust v. State of Punjab* [(1996) 4 SCC 212] the Court negatived the argument that even after finalisation of the acquisition proceedings possession of the land continued with the appellant and observed: (SCC p. 215, para 4)

"4. It is seen that the entire gamut of the acquisition proceedings stood completed by 17-4-1976 by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land.

Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession."

16. In *P.K. Kalburqi v. State of Karnataka* [(2005) 12 SCC 489] the Court referred to the observations made by Bhagwati, J. in *Balwant Narayan Bhagde v. M.D. Bhagwat* [(1976) 1 SCC 700] that no hard-and-fast rule can be laid down as to what act would be sufficient to constitute taking of possession of the acquired land and observed that when there is no crop or structure on the land only symbolic possession could be taken.

17. In *NTPC Ltd. v. Mahesh Dutta* [(2009) 8 SCC 339 : (2009) 3 SCC (Civ) 375] the Court noted that the appellant NTPC paid 80% of the total compensation in terms of Section 17(3-A) and observed that it is difficult to comprehend that after depositing that much of amount it had obtained possession only on a small fraction of land.

18. In *Sita Ram Bhandar Society v. Govt. of NCT of Delhi* [(2009) 10 SCC 501 : (2009) 4 SCC (Civ) 268] and *Omprakash Verma v. State of A.P.* [(2010) 13 SCC 158 : (2010) 4 SCC (Civ) 823] it was held that when possession is to be taken of a large tract of land then it is permissible to take possession by a properly executed panchnama. Similar view was expressed in the recent judgment in *Brij Pal Bhargava v. State of U.P.* [(2011) 5 SCC 413 : (2011) 2 Scale 692]

19. The same issue was recently considered in *Banda Development Authority v. Moti Lal Agarwal* [(2011) 5 SCC 394] decided on 26-4-2011. After making reference to the judgments in *Balwant Narayan Bhagde v. M.D. Bhagwat* [(1976) 1 SCC 700], *Balmokand Khatri Educational and Industrial Trust v. State of Punjab* [(1996) 4 SCC 212], *P.K. Kalburqi v. State of Karnataka* [(2005) 12 SCC 489], *NTPC Ltd. v. Mahesh Dutta* [(2009) 8 SCC 339 : (2009) 3 SCC (Civ) 375], *Sita Ram Bhandar Society v. Govt. of NCT of Delhi* [(2009) 10 SCC 501 : (2009) 4 SCC (Civ) 268], *Omprakash Verma v. State of A.P.* [(2010) 13 SCC 158 : (2010) 4 SCC (Civ) 823] and *Nahar Singh v. State of U.P.* [(1996) 1 SCC 434] this Court laid down the following principles: (*Banda Development Authority* case [(2011) 5 SCC 394], SCC p. 411, para 37)

"(i) No hard-and-fast rule can be laid down as to what act would constitute taking of possession of the acquired land.

(ii) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchnama

will ordinarily be treated as sufficient to constitute taking of possession.

(iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

(iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

(v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the court may reasonably presume that possession of the acquired land has been taken."

20. If the present case is examined in the light of the facts which have been brought on record and the principles laid down in the judgment in *Banda Development Authority case* [(2011) 5 SCC 394] it is not possible to sustain the finding and conclusion recorded by the High Court that the acquired land had vested in the State Government because the actual and physical possession of the acquired land always remained with the appellants and no evidence has been produced by the respondents to show that possession was taken by preparing a panchnama in the presence of independent witnesses and their signatures were obtained on the panchnama."

37. In *Raghubir Singh Sehrawat vs. State of Haryana and others*, (2012) 1 SCC 792, the Supreme Court held:

"21. Since the appellant has been non-suited by the High Court only on the ground that possession of the acquired land had been taken by the officers concerned and the same will be deemed to have vested in the State Government free from all encumbrances, we think that it will be appropriate to first consider this facet of his challenge to the impugned orders. In the writ petition filed by him, the appellant categorically averred that physical possession of the acquired land was with him and he has been cultivating the same. This assertion finds support from the entries contained in girdawari/record of cultivation, Book No. 1, Village Jatheri, Tehsil and District Sonapat (years 2001 to 2010). A reading of these entries shows that during those years crops of wheat, paddy and chari were grown by the appellant and at the relevant time i.e. the date on which possession of the acquired land is said to have been taken and delivered to Hsiidc, paddy crop was standing on 5 kanals 2 marlas of land.

22. The respondents have not questioned the genuineness and correctness of the entries contained in the girdawaris. Therefore, there is no reason to disbelieve or discard the same. That apart, it is neither the pleaded case of the respondents nor any evidence has been produced before this Court to show that the appellant had unauthorisedly taken possession of the acquired land after 28-11-2008. It is also not the pleaded case of the respondents that the appellant had been given notice that possession of the acquired land would be taken on 28-11-2008 and he should remain present at the site. Therefore, rojnamcha vakyati prepared by Sadar Kanungo and three patwaris showing delivery of possession to Shri Yogesh Mohan Mehra, Senior Manager (IA), Hsiidc, Rai, which is a self-serving document, cannot be made the basis for recording a finding that possession of the acquired land had been taken by the Revenue Authorities concerned.

23. The respondents have not produced any other evidence to show that actual possession of the land, on which crop was standing, had been taken after giving notice to the appellant or that he was present at the site when possession of the acquired land was delivered to the Senior Manager of Hsiidc. Indeed, it is not even the case of the respondents that any independent witness was present at the time of taking possession of the acquired land.

24. The Land Acquisition Collector and his subordinates may claim credit of having acted swiftly inasmuch as immediately after the pronouncement of the award, possession of the acquired land of Village Jatheri is said to

have been taken from the landowners and handed over to the officer of Hsiidc but keeping in view the fact that crop was standing on the land, the exercise undertaken by the respondents showing delivery of possession cannot but be treated as farce and inconsequential. We have no doubt that if the High Court had summoned the relevant records and scrutinised the same, it would not have summarily dismissed the writ petition on the premise that possession of the acquired land had been taken and the same vested in the State Government.

... ..

29. In view of the above discussion, we hold that the record prepared by the Revenue Authorities showing delivery of possession of the acquired land to Hsiidc has no legal sanctity and the High Court committed serious error by dismissing the writ petition on the specious ground that possession of the acquired land had been taken and the same vested in the State Government in terms of Section 16."

38. The position to our mind that even under Section 24(2) actual physical possession is contemplated is fortified by the language of Section 24(2). As Mr. Chopra, learned counsel appearing on behalf of petitioners in CWP No.2126 of 2015 and Mr. Bali, learned counsel appearing on behalf of petitioners in CWP No.6652 of 2014 rightly submitted, the legislature must be deemed to be aware of the law laid down by the Supreme Court. Section 24(2) is a legislative recognition of the pronouncements of the Supreme Court as is evident from the expression "physical possession" therein. The expression "physical possession" in sub-section (2) makes it clear that mere formal possession is not sufficient. Actual physical possession is necessary to take the case out of the ambit of Section 24(2) of the RFCT Act. In other words, if "physical

possession" of land has not been taken, the land-owners/persons interested would be entitled to contend that the proceedings are deemed to have lapsed.

39. Having said that, it appears equally clear to us that there is no strait jacket formula for taking physical possession and accordingly for determining whether or not physical possession was taken. Whether actual physical possession has been taken or not would depend on the facts of each case. Whether actual physical possession has been taken or not cannot be evidenced only in a particular manner. Whether physical possession has been taken or not can be evidenced, proved and established in any manner permissible in law. It will be necessary to consider the entire evidence in each case to ascertain, as a matter of fact, whether physical possession has been taken or not. A single fact or some of the facts alone cannot determine the issue. A fact may be irrelevant in one case but may tilt the balance or even be determinative in another. We do not read the judgments to hold that the documentation and records such as a 'rapat roznama' are irrelevant. They may not by themselves be determinative but they may when added to other facts and circumstances be relevant. This would be so even with respect to other Revenue records such as 'rojnamcha vakyatis' and 'sat bara utaras'. However, physical possession it must be to take the case out of the ambit of Section 24(2) of the RFCT Act.

**COMPUTATION OF THE FIVE YEARS PERIOD IN SECTION 24(2) -
WHETHER PERIOD OF STAY OF PROCEEDINGS TO BE EXCLUDED?**

40. The respondents contended that while computing the period of five years under Section 24(2) of the RFCT Act, the period during which a stay has been in operation restraining the respondents from taking physical possession of the land must be excluded. Mr. Amar Vivek contended that it would be unfair in the extreme to visit the Government and the acquiring body with the drastic consequence of lapse of the acquisition proceedings under the L.A. Act for no fault of theirs. The Government/acquiring body would not be entitled to take possession during the operation of such a stay. Their doing so would be in contempt of the orders of the Court. They cannot be penalized for abiding by the orders of the Court. He also contended that such a view would cause not mere hardship but to third parties but would be grossly unfair to them. Mr. Bali, however, contended that questions of hardship are irrelevant in the interpretation of statutes.

41. This question, however, has been answered against the respondents by various judgments of the Supreme Court. It is not open to us, therefore, to consider the rival contentions on principle.

In Sree Balaji Nagar Residential Association vs. State of Tamil Nadu & Ors., 2014 SCC OnLine SC 700, a similar contention was raised on behalf of the State.

It was contended that proceedings could not be treated

or declared as lapsed because the State was prevented from taking physical possession of the land on account of the interim orders passed by the High Court and the Supreme Court. The Supreme Court noted that the writ petitions were filed even before the making of the award and interim orders had operated against the State and, therefore, the State was not at fault in not taking physical possession of the land under acquisition. Even in such circumstances, the Supreme Court held:-

"There is no dispute that writ petitions were filed even before the making of award and interim orders have operated against the State of Tamil Nadu and, therefore, the State was not at fault in not taking physical possession of the concerned lands under acquisition. But the intention of the legislature in enacting Section 24(2) of the 2013 Act will have to be culled out from its wordings and on the basis of other relevant provisions of this Act and the relevant case law for deciding whether the period of stay/injunction is required to be excluded in computing the five years' period or not.

From a plain reading of Section 24 of the 2013 Act it is clear that Section 24(2) of the 2013 Act does not exclude any period during which the land acquisition proceeding might have remained stayed on account of stay or injunction granted by any court. In the same Act, the proviso to Section 19(7) in the context of limitation for publication of declaration under Section 19(1) and the Explanation to Section 69(2) for working out the market value of the land in the context of delay between preliminary notification under Section 11 and the date of the award, specifically provide that the period or periods during which the acquisition proceedings were held up on account of any stay or injunction by the order of any court be excluded in computing the relevant period. In that view of the matter it can be safely concluded that the legislature has consciously omitted to extend the period of five years indicated in Section 24(2) even if the proceedings had been delayed on account of an order of stay or injunction granted by a court of law or for any reason. Such *casus omissus* cannot be supplied by the court in view of law on the subject elaborately discussed by

this Court in *Padma Sundara Rao v. State of T.N.* (2002) 3 SCC 533

Even in the Land Acquisition Act of 1894, the legislature had brought about amendment in Section 6 through an Amendment Act of 1984 to add Explanation 1 for the purpose of excluding the period when the proceeding suffered stay by an order of the court, in the context of limitation provided for publishing the declaration under Section 6(1) of the Act. To a similar effect was the Explanation to Section 11-A which was added by Amendment Act 68 of 1984. Clearly the legislature has, in its wisdom, made the period of five years under Section 24(2) of the 2013 Act absolute and unaffected by any delay in the proceedings on account of any order of stay by a court. The plain wordings used by the Legislature are clear and do not create any ambiguity or conflict. In such a situation, the court is not required to depart from the literal rule of interpretation.

It was faintly suggested by Mr Subramonium Prasad, learned AAG for the State of Tamil Nadu that the proviso may come to the rescue of the State and save the proceedings from suffering lapse if it is held that since there was an award leading to payment of compensation in respect of some of the landholdings only, therefore all the beneficiaries may now be entitled to compensation in accordance with the provisions of the 2013 Act. This contention could have been considered with some more seriousness if physical possession of the land had been taken but since that has not been done, the proviso dealing only with compensation cannot be of any help to the State. Therefore, we are not required to go deeper into the effect and implications of the proviso which prima facie appears to be for the benefit of all the landholders in a case where the award is subsisting because the proceedings have not lapsed and compensation in respect of majority of landholdings has not been deposited in the account of the beneficiaries. There is nothing in the language of the proviso to restrict the meaning of the words used in Section 24(2) mandating that the proceedings shall be deemed to have lapsed if the award is five years or more than five years old but the physical possession of the land has not been taken over or the compensation has not been paid. The law is trite that when the main enactment is clear and unambiguous, a proviso can have no effect so as to exclude from the main enactment by implication what clearly falls within its express terms, as held by the Privy Council in the case of *Madras and Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality* AIR 1944 PC 71 and by this Court

in the case of C.I.T. v. Indo Mercantile Bank Ltd. AIR 1959 SC 713.

The judgment of three Judges' Bench in the case of *Harakchand Misirimal* (supra) has been followed by another Bench of three Judges in the case of *Union of India v. Shivraj* (2014) 6 SCC 564. In paragraphs 25 and 26 of that judgment, this Court took notice of a clarification issued by the Government of India, Ministry of Urban Development, Delhi Division dated 14-3-2014. Part of the circular extracted in that case clearly shows that the period of five years or more in Section 24(2) of the 2013 Act has been prescribed with a view to benefit the land-losers and the period spent in litigation due to challenge to the award or the land acquisition proceedings cannot be excluded."

The judgment was followed by the Supreme Court in *Sita Ram vs. State of Haryana and Anr.*, 2014 SCC OnLine SC 936. It was held in para-20 therein as under:-

"20. Further, this Court in the case of *Sree Balaji Nagar Residential Association v. State of Tamil Nadu* 2014 (10 SCALE 388, held that Section 24(2) of the Act of 2013 does not exclude any period during which the land acquisition proceeding might have remained stayed on account of stay or injunction granted by any court. It was conclusively held that the legislature has consciously omitted to extend the period of five years indicated in Section 24(2) of the Act of 2013 for grant of relief in favour of landowners even if the proceedings had been delayed on account of an order of stay or injunction granted by a court of law or for any reason."

In *Rajiv Chowdhrie HUF v. Union of India and Ors.*, 2014 SCC OnLine SC 990, the Supreme Court followed the above decision on this issue.

42. In the circumstances, while calculating the period of five years stipulated in Section 24(2) of the RFCT Act, the period during which a stay was in operation cannot be excluded.

EFFECT OF THE SECOND PROVISO TO SECTION 24(2) ADDED BY THE ORDINANCE OF 2014.

43. This brings us to the amendment to Section 24(2). The second proviso was added to Section 24(2) by clause-6 of the Ordinance of 2014. The respondents contend that by virtue of this amendment the period during which the proceedings for acquisition were held up on account of any stay or injunction issued by any court is to be excluded while computing the period of five years referred to in sub-section (2) of Section 24 of the RFCT Act.

44. The Supreme Court in a judgment dated 12.01.2015 in *M/s Radiance Fincap (P) Ltd. & Ors. Vs. Union of India & Ors. (I.A. No.3 of 2014 in Civil Appeal No.4283 of 2011)* considered a case where the right under Section 24(2) had accrued on the date of filing of the application on which date the appellants had asserted that they had been in physical and actual possession of the land sought to be acquired and had also not been paid compensation in respect thereof. The Supreme Court rejected the contention that in view of the ordinance of 2014, the period of stay ought to be excluded.

The Supreme Court referred to an earlier judgment of the Supreme Court in *Shyam Sunder v. Ram Kumar, (2001) 8 SCC 24* where it was held that the law relating to limitation is procedural in nature; that a procedural statute should not generally speaking be

applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of the transactions already accomplished and that a statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise indicated. The Supreme Court held that the right conferred by Section 24(2) is a statutory right and cannot, therefore, be taken away by an ordinance by inserting the second proviso without giving it retrospective effect. The Supreme Court held:-

"The right conferred to the landholders/owners of the acquired land under Section 24(2) of the Act is the statutory right and, therefore, the said right cannot be taken away by an Ordinance by inserting proviso to the abovesaid sub-section without giving retrospective effect to the same. Taking into consideration the fact that we have allowed similar matters in C.A. No.4284/2011 titled M/s. Magnum Promoters P. Ltd. Vs. Union of India & Ors., vide order dated 27.11.2014 and in other appeals also by following the earlier decisions of this Court with regard to taking physical possession of the acquired land by the Land Acquisition Collector, which are extensively referred in the above judgment, promulgation of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 was made on 31.12.2014, which is prospective in nature and, therefore, it cannot be applied to their cases."

The Supreme Court followed this view in *M/s Magnum Promoters P. Ltd. vs. Union of India & Ors.*, I.A.3 of 2014 in Civil Appeal No.4284 of 2011, decided on 27.11.2014.

45. The Supreme Court by a judgment dated 22.01.2015 in *Karnail Kaur and Ors. vs. State of Punjab and Ors.*, I.A. No.8 of 2014 in Civil Appeal No.7424 of 2013, considered a case where compensation had been paid and the possession of the land sought to be acquired had not been taken over. The Supreme Court noted the 2014 Ordinance and held:-

"21.

The above said amendment has come into force w.e.f. 01.01.2015. With due regard to the same, we are of the view that the amendment would not be applicable to the case on hand for the reason that these appeals were pending much prior to the ordinance and also the applications under Section 24(2) of the Act of 2013 were filed prior to the amendment to Section 24(2) by Ordinance and the same were heard and reserved for orders on 28.10.2014 and therefore the Ordinance in so far as insertion of proviso to the above Section by way of an amendment is prospective. Further, keeping in mind the principles laid down by this Court in the case of *Garikapati Veeraya v. N. Subbiah Choudhry and Ors.*, AIR 1957 SC 540, wherein it was held thus:

"23...(iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal. (v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

25. In construing the articles of the Constitution we must bear in mind certain cardinal rules of construction. It has been said in *Hough v. Windus* [1884] 12 Q.B.D. 224, that "statutes should be interpreted, if possible, so as to respect vested right." The golden rule of construction is

that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so constructed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed [Leeds and County Bank Ltd. v. Walker (1883) 11 Q.B.D. 84; Moon v. Durden (1848) 2 Ex. 22; 76 R.R. 479. The following observation of Rankin C.J. in Sadar Ali v. Dalimuddin (supra) at page 520 is also apposite and helpful : "Unless the contrary can be shown the provision which takes away the jurisdiction is itself subject to the implied saving of the litigant's right." In Janardan Reddy v. The State [1950]1SCR940 Kania C.J. in delivering the judgment of the Court observed that our Constitution is generally speaking prospective in its operation and is not to have retroactive operation in the absence of any express provision to that effect. The same principle was reiterated in Keshavan Madhava Menon v. The State of Bombay 1951CriLJ680 and finally in Dajisaheb Mane and Others v. Shankar Rao Vithal Rao [1955]2SCR872 to which reference will be made in greater detail hereafter."

(emphasis laid by this Court)

Further in the case of Shyam Sunder v. Ram Kumar & Anr., (2001)8 SCC 24, the Constitution Bench of this Court held thus:

"26. In Hitendra Vishnu Tahkur & ors. vs. State of Maharashtra & ors. 1995CriLJ517 this Court laid down the ambit and scope of an amending act and its retrospective option as follows:

'(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such as construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) a procedural statute should not generally speaking be applied retrospective where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) a statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation unless otherwise provided, either expressly or by necessary implication.'

27. In K.S. Paripoornan vs. State of Kerala & others AIR1995SC1012, this Court while considering the effect of amendment in the Land Acquisition Act in pending proceedings held thus:

"... In the instant case we are concerned with the application of the provisions of sub-section 1(1-A) of S. 23 as introduced by the Amending Act of acquisition proceedings which were pending on the date of commencement of the Amending act. In relation pending proceedings, the approach of the courts in England is that the same are unaffected by the changers in the law so far as they relate to the determination of the substantive rights and in the absence of a clear indication of a contrary intention in an amending enactment, the substantive rights of the parties to an action fall to the determined by the law as it existed when the action was commenced and this is so whether the law is change before the hearing of the case at the first instance or while an appeal is pending (See Halsbury's Laws of England, 4th Edn., Vol. 44, para 922).'

28. From the aforesaid decisions the legal position that emerges is that when a repeal of an enactment is followed by a fresh legislation such legislation does not effect the substantive rights of the parties on the date of suit or adjudication of suit unless such a legislation is retrospective and a court of appeal cannot

take into consideration a new law brought into existence after the judgment appealed from has been rendered because the rights of the parties in an appeal are determined under the law in force on the date of suit. However, the position in law would be different in the matters which relate to procedural law but so far as substantive rights of parties are concerned they remain unaffected by the amendment in the enactment. We are, therefore, of the view that where a repeal of provisions of an enactment is followed by fresh legislation by an amending Act such legislation is prospective in operation and does not effect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment. We are further of the view that there is a presumption against the retrospective operation of a statute and further a statute is not to be construed to have a greater retrospective operation than its language renders necessary, but an amending act which affects the procedure is presumed to be retrospective, unless amending act provides otherwise."

(emphasis laid by this Court)

22. In view of the aforesaid findings and reasons recorded by us, the acquisition proceedings in respect of the appellants' land have lapsed.

The aforesaid applications are allowed in the above said terms and consequently, the appeals referred to above are also allowed by quashing the land acquisition proceedings notification in so far as the land of the appellants are concerned. No costs."

46. Thus, it was held in *M/s Radiance Fincap (P) Ltd. & Ors. Vs. Union of India & Ors. (supra)* that the statutory right under Section 24(2) of the RFCT Act cannot be taken away by an ordinance by inserting the second proviso without giving it retrospective effect. The amendment has been held to be prospective.

47. Mr. Amar Vivek strongly contended that the above judgments to the effect that the ordinance is

prospective are *per incuriam* for the reason that in those matters the validity of the ordinance had not been challenged.

48. We fail to understand how a judgment of the Supreme Court or for that matter of any Court which decides whether a statutory provision is prospective or retrospective merely can be said to be *per incuriam* because the validity of the statutory provision was not challenged. The answer to the question whether a provision of law is retrospective or prospective does not depend upon the validity of the provision being challenged. In any event, in *M/s Radiance Fincap (P) Ltd. & Ors. Vs. Union of India & Ors. (supra)*, the Supreme Court held that the statutory right under Section 24(2) cannot be taken away by an ordinance by adding a proviso thereto without giving it retrospective effect. The section has been construed to be prospective in nature by the Supreme Court.

ISSUES NOT DECIDED.

49. The parties sought to raise three other very important questions of law. These questions are not only of considerable complexity but are of enormous importance in the applicability of the Act. We, however, refrain from dealing with the same as they do not arise in the three petitions before us. It is sufficient only to note the issues briefly.

50. The first is the effect of third party rights having been created in the property over the years in cases where the compensation has not been paid or possession has not been taken. The second question is whether a proceeding can be said to have lapsed in view of Section 24(2) if possession of only a part of the property, however negligible or small a proportion it may bear to the whole, is not taken. The third question is whether for the purpose of determining whether compensation is paid or not under Section 24(2) the amount mentioned in the award or the enhancement granted in proceedings under Section 18 of the L.A. Act is relevant. In other words, whether the proceedings could be said to have lapsed under Section 24(2) in cases where the Court grants an enhancement under Section 18 although the amount mentioned in the award had been paid over to the persons interested or deposited in Court.

As we mentioned, these are matters not only of complexity but of enormous importance in the implementation of the Act. We, therefore, do not consider it appropriate to decide these issues which do not arise in these petitions.

NOTIFICATIONS CONSTITUTING HIGH LEVEL PANEL/ZONAL COMMITTEES TO DECIDE REPRESENTATIONS OF THE PETITIONERS.

51(A) As we mentioned earlier, the issues of fact, which arise in such cases including in the above writ petitions, are complex. While the question whether the

compensation was paid or not may not admit of complexity, the issue as to whether possession was taken in accordance with the aforesaid principles or not is a different matter altogether. The question regarding possession which arises in many cases, is bound to involve substantial consideration especially an analysis of the facts. We were informed that there are over a thousand petitions pending in this Court. We were invited to decide only these three petitions as Mr. Amar Vivek had stated, at the outset, that depending upon our decision in these cases, the Government would decide each of the cases on facts in accordance with the judgment subject of course to any challenge thereto. For this purpose, he had stated, the Government would devise a procedure. They have done so. During the course of the hearing, Mr. Amar Vivek tendered a letter dated 20.02.2015 addressed by the Director General, Urban Estates Department, Haryana, to the Advocate General, Haryana, intimating that the Government has decided to constitute a High Level Panel to decide the claims in view of Section 24(2) of the RFCT Act. The constitution of the proposed High Level Panel was also mentioned.

The letter mentions the salient policy parameters to be followed by the Panel would be to adjudicate all the cases in a time-bound manner. The Panel would be competent to examine if the lands are to be released or re-acquired or whether the government

ought to re-negotiate the compensation at enhanced rates to avoid release of land and the Panel would make its recommendations to the Government about urgent measures to be taken in such situations where the Panel feels that there is no other option but to release the land. The letter finally requests the Advocate General to request the Court to dispose of all the pending writ petitions seeking reliefs similar to those sought in the present writ petitions.

(B) At the time of pronouncement today, Ms. Palika Monga, learned Deputy Advocate General for the State of Haryana, tendered a notification dated 22nd May, 2015 of the Haryana Government. By this notification, the Governor of Haryana has notified a Zonal Committee for each of the five zones to decide the representations of the petitioners as well as of other land owners not only in these writ petitions but in other writ petitions as well who may not have approached the Court seeking lapse of acquisition proceedings in terms of Section 24(2) of the RFCT Act. Clause-3 of the Notification states that the recommendations sent by the Committee will be examined in the Urban Estates Department, after which the Department will submit its proposal to the Government for approval/orders and that the approval/orders received from the Government will be conveyed to the Zonal Administrator-cum-Additional Director, Urban Estates of the concerned zones, who will pass appropriate speaking orders accordingly.

The letter dated 20.02.2015 and the above notification only pertain to the acquisition proceedings initiated by the Department of Urban Estates, Haryana.

52. The High Level Panel is, of course, only for convenience. A party cannot be compelled to approach the High Level Panel. Obviously, the decision of the High Level Panel would not be binding at least on the land owners/persons interested in the land sought to be acquired.

ORDER.

53. The petitions are accordingly disposed of with the above findings and with the following directions.

The respondents shall consider the claim of the petitioners that the proceedings for acquisition have lapsed qua their lands by 30th December, 2015. The statement on behalf of the petitioners that in the event of the petitioners' claims succeeding at any stage either before the respondents or in any subsequent challenge before any Court or Tribunal, they would refund the compensation, if any, together with interest as may be directed, is accepted. There shall be no order as to costs.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

29.05.2015
parkash*

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether reportable: YES
