

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 21.04.2015
Pronounced on: 28.04.2015

+ **W.P.(C) 2009/2014**

KATHURIA PUBLIC SCHOOL AND ORS.Petitioners

Through: Sh. A.S. Chandhiok, Sr. Advocate with Sh. Vikas Mehta,
Sh. Ritesh Kumar, Sh. Rajat Sehgal, Ms. Honey Kumari and Sh.
Mayank Bamniyal, Advocates.

Versus

UNION OF INDIA AND ORS.Respondents

Through: Sh. Ripu Daman Bhardwaj, CGSC with Sh. T.P. Singh,
Advocate, for UOI.
Sh. Ajay Verma, Sr. Standing Counsel with Sh. Amit Mehra,
Advocate, for DDA.
Sh. Sanjay Poddar, Sr. Advocate with Sh. Sanjay Kumar Pathak,
Ms. K. Kaumudi Kiran, Ms. Sunil Kumar Jha, Sh. Govind Kumar
and Ms. Pavni Poddar, Advocates, for Respondent No.3.
Ms. Shefali Jain, for Sh. Rakesh Kumar Khanna, Advocate, for
Respondent No.4.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K. GAUBA

MR. JUSTICE S. RAVINDRA BHAT

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1. By these proceedings under Article 226 of the Constitution of India, the Petitioners (hereafter compendiously referred to as “KPS”) seek a declaration that with the enactment and coming into force of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (hereafter “Acquisition & Rehabilitation Act”) the lands being occupied by the public school under their management were no longer subject to acquisition; they also seek an order enjoining or prohibiting the respondents from taking any action towards dispossessing them.

2. On 23.1.1965 a notification under Section 4, Land Acquisition Act 1894 (“old Act”) was issued and on 26.12.1968 a declaration under Section 6 was issued in respect of land measuring 80 bighas 7 biswas comprised in Khasra Nos. 1726 (3-3), 1727 (4-16), 1728 (2-12), 1729 (6-14), 1747 (4-16), 1748 (4-16), 1749 (4-16), 1750 (4-16), 1751 (4-16), 1752 (4-16), 1753 (3-5), 1754 (6-2), 1755 (4-16), 1756/2 (3-4), 1757/2 (3-4), 1875 (4-16), 1876 (4-16) and 1877 (4-3) in village Rangpuri alias Malikpur Kohi (Vasant Kunj) Tehsil Mehrauli. The award in respect of these lands (hereafter “the suit lands”) was made on 30-03-1981. In the meanwhile, late Shri R.P. Kathuria, acting as *karta* of a HUF consisting of himself and his sons- by a sale deed dated 18-04-1967- (executed by Smt. Saroopi Devi, Smt. Sarjo and Smt. Bartho in his favour) purchased the suit lands after the Section 4 notification under the old Act was issued. Claiming to be aggrieved by the acquisition proceedings, he approached this Court by filing Civil Writ Petition No.586/1981 alleging undue delay in the finalization of acquisition process. While issuing notice on 24.03.81, orders of status quo regarding possession was made by this Court. The *status quo* order was subsequently confirmed. The writ petition remained pending for a considerable period; eventually it was dismissed on 14-12-1995 along with a batch of writ petitions in a Full Bench decision reported as *Roshnara Begum vs. Union of India* 1996(61) DLT 206. The appeal by special leave, to the Supreme Court, preferred in that regard, was rejected in a reported judgment of that Court, i.e. *Murari vs. Union of India* 1997 (1) SCC 15 where validity of the acquisition proceeding was upheld.

3. The Supreme Court, even while dismissing the appeal against acquisition of the suit lands, permitted a representation to the State for withdrawal from acquisition in case the suit land was not required for any other

purpose. Relying on that order R.S. Kathuria and the present petitioners represented to the Government of National Capital Territory (NCT) under Section 48 of the old Act which was rejected. R.P. Kathuria preferred WP(C) No. 233/97 challenging the decision of Govt of NCT rejecting the representation. Interim orders were made in the said writ petition not to dispossess Shri Kathuria. During pendency of those proceedings, Shri Kathuria also filed a civil suit, (C.S. (OS) No. 927/2002) before this Court; in that suit, he sought the relief of declaration that he was absolute owner of the suit lands and that the defendant, Delhi Development Authority (DDA) had no interest whatsoever in it. The suit claim was premised on the assertion that the plaintiff was a *Bhumidar* under the Delhi Land Reforms Act, 1954. The DDA resisted the suit stating that the Award relating to the suit lands had been made on 30th March, 1981 and possession was taken over on 31-03-1981. The suit lands were placed at the disposal of the DDA by Notification issued under Section 22 of the Delhi Development Act (“the Development Act”) on 19-05-1981 and 17-06-1983.

4. A preliminary issue was framed by the learned single judge who tried the suit filed before the court; by a reasoned order dated 5-06-2007, it was held that the suit was maintainable and that the question of possession was to be decided by the court. Both the DDA and Govt. of NCT of Delhi preferred appeals against that decision, being FAO (OS) 313/2007 and FAO(OS) 27/2008. On 28-11-2008, by a common judgment a Division Bench allowed the appeals (of DDA and Govt. of NCT of Delhi).

5. In the pending writ petition, WP(C) 233/1997, the petitioners claimed that a school (called “*Kathuria Public School*”) had been established and was functioning on the land in question since 1988. It was alleged that they

constructed a school building along with staff quarters and boundary wall on the suit land. By a representation dated 01.01.1996, they had again sought release of the land from acquisition seeking parity with the case of Hamdard Public School land of which was de-notified by the Government. They represented again on 11.11.1996 for release of their land on the par with St. Xavier Society's land (which was released from acquisition on 06.9.1996) and at par with the case of Hamdard Public School. A direction for de-notification of the suit lands at par with the other's case, and a further direction to DDA and Govt. of NCT not to demolish any part of the building constructed on the suit lands and not to take physical possession, was sought. By judgment and order dated 09-11-2011, a Division Bench of this court rejected WP(C) 233/1997. A review proceeding, being R.P. 716/2011 was disposed of by the Division Bench on 02-12-2011.

6. A special leave petition (SLP (C) 20893/2011) was preferred before the Supreme Court against the said judgment dismissing WP(C) 233/1997 and the review petition. By order dated 09-12-2011, the Supreme Court rejected that writ petition, recording as follows:

“no ground is made out for our interference with a well reasoned judgment of the High Court. Accordingly, the Special Leave Petitions are dismissed.

At this stage, Mr. Rohatgi submits that since more than 600 students are studying in the school, being run in the building constructed on the subject land, petitioners may be granted some reasonable time to shift the school. He, however, fairly states that insofar as the portion of land allotted to the Indian Spinal Injuries Centre is concerned, the petitioners will have no objection if its possession is delivered by the DDA to the said institute.

Keeping in view the interest of the students, we accede to the prayer and direct that, except for the piece of land allotted to the aforesaid institute, all the parties shall maintain status quo in respect of nature, title and possession of the subject land till 30th April, 2013, subject to the petitioners and all others who claim to be in possession of the subject land, furnishing an undertaking to this Court to the effect that they will deliver vacant and peaceful possession of the land under their occupation on or before the said date. The time so granted shall not be extended under any circumstances. The requisite undertaking shall be filed within four weeks from today, failing which, it will be open to the DDA to take possession of the land forthwith. Insofar as the land allotted to the aforesaid institute is concerned, its possession may be delivered to them as and when the DDA decides to do so.

We further direct that no construction activity of any kind shall be undertaken on the entire land, subject matter of this petition.”

In furtherance of the above order, Shri. Sunil Kathuria, son of R.S. Kathuria affirmed an affidavit (dated 06-01-2012 which was filed before the Supreme Court) undertaking to vacate the suit land in terms of the order dated 09-12-2011 and *inter alia*, stated:

“..The present undertaking is given in terms of the Order dated 9th December 2011 passed in the aforesaid SLP without prejudice to any rights of the Petitioner in terms of the policies of the Government.”

7. The undertaking (to vacate the suit property) was not complied within the time indicated, i.e 30-04-2013. The present writ petition was filed on 26-03-2014, alleging, *inter alia*, that the DDA was planning to take over the suit lands; it was also importantly contended that in view of Section 24 (2) of the newly enacted Right to Fair Compensation and Transparency in Land

Acquisition, Rehabilitation and Resettlement Act, 2013, (hereafter “Acquisition & Rehabilitation Act”) the lands had to be released in their favour. The present writ petition was listed for admission on 27-03-2014, when, after elaborately noticing the background facts, the Court also recorded the submission of DDA that it had preferred a contempt petition before the Supreme Court for non-compliance with the order dated 09-12-2011 and the undertaking given (i.e failure to vacate the suit lands by 30-04-2013). The court then disposed of the writ petition, stating as follows:

“11. As noted above, the petitioners have miserably failed to abide by the aforesaid undertaking furnished by them to the Supreme Court and instead, they have held on to the subject land by the skin of their teeth, under the flimsy pretext of submitting representations to the respondent/DDA for releasing the same and curiously, for reasons best known to the respondent No.2/DDA, even after expiry of the time granted by the Supreme Court to the petitioners, it has elected not to take any steps for dispossessing them from the subject land. However, having regard to the fact that now the respondent No.2/DDA has finally decided to exert itself and has approached the Supreme Court for initiating contempt proceedings against the petitioners for breach of the undertaking given by them in terms of the order dated 9.12.2011 and this Court has been given an assurance that the said petition is likely to be listed in a couple of weeks, it is not inclined to entertain the present petition. It is however directed that as the respondent No.2/DDA has not taken any steps till date to dispossess the petitioners, they shall await appropriate orders from the Supreme Court in the contempt petition filed by them and till then, no coercive action shall be taken against the petitioners. In those proceedings, the petitioners shall be at liberty to explain their conduct in failing to hand over possession of the subject land to the DDA within the stipulated timeline and take all the pleas that may be available to them, both in law and on facts.

12. The present petition is disposed of, along with pending application.”

On 01-08-2014, the Supreme Court made a common order in the Special Leave petition preferred by the present petitioner (against the above order dismissing its present writ petition) and the contempt petition (Nos. 281-82/2014, filed by DDA). The relevant extracts of that order are as below:

“...the land which has been acquired, except the land on which the school premises is situated and the area abutting the school, which is required as play ground, shall be taken possession of by the Delhi Development Authority within two weeks from today. The details with regard to the land of which possession has been taken, shall be given to this Court as well as to Shri Rakesh K. Khanna, Senior Advocate of this Court, who is hereby appointed for overall supervision of the general functioning of the school.

Mr. Rakesh K. Khanna shall be permitted to have access to the Books of Accounts of the school. Accounts of the school shall be furnished by the present administration to Mr. Khanna periodically. Mr. Khanna shall be in overall charge of the administration, though the present administration shall manage the school.

The honorarium to be paid to Shri Rakesh K. Khanna shall be decided subsequently.”

8. On 17.09.2014, the Supreme Court disposed of the contempt proceedings (C.P. Nos. 281-282/2014) filed by DDA. It accepted the apology of Sh. Sunil Kathuria, Chairman of Kathuria Public School and the Society and recorded as follows:

“The apology is accepted.

He further stated that he is deemed to have handed over possession of the land in question, including the premises constructed thereon on 30.04.2013, as per his undertaking given to this Court on 09-12-2011.”

The Court confirmed that Sh. Rakesh Khanna, learned senior counsel will continue to *“look after the management of the school till 30.04.2015 or till final decision, which might be rendered by the High Court in W.P.(C) 2009/2014, whichever is earlier.”* The Supreme Court then dealt with SLP 15796/2014 – which was directed against the earlier order of this court, dismissing the present writ petition. The Supreme Court noticed that the said order disposing of the writ petition was not on the merits but for the reason that contempt proceedings were pending before that Court and that the land in question had not been handed over by the petitioners. In view of the disposal of the contempt proceedings, the Court then stated that this Court should decide the present writ petition preferably by 30.12.2014. The Court also noticed that all matters pertaining to the Acquisition and Rehabilitation Act were pending before a Division Bench in Court No.2. Learned counsel for the petitioner was permitted to mention the same so that it could be taken up by the Bench on an early date. The several appeals arising out of SLP 15796/2014 were accordingly disposed of.

9. As a consequence of the liberty granted, the matter was mentioned on 18.10.2014. The respondent sought time to file counter affidavits and petitioner’s rejoinders which was granted. On 02.12.2014, Sh. Rakesh Khanna was added as a party and subsequently, the matter was re-notified to two dates, i.e. 15.12.2014 and 23.12.2014. As a result, the petition could not be disposed of and the new Bench assembled and held proceedings on various dates from January onwards, i.e. on 07.01.2015, 02.02.2015, 18.02.2015, 23.02.2015, 03.03.2015, 12.03.2015, 16.03.2015, 17.03.2015, 23.03.2015. On the next date, i.e. 10.04.2015, the writ petition was directed to be listed before another Bench since one of the members felt constrained to recuse from the proceedings. It is

in these circumstances that the petition was listed before the present Bench on 16.04.2015 when the Court was informed about the Supreme Court's order and the time limit indicated, i.e. 30.04.2015. The writ petition was again heard on two dates and reserved for judgment on 21.04.2015.

Pleadings of parties:

10. In the writ petition, it is urged that by virtue of Section 24(2) of the Acquisition and Rehabilitation Act, the acquisition proceedings initiated in 1965 under the old Act, which culminated in the award of 30.01.1981 had lapsed. It is asserted that the respondents never secured possession of the suit lands on which Kathuria Public School has been and continues to exist all along with the requisite approvals and sanctions of Directorate of Education and affiliation from CBSE- on the said land. The petitioners also rely upon a decision taken in a meeting chaired by the Lieutenant Governor, NCT of Delhi dated 23.04.2014 whereby the suit lands was to be released to the extent it is covered by the school building and an equal area for play-ground. The minutes of this meeting, argued learned counsel for the petitioner, were approved on 08.05.2013. The petitioners further submit that despite having complied with their obligations and furnishing an undertaking to hand over possession on 30.04.2013, the respondents made no arrangements or came forward to take possession of the suit lands. As against this, the petitioners rely upon their conduct in voluntarily giving up possession of the land to the extent of 2.63 acres to DDA for allotment to the Indian Spinal Injuries Centre in tune with the statement made to the Supreme Court. A reference is made to a letter of DDA dated 29.04.2013 asking the petitioner to hand over the possession. It is alleged that the DDA never came forward and accepted possession. Reliance is placed upon the decision of the Supreme Court in *Pune Municipal Corporation and Anr. V. Harakchand Misirimal Solanki* 2014 (3) SCC 183; *Bimla Devi v. State*

of Haryana 2014 (6) SCC 583; *Bharat Kumar v. State of Haryana*; 2014 (6) SCC 586; *Velaxan Kumar v. UOI and Ors.* 2014 (14) SCALE 37 and *M/s. Magnum Promoters Pvt. Ltd. v. UOI and Ors.* 2015 (3) SCC 327; 2014 (13) SCALE 362. It is contended that the actual physical possession of the suit lands was never disturbed or taken over from the petitioners by the DDA or the GNCTD. In these circumstances, the preconditions for applicability of Section 24(2), i.e. the finalization of the award five years before the date of increment of the Acquisition and Rehabilitation Act and continued possession of the land owner were fulfilled. Acquisition proceedings had lapsed. The pleadings in the original writ petition do not reflect whether compensation was tendered or deposited; no allegation or averment to that effect was made. However, in the rejoinder affidavit (dated 20.12.2014), in response to DDA's counter affidavit, it is further asserted that no compensation whatsoever was offered by the respondents to the petitioner with respect to the suit lands. The petitioners rely upon the reply to an RTI query whereby the LAC in a letter dated 21.04.2014 enclosed a document showing that the amount awarded in favour of late R.S. Kathuria – ₹2,80,662.29/- was sent to the revenue deposit which established that the respondents had "*not deposited the compensation before the reference court RC which is the essential requirement as held by the Hon'ble Supreme Court in Pune Municipal Corporation*".

11. The GNCTD and DDA filed separate reply affidavits, recounting the background facts, including the dismissal of the first writ petition on 14.12.1995; filing of the W.P.(C) 233/1997; its dismissal on 09.11.2011, dismissal of the review petition dated 02.12.2011 and dismissal of the Special Leave Petition on 09.12.2011. They do not also dispute that *status quo* orders were made on 24.03.1981. They, however, state that in view of the express conduct of the Kathuria Public School, and other petitioners, possession vested

in the respondents pursuant to the undertaking furnished to the Supreme Court and that the petitioners were only given permission to continue the school subject to filing of the undertaking. Referring to failure of the petitioners to deliver the suit property on or after 30.04.2013, the respondents assert that KPS is bound by the statement of Sh. Sunil Kathuria and are deemed to have been divested of possession of the land, including the said building premises on 30.04.2013 in terms of the undertaking furnished to the Supreme Court. It is stated that the issue with respect to possession, therefore, stands concluded. So far as the deposit of compensation goes, it is stated that the Land Acquisition Collector made an award, No. 146/80-81 dated 30.03.1981 and transmitted the sum of ₹2,29,090.67/- to the Reference Court - RV No.586 dated 09.11.1982 under Sections 30/31 of the old Act, in view of a dispute by the SBI which claimed to be the mortgagee of the suit lands. As the right of compensation was not undisputed, the question of tendering amounts to the claimants do not arise and the amount was deposited with the Reference Court (T No.17240 dated 10.11.1983). Govt. of India accuses the writ petitioner of not disclosing this important fact. Likewise, it is stated that the two suits, i.e. CS(OS) 927/2002 and CS(OS) 1652/2007 – the first of which was dismissed on 27.01.2009 in view of the judgment of a Division Bench in FAO(OS) 27/2008, and withdrawal of the second suit on 28.05.2010 were also concealed from this Court. These suits had claimed declaration of *bhoomidari* rights on behalf of the present petitioners; in fact the petitioner was the purchaser who had been arrayed as plaintiff. As a consequence, the findings regarding possession of the respondents had been rendered final. This, it is contended, results in *res judicata* so far as the plea of possession is concerned.

12. In an additional affidavit, (of the Govt of NCT) filed with leave of the Court, it is clarified that the sum initially deposited on 10.07.1981 in the

revenue deposit of ₹2,80,662.49/- was towards compensation and that it was sent by the then LAC to the Court of the Additional District Judge under cover of letter dated 12.11.1982 as compensation for suit land of which possession had been taken over under Award No.146/81. Except the remaining compensation for 9 biswa from Khasra No.1877 of which possession was not taken over earlier at that stage, the amount was lying deposited in the revenue deposit. It is reiterated that the said amount was sent to the Court under Sections 30/31 as Refund voucher (RV) no.586 dated 09.11.1982. Regarding Khasra No.1730/2(1)(12) acquired by another award – 8/83-84, it is stated that the petitioners have admitted in the rejoinder that they are not in possession of those lands. The compensation for this was assessed at ₹18,400/- and was sent to revenue deposit on 05.07.1983 through cheque dated 24.06.1983. The GNCTD relies upon the maxim *actus curiae neminem gravabit*, i.e. an act of Court shall prejudice no one. They rely upon the second proviso to Section 24(2), added through a subsequently promulgated ordinance to state that the period of stay which prevents the State from taking over possession would have to be excluded while reckoning period of five years in Section 24(2).

Arguments on behalf of the petitioner:

13. Sh. A.S. Chandhiok, learned senior counsel argues that both requirements for applicability of Section 24(2) of the Acquisition and Rehabilitation Act were fulfilled. In this regard it is submitted that the previous litigation culminated in the undertaking furnished pursuant to the Supreme Court's order dated 09.12.2011 and the subsequent orders, pales into insignificance because as on the date when the said enactment came into force, i.e 01.01.2014, the suit lands were still in the possession of the Kathuria Public School and the other petitioners. Underlining that continued physical

possession was a key element for entitlement to the rights guaranteed under Section 24(2), learned counsel submitted that there is no dispute that during the pendency of all previous litigations, *status quo* orders were subsisting and the petitioner was never divested of possession. Counsel also stated that the minutes of meeting of Lt. Governor approved on 08-05-2013 supported the petitioners' case for release of lands. It was next contended that the respondents cannot profit from the undertaking or the subsequent statements made in Court, including the statement of Sh. Sunil Kathuria recorded in the Court that possession was "*deemed to have been taken over on 30.04.2013.*" It was argued that such orders were made in contempt proceedings complaining of non-compliance with the undertaking. The fact still remains that possession was actually not handed over. Furthermore, it was urged that the statement or undertaking could not have precluded the assertion of the petitioner's independent rights arising from a new enactment because when the undertaking was given, such rights were unknown. Here, learned counsel stated that there can be no waiver of an unknown right or that estoppels cannot be set up against a party to preclude him from exercising statutory rights. Learned counsel also submitted that this principle is underlined in the Supreme Court ruling in *P.R. Deshpande v. Maruti Balaram Haibatti* 1998 (6) SCC 507.

14. Learned counsel next submitted that the previous judgments – particularly in W.P.(C) 233/1997, FAO(OS) 27/2008 and connected cases cannot be construed as *res judicata*. It was argued that the findings in W.P.(C)233/1997 and FAO(OS) 27/2008 only pertained to the maintainability of the suit; the observations relating to taking over possession could not be, therefore, conclusive. Likewise, learned counsel relied upon the order made in review proceedings on 02.12.2011, in respect of the main judgment in W.P.(C) 233/1997. Highlighting that the review order clarified that the main issue

concerned eligibility of the petitioner's suit lands for withdrawal from acquisition in the light of its being a transferee after the Section 4 notification, learned counsel stated that the review order recognized this fact and clarified it. It was lastly argued that the respondent's submission that possession was taken over on 30.03.1981, lacks substance given the previous interim *status quo* order made on 24.03.1981. Even if such possession were assumed to have been taken, the entire proceedings in that regard were illegal and could not have divested the petitioners of their legal entitlements under the new law.

15. Learned counsel next submitted that the alternative requirement for applicability of Section 24(2), i.e. that the compensation should not have been tendered or paid, too remains unfulfilled in the facts of the present case. It is urged that in the present case, the award was announced on 31.03.1981. The petitioners argued that there is no material to state that the determined compensation was ever deposited immediately or contemporaneously with the announcement of the award. Countering the respondent's plea (in the counter affidavit) that a dispute existed, regarding disbursement of compensation, learned counsel submitted that the award is conclusive in its terms on this aspect. Sh. Chandhiok, learned senior counsel submitted that the award itself discloses in clear terms Sh. R.S. Kathuria's entitlement to be paid compensation. Therefore, the submission that a dispute existed whereby SBI had preferred a prior claim has no substance. Learned counsel relied upon Section 12(2) of the old Act to say that in such matters, the terms of the award are deemed conclusive.

16. Learned counsel submitted that even assuming that some dispute existed, the record clearly established that when SBI was issued with notice by the LAC, it chose not to pursue the matter any further. Consequently, its claim was rejected "*ex-parte*" on 08.01.1982 by the LAC. In the circumstances, there

was no impediment to the tendering of the compensation amount to the land owner immediately thereafter. Instead, the LAC chose to transmit the records and deposited the compensation much later. Learned counsel relied upon the Constitution Bench decision of the Supreme Court in *Sunder v. UOI* 2001 (7) SCC 211 to submit that in such cases, the Collector is under a statutory duty to render payment of the compensation award to those entitled to it according to the award. Particular emphasis was laid upon the observations that, “*the law does not relish any delay in making the payment once the award is made.*” Learned counsel reiterated the petitioner’s reliance on the decision in *Pune Municipal Corporation (supra)*; *Bimla Devi (supra)* and *Velaxan Kumar (supra)*.

17. Besides relying on *Sunder (supra)*, learned counsel also relied upon the judgment reported as in *Sharda Devi v. State of Bihar* 2003 (3) SCC 128 to say that finality attaches to the award regarding its determination as to, “*persons interested*” to receive compensation. It was stated that the statute, i.e. Section 31 having mandated something to be done in a particular manner, i.e. tender of compensation to the one interested, the State was obliged to prove compliance with that provision and any other manner of performance was forbidden. Relying on the observations in *Pune Municipal Corporation (supra)*, learned senior counsel argued that the GNCTD’s contention that compensation has been deposited is of no avail and that the mandate of Section 24(2) takes the suit lands out of the purview of acquisition proceedings.

Arguments of the respondents

18. Learned senior counsel for the GNCTD, Sh. Sanjay Poddar and Sh. Ajay Verma, learned counsel for the DDA submitted that this Court should not ignore the past litigation history and the background of circumstances which

led to the institution of these proceedings. It was emphasized that each time the petitioner asserted illegality on the part of the State with respect to acquisition proceedings, the challenge met with no success. Learned senior counsel argued that even though the *status quo* existed for the period 24.03.1981 to 14.12.1995 (the last date being when W.P.(C) 586/1981 was dismissed along with batch of cases in *Roshnara Begum*), nevertheless, the finding that possession had been taken over, - in the judgment delivered on 09.11.2011 (W.P.(C) 233/1997) became conclusive because the Petitioners' challenge failed before the Supreme Court. He relied upon the observations in the said judgment *vis-a-vis* possession. The Court was dealing with the present petitioners' contentions that even as per the case records, the possession of the suit lands had not been taken because the *status quo* order was communicated on 31.03.1981. Dealing with the said noting in the file of one Sh. U.P. Singh dated 06.04.1999, the Division Bench held in W.P.(C) 233/1997 that:

"We also find from the notings on the file that Denotification Committee in its meeting held on 27.1.1991 recommended rejection of the representation made by the petitioners on the ground that possession of land in question was taken over on 31.3.1981 and the above referred noting by Mr. U.P. Singh was made thereafter, on the representation dated 24.2.1999 made by the petitioners.

We find that in the subsequent note dated 2.12.2000 Mr. V.B.Pandey, Legal Advisor recorded that possession of the acquired land was taken by LAC on 31.3.1981 because the status quo order was not served on him. He also noted that DDA vide letters dated 7.1.2000 and 25.1.2000 had reiterated its stand that possession of the land was with them.

In her note dated 9.2.2000 Principal Secretary (PWD/L&B) noted that as the order of this Court dated 24.3.1981 directing maintaining of status quo was notserved on the Land Acquisition Collector, the possession of land was taken over on 31.3.1981 and handed over to DDA. She also noted that though the contention of the petitioners

was that the possession of the land had remained with them, the record showed otherwise and Additional Secretary (NCR) had confirmed that possession was with DDA. She also noted that latest communication from DDA also showed that physical possession of the land was transferred by LAC and Land & Building Department to DDA vide notifications under Section 22(1) of DDA Act.”

19. Sh. Poddar also submitted that no inspection of the suit lands had been carried out by any official who made reports or notings favourable to the petitioners in the official files. Underlining that such notings had no evidentiary value, learned counsel relied upon *Sethi Auto Service Station v. DDA* 2009 (1) SCC 180. It was further argued that in the Division Bench ruling in FAO 27/2008 and 313/2007 (*DDA v. R.S. Kathuria* 2009 (7) AD (Del) 265), the Court had rendered another finding that possession had been taken over on 31.03.1981. The following extracts of the said judgment were relied upon:

“In the present case, the Award was passed on 30th March, 1981 and the possession was taken on 31st March, 1981 before the interim orders were communicated to the appellant. The continued possession of the respondent No.1 pursuant to the said orders of the Court cannot be treated as possession for the purpose of Section 16 of the LA Act and on the dismissal of challenge of respondent No. 1 to the acquisition proceedings; the said respondent no. 1 has no longer any claim in respect of the same.

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In view of the facts of the present case, we feel that the learned Single Judge was not right in observing that the respondent No. 1 is in possession as the said possession is pursuant to the interim orders of this Court. It is a matter of fact that the said interim order stands vacated on the dismissal of the SLP by the Supreme Court. The learned Single Judge wrongly observed that the appellants have not taken the actual physical possession or symbolic possession and therefore the suit is maintainable for determination of the same. The said finding of the learned Single Judge was

contrary to the facts of the present case as the Award having been passed on 30th March, 1981, the question of the appellants not taking the symbolic and physical possession does not arise as the authorities are free to take the actual possession on the vacation of the interim orders passed in the writ petition filed by respondent No.1.”

20. Sh. Poddar relied upon the judgment of the Supreme Court reported as *Maria Margarida Sequeira Fernandes & Ors. Vs. Erasmo Jack De Sequeira (Dead) Through LRs* 2012 (5) SCC 370 to say that possession is not an inflexible term and does not confine itself to mere actual physical possession. It was submitted that the legal conception of possession may be in various forms. The two elements are *corpus* and *animus*. Even though an individual may be in physical possession yet that may not be deemed to be one in the eyes of law if the *animus* is lacking. To the same extent, learned counsel relied upon the judgment reported as *Thomas Cook India Limited v. Hotel Imperial and Ors* 2006 (6) DLT 431. It was highlighted that the review petition seeking correction of this order was put in issue but the petitioner's plea was not accepted and the review petition was dismissed. Further, it was stated that several rulings of the Supreme Court, notably *NTPC Ltd. v. Mahesh Dutta* 2009 (8) SCC 339; *Banda Development Authority, Banda v. Moti Lal Aggarwal* 2011 (5) SCC 394 and *Balwant Narayan Bagde v. M.D. Bhagwat* 1976 (1) SCC 700 have indicated *inter alia* that there is no hard and fast rule about what constitutes taking over possession of acquired land and that if acquisition is in respect of large tracts of land, it is not possible for the authority concerned to take physical possession of each and every parcel of land. In such case symbolic possession taken, by preparing appropriate documents and marking the lands, in the presence of independent witnesses is deemed sufficient. It was submitted that in the present instance, there was no

resistance at the site and the land was demarcated and pillars installed on all four sides as was evident from the possession report dated 31.03.1981.

21. Dealing with the question of possession, learned counsel relied upon a copy of the letter written by SBI to the LAC on 16.11.1981 which had referred to an earlier letter dated 05.02.1979. The said letter *inter alia* indicated that the bank was a mortgager and was interested in the compensation determined. He also relied upon letters dated 15.02.1982 and 24.07.1982 on the same subject by the bank. These were part of the land acquisition records. It was stated that in these circumstances, regardless of whether the interests of bank were noted in the award or not, the LAC was duty-bound to refer the matter to the concerned Court under Section 30 given the dispute as to the rightful individual or person entitled to compensation. Learned counsel stated that in fact this course was resorted to when the exact compensation amount was remitted to the reference Court under cover of letter dated 09.11.1982 along with compensation amount. That letter also specifically mentioned the details of the land and the two persons interested who had rival claims for compensation, i.e. SBI and R.S. Kathuria.

22. It was submitted that consequently, the LAC complied with the requirements of Section 31 having regard to the nature of the dispute. It was submitted that in *Pune Municipal Corporation (supra)* itself, the Supreme Court had visualized three contingencies that could prevent the Collector from tendering the compensation to the land owners or person interested. Learned counsel relied upon the following extract of the decision – “*the contingencies contemplated under Section 31(2) are : (i) the persons interested entitled to compensation do not consent to receive it, (ii) there is not person competent to alienate the land, (iii) there is dispute as to 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 the reference under Section 18 may be made.

Analysis and Conclusions

23. Section 24 of the Acquisition & Rehabilitation Act provides that:

“24. (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 land holding 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.”

24. As noticed in *Pune Municipal Corporation*, Section 24 (1) overrides existing law and the old Act. It provides that where compensation determination is pending, such determination would be under the new 2013 Act. Section 24(2) deals with a different aspect; it too begins with a *non-*

obstante clause. To qualify its application, i.e lapsing or cancellation of previously instituted land acquisition proceedings under the old Act, two requirements are to be satisfied: (i) the finalization and publication of an award five years before the date the provision came into force, i.e. 01.01.2014. (ii) (a) that the physical possession of the lands should not have been taken over (i.e it must still continue with the land owner) or (b) that compensation should not have been paid to the land owner or. Now there is no dispute that this requirement was fulfilled in the present case. The second requirement is the more contentious one.

25. The petitioners have urged that in the present case both these preconditions have been fulfilled in that neither was compensation paid to them nor was possession given to the respondents or taken from the other land owners by the respondents. Quite naturally, both respondents refute both these assertions.

26. This Court proposes to first deal with the nature and character of the litigation and with the undertaking furnished on behalf of the petitioner in the context of the submission that the said undertaking in no manner reflects on the rights asserted by them, through these proceedings. There is no doubt that when the previous litigation culminating in the judgment dated 09.11.2011 in W.P.(C) 233/1997 was pronounced, the petitioners were not aware of a possible right accruing in their favour in future. The question is does it alter the circumstances in their favour in any manner. The findings with respect to possession in that writ petition were not ambiguous. Categorically – in more places than one, the Division Bench (in WP(C) 233/97) concluded that possession was no longer with the petitioners and had been handed over to or taken by the respondents. In this regard, there is an elaborate discussion in the

Division Bench judgment as regards the manner possession was in fact taken over. The Division Bench rejected the petitioner's submission that physical possession had not been taken on 31.03.1981. The petitioners had relied upon a file noting of one official; the Division Bench refuted the veracity or accuracy of that notings, commenting that all higher officials had negated the inference drawn. What is more, the Division Bench even observed that there was no inspection report to support the notings that the petitioner had relied upon. Apart from the extracts of the observations in the said judgement (of 09-11-2011) set out above, the Division Bench also held that:

"It would thus be seen that the opinion of Mr. U.P.Singh was not accepted by his superiors and certainly not by the Lieutenant Governor who was the Competent W.P.(C) No. 233/1997 Page 28 of 48 Authority in the matter and before whom the entire file which included the notings recorded by Mr. U.P.Singh, was placed.

As regards the letter dated 26.5.1999 written by Mr. Shamim Ahmed we find that in this letter he was only referring to the opinion of Mr. U.P.Singh OSD (Litigation). He did say that the site was inspected by the field staff and it was found that an authorized building of senior secondary school existed there along with a nursery, playground, staff quarters and a building occupied by Oriental Bank of Commerce. However, he did not say that the inspection by the field staff was carried out on or before 31.3.1981. In fact, this is nobody's case before us that the inspection referred in the letter of Mr. Shamim Ahmed was carried out prior to 31.3.1981. No such inspection report has been filed by any of the parties to this petition. We find merit in the contention of Mr. Poddar that if possession of the land was taken over by revenue officials on 31.3.1981, trespass on that land by the petitioners at a later date and construction of buildings on it would be of no consequence and would not be recognized by the Court. Mr. Poddar also pointed out to us that it was Mr. Shamim Ahmed who filed counter W.P.(C) No. 233/1997 Page 29 of 48 affidavit in this behalf on behalf of DDA and stated on oath that possession of land

in question was taken over on 31.3.1981 and the land was placed at the disposal of DDA.

The following observations made by Supreme Court in Shanti Sports Club (Supra) are pertinent with respect to notings/opinions recorded by the Government Officers/Ministers on the file:

A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government, unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review.

In Sethi Auto Service Station v. DDA (2009) 1 SCC 180 Supreme Court observed as under:

“It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned.”

Hence, we cannot conclude, merely on the basis of the noting of Mr U.P. Singh and/or the letter of Mr Shamim Ahmed that the possession of land in question was not taken on 31.03.1981.”

27. Significantly, these findings were questioned in special leave petition before the Supreme Court and specifically put in issue; the Court however rejected the challenge. Its observation allowing the petitioners to continue to operate the school was in the light of their plea of hardship to the students studying in the school. They were given up to 30th April 2013 to hand over vacant possession to the respondents. They undertook to do so. That the petitioners reneged from this undertaking and were compelled to apologise to the court is a matter of detail; what is important is that the findings in respect of possession having been taken over in March 1981 were left undisturbed by the Supreme Court. We are also unpersuaded by Mr. Chandhoik's submission that the later order – of 17.09.2014 in the contempt proceedings, cannot be said to have been made under threat of contempt and therefore inconclusive of the Petitioner's legal rights. That the petitioner ceased to have any rights in view of finality of the finding of possession having vested with the respondents in March, 1981 is unquestioned. Equally in view of that position, the petitioners were granted time to vacate till 30-04-2013 purely as a humanitarian gesture – not for their sake, but for the interests of the body of innocent students who were enrolled in the institution. This was subject to an undertaking. The Petitioners breached the undertaking. That did not mean that the nature of their possession (which was permissive up to 30-04-2013) in any manner changed, and enlarged into an entitlement to urge that the acquisition proceedings had lapsed. Here, it is also necessary to deal with the petitioners' argument with respect to the review order made on 02-12-2011. That order is extracted in full:

*“We have heard learned counsel for the parties. The main plea taken by Mr. Sarin in this review petition is that certain decisions referred by him have either not been taken note of or have not been discussed in detail in our judgment dated 09-11-2011. One of the decisions, for example is the case of **Prithi Pal Singh & Ors v Lieutenant Governor & Ors**: WP (C) 3823-25/2006 decided on **24-12-2010**, which was cited by Mr. Sarin, inter alia, on the plea of possession. Similarly there was a decision in the case of **Delhi Development Authority v Ram Sarup Kathuria & Ors** in CCP No. 357/1991 decided on **02-07-1999** by a learned single judge of this court which also had some observations with regard to possession. In so far as the plea of possession is concerned, as will be apparent from paragraph 12 of our judgment, it cannot be concluded that the possession of the land in question was not taken on 31-03-1981. However, as would be evident from the manner in which our judgment has proceeded, the aspect of possession has not been conclusively dealt with by us inasmuch as, even if it is assumed that physical possession had not been taken, the petitioner cannot succeed.”*

28. This court is of the opinion that the review order cannot rescue the petitioners in any manner whatsoever. The petitioners had specifically put in issue the fact that possession had not been taken over by the respondents, to substantiate their claim of denotification entitlement in respect of suit lands. The first portion of the judgment in WP(C) 233/1997 in fact deals only with this aspect- about 9 paragraphs are devoted to this issue (even stating that when possession was taken over on 31-03-1981, the *status quo* order had not been served on the respondents) at the end of which the petitioners’ arguments were rejected. The latter part (Para 19) is an additional reason- the court said that *arguendo* the petitioners had not lost possession, they were nevertheless ineligible to the relief, given that they had purchased the suit lands, after they were notified for acquisition.

29. This court's conclusions are supported by other findings in FAO 27/2008 and FAO 313/2007. Although in one technical sense, the petitioners are correct in asserting that the relief sought in that case was not directly or relating to possession, the fact remained that the issue of possession was intrinsic to the right and relief claimed by them, i.e. that they were *bhoomidars*. The question of *bhoomidari* rights or a declaration to that would have direct dependence on whether they were in possession or not. Here again, the Division Bench decision is decisive in that it recorded categorically that possession had been taken away from the petitioner and had vested with the respondents. The following findings of the earlier Division Bench in the first appeals are relevant:

"41. In the present case, the Award was passed on 30st March, 1981 and the possession was taken on 31st March, 1981 before the interim orders were communicated to the appellant. The continued possession of the respondent no. 1 pursuant to the said orders of the court cannot be treated as possession for the purpose of section 16 of the LA Act and on the dismissal of challenge of respondent No.1 to the acquisition proceedings; the said respondent no.1 has no longer any claim in respect of the same.

42. In the suit filed by the respondent no.1, relief sought is not only a decree of declaration as Bhoomidar but it was also sought that the Appellants have no right whatsoever and cannot interfere.

43. The legal position, is therefore, absolutely clear that when the acquisition proceedings are upheld, there is no embargo on the Appellants on taking over the land. However, before the physical/actual possession can be taken, the respondent started another round of litigation by filing of the writ petition and the present suit. It is not disputed in law that the LA Act is a complete code in itself relating to the acquisition of land and once provision of LA Act are invoked and the land acquired, no right in respect of said land can be claimed under some other act.

44. *In view of the facts of the present case, we feel that the Ld. Single Judge was not right in observing that the respondent No. 1 is in possession as the said possession is pursuant to the interim orders of this court. It is a matter of fact that the said interim order stands vacated on the dismissal of the SLP by the Supreme Court. The Ld. Single Judge wrongly observed that the appellants have not taken the actual physical possession or symbolic possession and therefore the suit is maintainable for determination of the same. The said finding of the Ld. Single Judge was contrary to the facts of the present case as the Award having been passed on 30th March, 1981, the question of the appellants not taking the symbolic and physical possession does not arise as the authorities are free to take the actual possession on the vacation of the interim orders passed in the writ petition filed by respondent No.1. It appears from the impugned order that the Ld. Single Judge has overlooked the fact that the respondent No.1, apart from seeking Bhumidar rights, also sought orders restraining authorities/appellants from interfering with his possession and also obtained order in the suit in his favour. It was wrongly observed that the suit for declaration of bhumidar right u/s 34 of the Specific Relief Act is maintainable and can be determined by a Civil Court in a civil suit."*

30. In these circumstances, the DDA and the GNCTD, in the opinion of this Court, are correct in arguing that the findings in the appellate judgment – and the subsequent judgment in W.P.(C) 233/1997 operate as *res judicata*. There cannot be any suggestion that the Court, i.e. the Division Bench which decided both these cases was not competent to do so. Equally the issue of possession was directly put in issue by the petitioners themselves who suffered an adverse finding. Although the order in review – in respect of the judgment in W.P.(C) 233/1997 in some sense softened the rigour of these findings, the fact remains that the findings themselves were not set aside. What the review order dated 02.12.2012 stated was that the main judgment in para 19 itself had clarified that even if the question of possession were in the petitioner's favour (i.e. the usual kind of assumption which the Court or even a counsel draws or makes, without

conceding to the other fact) even then the petitioner was not entitled to claim denotification or to be covered by the relevant guidelines. Now, according to this Court, the observations in the review order in no way relieve the rigor of the findings that possession vested with the respondents in March 1981 and that the petitioner continued in physical possession after having gone back and enjoyed such possession on account of his *status quo* order. The Division Bench's observations in terms was that the petitioner took back unilaterally the said lands. Surely that could not be characterized as legal possession or uninterrupted physical possession of the kind envisioned in Section 24(2) of the Rehabilitation and Acquisition Act.

31. This court finds the petitioners' submission that they cannot be deprived of the right inuring in their favour under Section 24 (2) for the reason that they had furnished an undertaking. As discussed earlier, the undertaking was not given for escaping contempt: it preceded that, when the special leave petition was dismissed, on 09-12-2011. The reliance on *P.R. Deshpande (supra)* is inappropriate, because there the right to appeal was held non-derogable despite an undertaking to comply with the High Court order. Here, the undertaking was the basis of the continued occupation-not legal possession *in the nature of sufferance of the respondents*. As such, the undertaking was an endorsement of the factual findings in two judgments. That is the only conclusion which can be drawn. This was underscored by the order of 17-09-2014 which recorded Sunil Kathuria's statement- on behalf of the petitioners, that possession was deemed to have been handed over on 31-03-2013 - in tune with the order of the Supreme Court, dated 09-12-2011.

32. In *Maria Margadia Sequeria v Erasmo Jack De Sequeria* 2012 (5) SCC 370, approving a decision of this Court, the Supreme Court clarified what amounts to "possession" in law:

"Possession is flexible term and is not necessarily restricted to mere actual possession of the property. The legal conception of possession may be in various forms. The two elements of possession are the corpus and the animus. A person though in physical possession may not be in possession in the eye of law, if the animus be lacking. On the contrary, to be in possession, it is not necessary that one must be in actual physical contact. To gain the complete idea of possession, one must consider

(i) the person possessing, (ii) the things possessed and, (iii) the persons excluded from possession. A man may hold an object without claiming any interest therein for himself. A servant though holding an object, holds it for his master. He has, therefore, merely custody of the thing and not the possession which would always be with the master though the master may not be in actual contact of the thing. It is in this light in which the concept of possession has to be understood in the context of a servant and master."

101. Principles of law which emerge in this case are crystallized as under:-

1. No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property."

The continued occupation of the suit premises, by the petitioners, who are not original landowners, but purchasers who bought the property *after* it was notified for acquisition, with the aid of successive interim orders, long after the acquisition proceedings were upheld, and after possession was taken over on 31-03-1981, therefore does not answer the description of possession within the meaning in Section 24 (2) of the Acquisition and Rehabilitation Act. The

decisions of the Supreme Court, particularly in *Rajiv Chowdhrie HUF v. Union Of India & Ors* (decided on 10-12-2014, in CA 8785/2013) and [*Sree Balaji Nagar Residential Association v. State of Tamil Nadu & Ors.*](#)[2014 (10) SCALE 388]- which held that Section 24(2) of the Act of 2013 does not exclude any period during which the *"land acquisition proceedings might have remained stayed on account of stay or injunction granted by any court"* because unlike the old Act, which did exclude such period (by Section 6) the Acquisition & Rehabilitation Act contain no such exclusionary provision, the fact situation in the present case is entirely different. As held earlier, the possession had vested with the respondents on 31-03-1981; the petitioners appear to have entered into the suit lands thereafter. The findings of two Division Benches confirm this; what is more, their possession could not be characterized as such because the findings were upheld by the Supreme Court on 09-12-2011. The subsequent statement recorded on 17-09-2014 only reinforced this. This Court is of the opinion that the decision recorded in the minutes of meeting chaired by the Lt. Governor on 08-05-2013 is inconclusive. It could not have dislodged judicial findings regarding the petitioners having lost possession.

33. The above decision as to lack of possession with the petitioners, however does not end the matter. The court has to nevertheless decide whether the payment of compensation was made to the petitioners. *Pune Municipal Corporation* (supra) held, pertinently, that:

"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 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."

34. The petitioners' argument about payment of compensation is that firstly, no payment was ever tendered to them; if so, the respondents have not indicated when. Secondly, it is argued that the payment said to have been tendered in November, 1982 was in fact in the form of a refund voucher, in 1983; this meant that the amount was never deposited. Thirdly, it was argued that even if it were to be assumed that payment was in fact tendered when the voucher was sent to the District Judge, that did not comply with Section 31 of the old Act, because there is no explanation for the delay. *Sunder (supra)* is relied on to say that the law in such a case does not tolerate any delay in deposit of the compensation amount.

35. The respondents' reliance on the letter of the SBI dated 19-11-1981 (which cites the previous letters intimating that the suit lands were mortgaged to it) is in our opinion, of significance. That showed that the LAC was aware of a dispute as to entitlement to compensation. Here, importantly, the petitioner

does not deny that the suit lands were subject of mortgage with the said Bank. The records show that the SBI was asked to appear before the LAC, who sent a notice on 22-12-1981. However, that Bank did not cause appearance on the date fixed, i.e 08-01-1982. Their claim was shown to have been rejected *ex-parte*. The respondent's counter to the petitioners' submission that the award is conclusive on this because the name of R.S. Kathuria as one entitled to the award by reason of Section 12 (2) of the old Act, is that in such cases, whether the award itself reflects a dispute is not decisive; so long as there is material to show that such dispute does exist, LAC is not a free agent and has to forward the matter for determination. In *Dr. G.H. Grant vs State Of Bihar* AIR 1966 SC 237 the obligation of the Land Acquisition Collector in such cases was spelt out as follows:

"We are unable to agree with the view expressed by the Mysore High Court in Boregowda and another v. Subbaramiah and others that if the Collector has made apportionment of the compensation money by his award his power to refer a dispute under s. 30 cannot be exercised. Clause (iii) of s. 11 enjoins the Collector to apportion the compensation money among persons known or believed to be interested in the land: he has' no discretion in the matter. Exercise of the power under s. 30 to refer the dispute relating to apportionment or as to the persons to whom it is payable is, it is true, discretionary: the Collector may, but is not bound to exercise that power. It is however not predicated of the exercise of that power that the Collector has not apportioned the compensation money by his award. We are also unable to agree with the Mysore High Court that the power under s. 30 of the Land Acquisition Act has to be exercised on a motion within the period prescribed by s. 18(2) of the Land Acquisition Act. In our judgment the powers exercisable by the Collector under s. 18(1) and under s. 30 are distinct and may be invoked in contingencies which do not overlap. By virtue of the notification issued under the Bihar Land Reforms Act the right of Dr. Grant vested in the State of Bihar. On March 25, 1952 when the Collector made an award under s. 11, the only

persons interested in the award were Dr. Grant and the members of the village community, but the title of Dr. Grant in the land notified for acquisition stood, by operation of the Bihar Land Reforms Act, transferred as from May 22, 1952 to the State of Bihar. A dispute then arose between the State Government and Dr. Grant "as to the persons whom" compensation was payable. The State had no right to the compensation payable for the land under a title existing before the date of the award of the Collector, and no application for reference could be made by the State, as a person interested within the meaning of s. 18(1). The title of the State to receive compensation arose only when in consequence of the notification under s. 3 of the Bihar Land Reforms Act, the title of Dr. Grant to the Estate was divested.....

The scheme of the Land Acquisition Act is that all disputes about the quantum of compensation must be decided by resort to the procedure prescribed by the Act; it is also intended that disputes about the rights of owners to compensation being ancillary to the principal dispute should be decided by the Court to which power is entrusted. Jurisdiction of the Court in this behalf is not restricted to cases of apportionment, but extends to adjudication of disputes as to the persons who are entitled' to receive compensation, and there is nothing in s. 30 which excludes a reference to the Court of a dispute raised by a person on whom the title of the owner of land has, since the award, devolved.

It was strongly pressed that under s. 31 of the Land Acquisition Act the Collector is bound to tender payment of compensation awarded by him to the persons entitled' thereto according to the award and that implied that a right in the amount of compensation arises to the person to whom compensation is directed to be paid under the award, and therefore the only persons who can raise a dispute under s. 30 are those whose names are set out in the award. This contention stands refuted by the plain terms of s. 30. The Collector is not authorised to decide finally the conflicting rights of the persons interested in the amount of compensation: he is primarily concerned with the acquisition of the land. In determining the amount of compensation which may be offered, he has, it is true, to

apportion the amount of compensation between 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 appeared before him. But the scheme of apportionment by the Collector does not finally determine the rights of the persons interested in the amount of compensation: the award is only conclusive between the Collector and the persons interested and not among the persons interested. The Collector has no power to finally adjudicate upon the title to compensation, that dispute has to be decided either in a reference under s. 18 or under s. 30 or in a separate suit. Payment of compensation therefore under s. 31 to the person declared by the award to be entitled thereto discharges the State of its liability to pay compensation (subject to any modification by the Court), leaving it open to the claimant to agitate his right in a reference under s. 30 or by a separate suit."

The above decision has been followed consistently; recently it was applied in *Madan v State of Maharastra* 2014 (2) SCC 720 where it was held that:

"12. A cursory glance of the provisions of Sections 18 and 30 of the Act, extracted above, may suggest that there is some overlapping between the provisions inasmuch as both contemplate reference of the issue of apportionment of compensation to the Court. But, a closer scrutiny would indicate that the two Sections of the Act operate in entirely different circumstances. While Section 18 applies to situations where the apportionment made in the Award is objected to by a beneficiary thereunder, Section 30 applies when no apportionment whatsoever is made by the Collector on account of conflicting claims. In such a situation one of the options open to the Collector is to make a reference of the question of apportionment to the Court under Section 30 of the Act. The other is to relegate the parties to the remedy of a suit. In either situation, the right to receive compensation under the Award would crystallize after apportionment is made in favour of a claimant. It is only thereafter that a reference under Section 18 for enhanced compensation can be legitimately sought by the claimant in whose favour the order of apportionment is passed either by the Court in the reference under Section 30 or in the civil suit, as may be."

Thus, the petitioners' argument that the SBI's claims could not have been seen, is rejected. The next question is whether the forwarding of the RV on 12-11-1982, through a covering letter, enclosing a cheque for ₹2,79,090-67 satisfied the requirement of Section 31. The court notices here that the voucher, along with the covering letter, also enclosed details of the acquired land, description of the disputing parties claiming the compensation (SBI and R.S. Kathuria) etc. The voucher was received by the Court. The further detail as to receipt of the voucher is also reflected in the extracts of the book maintained by the Land Acquisition Officer. In these circumstances, whether that voucher was renewed later, or the court treasury defaulted in any manner, as is suggested by the petitioners is irrelevant. The LAC fulfilled all the steps required to be fulfilled by him, in depositing the compensation, in view of the disputed claim to it.

36. So far as the petitioners' reliance on *Pune Municipal Corporations'* submissions and other decisions that followed it are concerned, this Court notices that in none of those cases was a dispute within Section 30 involved. The contention that compensation was not paid also, therefore, fails.

37. In view of the above findings, the writ petition must fail. The Supreme Court's order of 17-09-2014 was categorical, in that Shri Rakesh Khanna was to be in charge of the management till 30-04-2015 (to "*look after the management of the school till 30.04.2015 or till final decision, which might be rendered by the High Court in W.P.(C) 2009/2014, whichever is earlier*"). In the light of the above findings, Shri Rakesh Khanna, is required to hand over possession of the suit property in compliance with the order of the Supreme Court, to the respondents, on 29th April, 2015, at 11:00 AM.

38. The writ petition and all pending applications are dismissed in terms of the above directions.

Order dasti under signatures of Court Master.

S. RAVINDRA BHAT
(JUDGE)

R.K. GAUBA
(JUDGE)

APRIL28, 2015

