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HIGH COURT OF CHHATTISGARH BILASPUR**Judgment reserved on 18/09/2018****Judgment delivered on 05/10/2018****Writ Appeal No. 407 OF 2011**

Jalaram Co-operative Housing Society Limited, Through its President
Narendra Davra, S/o Shri Maganlal Davra, Niranjana Graphics,
Pushpak Apartment, Raipur (Chhattisgarh).

---- Appellant**Versus**

1. The Secretary, Revenue Department, State of Chhattisgarh, D.K.S. Building, Raipur (Chhattisgarh).
2. The Collector and Ex-Officio Secretary, Revenue Department, State of Chhattisgarh, Raipur (Chhattisgarh).
3. Chhattisgarh Housing Board Through-Executive Engineer, Division-1, Hirapur (Jarwai), Raipur (Chhattisgarh).
4. The Sub-Divisional Officer-cum-Land Acquisition Officer, Raipur (Chhattisgarh).

---- Respondents

For Appellant	:	Mr. Sankalp Kochar, Advocate.
For Respondent/State	:	Mr. UNS Deo, Government Advocate.
For Respondent No.3	:	Ms. Hamida Siddiqui, Advocate
For Intervenor	:	Mr. Rahul Tamaskar, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C A V JUDGMENT**Per Parth Prateem Sahu, Judge**

1. The appellant has assailed the legality, validity and propriety of the impugned order dated 11/05/2011 passed by learned Single Judge in Writ Petition (C) No.2527 of 2011 whereby the writ petition filed by the appellant challenging the supplementary award dated 21/07/2009 passed by the Sub-Divisional Officer (Revenue)-cum-Land Acquisition Officer, Raipur (hereinafter referred to as 'the Land Acquisition Officer') in Land Acquisition Case No.60/A-82/Year 1988-89 has been dismissed.

2. The facts of the case, are that, the Land Acquisition Officer initiated proceeding for acquisition of the lands situated at village Jarwai alias Hirapur including the lands subject matter of the appeal bearing Khasra Nos.752, 754/2, 757 and 759/2 (hereinafter referred to as 'subject land'). The notification under Sections 4(1), 17(1) and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act of 1894') was published for acquisition of lands some where in 1989. Objections have been filed wherein the original owner of the land in question, namely, Yogendra Nath Thakur has also raised objection mentioning that the case under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as 'the Ceiling Act') is pending before the competent authority with respect to the disputed land. The objection of Yogendra Nath Thakur along with others was decided and the Land Acquisition Officer dropped the land acquisition proceedings of the lands in question measuring 19.52 acres.

3. Respondent No. 3 during pendency of land acquisition proceeding, has again filed an application that the lands subject matter of the appeal should not be left and it should be acquired. The Land Acquisition Officer vide its order dated 14/02/1991, rejected the request of respondent No.3 and categorically held that the lands subject matter of the appeal could not be acquired due to pendency of proceeding under the Ceiling Act with respect to the subject lands. Thereafter, the land Acquisition Officer has passed an award on 08/03/1991 with respect to other lands setting apart the lands subject matter of the appeal, which also finds place in the contents of award. Till passing of award, the possession of the lands notified under Sections 4(1), 17(1) and 6 of the Act of 1894 was not taken over, which is also mentioned in the award dated 08/03/1991.

4. Subsequently, respondent No.3, again moved an application on 06/07/2007 to the Collector, Raipur mentioning that as the lands subject matter of the appeal have been exempted from ceiling proceeding and possession was also given to them by Tahsildar on 06/07/1992, therefore,

the lands should be allotted to them. Undisputedly, the ceiling proceeding concluded on 08/11/1994. The Collector proceeded with the aforementioned application and subsequently, the Land Acquisition Officer has passed supplementary award on 21/07/2009 considering the notices published under Sections 4(1), 17(1) and 6 of the Act of 1894 in the year 1989.

5. The said award was challenged by the appellant before this Hon'ble Court in Writ Petition (C) No.2527 of 2011. The said writ petition was dismissed by the learned Single Judge holding that once notices under Sections 4(1), 17(1) and 6 of the Act of 1894 was not challenged by the land owner, then subsequently, he cannot challenge the final award passed by Land Acquisition Officer in a writ petition.

6. Learned counsel appearing for the appellant submits that notice under Section 6 of the Act of 1894 was published on 31/03/1989 and during the pendency of the land acquisition proceeding itself, the acquisition proceeding with respect to subject land has been dropped, which finds place in the order sheet dated 14/02/1991 of the Land Acquisition Officer as well as award dated 08/03/1991. He further submits that once land acquisition proceeding has been dropped, then the authorities could have initiated fresh land acquisition proceeding for acquiring the subject land if its requirement of acquisition exists. He further submits that provision of Section 17 of the Act of 1894 provides for special powers in case of urgency under which notices have been issued, but without compliance of the provisions of sub-section (3A) of Section 17, no such award can be made by the Collector. He further submits that as after publication of the declaration/notice under Section 6 of the Act of 1894, the Land Acquisition Officer has not passed any award with respect to the land subject matter of the appeal, then the proceeding of acquisition of the subject land had automatically lapsed in view of provision of Section 11(A) of the Act of 1894. He lastly submits that the Act of 1894 do not provide for

passing of any supplementary award.

7. Per contra, learned counsel appearing for the State/respondents No.1, 2 and 4 submits that the land acquisition proceeding has been initiated, in which, notices under Sections 4(1), 17(1) and 6 of the Act of 1894 was published for acquisition of the land subject matter of the appeal alongwith other lands. He further submits that as the proceeding under the Ceiling Act was pending with respect to the subject land, therefore, the award at that relevant time could not be passed with respect to land in question. He further submits that Land Acquisition Officer has rightly passed the supplementary award because the compliance with respect to publication of notices under Sections 4(1), 17(1) and 6 of the Act of 1894 have already taken place on 21/03/1989 and 31/03/1989 respectively. He further submits that once the possession of the land has been taken over in view of Section 17(1) of the Act of 1894 on 26/07/1992, therefore, the appellant could not have challenged the award by filing of writ petition. He lastly submits that the learned Single Judge has rightly dismissed the writ petition by observing that once the award is passed by the Land Acquisition Officer, then the writ petition would not lie.

8. Learned counsel appearing for respondent No.3 supported the impugned order passed by learned Single Judge and submits that after handing over the possession of the subject land in the land acquisition proceeding, the construction has already been taken place and completed. She further submits that after passing of the award by competent authority under the Act of 1894, the writ petition is not maintainable.

9. Perusal of records would show that the land bearing Khasra Nos.752, 754/2, 757 and 759/2, admeasuring 19.52 acres of land was originally owned by one Yogendra Nath Thakur. Against Yogendra Nath Thakur one ceiling case under the Ceiling Act, was registered in the year 1976-77 and during the pendency of the ceiling case, the owner of the

aforementioned lands, with permission of the competent authority under the Ceiling Act has sold the land and in that process, the appellant has subsequently purchased the land and become owner of aforementioned lands.

10. On 21/03/1989, notification under Sections 4(1) and 17(1) of the Act of 1894 was issued/published and thereafter on 31/03/1989, notification under Section 6 of the Act of 1894 was also issued/published. The land acquisition proceeding is with respect to 51.06 acres of land in total of different land owners bearing different Khasra numbers of village Jarwai alias Heerapur. The land admeasuring 51.06 acres of land also includes the land purchased by the petitioner/appellant bearing Khasra Nos.752, 754/2, 757 and 759/2, admeasuring 19.52 acres.

11. During the land acquisition proceeding before the Land Acquisition Officer, original owner of land Yogendra Nath Thakur has submitted his objection and intimated that against subject land proceeding before the competent authority under the Ceiling Act is pending and also that the competent authority under the Ceiling Act has granted permission of transfer of land to one Housing Society. The objection raised by the original owner of the land in dispute was considered and the Land Acquisition Officer has recorded that as the proceeding under the Ceiling Act is pending before the competent authority, therefore, the lands bearing Khasra Nos.752, 754/2, 757 and 759/2 is not being acquired. The said fact is also recorded in the order sheet dated 14/02/1991 by the Land Acquisition Officer while considering the application of the respondent No. 3-Housing Board. Finally, the Land Acquisition Officer passed an award on 08/03/1991 with respect to other lands leaving apart the subject land.

12. Rejection of application of respondent No. 3 (beneficiary of acquisition proceedings) with respect to acquire the subject land was neither challenged nor the award dated 08/03/1991 was challenged before

competent authority by respondent No. 3 wherein the award specifically mentions that subject land is not acquired.

13. Respondent No.3 wrote a letter to the Collector on 06/07/2007 for allotting the land in favour of the Housing Board as the land subject matter of the appeal has been excluded from ceiling. The Collector sent the letter to the Land Acquisition Officer on 25/07/2007 and the Land Acquisition Officer has opined in order sheet dated 30/10/2007 that supplementary award would be passed. The Land Acquisition Officer has subsequently passed a supplementary award on 24/04/2009 and sent for approval of the competent authority i.e. Collector, Raipur (it is a land acquisition), in which, there was an endorsement that a new case of land acquisition be prepared. But, subsequently after number of discussions between the authorities, finally the supplementary award was passed on 21/07/2009.

14. Looking to the issues involved in the instant appeal and the grounds raised by learned counsel for the appellant, it will be beneficial to glance the relevant provisions of Act of 1894. Sections 4(1), 17(1), 6 and 11 of the Act of 1894 reads as under :-

“4. Publication of preliminary notification and powers of officers thereupon.”-(1) Whenever it appears to the [appropriate Government] that land in any locality [is needed or] is likely to be needed for any public purpose [or for a company] a notification to that effect shall be published in the Official Gazette [and in two daily newspapers circulating in that locality of which at least one shall be in the regional language], and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality [(the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the notification)].

6. Declaration that land is required for a public purpose.”-(1) Subject to the provisions of Part VII of this Act, [when the] [appropriate Government] is satisfied after considering the report, if any, made under section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to

certify its orders [and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under section 5A, sub-section (2)]

[Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1),-

- (i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967) but before the commencement of the Land Acquisition (Amendment) Act, 1984 shall be made after the expiry of three years from the date of the publication of the notification; or
- (ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:]

[Provided further that] no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

[Explanation 1.-In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

[Explanation 2.-Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues].

(2) [Every declaration] shall be published in the Official Gazette, [and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the date of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state] the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a

Company, as the case may be; and, after making such declaration the [appropriate Government] may acquire the land in a manner hereinafter appearing.

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

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

[Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf: Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.]

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

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

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

17. Special powers in cases of urgency.-(1) In cases of urgency, whenever the [appropriate Government] so directs, the Collector, though no such award has been made, may, on the expiration

of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), [take possession of any land needed for a public purpose]. Such land shall thereupon [vest absolutely in the [Government]], free from all encumbrances.”

* * * * *

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[(3A) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3),-

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2),

and where the Collector is so prevented, the provisions of section 31, sub-section (2) (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.]”

15. It is not disputed by any of the party to the appeal that the lands subject matter of the appeal were also included in the notice under Sections 4(1), 17(1) and 6 of the Act of 1894. It is also not in dispute that in the land acquisition proceeding, the notification of declaration as provided under Section 6 of the Act of 1894 has been made on 31/03/1989, which is also mentioned in award dated 08/03/1991 passed by Land Acquisition Officer.

16. From perusal of the documents available on record, it is evident that though the land acquisition proceeding was initiated by Land Acquisition Officer on 21/03/1989 for acquisition of the land admeasuring 51.06 acres including the land subject matter of appeal bearing Khasra Nos.752, 754/2, 757 and 759/2, admeasuring 19.52 acres, but the Land Acquisition Officer has not passed any award for the lands claimed by the appellant i.e. Khasra Nos.752, 754/2, 757 and 759/2.

17. The Land Acquisition Officer in the same award dated 08/03/1991 has mentioned that the land subject matter of the appeal is not being

acquired due to pendency of ceiling case in the Urban Land Ceiling Act and also specifically mentioned that land acquisition proceeding with respect to a land in question is dropped. The proceeding under the Ceiling Act has been concluded on 08/03/1991, in which, no award was passed with respect to the lands bearing Khasra Nos.752, 754/2, 757 and 759/2.

18. The provision of Section 11A of the Act of 1894 has been introduced by way of an amendment on 24/09/1984, in which, the legislature has provided the period of limitation for making an award by Land Acquisition Officer. Section 11A of the Act of 1894 reads as under :-

“[11A. Period within which an award shall be made.-(1) The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation.- In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.]”

19. From bare perusal of the aforementioned section, It is clear that the Land Acquisition Officer is bound to make an award of the lands whose publication has been made under Section 6 of the Act of 1894 within a period of two years from its declaration, and if not, then the entire proceeding of the acquisition of land shall lapse. The explanation to Section 11A provides in computing the period of two years, the period during which any action or proceeding to be taken in pursuance of said declaration is stayed by an order of a Court shall be excluded.

20. From perusal of the record, there is no material to show that the publication under Section 6 of the Act of 1894 was challenged by the owner of the land before any competent Court of law or authority and had

obtained stay order with respect to the acquisition of the land in question. In fact, the record shows that the Land Acquisition Officer himself has declined to acquire the land, which is subject matter of the appeal. In view of the above, the explanation appended to Section 11A of the Act of 1894 have no application to the facts of the case.

21. In the case in hand, award with respect to the subject matter of the land was passed by the Land Acquisition Officer only on 21/07/2009 by mentioning as “supplementary award”. From perusal of the said supplementary award dated 21/07/2009, it is evident that all the proceedings i.e. notification under Sections 17(1), 4(1) and 6 of the Act of 1894 has been taken in the land acquisition proceeding, which was initiated in the year 1989 and also completed by passing the award on 08/03/1991 but lands in question was excluded from acquisition by Land Acquisition Officer and no award with respect to same was passed.

22. Looking to the contents of supplementary award dated 21/07/2009, it is not in dispute that the declaration under Section 6 of the Act of 1894 has been made on 31/03/1989 and thereafter, the award has been passed on 21/07/2009, which is in contravention with the provision of Section 11A of the Act of 1894.

23. The Hon'ble Supreme Court while considering the provision of Section 11A of the Act of 1894 in the matter of **Mohan & Anr. v. State of Maharashtra & Ors.**¹ held as under:

“9. In our opinion under Section 11A what has to be seen is the date of last publication of the declaration under Section 6, and not any subsequent corrigendum to the said declaration. The only circumstance under which the period between the declaration under Section 6 and the award can be extended is mentioned in the explanation to Section 11A which states : “In computing the period of two years referred to in Section 11A, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court is excluded.”

¹ AIR 2007 SC 2625

10. There is no mention in Section 11A that the period after the publication of the declaration under Section 6 and the publication of any corrigendum to the said declaration has also to be excluded. We will be adding words to the statute if we put such interpretation to Section 11A, and it is well settled the Court should not add or delete words in a statute.”

24. The issue with regard to provisions of Sections 17, 5A, 9, 11 and 11A of the Act of 1894 have been elaborately discussed by the Hon'ble Supreme Court in the matter of **Laxmi Devi v. State of Bihar and Others²**, in which, the Supreme Court held as under:-

“18. Section 17(3-A) came to be introduced into the statute by Act 68 of 1984. It requires the Collector to tender payment of eighty per cent of the compensation estimated by him, obviously and pointedly, to the person interested in compensation for such land, unless the Collector is precluded or prevented from making such payments because of exigencies enumerated in Section 31 of the L.A. Act. In other words, the Collector cannot by way of first recourse deposit the estimated compensation even in the Court to which the filing of a Reference under Section 18 is provided.

18.1 The use of the word “shall” indicates that the provisions are prima facie mandatory in nature unless the statute or the language employed in the Section indicates otherwise. The language of sub-Section (3A), inasmuch as it commences with the words “Before taking possession of any land.....”, makes it incontrovertibly clear that what follows are the prerequisites thereto. It is beyond cavil, therefore, that the statute has ordained a precise and particular methodology which must be adhered to as a precursor to divesting the owner of land of its possession and title.

18.2 It is axiomatic that if a statute prescribes the manner in which an action is to be performed, it must be carried out strictly in consonance thereto or not at all. This legal principle has been articulated over a century ago in *Taylor v. Taylor*, (1875) LR 1 Ch D 426 and has admirably and in fact unquestionably withstood the test of time. It was approved by the *Privy Council in Nazir Ahmad v. King Emperor*, (1935-36) 63 IA 372 and subsequently applied by three Judge Benches in *Rao Shiv Bahadur Singh v. State of Vindya Pradesh*, AIR 1954 SC 322, *State of U.P. v. Singhara Singh*, AIR 1964 SC 358, *Baby Verghese v. Bar Council of Kerala*, (1999) 3 SCC 422 and most recently in *Hussein Ghadially v. State of Gujarat* (2014) 8 SCC 425.

18.3 Simply put, but for the statutory enablement, the action could not have been taken; ergo everything surrounding that empowerment must be meticulously performed. Possession of the land can be taken on grounds of urgency if and only if there is contemporaneous payment of eighty per cent of the estimated compensation, otherwise making the acquisition vulnerable to vitiation because of the Taylor v. Taylor, (1875) LR 1 Ch D 426 principle. The use of the word “estimated” in Section 17(3-A) delineates the distinction from “actual” compensation; an estimate always remains a rough or approximate calculation only [Black’s Law Dictionary], or an approximate judgment and /or a price specified as that which is likely to be charged. It would do violence to the statute and fly in the face of common sense if an estimate is treated per se as a conclusive calculation. Any doubt that may remain is immediately dispelled upon a perusal of Section 17(3-B) which clarifies that the estimated amount tendered/paid under sub-section (3A) will be taken into account for determining the amount of compensation and thereafter logically permitting the shortfall or the excess to be adjusted. In other words, the amount of compensation has to be determined and computed under the relevant sections of the L.A. Act.

18.4 A reading of sub-section (4) sounds the death-knell to the arguments put forward for the Respondent State, inasmuch as it allows the option to the appropriate Government to make the provisions of Section 5-A inapplicable. Paraphrased differently, even where the urgency provisions contained in Section 17 are resorted to, ordinarily the provisions of Section 5-A have to be adhered to, i.e. inviting and then deciding the objections filed by the landowners. Significantly, sub-Section (4) of Section 17 does not, as it very easily could have, exempt compliance with the publication of the declaration under Section 6 and the hearing of parties preparatory to the passing of an award under Sections 9 to 11 of the Act. There is, therefore, not even an iota of doubt that remains pertaining to the absolute necessity of the passing of an award under Section 11 of the L.A. Act.

18.5 We are in no manner of doubt, and we reiterate, that the tender of the estimated compensation is the precondition, the sine qua non, enabling the Government to take possession of land under the foregoing subsections; and must be followed by the exercise of computation of compensation in a procedure corresponding to that in Section 11.”

25. So far as the facts of the case are concerned, the possession of the subject land of the appeal has not been taken over by the State Government or its beneficiary agency after notification under Sections 17(1) or 6 of the Act of 1894 even till passing of the award by the Land

Acquisition Officer and further that the land subject matter of the appeal is even not acquired. Even the application of beneficiary agency for continuing the acquisition proceedings of the subject land was dismissed on 14/02/1991 prior to passing of award on 08/03/1991. The order of Land Acquisition Officer reads as under :-

“प्रतिलिपि

न्यायालय कलेक्टर (भू अर्जन शाखा) रायपुर प्रकरण क्रमांक 60अ/82 वर्ष 88.89 कार्यपालन यंत्री म.प्र. गृह निर्माण मंडल रायपुर विरुद्ध पराग बाई व अन्य 58 ग्राम जरवाय उर्फ हीरापुर तह. व जिला रायपुर.

नकल आदेश पत्र दि. 24.2.91 का

14.2.91 प्रकरण प्रस्तुत। ख.नं. 752, 754/2, 757, 759/2 के संबंध में गृह निर्माण मण्डल से प्राप्त किया है जो प्रकरण में संलग्न है। कार्यपालन यंत्री ने सूचित किया है कि सक्षम अधिकारी ने मिडिल इन्कम ग्रुप हाउसिंग सोसाईटी विवेकानंद नगर की धारा 20 के अंतर्गत उपरोक्त ख.नं. की भूमि बिक्री करने की छूट दी गई है। मंडल ने इस भूमि को नहीं छोड़ने की मांग की है सक्षम अधिकारी नगर भूमि सीमा से प्राप्त सूचना के अनुसार उपरोक्त भूमि के संबंध में सीलिंग प्रकरण लंबित होना बताया है ऐसी स्थिति में इस भूमि का अर्जन नहीं किया जा सकता प्रकरण आवार्ड के लिए रखा जाय.

सही/—
भू अर्जन अधिकारी
रायपुर म.प्र.”

26. The identical circumstance has been discussed by the Hon'ble Supreme Court in the matter of **Laxmi Devi** (supra) and held as under:-

“26. This is also in line with a plain reading of Section 17(1), which states that “once possession of the land is taken by the Government under Section 17, the land vests absolutely in the Government, free from all encumbrances”. In Section 48(1) the taking over of the possession of the land is of seminal significance in that the provision succinctly states that “the Government shall be at liberty to withdraw from the acquisition of any land the possession of which has not been taken”. The next sub-section covers calculation of compensation for the aborted occupation.”

26.1 The same position came to be reiterated in *Satendra Prasad Jain v State of U.P.*, (1993) 4 SCC 369 by a three-Judge Bench of this Court. The acquisition proceedings including the exclusion of Section 5-A had obtained the imprimatur of the Allahabad High Court; the urgency and public purpose

had received curial concurrence. Possession of the land was taken by the State from the landowners. Previously, the Special Leave Petition filed by the landowners had been dismissed by this Court. Ironically, the subsequent stance of the State was that the acquisition of land under the urgency provisions was required to be set aside for the reason that the State had failed to pass an award under Section 11 within two years and had also failed to pay eighty per cent of the estimated compensation required under Section 17(3-A). Whilst the State endeavoured to withdraw from the acquisition, the erstwhile landowners opposed it. This Court directed the State “to make and publish an award in respect of the said land within twelve weeks from today”. The abovementioned discussion bears out that this Court was concerned only with the issue of the land being returned by the State to the erstwhile owner. It does not go so far as to limit or restrict the rights of landowners to fair compensation for their expropriated property, as that is a Constitutional right which cannot be nullified, neutralised or diluted.

26.2 We think it justified to again refer to the opinion in *Satendra Prasad Jain v. State of U.P.*, (1993) 4 SCC 369 that: (SCC p. 374, para 16)

“16.Section 11-A cannot be so construed as to leave the Government holding title to the land without the obligation to determine compensation, make an award and pay to the owner the difference between the amount of the award and the amount of eighty per cent of the estimated compensation.”

26.3. The second issue, one that we feel must be kept in mind in the interpretation in the law laid down by this Court, is the factual matrices involved in both *Satendra Prasad Jain v. State of U.P.*, (1993) 4 SCC 369 and *Lt. Governor of H.P. v Avinash Sharma*, (1970) 2 SCC 149. In both these precedents, as well as in innumerable others that have relied upon them, the Government's attempt was to misuse its own omissions to achieve its own oblique purposes. It was in this context that this Court declined to accede to the pleas of the Government. This Court poignantly repelled the State's attempt to nullify the acquisition on the predication of its non-compliance with Sections 16 and 17(3-A). The judicial intent was not to cause any loss to landowners, but to protect them. The pernicious practice that was becoming rampant, that is to make partial compliance with the statute and to follow the acquisition procedure in a piecemeal manner, and then to argue that its own lapses rendered its acquisition illegal, was roundly repulsed. Although this strictly constitutes obiter, we think it appropriate to clarify that where the landowners do not assail the acquisition, it may be open to them to seek a mandamus for payment to them, after a reasonable period, of the remaining compensation, which will

thereupon metamorphose from a mere estimation to the actual compensation for the expropriation.”

27. In the case in hand, as per the facts emerging on record, it is clear that it is not a case where after publication of notices under Sections 17(1), 4(1) and 6 of the Act of 1894, the Land Acquisition Officer withheld the proceeding of land acquisition, but here is a case that the Land Acquisition Officer himself has left the land from acquisition mentioning that the land subject matter of the appeal is not being acquired and thereafter, the award with respect to other lands have been passed by the Land Acquisition Officer on 08/03/1991. The proceeding which has been initiated vide notifications and publications under Sections 17(1), 4(1) and 6 of the Act of 1894 have been completed by passing an award on 08/03/1991, in which, no award has been passed by the Land Acquisition Officer with respect to the land in question.

28. Under the Land Acquisition Act, 1894, there is no provision prescribed with respect to passing of supplementary award and in the instant case, the Land Acquisition Officer has passed supplementary award on 21/07/2009 taking into consideration the notifications under Sections 17(1), 4(1) and 6 of the Act of 1894 published in the year 1989. The notifications earlier issued/published under Sections 17(1), 4(1) and 6 of the Act of 1894 have lost its significance as soon as the final award under Section 11 of the Act of 1894 has been passed by the Land Acquisition Officer in continuity of the said notification and the same will not remain alive for the lands, which was not acquired by the Land Acquisition Officer and no award was passed.

29. As discussed above, the proceeding of land acquisition initiated in the year 1989 by issuing the notifications under Section 17(1), 4(1) and 6 of the Act of 1894 concluded without acquiring the land in question and final award was already passed on 08/03/1991. There cannot be continuity of the said proceeding for passing an award after lapse of more than 17

years of passing final award. Secondly, Section 11A of the Act of 1894 provides limitation for passing of an award within a period of two years from the date of publication of notification under Section 6 of the Act of 1894.

30. Provision of Section 11A was enacted with a view to prevent inordinate delay being made by Land Acquisition Officer in making the award which deprived owners from enjoyment of the property or to deal with the land whose possession has already been taken. Delay in making the award subjected the owner of the land to untold hardship. The objects and reasons for introducing Section 11A into the Act of 1894 were that “the pendency of acquisition proceedings for long periods often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them”.

31. While passing the impugned order, the learned Single Judge has failed to take note of provision of Section 11A of the Act of 1894. The learned Single Judge has passed the impugned order only on the premise that as the acquisition proceeding has not been challenged by the petitioner in its initial stage at the time of publication of notice under Sections 4(1), 17(1) and 6 of the Act of 1894, and therefore, subsequently after passing of the award on 21/07/2009, the appellant is restrained from challenging the award (supplementary award) ignoring the specific pleadings in the writ petition with respect to provision of Section 11A of the Act of 1894.

32. Present is not a case of passing an award after following all the mandatory requirements as provided under the Act of 1894, but it is a case where the award dated 21/07/2009 (supplementary award) has been passed without following the procedure as provided under the Act of 1894. Even no notice was issued prior to passing of the award. The Act of 1894 does not provide any provision for passing the supplementary award, and

further Section 11A of the Act of 1894 in its clear words mandates that as soon as two years is passed after declaration under Section 6 of the Act of 1894 and its notification, whole proceeding initiated with respect to land acquisition, whose details have been notified under Section 6 of the Act of 1894 shall be lapsed. Meaning thereby that the whole proceeding taken place prior to the period of limitation with respect to subject land is automatically lapsed by virtue of Section 11A of the Act of 1894. In the instant case the Land Acquisition Officer himself dropped the land acquisition proceeding with respect to subject land.

33. In the present case, possession of land was not taken immediately as per provisions of Section 17 of the Act of 1894, but the possession was taken on 06/07/1992 after passing of award on 08/03/1991, in which, no award for acquisition of subject land was passed. It has been brought to the notice of this Court that after taking possession of subject land, construction has been made over it and also the third party right has been created.

34. Be that as it may, the question before this Court is for what relief the landowner/appellant would be entitled for in the present facts and circumstances of the case. As held earlier the proceedings initiated for acquisition of land was lapsed by application of Section 11A of the Act of 1894 and secondly, the Land Acquisition Officer has not acquired and passed award with respect to subject land and passed award for other lands which were subject matter of notification under Sections 17(1), 4(1) and 6 of the Act of 1894 alongwith subject lands, therefore, the proceeding initiated in the year 1989 is completed and there cannot be any notice or publication made in 1989 remain in existence in the year 2009, when the proceeding initiated was completed by passing an award on 08/03/1991.

35. The Supreme Court in the matter of **Laxmi Devi** (supra) further considered the situation where acquisition proceeding started under

Section 17 of the Act of 1894 but no award was passed and held as under:-

“29. The scenario before us depicts the carelessness and the callousness of the State, quite different from the situation in *Satendra Prasad Jain and State of U.P.*, (1993) 4 SCC 369 and *Lt. Governor of H.P. v. Avinash Sharma*, (1970) 2 SCC 149. The Appellants herein are being denied just and fair compensation for their land in proceedings which commenced in 1987, despite the directions of the High Court passed as early as in 1988 to pass an award within four months. The *raison d'être* behind the introduction of Section 11A was for the landowners to have a remedy in the event of an award not being passed expeditiously. If *Satendra Prasad Jain (supra)* is interpreted to mean that Section 11A will not apply to any acquisition under the urgency provisions, landowners such as the Appellants before us will have no protection, even if they are not paid full compensation for their land for decades. This cannot be in keeping with the legislative intent behind this Section. Furthermore, keeping empirical evidence in sight, we make bold to opine that circumstances require this Court to reconsider its view that even if the stated public interest or cause has ceased to exist, any other cause can substitute it, especially where the urgency provisions have been invoked.

30. We feel it imperative to distinguish between the setting aside of an acquisition and the reversion of possession to the erstwhile landowners. While the L.A. Act and the judgments discussed above do not allow for the latter, we are of the considered opinion that this does not necessarily imply that the former is also not an option. Both the abovementioned cases dealt with a factual situation in which the Government was attempting to set the acquisition of the land at naught so that they would not have to pay compensation to acquire it. Setting aside of the acquisition in those cases was tantamount to reverting the possession to the original owners. In this scenario, however, the two do not have to go hand in hand. In allowing the acquisition of land that the Government finds necessary to be set aside, we would not necessarily be holding that the land revert to the Appellants, as the alternative of permitting the Government to keep possession provided it re-acquires the land with a new Section 4 notification exists. This option, particularly in the present factual matrix, does the least violence to the intent and content of the L.A. Act, in that it upholds Section 11A even in cases of acquisition under Section 17 while preserving the requirement of Section 17 that the unencumbered possession of the land remain vested in the Government. It also protects the rights of the landowners, thus fulfilling the intent of Section 11A, while allowing the Government to acquire land in cases of emergencies without its title being challenged, which is the avowed intention of Section

17. Any other interpretation of the law would serve to protect only those landowners who had approached the Court to stop the Government from undoing an emergency acquisition, while leaving in the cold equally aggrieved landowners seeking to enforce their right to fair compensation for their land. Even equity demands that the party bearing the consequence of the delay in the award ought not to be the innocent landowner, but the errant State.”

36. In view of the aforementioned discussions and also applying the law laid down by Hon'ble Supreme Court in aforementioned cases, we are of the considered opinion that the learned Single Judge committed an error in dismissing the writ petition ignoring the provision of Section 11A of the Act of 1894. We therefore set aside the impugned order dated 11/05/2011 passed by the learned Single Judge in Writ Petition (C) No.2527 of 2011 and further set aside the supplementary award dated 21/07/2009 passed by the Sub-Divisional Officer (Revenue)-cum-Land Acquisition Officer, Raipur in Land Acquisition Case No.60/A-82/Year 1988-89.

37. As the award is set aside, the appellant is entitled for just and reasonable compensation at the earliest, particularly in a given case where the appellant was deprived of his property in the year 1992. The State Government is directed to issue fresh notification and initiate land acquisition proceedings afresh with respect to subject land bearing Khasra Nos.752, 754/2, 757 and 759/2 within a period of three months from the date of receipt of the copy of this order.

38. The appeal is allowed in the aforesaid terms.

Sd/-
(Ajay Kumar Tripathi)
Chief Judge

Sd/-
(Parth Prateem Sahu)
Judge