

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1431 of 2010**

1. Laxmichand Aged About 58 years son of Late Shankar Lal Nathani
2. Panna Lal aged about 57 years S/o Late Purushottam Das Nathani
3. Ratan Lal aged about 50 years S/o Shri Ganga Das Nathani

All R/o Sadar Bazar, Raipur, Chhattisgarh

---- Petitioners

Versus

1. State Of Chhattisgarh through the Secretary, Department of Revenue, Mantralaya, DKS Building, Raipur (CG)
2. Executive Engineer, Chhattisgarh Housing Board, Shankar Nagar, Raipur, District – Raipur (CG)
3. The Chairman, Chhattisgarh Housing Board, Shankar Nagar, Raipur, Distt. Raipur CG
4. Land Acquisition Officer, Collectorate Building, Raipur, District – Raipur (CG)

---- Respondents

For Petitioners	:	Shri V.V.S. Murthy, Senior Advocate with Shri Ramkumar Tiwari and Shri Shantanu Kumar, Advocates
For State	:	Shri Alok Bakshi, Additional A.G. with Ms. S. Harshita, Panel Lawyer
For Respondents 2 and 3	:	Shri Sanjay Patel, Advocate

S.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

12/12/2019

Heard.

This petition, under Article 226 of the Constitution of India, has been

preferred by the petitioners, the erstwhile owners of land, aggrieved by an award dated 28/10/2009 passed in Land Acquisition Proceeding No.190/A-82 whereby, upon acquisition of petitioners' land, compensation to the tune of Rs.7,74,057/- has been awarded. This is second round of litigation and the case has a chequered history also. The respondent / Housing Board came out with the housing project of construction of houses in the city of Raipur. For the purposes of making available land towards development of housing project, at the initiative of the Housing Board, land acquisition proceedings were initiated by the Land Acquisition Officer by issuance of notification under Section 4 (1) of erstwhile Land Acquisition Act, 1894 (for short 'the Act of 1894'). In the said notification, admittedly, land belonging to petitioners, admeasuring 0.405 hectares, situated in khasra no.26 in Shankar Nagar, Raipur was also included. As the project was conceived to be urgent, urgency clause under Section 17 of the Act of 1894 was also invoked and a notification under Section 17 (1) was issued on 29/10/1976, which was followed by declaration under Section 6, vide notification dated 14/01/1977. On 15/04/1977, advance possession was also taken to facilitate development of housing colony. However, thereafter, the Land Acquisition Officer did not proceed further. As no compensation was paid to the petitioners, either before taking possession, as required under Section 17 itself, nor thereafter, nor any award passed by the Land Acquisition Officer, the petitioners finally approached this Court by filing writ petition i.e. W.P. No.1135/2001 seeking relief that the respondent / land acquisition officer be commanded to determine compensation under Section 11 of the Act of 1894 in respect of the land which was taken away from the petitioners. Prayer was also made that as no award has been passed since the date of notification

under Section 4 of the Act of 1894, entire land acquisition proceedings having lapsed under Section 11-A of the Act of 1894, petitioners be declared entitled to return of land.

2. In the aforesaid writ petition, the respondents came out with a stand that the process would be re-initiated by issuance of a fresh notification and upon determination of proper compensation, compensation shall be paid to the petitioners. In view of such specific stand taken by the Land Acquisition Officer and the Housing Board, this Court passed following order, relevant extracts of which are reproduced herein below –

“XXXXXXXXXX

The grievance of the petitioners is that the land acquisition proceedings for the land owned by the petitioners was initiated in the year 1974-75 and notification under Section 4 of the Land Acquisition Act was published, however, the respondents did not complete the acquisition proceeding and without acquisition, the possession of the land was taken for the purpose of C.G. Housing Board.

The respondents No.1 and 4 in their return have submitted that the Land Acquisition Case No.190-A/82 of the year 1974-75 was registered and invoking emergency clause, the land was acquired without compensation to the land owners, however, subsequently the record of the land acquisition proceeding was misplaced and despite the earnest efforts, the file could not be reconstructed. The Land Acquisition Officer, Raipur has, in the meanwhile, sought permission to initiate proceeding for acquisition of the land and the Collector has granted permission on 27/03/2008 and fresh land acquisition proceedings are being initiated.

Learned counsel for the petitioners submits that this

petition may be disposed of with a direction to the respondents to initiate the land acquisition proceedings and conclude the same expeditiously.

Learned counsel for the respondents have no objection if the petition is disposed of in the above terms.

In view of the submissions made by learned counsel for the parties, this petition is disposed of with direction to the respondents to conclude the land acquisition proceeding of the disputed land within a period of one year from today.”

The order clearly records the stand of the respondents that, though, land acquisition proceedings were initiated, invoking emergency clause, no compensation was paid and subsequently, record of land acquisition proceedings was also misplaced and could not be reconstructed. Further stand taken before the Court and recorded in the order was that the Land Acquisition Officer, Raipur has sought permission to initiate proceedings for acquisition of land and the Collector has granted permission on 27/03/2008 and fresh land acquisition proceedings are being initiated.

It was on this specific stand taken by the respondents that the petitioners sought disposal of the writ petition with appropriate direction to the respondents to initiate land acquisition proceedings and conclude the same expeditiously and on that premise, this Court disposed off the petition with a direction to conclude acquisition proceedings within a period of one year from the date of passing of the order.

3. Thereafter, no further proceedings were drawn, except passing the impugned award on 28/10/2009. A perusal of the same shows that on the

basis of earlier proceedings which were initiated in the year 1976, award for payment of compensation of Rs.7,74,057/- was passed.

4. Assailing legality and validity of the impugned award and determination of compensation, learned senior counsel appearing for the petitioner would submit that the award is *per se* illegal and in the teeth of mandatory provisions contained in Section 11 (A) of the Act of 1894. He would argue that the respondent authority acted in breach of clear statement made before the Court that fresh notification would be issued. He would argue that in the earlier proceedings before this Court, the respondent had conceded that the earlier proceedings could not be brought to its logical conclusion by passing an award and paying compensation as the records were misplaced and in such circumstances, decision was taken to re-initiate the proceedings. Therefore, it was contended that it was obligatory on the part of the land acquisition officer to initiate fresh proceedings and pass award under the provisions of the then existing land acquisition law. Instead of doing that, the authorities again resorted to the earlier notification and proceedings which had lapsed by operation of law, in complete dereliction of the duty and passed an award which is clearly illegal. Relying upon judgments of the Supreme Court in the cases of **Mohan and anr. v. State of Maharashtra & ors., AIR 2007 SC 2625**, **Laxmi Devi v. State of Bihar and ors., (2015) 10 SCC 241** and Division Bench judgment of this Court in **Jalaram Co-operative Housing Society Limited v. The Secretary and ors. (W.A.No.407/2011)**, it is argued that by operation of mandate under Section 11-A of the Act of 1894, award having not being passed, earlier proceedings had lapsed and it was clearly

admitted also. The respondents were duty bound to re-initiate the proceedings by issuing notifications, determine compensation and then pass award. According to him, determination of compensation based on notification of 1976 is completely illegal. He would further submit that reference of Section 48 of the Act of 1894, made in para 4 of the impugned award, exposes the fallacious approach of the land acquisition authority that if proceedings under Section 48 have not been drawn, award could be passed any time, which is in complete ignorance of Section 11 of the Act of 1894.

5. On the other hand, learned State counsel would argue that earlier, proceedings were drawn by the petitioners, seeking direction for payment of compensation and nothing more. In these proceedings, statements were made before the Court on the basis of averments made in their return in which, it was stated that appropriate proceedings would be drawn towards payment of compensation. The earlier proceedings were not held illegal and direction issued by this Court was to conclude the proceedings. Learned counsel for the State would argue that as on the date, when land stands acquired long back and possession was taken in the year 1977, legality of those proceedings of acquisition are not open to challenge. Further submission is that the petitioners had agreed to rate of compensation as Rs.1.75p./Sq.Ft. in the year 1977 and upon their consent, only possession of the land was taken on 15/04/1977, invoking emergency clause. Further submission is that on the basis of such agreed rate of compensation, the Land Acquisition Officer has correctly determined the amount of compensation which includes appropriate interest as also solatium as 30% and total amount arrived at by such calculation in

accordance with the provisions of Land Acquisition Act is Rs.7,74,057/-, which amount has been deposited but the petitioners, instead of receiving the said amount, have challenged the award on untenable grounds. Reliance has been placed on the decision of the Supreme Court in the case of **Satendra Prasad Jain and ors. v. State of U.P. and ors., (1993) 4 SCC 369.**

6. Learned counsel for Housing Board adopted the arguments of learned State counsel and submits that the land acquisition proceedings have not been drawn by the Housing Board but the Land Acquisition Officer. He would submit that as the Housing Board required land for building of housing project, it had requested the land acquisition officer for acquisition of land and whatever amount was required to be paid, as per directions under the award, has already been deposited and therefore, as far as Housing Board and the house constructed by it are concerned, no relief can be granted to the petitioners against the Housing Board.

7. I have heard learned counsel for the parties and perused the records.

8. Indisputably, in the present case, notification under Section 4 (1) was issued way back on 29/10/1976. According to the parties, it is not a disputed position that acquisition of land was made for development of housing project by the then Madhya Pradesh Housing Board.

It is also not in dispute that while issuing notification under Section 4(1) on 29/10/1976, urgency clause under Section 17(1) of the Act of 1894 was also invoked. Further, issuance of declaration under Section 6 on 14/01/1977 and taking of advance possession of petitioner's land admeasuring 0.405 hectares

on 15/04/1977 is also not in dispute.

9. It is also reflected from the pleadings and records that after petitioners' land was taken, no further proceedings were drawn towards completion of enquiry under Section 11 of the Act of 1894 nor any award was passed, much less payment of any compensation to the petitioners and in this background, when the petitioners did not receive anything despite having been divested of their valuable property, they had to take shelter of this Court by filing Writ Petition No.1135/2001.

During the course of hearing, original records of the said writ petition were called by this Court. A perusal of the return filed by the State as well as by the Housing Board unequivocally reveal and leaves no manner of doubt that the stand taken by the respondents was that earlier proceedings had lapsed and therefore, the respondents are contemplating to issue fresh notification. Paragraphs 3, 4 and 5 of the return on affidavit, filed by the respondent / State are reproduced for ready reference herein below -

“3. That, the aforesaid land acquisition case was lost / misplaced and could not be traced. Vide order dated 26.10.2007 the then Sub-Divisional Officer (Revenue) and ADM, Raipur was directed to reconstruct the filing and proceedings of the case. However that was not done. Ultimately, on 20.03.2008 the Land Acquisition Officer (Revenue) has been reported that file could not be reconstructed and no further action was taken to determine the compensation payable to the owners.

4. That, on 26/03/2008, the Sub-Divisional Officer (Revenue) / Land Acquisition Officer, Raipur has sought to initiate the proceedings for acquisition of the land. The

Collector, Raipur has granted permission on 27.03.2008 to do the needful. A letter has been sent by the Sub-Divisional Officer (Revenue) to the Executive Engineer, C.G. Housing Board, Division No.1, Raipur to submit a new proposal for acquisition of the land so that amount of compensation can be determined. Copies of entire correspondences are annexed herewith and have been marked as **Annexure R-1.**

5. That, the answering respondents submit that the proceedings are being initiated to register a case of land acquisition and for determination and payment of the amount of compensation to the petitioner and other persons.”

From the return of the State, it is crystal clear that the State had taken clear stand before this Court that the proceedings are going to be re-initiated by issuance of fresh notification. In the return, it was explicitly revealed that, though, emergency clause was invoked and the land was acquired without giving compensation to land owners, later on, the record was lost and could not be traced. The reply of the Housing Board was no different in so far as the status of the land acquisition proceedings initiated in the year 1976 are concerned. It only led to assumption that they would be paying compensation as assessed by the Land Acquisition Officer in accordance with law.

10. On the face of such stand taken by the respondent / State, this Court was not called upon to decide the legality and validity of earlier proceedings because, even according to the respondents, the proceedings had lapsed and therefore, fresh proceedings were in contemplation. The direction of this Court was for determination of compensation payable to the petitioner by concluding the land acquisition proceedings within one year.

11. It is, however, found that thereafter, the Land Acquisition Officer did nothing. In breach and deviation of a clear stand taken before this Court, the Land Acquisition Officer conveniently proceeded to pass impugned award on the basis of lapsed proceedings which were initiated way back in the year 1976 but died their natural demise on account of non-passing of award as required under Section 11-A of the Act of 1894. A perusal of the impugned award exposes fallacious approach in passing the award. Having noted the history of litigation as also order passed by this Court on 01/05/2008 in W.P.No.1135/2001, the Land Acquisition Officer, despite having referred to letter dated 28/03/2008 of the Collector for fresh initiation of land acquisition proceedings, referring to request of the Housing Board to pass an award, has proceeded on following observations -

“4. xxxxxxxxx उक्त आदेश में यह स्पष्ट उल्लेख है, कि भू-अर्जन प्रकरण में धारा 06 की कार्यवाही उपरांत यदि धारा 48 की कार्यवाही नहीं हुई है तो धारा 11 के तहत अवार्ड पारित किया जा सकता है। चूंकि प्रस्तुत प्रकरण में भी धारा 06 का प्रकाशन दिनांक 14.1.1977 को किया गया है एवं धारा 48 की कार्यवाही नहीं हुई है, इसलिए प्रकरण में धारा 11 की कार्यवाही किए जाने हेतु कलेक्टर, रायपुर द्वारा दिनांक 04.09.2009 को आदेश दिया गया।”

12. The said observations made by the Land Acquisition Officer reveal that it proceeded on a fallacious assumption of law that if, after proceedings under Section 6, no proceedings under Section 48 have been drawn, an award under Section 11 could be passed. On that assumption, having noted that Section 6 declaration was notified on 14/01/1977 and proceedings under Section 48 have not been drawn, an order has been passed by the Collector, Raipur on 04/09/2009 for taking further proceedings under Section 11.

Thereafter, the Land Acquisition Officer only obtained relevant notification from the records made available from the Housing Board and then determined amount of compensation. It would, thus, be clear that the Land Acquisition Officer proceeded to pass impugned award on the basis of proceedings of the year 1976.

13. After having issued notification under Section 4 (1) read with Section 17 (1) and thereafter, declaration having been made under Section 6 on 14/01/1977, all that the respondents did was to take over the possession of the land of the petitioners on 15/04/1977. Having taken the land in that manner, the Land Acquisition Officer was obliged under the law to proceed in accordance with the provisions contained in the Act of 1894 which included hearing of objections under Section 5-A, determination of compensation under Section 9, followed by enquiry and passing of an award under Section 11. But, as is clear from the stand taken by the respondents themselves, records were misplaced and no proceedings could be drawn and no compensation could be paid.

14. Prior to insertion of Section 11 (A), by way of amendment in the Act of 1894, the provisions contained in Section 11 or any other provisions of the Land Acquisition Act, did not provide for any consequence in the event of failure to pass an enquiry within stipulated period. By way of an amendment in the year 1984, new Section 11-A was inserted w.e.f. 24/09/1984 under Act 68 of 1984. The provision reads as below -

“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."

15. It is well settled legal position, stated and re-stated in plethora of decisions including authoritative pronouncement of the Supreme Court in the case of **Laxmi Devi** (supra) that where an award is not passed within a period of two years from the date of declaration of objection, the entire proceedings of acquisition of land would lapse.

In respect of cases where declaration under Section 6 was published before commencement of the Land Acquisition Amendment Act, 1984 (for short 'the Act of 1984'), it has been clearly provided that the award shall be made within a period of two years from such commencement. In the present case, declaration under Section 6 was notified on 14/01/1977 i.e. prior to coming into force of the Act of 1984, therefore, the proceedings were mandatorily required to be brought to its logical conclusion by passing of an award within a period of two years from such commencement. That way also, the award was required to be passed on or before 24/09/1986 but nothing was done.

The only conclusion which follows by operation of law is that the entire proceedings lapsed.

16. This legal position was never disputed by the respondents and therefore, they themselves came out with a stand in earlier petition that they would be re-initiating the proceedings under the law, towards acquisition. However, that was not done and based on lapsed proceedings and ineffective and redundant notification under Section 4(1), Section 17(1) and Section 6, compensation was determined and award passed.

17. In the case of **Laxmi Devi** (supra), Their Lordships in the Supreme Court examined legislative intention reflected in the prefatory note – Statement of Objects and Reasons of amendment as below -

“11. The prefatory note – Statement of Objects and Reasons of Act No.68 of 1984 as are relevant are reproduced: [*Current Central Legislation Vol.10 1984 - 3,5,6,9*]

Prefatory Note – Statement of Objects and Reasons

– With the enormous expansion of the State's role in promoting public welfare and economic development since independence, acquisition of land for public purposes, industrialisation, building of institutions, etc., has become far more numerous than ever before. While this is inevitable, promotion of public purpose has to be balanced with the rights of the individual whose land is acquired, thereby often depriving him of his means of livelihood. Again, acquisition of land for private enterprises ought not to be placed on the same footing as acquisition for the State or for an enterprise under it. The individual and institutions who are unavoidably to be deprived of their property rights in land need to be adequately compensated for the loss keeping in view the sacrifice they have to make for the larger interests of the community. *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.

2. The main proposals for amendment are as follows:-

* * * *

(iii) A time-limit of one year is proposed to be provided for completion of all formalities between the issue of the preliminary notification under Section 4(1) of the Act and the declaration for acquisition of specified land under Section 6(1) of the Act.

* * * *

(v) It is proposed to provide for a period of two years from the date of publication of the declaration under Section 6 of the Act within which the Collector should make his award under the Act. If no award is made within that period, the entire proceedings for the acquisition of the land would lapse. He has also been empowered to correct clerical or arithmetical mistakes in the award within a certain period from the date of the award.

(vi) The circumstances under which the Collector should take possession of the land before the award is made in urgent cases are being enlarged to include a larger variety of public purposes.

* * * *

(ix) Considering that the right of reference to the

civil court under Section 18 of the Act is not usually taken advantage of by inarticulate and poor people and is usually exercised only by the comparatively affluent landowners and that this causes considerable inequality in the payment of compensation for the same or similar quality of land to different interested parties, it is proposed to provide an opportunity to all aggrieved parties whose land is covered under the same notification to seek re-determination of compensation, once any one of them has obtained orders for payment of higher compensation from the Reference Court under Section 18 of the Act. (emphasis supplied)

18. In earlier decision in the case of **Mohan** (supra), it was held as below -

“7. In our opinion the submission of learned counsel for the appellant is clearly correct in view of the clear provision of Section 11A of the Act. In view of Section 11A an award has to be made within two years from the date of publication of the declaration under Section 6. Failure to adhere to this time frame is fatal to the award, as the provision is mandatory.

8. xxxxxxxx

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."

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.

19. In view of aforesaid decisions, there can be no two views that the requirement of passing of award within the stipulated period as prescribed in Section 11-A is mandatory and non-compliance invariably has to result in lapse of proceedings. The consequence so prescribed under the law is arrested only in the circumstances exhaustively enumerated therein and noticed by the Supreme Court in the case of **Mohan** (supra).

20. Justification provided in the award for taking queue from the earlier proceedings, drawn several decades before, to conclude with the determination of compensation and passing of award, is wholly erroneous and unsustainable in law. As referred to herein above in para 4 of the award, justification provided is by taking recourse to a peculiar reasoning that if, after declaration under Section 6, proceedings under Section 48 have not been drawn, an award could be passed under Section 11. Present is not a case where the State authority decided to withdraw acquisition proceedings. Proceedings under Section 48 of the Act of 1894 could be invoked only when the Government withdraws from acquisition proceedings in exercise of its liberty. That too has to be exercised prior to taking of possession. It is too well settled legal position, as adumbrated in the case of **Mysore Urban Development Authority** (supra) that once possession of the land is taken by

the Government, the land vests in the government and the power of the Government under Section 48 (1) of the Act of 1894 to withdraw acquisition in regard to such land would cease to exist. Thus, legally as well as on factual score also, there was absolutely no occasion for making a reference to Section 48 of the Act of 1894. It appears that the Land Acquisition Officer, in its anxiety to somehow justify passing of award under Section 11 on the basis of Section 4 (1) and Section 17 (1) notification of the year 1976 – 1977, has chosen to take recourse to reasons which completely defies reason and logic, much less justification in law.

21. In the present case, what is apparent is that right from the beginning, proceedings have been drawn in complete violation of the statutory scheme of acquisition of land. Invocation of urgency clause, followed by taking possession was also in utter contravention of mandatory requirement of payment of 80 per centum of the estimated compensation as provided in Section 17(3)(A). This legal aspect was considered by the Supreme Court in the case of **Laxmi Devi (supra)** and following observations were made after having taken note of statutory scheme of Section 17.

“15. Section 17 is not a pandect; it could have been devised by Parliament to be so, inter alia, by the use of a non obstante clause, or in the alternative by clear and unequivocal language. In *Union of India v. G.M. Kokil* 1984 (Supp) SCC 196 this Court has opined that a “non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions.” Alternatively, Sections 9,

11, 11-A etc. could have been made subject to Section 17, although both cumbersome and clumsy, but has not been so done.

16. The salient concomitants of Section 17(1) deserve enumeration.

16.1. *Firstly*, the Section is attracted even though an award has not been made which, it appears to us, clearly indicates that the completion of this exercise has not been obliterated or dispensed with but has been merely deferred. An unambiguous and unequivocal statement could have been made excluding the requirement of publishing an award.

16.2. *Secondly*, it is available only on the expiration of fifteen days from the issuance of the Section 9 notice. This hiatus of fifteen days must be honoured as its purpose appears to be to enable the affected or aggrieved parties to seek appropriate remedy before they are divested of the possession and the title over their land. The Government shall perforce have to invite and then consider objections preferred under Section 5-A, which procedure, as painstakingly and steadfastly observed by this Court, constitutes the constitutional right to property of every citizen; inasmuch as Section 17(4) enables the obliteration of this valuable right, this Court has repeatedly restated that valid and pressing reasons must be present to justify the invocation of these provisions by the Government.

16.3. *Thirdly*, possession of the land can be taken only if it is needed for public purpose, which term stands defined in the preceding Section 3(f). A conjoint reading of Sections 17 and 3(f) makes it apparent to us that urgency provisions cannot be pressed into service or resorted to if the acquisition of land is for companies; however we must be quick to add that this

question does not arise before us.

16.4. *Fourthly*, possession of such lands would vest in the Government only when the foregoing factors have been formally and strictly complied with. This Section enables the curtailment of a citizen's Constitutional right to property and can be resorted to only if the provisions and preconditions are punctiliously and meticulously adhered to, lest the vesting be struck down and set aside by the Court in its writ jurisdiction, on the application of the *Taylor v. Taylor (1875) 1 Ch D 426* and several judgments of this Court which has followed this decision (*supra*).

17. xxxxxxxxxxxxxx

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 (3-A), 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* 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 Bench in *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh*, AIR 1954 SC 322, *State of U.P. v. Singhara Singh*, AIR 1964 SC 358, *Babu 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* principle. The use of the word “estimated” in the 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 (3-A) 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 sub-sections; and must be followed by the exercise of computation of compensation in a procedure corresponding to that in Section 11."

22. In that case, the Supreme Court also examined the question as to whether the constraint condition under Section 11-A were also applied in

Section 17 resorted to as below -

“29. The scenario before us depicts the carelessness and the callousness of the State, quite different from the situation in *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. 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 11-A 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 11-A 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 LA 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 LA Act, in that it upholds Section 11-A 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 11-A, 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.”

23. Admittedly, as the facts of the case stands admitted from the pleadings on record, not a single penny of compensation was paid to the petitioners, much less 80% of the estimated compensation, while taking possession of the property of the petitioners.

24. A convenient mode of determining compensation completely *de hors* the mandate and spirit of law nullifying and neutralizing the legislative mandate of the Land Acquisition Act, is reflected from the fact that compensation has been awarded on the basis of rate which prevailed on the date on which notification under Section 4 was issued i.e. on 29/10/1976. The stand of learned State counsel is that at that time, the petitioners had agreed for rate of Rs.1.75p./Sq.Ft. which have been made a basis for computation of compensation.

It would have been perfectly valid for the State, if by following the provisions of the Act of 1894, they would have paid 80% of the estimated compensation while taking possession and thereafter, pass a valid award within the time prescribed under Section 11-A. Infact, in the present case, after insertion of Section 11-A, award could be passed within next two years i.e. on or before 24/09/1986, but that was not done because the records were misplaced and the attitude of the respondents was most apathetic because for public purpose, the land was taken and handed over to the Housing Board. This apparent and indifferent act on the part of the respondent authorities is highly reprehensible and needs condemnation. The authorities were least bothered whether the persons whose lands have been taken, are paid compensation or not. Misplacement of record was more used as a device to escape from statutory obligation. Even if records were misplaced, it was bounden duty of the authorities to complete the proceedings in the manner permissible under the law or to initiate fresh proceedings. But that was not done and the petitioners were left in lurch and they are running from pillar to post deprived of huge chunk of land which were snatched away from their

hands in a very pernicious manner, in complete violation and disregard to the process of law.

25. What is more concerning and calls for severe condemnation is that when the petition was filed before this Court, the respondents stated that the proceedings had lapsed, made a statement before the Court that they would be initiating fresh proceedings. That alone could be the valid stand because the proceedings had lapsed long before, in view of mandate under Section 11 – A. But then, after the petition was disposed off by this Court, relying upon statement made before this Court, sanctity of the proceedings was again breached by respondents with impropriety by not initiating fresh proceedings and instead of passing award, by which, compensation has been fixed on the basis of rate of Rs.1.75p. / Sq. Ft. to which the petitioners had agreed in the year 1976 but thereafter, the land acquisition proceedings were not brought to its logical conclusion by passing of an award resulting in lapse of proceedings.

26. Viewed from any angle, action of the respondent authorities is apparently illegal and suffers from what one may call malice in law. The respondent authorities have also not acted in accordance with the statement and undertaking which was made before this Court and on which basis, an order was passed on 05/01/2008 in W.P.No.1135/01.

27. The inescapable result would, therefore, is that the impugned award is *sans merit* and has to be set aside and is, accordingly, set aside.

Much injury has been caused to the petitioners due to illegal acts of the

respondents. Despite lapse of more than four decades, petitioners are deprived of legitimate compensation to which they were entitled. No doubt that right to property is not a fundamental right nevertheless, this Court has jurisdiction and authority to invoke Article 226 of the Constitution of India when there is deprivation of the property of a citizen in utter violation of the statutory scheme of acquisition of land which entitle the aggrieved to appropriate compensation by determination in accordance with law and not on the basis of rates which were prevalent in the year 1976.

28. The respondents are obliged and are hereby directed to forthwith initiate proper land acquisition proceedings on the basis of law as applicable on the date and conclude the same expeditiously within an outer limit of six months. A final award shall be passed in the matter and appropriate compensation, as determined on the basis of provisions of the land acquisition laws on the date of initiation of proceedings under the directions, shall be expeditiously paid to the petitioners.

29. In the present case, looking to the injury and insult which the petitioners have suffered and have been made to come back to this Court time and again, without having been paid anything against acquisition of huge chunk of land, I hereby impose a cost of Rs.2 lakhs on the respondent / State to be paid to the petitioners within a period of 60 days from the date of receipt of copy of this order. This amount will be in addition to the compensation to which the petitioners are entitled on the basis of award that could be passed as per the directions of this Court.

Before parting with the case, it is necessary for this Court to observe that

where the respondent / State finds that defect in the proceedings is on account of callous negligence on the part of the Land Acquisition Officer in drawing and passing orders, nothing prevents the State from taking disciplinary action including recovery from such officials.

Sd/-
(Manindra Mohan Shrivastava)
Judge