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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 418/2015, CM APPLs. 698/2015 & 8065/2019**

KAPOOR SINGH AND ORS. ...Petitioners
Through: Mr. Ravi Prakash Gupta,
Advocate.

versus

UNION OF INDIA AND ORS. ... Respondents
Through: MrVishal Mahajan, Senior
Panel for UOI.
Mr. Yeeshu Jain and Ms. Jyoti
Tyagi, Advocates for
LAC/L&B.
Mr. Dhanesh Relan, Standing
Counsel DDA with Ms. Gauri
Chaturvedi, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

ORDER
20.02.2019

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1. The prayers in this writ petition read as under:

“It is, therefore, most respectfully prayed that this Hon'ble Court ma
graciously be pleased to:

(a) Issue any appropriate writ, order or direction declaring acquisition
proceedings w.r.t. land of petitioners measuring 66 bigha 06 biswa (as
mentioned in Annexure P-1) including those of their predecessors
[whose names have borne out in the Award No.17/DC(NW)/2003-
2004 dt. 22.10.2003 (Annexure P-6) bearing khasra numbers as

mentioned in Annexure No.P-1] as deemed to have lapsed u/s Section 24 (2) of Land Acquisition Act, 1894 and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;and/or

(b) Issue any appropriate writ, order or direction quashing Notification No. F.1 1(56)/2001/L&B/LA/14043 dt.07.12.2001 issued u/s 4, Notification No. F.10(30)/2001/L&B/LA/16231 dated 16.01.2002 issued u/s 6 of Land Acquisition Act and Award bearing No.17/DC(NW)/2003-2004 dt. 22.10.2003 w.r.t. land bearing khasra numbers as mentioned in Annexure No.P-1 measuring total 15 bigha 5 biswa (as mentioned in Annexure P-1) situated in Revenue Estate of Village-Sanoth, P.O. Narela, North-West, N.C.T. of Delhi for being violative of Articles 14 & 300-A of the Constitution of India as well as provisions contained Land Acquisition Act, 1894 and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; and/or

(c) Issue any appropriate writ, order or direction commanding Respondents to enter the names of petitioners including their predecessors as mentioned in Annexure P-1 [whose names have borne out in the Award No.17/DC(NW)/2003-2004 dt. 22.10.2003 (Annexure P-6)] in the relevant revenue records after declaration of these acquisition proceedings as deemed to have lapsed u/s Section 24 (2) of Land Acquisition Act, 1894 and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 w.e.f 01.01.2014;and/or

(d) Issue any appropriate writ, order or direction commanding the Respondent No. 1 to extend benefit of Section 101. of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 over to all land acquisitions made earlier under the repealed Land Acquisition Act, 1894 to the extent the State is duty bound to return the land so acquired if the same remained unutilized u/s 101;and/or

(e) Issue any appropriate writ, order or direction restraining the respondents, their officers, agents, representatives or anybody

claiming through them from entering the name of govt. in the revenue records and also restraining them from dispossessing the petitioners from their settled possession over the land in dispute and changing the nature, title and character of plot in dispute falling in revenue estates of Village-Sanoth, P.O. Narela, North-West, N.C.T. of Delhi bearing Khasra number as mentioned in Annexure P-1; and/or

(f) Issue any appropriate writ, order or direction declaring possession memo dated 19.12.2003 (Annexure P-3) as being illegal, fabricated, concocted for being prepared without following due process of law including observance of principles of natural justice; and/or

(g) Award the costs of writ petition in favour of petitioners;

(h) pass any other/further order or orders as this Hon'ble Court may deem fit in the interest of justice.."

2. This petition is filed by Kapoor Singh and four others where the essential relief sought is for a declaration of deemed lapsing of land acquisition proceedings in terms of Section 24 (2) of the the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013 ('2013 Act') in relation to the land admeasuring 15 Bhigha 5 biswas in Khasra Nos. 2, 8, 9, 3 min, 13/2, and 19 situated in Village-Sanoth, P.O. Narela, North-West Delhi.

3. Admittedly, the notification under Section 4 of the Land Acquisition Act, 1894 ('LAA') in respect of the acquisition of the aforesaid land was issued on 7th December 2001, followed by declaration under Section 6 of the LAA on 16th January 2002. The impugned Award No.17/03-04 was passed by the Land Acquisition

Collector ('LAC') on 22nd October 2003.

4. The case of these Petitioners is that only 'paper' possession was taken of the lands and, therefore, it was merely 'symbolic possession'. Reliance is placed on the decisions in *Balwant Narayan Bagde v. M. D. Bhagwat* (1976) 1 SCC 700, *Banda Development Authority v. Moti Lai Agarwal* (2011) 5 SCC 394, *Prahlad Singh v. Union of India* (2011) 5 SCC 386 and *Velaxan Kumar v. Union of India* (2015) 4 SCC 325 to urge that the basic requirement for proving that actual physical possession of agricultural land has been taken is not fulfilled in the present case inasmuch as the *panchnamas* do not bear the signatures of the independent witnesses. These Petitioners assert that they continue to remain in actual physical possession and are cultivating the lands in question. Photographs to show that they are cultivating the subject lands have been enclosed with the petition.

5. When the petition was listed for hearing on 19th January 2015, while directing notice to be issued, this Court directed that "If construction work has commenced on the road, that may go on. Any development taking place after today shall, in any event, be subject to final orders that may be passed in the writ petition."

6. In paragraph 23 of the petition it is stated as under:

"That the petitioners being on road for having left on the verge of starvation with no source of income have although withdrawn the compensation which they are ready to return on declaration of acquisition proceedings as lapsed."

7. It must be added here that the Petitioners have since filed CM No. 8065/2019 for deletion of the aforesaid paragraph, wrongly mentioned as paragraph 23 in the application, by contending that

“such statement ought not to have been taken literally. These phrases are normally used to show the pitiable condition of farmers agitating all over India committing suicides in large numbers.”

8. In the counter affidavit filed by the LAC, it is stated that the actual vacant possession of the subject land was taken on 16th April 2002. It is stated that the recorded owners duly applied for the release of compensation and the same was paid to them. Details of payment of compensation have been attached along with the counter affidavit.

9. It is pointed out that at no stage thereafter did any of the Petitioners write to the LAC retracting the above statements made in the applications. The LAC further points out that the petition is barred by laches as possession was taken way back in 2002 and compensation was also paid. It is further submitted that the alleged possession of the lands in question being with the Petitioners is nothing but ‘illegal possession’ with the Petitioners being ‘unlawful encroachers of the government land’.

10. No rejoinder has been filed to the counter affidavit of the LAC.

11. Mr. Ravi Prakash Gupta, learned Counsel for the Petitioners, at

the outset submitted that all the five issues decided by the three Judge Bench of the Supreme Court in *Indore Development Authority v. Shailendra* (2018) 3 SCC 412 have been referred to a larger Bench by the order passed by the Constitution Bench of the Supreme Court in *Indore Development Authority v. Shyam Verma* (2018) 3 SCC 405. In particular he submitted that the issues regarding the normal mode of taking physical possession in land acquisition cases in terms of the law explained in *Banda Development Authority v. Moti Lai Agarwal* (*supra*), the tendering of compensation under Section 31(1) of the LAA as well as the proposition that Section 24 of the 2013 Act does not revive 'bald or staled claims' have all been referred to the Constitution Bench of the Supreme Court.

12. Mr. Gupta also referred to the order passed by the three Judge Bench of the Supreme Court in *State of Haryana v. M/s.G.D.Goenka Tourism Corporation Ltd.* (2018) 3 SCC 585 requesting High Courts not to deal with any cases relating to interpretation concerning Section 24 of the 2013 Act pending a final decision on making a reference to a larger Bench. Mr. Gupta submitted that even though the Constitution Bench in *Indore Development Authority v. Shyam Verma* (*supra*), did not, while making a reference to the larger Bench, expressly continue the aforementioned stay order, the practice in the Supreme Court, according to him, is that once a stay order is passed by a particular Bench, then it would continue unless it is discontinued by either the same Bench or a larger Bench. He referred to an order dated 28th September 2018 passed by the Supreme Court in Miscellaneous

Application Diary No.28242/2018 (*Yogender Kumar v. Union of India*) in which the order reads: “List the matter after judgment is delivered in SLP(C) 9798-99 of 2016” (i.e. *Indore Development Authority v. Shyam Verma*). According to him, the aforementioned one line order should be understood as the Supreme Court having continued the stay order passed in *State of Haryana v. M/s. G. D. Goenka Tourism Corporation Ltd.* (*supra*).

13. The above submissions have been considered and negated by this Court in two of its earlier decisions i.e. the decision dated 19th December 2018 in WP(C) No.6287/2014 (*Kartar Singh v. Union of India*) and decision dated 17th January 2019 in WP(C) 4528 of 2015 (*Mool Chand v. Union of India*).

14. In *Mool Chand v. Union of India* there is a detailed discussion of the above contentions in paras 22 to 41 as under:

“22. In order to appreciate the above submission it requires to be noted that the three Judge Bench of the Supreme Court had in *Pune Municipal Corporation v. Harakchand Misirimal Solanki (2014) 3 SCC 183* interpreted Section 24 of the 2013 Act. One of the issues considered was whether the deposit of compensation in the Government treasury, when the land owner refuses to accept it would amount to tendering compensation for the purpose of Section 24 (2) of 2013 Act. This was answered in the negative in the said decision.

23. Another issue arose in *Yogesh Neema v. State of Madhya Pradesh (2016) 6 SCC 387* whether the Supreme Court was considering whether Section 24 (2) of 2013 Act can be invoked even where land acquisition

proceedings are kept pending by the land owners by filing successive petitions in which interim orders have been passed. In the said decision the Court doubted the correctness of the decision in *Sree Balaji Nagar Residential Association v. State of Tamil Nadu (2015) 3 SCC 353* as regards exclusion of the period covered by the interim orders from the calculation of the period of five years under Section 24 (2) of the 2013 Act. Accordingly, the matter was referred to a larger Bench.

24. In *Indore Development Authority v. Shailendra (supra)*, a three Judge Bench of the Supreme Court formulated the following questions for determination:

“3.1 (i) What is the meaning of the expression ‘paid’/‘tender’ in Section 24 of the Act of 2013 and section 31 of the Act of 1894? Whether non-deposit of compensation in court under section 31(2) of the Act of 1894 results into a lapse of acquisition under section 24(2) of the Act of 2013. What are the consequences of non-deposit in Court especially when compensation has been tendered and refused under section 31(1) of the Act of 1894 and section 24(2) of the Act of 2013? Whether such persons after refusal can take advantage of their wrong/conduct?

3.2 (ii) Mode of taking physical possession as contemplated under section 24(2) of the 1894 Act.?

3.3. (iii) Whether section 24 of Act of 2013 revives barred and stale claims?

3.4 (iv) Whether the conscious omission referred to in paragraph 11 of the judgment in *Sree Balaji Nagar Residential Association v. 5 State of Tamil Nadu [(2015) 3 SCC 353]* makes any substantial difference to the legal position with regard to the exclusion or inclusion of the period covered by an interim order of the Court for the purpose of determination of the applicability of Section

24 (2) of the 2013 Act?

3.5 (v) Whether the principle of “actus curiae neminem gravabit”, namely act of the Court should not prejudice any parties would be applicable in the present case to exclude the period covered by an interim order for the purpose of determining the question with regard to taking of possession as contemplated in Section 24(2) of the 2013 Act?

25. The questions were answered by a majority of 2:1 as under:

“Q. No. I: 218.I. The word ‘paid’ in section 24 of the Act of 2013 has the same meaning as ‘tender of payment’ in section 31(1) of the Act of 1894. They carry the same meaning and the expression ‘deposited’ in section 31(2) is not included in the expressions ‘paid’ in section 24 of the Act of 2013 or in ‘tender of payment’ used in section 31(1) 194 of the Act of 1894. The words ‘paid/tender’ and ‘deposited’ are different expressions and carry different meanings within their fold. In section 24(2) of the Act of 2013 in the expression ‘paid,’ it is not necessary that the amount should be deposited in court as provided in section 31(2) of the Act of 1894. Non-deposit of compensation in court under section 31(2) of the Act of 1894 does not result in a lapse of acquisition under section 24(2) of the Act of 2013. Due to the failure of deposit in court, the only consequence at the most in appropriate cases may be of a higher rate of interest on compensation as envisaged under section 34 of the Act of 1894 and not lapse of acquisition. Once the amount of compensation has been unconditionally tendered and it is refused, that would amount to payment and the obligation under section 31(1) stands discharged and that amounts to discharge of obligation of payment under section 24(2) of the Act of 2013 also and it is not open to the person who has refused to accept compensation, to urge that since it has not been deposited in court, acquisition has

lapsed. Claimants/landowners after refusal, cannot take advantage of their own wrong and seek protection under the provisions of section 24(2).

Q. No. II:- 218.2. The normal mode of taking physical possession under the land acquisition cases is drawing of Panchnama as held in Banda Development Authority (supra).

Q. No. III :- 218.3. The provisions of section 24 of the Act of 2013, do not revive barred or stale claims such claims cannot be entertained.

Q.No. IV:- 218.4. Provisions of section 24(2) do not intend to cover the period spent during litigation and when the authorities have been disabled to act under section 24(2) due to the final or interim order of a court or otherwise, such period has to be excluded from the period of five years as provided in section 24(2) of the Act of 2013. There is no conscious omission in section 24(2) for the exclusion of a period of the interim order. There was no necessity to insert such a provision. The omission does not make any substantial difference as to legal position.

Q. No. V:- 218.5. The principle of actus curiae neminem gravabit is applicable including the other common law principles for determining the questions under section 24 of the Act of 2013. The period covered by the final/ interim order by which the authorities have been deprived of taking possession has to be excluded. Section 24(2) has no application where Court has quashed acquisition.”

26. Relevant to the present petition is the conclusion with respect to Question No. 3 that Section 24 (2) of 2013 Act does not revive barred or stale claims.

27. It may be mentioned here that the third learned Judge, Mohan M. Shantanagoudar, J. while concurring on the

conclusions *qua* Questions II to V, dissented on Question I only to the extent on whether ***Pune Municipal Corporation*** (*supra*) was *per incuriam*. According to the learned Judge, the correctness of that decision, rendered by the three Judge Bench could be considered only by the larger Bench.

28. The operative order passed by the three-Judge Bench of the Supreme Court in ***Indore Development Authority v. Shailendra*** (*supra*) reads as under:

“We unanimously agree to the answers given to all the questions i.e. (i) to (v), except to the aspect decided by majority whether *Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki* 2014 (3) SCC 183 is *per incuriam* or not. As the majority has taken the view that it is *per incuriam*, it is declared to be *per incuriam*. The questions referred stand answered in terms of majority judgment. Hence, ordered accordingly.”

29. The decision in ***Indore Development Authority v. Shailendra*** (*supra*) was rendered on 8th February, 2018. Within two weeks thereafter on 21st February, 2018 another three Judge Bench in ***State of Haryana v. G.D.Goenka Tourism Corporation Ltd.*** (2018) 3 SCC 585 was seized with the issue. It was submitted to the said Court that a reference would have to be made to a larger Bench of the issues arising out of the decision in ***Indore Development Authority v. Shailendra*** (*supra*) “since a Bench of three Judges cannot hold another decision rendered by a Bench of three learned Judges *per incuriam*.” In the circumstances the Supreme Court in para 9 of its order dated 21st February, 2018 in ***State of Haryana v. G.D.Goenka Tourism Corporation Ltd.*** (*supra*) observed as under:

“we are of the opinion that it would be appropriate if in the interim and pending a final decision on making a reference (if at all) to a larger Bench, the High Courts be requested not to deal with any cases relating to the

interpretation of or concerning Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The Secretary General will urgently communicate this order to the Registrar General of every High Court so that our request is complied with.”

30. This was followed by a two Judge Bench of the Supreme Court on the immediate next date i.e. 22nd February, 2018 passing the following order in in SLP No. 9798-99/2016 (*Indore Development Authority v. Shyam Verma*):

“Vide order dated 18.04.2016 *Indore Development Authority v. Shyam Verma*, this matter was directed to be listed after the decision in SLP(Civil) No.10742 of 2008. The same has since been decided in *Indore Development Authority v. Shailendra* (2018) 3 SCC 412. A copy of order dated 21.02.2018 in SLP (C) No. 5552/2018 CC. No.8453/2017 *State of Haryana v. G.D. Goenka Tourism Corporation Limited* has been shown to this Court by Mr. Rohatgi, Senior Advocate. We are of the view that having regard to the nature of the issues involved in the matter, the issues need to be resolved by a larger Bench at the earliest. These matters may be placed before the appropriate Bench tomorrow i.e. 23 February, 2018, as per orders of Hon’ble the Chief Justice of India.”

31. A similar order was passed on the same date by a two-Judge Bench of the Supreme Court in Civil Appeal No. 4835/2015 (*State of Haryana v. Maharana Pratap Charitable Trust*).

32. All these matters were considered by the Constitution Bench in *Indore Development Authority v. Shyam Verma* (2018) 3 SCC 405 on 6th March, 2018. The operative portion of that order reads as under:

“8. Keeping in view the aforesaid orders, it was thought appropriate by the Chief Justice of India to constitute a

Constitution Bench to deal with all the issues in an apposite manner, and that is how these matters have been placed before us.

9. The learned counsel for the parties argued at some length and requested for framing questions of law. We think it appropriate to state, this Bench shall consider all the aspects including the correctness of the decision rendered in *Pune Municipal Corporation (supra)* and the other judgments following the said decision as well as the judgment rendered in *Indore Development Authority (supra)*. Be it noted, learned counsel for the parties would be at liberty to file their propositions of law when the matter is taken up for hearing.

10. We would have proceeded for hearing of these matters but as we are in the midst of hearing of another Constitution Bench matter, we think it appropriate to list these matters after conclusion of hearing of Item No.506 i.e. W.P.(Crl.) No.76/2016. However, the matters shall remain in the cause-list.”

33. What is clear is that the earlier interim order passed by the three Judge Bench in *State of Haryana v. G.D.Goenka (supra)* was not continued by the Constitution Bench when it made the reference. The second aspect is that while referring the matters, the Constitution Bench of the Supreme court did not consider it necessary to frame questions of law but stated that the Constitution Bench shall consider “all the aspects including the correctness of the decision rendered in *Pune Municipal Corporation (supra)* and other decisions following the said decision as well as the decision rendered in *Indore Development Authority v. Shailendra (supra)*.”

34. The question then arises whether only the points of difference between the decisions in *Pune Municipal*

Corporation (*supra*) and *Indore Development Authority v. Shailendra* (*supra*) and all issues incidental thereto have been referred to the Constitution Bench? In this context it requires to be noted that although several questions were framed in *Indore Development Authority v. Shailendra* (*supra*), it is only on Question I, viz., on whether the deposit in the RD Account would amount to having tendered compensation for the purposes of Section 24 (2) of the 2013 Act, that there was a difference of opinion between the view expressed in the two decisions viz., *Pune Municipal Corporation* (*supra*) and *Indore Development Authority v. Shailendra* (*supra*).

35. The other point of difference was that arising in *Yogesh Neema v. State of MP* (*supra*) where the correctness of the decision in *Sree Balaji Nagar Residential Association v. State of Tamil Nadu* (*supra*) as regards exclusion of the period covered by the interim orders from the calculation of the period of five years under Section 24 (2) of the 2013 Act was questioned. On this point the three-Judge Bench in *Indore Development Authority v. Shailendra* (*supra*) unanimously overruled the decision in *Sree Balaji Nagar Residential Association v. State of Tamil Nadu* (*supra*). On this issue no subsequent Bench of the Supreme Court of co-ordinate strength appears to have taken a contrary view. It is doubtful, therefore, whether this issue would be examined by the Constitution Bench.

36. Relevant to the issue on hand, there was no difference of view *qua* Question III addressed in *Indore Development Authority v. Shailendra* (*supra*) i.e. “Whether section 24 of Act of 2013 revives barred and stale claims?” On this question there was no view (much less a contrary view) expressed in *Pune Municipal Corporation* (*supra*) or for that matter in any other subsequent decision of a smaller, co-ordinate or even

larger Bench of the Supreme Court. This question, therefore, was not the subject matter of reference before the Constitution Bench.

37. Consequently, this Court is of the view that although the order passed by the Constitution Bench refers to “all the aspects” being considered by the Constitution Bench, that expression would not include questioning the correctness of the decision of the three-Judge Bench in ***Indore Development Authority v. Shailendra*** (*supra*) as far as it holds by a unanimous opinion that Section 24 (2) of the 2013 Act cannot revive old and stale claims.

38. In this context it requires to be noticed that in ***Indore Development Authority*** (*supra*) in the judgment of the majority, between paras 120 and 130 (SCC), Question III was discussed. The decision in ***Mahavir v. Union of India*** (*supra*) was referred to with approval. It was further observed as under:

“128. In our considered opinion section 24 cannot be used to revive the dead or stale claims and the matters, which have been contested up to this Court or even in the High Court having lost the cases or where reference has been sought for enhancement of the compensation. Compensation obtained and still it is urged that physical possession has not been taken from them, such claims cannot be entertained under the guise of section 24(2). We have come across the cases in which findings have been recorded that by which of drawing a Panchnama, possession has been taken, now again under Section 24(2) it is asserted again that physical possession is still with them. Such claims cannot be entertained in view of the previous decisions in which such plea ought to have been raised and such decisions would operate as res judicata or constructive res judicata. As either the plea raised is negatived or such plea ought to have been raised or was not raised in the previous round of litigation. Section 24 of the Act of 2013 does not supersede or annul

the court's decision and the provisions cannot be misused to reassert such claims once over again. Once Panchnama has been drawn and by way of drawing the Panchnama physical possession has been taken, the case cannot be reopened under the guise of section 24 of Act of 2013.

129. Section 24 is not intended to come to the aid of those who first deliberately refuse to accept the compensation, and then indulge in ill-advised litigation, and often ill-motivated dilatory tactics, for decades together. On the contrary, the section is intended to help those who have not been offered or paid the compensation despite it being the legal obligation of the acquiring body so to do, and/or who have been illegally deprived of their possession for five years or more; in both the scenarios, fault/cause not being attributable to the landowners/claimants.

130. We are of the view that stale or dead claims cannot be the subject-matter of judicial probing under section 24 of the Act of 2013. The provisions of section 24 do not invalidate those judgment/orders of the courts where under rights/claims have been lost/negatived, neither do they revive those rights which have come barred, either due to inaction or otherwise by operation of law. Fraudulent and stale claims are not at all to be raised under the guise of section 24. Misuse of provisions of section 24 (2) cannot be permitted. Protection by the courts in cases of such blatant misuse of the provisions of law could never have been the intention behind enacting the provisions of section 24 (2) of the 2013 Act; and, by the decision laid down in *Pune Municipal Corporation (supra)*, and this Court never, even for a moment, intended that such cases would be received or entertained by the courts.”

39. It may be noticed here that in the category of claims that cannot be revived are not only dead or stale claims

but even those which have been contested earlier and where the land owners have lost the case. Section 24(2) was also held not to revive claims that have been “lost/negated”, “become barred, either due to inaction or otherwise by operation of law”. Therefore, inaction with regard to claims for several years would also attract the principle of laches and bar the invocation of Section 24 (2) of the 2013 Act.

40. Even assuming that when the Constitution Bench of the Supreme Court in its referral order while using the expression “all aspects” was referring even the above question of the non-revival of dead or stale claims by resorting to Section 24 (2) of the 2013 Act for consideration by the larger Bench, it is significant that the Constitution Bench did not continue the injunction issued by the three Judge Bench in *State of Haryana v. G.D.Goenka Tourism Corporation Ltd.* (*supra*). In other words, the Constitution Bench of the Supreme Court in the referral order dated 6th March, 2018 in *Indore Development Authority v. Shyam Verma (2018) 3 SCC 405* did not intend to and in fact did not restrain the High Courts from proceeding with writ petitions where interpretation of Section 24 (2) of 2013 Act was involved. Also, importantly, the Constitution Bench while making the reference did not stay the operation of the decision of the three-Judge Bench in *Indore Development Authority v. Shailendra* (*supra*).

41. While the Court takes note of the observation in *D.K.Trivedi & Sons v. Ambalal Manibhai Patel* (*supra*) that if a larger Bench of the Supreme Court is seized of an issue, the High Court should ordinarily not proceed to decide the matter, in the present case considering that an earlier stay order passed by the three Judge Bench of the Supreme Court in *State of Haryana v. G.D.Goenka Tourism Corporation Ltd.* (*supra*) was not continued by the Constitution Bench at the time of making the

reference, the said decision in the *D.K.Trivedi & Sons v. Ambalal Manibhai Patel* (*supra*) is distinguishable on facts.”

15. Consequently, the Court rejects the plea of Mr. Gupta that this Court should defer the hearing of the present petitions awaiting the judgment of the Constitution Bench of the Supreme Court in *Indore Development Authority v. Shyam Verma* (*supra*).

16. Mr. Gupta then submitted that all the conditions stipulated in Section 24(2) of the 2013 Act stand fulfilled and, therefore, the Petitioners are entitled to the relief of declaration of deemed lapsing of land acquisition proceedings.

17. While the condition regarding the Award having to be made at least 5 years or more prior to 1st January 2014, the date of coming into force of the 2013 Act, is fulfilled in the present case, the other two conditions are not. The Petitioners do not deny that they have already received compensation for the acquisition of the lands in question. Their assertion that actual physical possession remains with them stands contradicted by their own applications for compensation submitted to the LAC at the time of handing over possession of the lands in question on 16th April 2002. Therefore, it is of no avail for the Petitioners to contend that in view of the decisions in *Balwant Narayan Bagde v. M. D. Bhagwat* (*supra*), *Banda Development Authority v. Moti Lai Agarwal* (*supra*), *Velaxan Kumar v. Union of India* (*supra*) and *Prahlad Singh v. Union of India* (*supra*) it should

be held that actual physical possession of the lands was not taken by the LAC. As noticed in ***Kartar Singh v. Union of India*** (*supra*), the assertion by the Petitioners that they are still cultivating the lands in question can lead only to one inference viz., that they have re-entered upon the land after physical possession was taken over by the LAC and handed over to the DDA. The observation in ***Kartar Singh v. Union of India*** (*supra*) that ‘Section 24(2) of the 2013 Act will not come to the aid of a person who knowingly encroaches upon the land that is already vested in the State upon passing of the award’ will apply on all fours to the case in hand.

18. In this context, the Court would like to refer to the decisions of the Supreme Court in ***Mahadeo v. State of UP*** (2013) 4 SCC 524 and ***Sulochana Chandrakant Galande v. Pune Municipal Transport*** (2012) 1 SCC 138 to the effect that land once vested in the State cannot stand divested. A reference could also be made to the decision of this Court in ***Dr. Rajbir Solanki v. Union of India*** 148 (2008) DLT 363 (DB) which was in the context of a prayer for de-notification of the land under Section 48 of the LAA. In those proceedings official records were produced to show that the possession of the lands in question taken over on 1st November 1999 while the Petitioners before the Court were claiming to still be in cultivatory possession of the land. In that context the Court observed as under:

“The fact that the petitioners continued to sow crops on the land even after the land had vested in the State was in that view of the matter wholly inconsequential. As a matter of fact, any such cultivation could at best be

deemed to be permissive and the land for that purpose deemed to be in trust with those cultivating the same. We are supported in that view by a decision of the Division Bench of this Court in *Nagin Chand Godha v. Union of India and Ors.* 2003 (70) DRJ 721 where the Court has while dealing with a similar contention observed:

The Apex Court in the case of *Executive Engineer Jal Nigam Central Stores Division U.P. v. Suresha Nand Juyal*, (1997) 9 SCC 224, also considered the question of symbolic possession taken by the Officers. Therefore, in view of what is stated hereinabove, it is not possible for this Court to agree with the submission of the learned Counsel that possession is not taken. Suffice it to say that after symbolic possession is taken, if the petitioner is enjoying the possession, he is enjoying the possession as a trustee on behalf of the public at large and that by itself cannot be considered to be a ground to contend that possession is not taken. It is the duty of the person who is occupying the property to look after the property and to see that the property is not defaced or devalued by himself or by others. He cannot subsequently come to the Court to say that actual possession is not taken and therefore he should be protected and land be denotified.

10. A special leave petition against the above decision was also dismissed and so was a review before the Supreme Court.”

19. Consequently, the two essential conditions for grant of relief under Section 24(2) of the 2013 Act i.e. neither compensation having been paid nor possession taken is not fulfilled in the present case.

20. Additionally, there is no explanation in the petition for the inordinate delay in approaching the Court for relief. It will be recalled

that the Award in the present case was passed on 22nd October 2003. Here it is contended by Mr. Gupta that the cause of action of Petitioners arose only on 1st January 2014, the date on which the 2013 Act came into force.

21. This contention is no longer tenable in view of the judgment of the three-Judge Bench of the Supreme Court in *Indore Development Authority v. Shailendra* (*supra*), paras 128 to 130 of which have already been extracted in para 38 of the order in *Mool Chand v. Union of India* (*supra*) which has been referred to hereinbefore.

22. For the above reasons the petitions are dismissed on laches as well as merits. Pending applications are also dismissed.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 20, 2019/tr