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

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*Judgment Reserved on:* 10<sup>th</sup> APRIL, 2019

*Judgment Pronounced on :* 9<sup>th</sup> JULY, 2019

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W.P.(C) 8241/2013

MEERA SAHNI & ANR.

..... Petitioners

Through

Mr. Anil K. Sapra, Senior Advocate  
with Mr. B.S. Maan & Ms. Akanksha  
Choudhary, Advocates

versus

GOVERNMENT OF NCT OF DELHI & ORS. .... Respondents

Through

Mr. Sanjay Poddar, Senior Advocate  
with Mr. Yeeshu Jain & Mr. Sanjay  
Kumar Pathak, Standing Counsels  
with Mr. Govind Kumar, Ms. Jyoti  
Tyagi, Mr. Sunil Kumar Jha,  
Mr. Kushal Raj Tater,  
Mr. M.S. Akhtar, Mr. Shashi Kant  
Maurya & Mr. Sharf Habibullah,  
Advocates for LAC & L&B.  
Mr. Ajay Verma, Senior Standing  
Counsel with Mr. Ishaan Verma,  
Advocate for the DDA.

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**G.S.SISTANI, J.**

1. Petitioners have filed the present writ petition under Article 226 of the Constitution of India. The following reliefs were sought:

“A. Issue a writ(s), order(s) or direction(s) in the nature of prohibition whereby prohibiting the respondents from taking the forcible possession of the land of the petitioners comprised in khasra no.74/19/2, 74/22, 74/20/2, 74/21, 77/1/1, 74/11/3, 74/12/1, 74/19/1,

74/20/1 and 74/12/2, situated in the village Mehrauli, New Delhi from the acquisition proceedings.

- B. Pass any such further order/s that this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

2. The writ petition was listed upon mentioning during the Winter Vacation on 31.12.2013, when the following order was passed:

**"W.P.(C) No.8241/2013 & CM No.17391/2013(for stay)**

3. The matter has been listed on urgent mentioning and is taken up at about 1300 hours.

4. The Senior Counsel for the petitioners contends that though the challenge by the petitioners to the acquisition of their land has failed but the possession of the land has not been taken till now and the Lt. Governor, Delhi has now, vide order dated 8th July, 2013, ordered that only minimum land required for proper road access to the Institute of Liver and Biliary Sciences be obtained from the land belonging to the petitioners and the rest of the land should be allowed to be retained by the petitioners from the standpoint of equity. It is further contended that the said order amounts to de-notification of the land of the petitioners within the meaning of Section 48 of the Land Acquisition Act. It is yet further contended that without working out as to how much minimum land is required for road access, the petitioners are being sought to be dispossessed from their land, without regard to the order dated 8th July, 2013 supra. The Senior Counsel for the petitioners on enquiry confirms that the khasra numbers mentioned in the order supra of the Lt. Governor, Delhi tally with the khasra numbers cited in the petition.

5. None appears for the respondents in spite of advance copy stated to have been served.

6. Issue notice to the respondents through standing counsel for the Government of NCT of Delhi returnable on 8th January, 2014.

7. Till then, both parties to maintain status quo qua possession and construction if any on the land. The Senior Counsel on enquiry and instructions further states that there is a farmhouse constructed over the subject land duly bounded by the boundary wall.

Copy of this order be given dasti under the signatures of court master.”

3. Subsequently, the writ petition was amended. In the amended writ petition, the following prayers were made:

“(A) Issue an appropriate writ(s), direction(s) or order(s) in the nature of writ of mandamus or any other writ calling for the records of the Respondents and after examining the same declare that the Lands belonging to the Petitioners situated in Khasra nos.74/19/2, 74/22, 74/20/2, 74/21, 77/1/1, 74/11/3, 74/12/1, 74/19/1, 74/20/1 and 74/12/2 in village Mehrauli, New Delhi stood released from the acquisition in view of Statutory order dated 8.7.2013 passed by the Hon’ble Lieutenant Governor of Government of NCT of Delhi and duly communicated to the Petitioners, and

(B) Issue an appropriate writ(s), direction(s) or order(s) in the nature of writ of mandamus or any other writ commanding the Respondents to complete the process of implementation of the order/decision dated 8.7.2013 by carrying out necessary publication as well as other requisite steps namely, to assess the minimum land required for proper road access to the ILBS from the lands of the Petitioners; and

(C) Issue an appropriate writ(s), direction(s) or order(s) quashing/setting aside impugned order dated 30.12.2013 being contrary to statutory order dated 8.7.2013 and also any other decision, if it so exists,

purporting to recall/review, modify the order dated 8.7.2013 in any manner on account of lack of statutory power and also on account of violation of principles of natural justice; and/or

- (D) OR IN THE ALTERNATIVE, Issue an appropriate writ(s), direction(s) or order(s) holding that the land acquisition proceedings stood lapsed on 1.1.2014 by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; and
- (E) Issue an appropriate writ(s), direction(s) or order(s) restraining/prohibiting the Respondents from taking forcible possession of the land of the Petitioners comprised in Khasra nos.74/19/2, 74/22, 74/20/2, 74/21, 77/1/1, 74/11/3, 74/12/1, 74/19/1, 74/20/1 and 74/12/2 situated in village Mehrauli, New Delhi with a further direction to the respondents not to interfere/disturb in any manner with the peaceful possession of the Petitioners over the aforesaid land; or
- (F) Pass any other or further order/s as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

4. The case of the petitioners as set up in the amended writ petition is that the attempt of the respondents to take forcible possession of the land belonging to the petitioners is legally untenable for the reason that the land in question has been released from acquisition and stands de-notified by the Lt. Governor of Delhi by exercising powers under Section 48 of the Land Acquisition Act, 1894(hereinafter referred to as the 'Old Act'). It is submitted that the land stands de-notified by an order of de-notification communicated to the petitioners and the respondents have acted upon the same. The effect of de-notification is that no acquisition proceedings can be said to be

pending with respect to the land of the petitioners and hence the petitioners cannot be dispossessed. After the order dated 08.07.2013 was duly communicated to the petitioners, no hearing, no recall, review, variation order has been passed and thus, the rights vested in the petitioners cannot be disturbed or unsettled, much less without complying with the principles of natural justice. In alternative, it was submitted that the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the “New Act”) has been notified on 01.01.2014 and assuming without admitting that acquisition proceedings are pending, they would be deemed to have been lapsed by virtue of Section 24 of the New Act since neither physical possession of the land in question has been taken nor compensation paid.

5. It is claimed that the petitioners are the recorded owners of the land comprised in Khasra nos.74/19/2, 74/22, 74/20/2, 74/21, 77/1/1, 74/11/3, 74/12/1, 74/19/1, 74/20/1 and 74/12/2 situated in village Mehrauli, New Delhi. The respondent no.1 initiated acquisition proceedings in respect of the land situated in village Mehrauli by issuing a notification under Section 4 of the Old Act on 24.10.1961. The land was sought to be acquired for the public purpose, namely, Planned Development of Delhi. Subsequently, a notification dated 04.01.1969 was also issued under Section 6 of the Old Act and thereafter, an Award dated 12.12.1997 was passed by the LAC. It is claimed that prior to initiation of the acquisition proceeding, the predecessors-in-interest of the petitioners namely Sh. Puran Chand, Sh. Khem Chand, Sh. Shera S/o Lal Chand, Sh. Bahan Singh S/o Nathu, Sh. Shri Chand S/o Sh. Gopal, Sh. Hari Singh S/o Sh. Neki

and Smt. Harbaji D/o Gangadaan etc., were the recorded bhumidars of the agricultural land bearing Khasra nos.75, 77, 184, 2214/151, 1054, 1058, 859, 901, 2209/151 and 2215/151 situated in the revenue estate of village Mehrauli, New Delhi. It is claimed that on 24.10.1961, the respondents issued a notification under Section 4 of the Old Act for acquisition of the land situated in revenue estate of village Mehrauli, New Delhi and other revenue estates. It is claimed that the land comprised in the above said khasra nos. owned and possessed by the predecessors-in-interest of the petitioners did not fall within the boundary line laid down by the Section 4 notification and were therefore, not part of the acquisition proceedings. It is further claimed that during the re-partition/consolidation proceedings, land comprised in New Khasra bearing Nos.74/19/2, 74/22, 74/20/2, 74/21, 77/1/1, 74/11/3, 74/12/1, 74/19/1, 74/20/1 and 74/12/2 situated in revenue estate of village Mehrauli, New Delhi was allotted to the predecessors-in-interest of the petitioners by the Consolidation Officer in lieu of their original landholding. The land described above was purchased by the petitioners through registered sale deed dated 05.06.1980 from their predecessors-in-interest and the same was also mutated in their names in the revenue records. Further, it is claimed that on 26.04.1983, the Land Acquisition Collector (LAC) issued a notification under Section 9 of the Old Act stating therein, that the Government intended to take possession of the lands and required the interested persons to file their claims for compensation before him. Thereafter, the petitioners challenged the acquisition proceeding essentially on the ground of delay as well as on the ground that the petitioners had purchase the land in question after obtaining prior permission from the appropriate authorities and

therefore, the acquisition proceedings were not legally maintainable. The petitioners contended primarily that since the sale deed dated 05.06.1980 was executed and got registered in favour of the petitioners after obtaining the necessary No Objection Certificate (NOC) from the competent authority, the acquisition proceedings qua the lands of the petitioners were contrary to the Delhi Lands (Restrictions on Transfer) Act, 1972. The petitioners failed in the said litigation and the Supreme Court of India rejected the appeals on 15.07.2008.

6. Detailed arguments have been heard on behalf of the learned counsels for the parties. Written submissions have also been handed over in Court.
7. The main thrust of argument of Mr. Anil Sapra, learned Senior Counsel appearing for the petitioners is that the case of the petitioners is duly covered under the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The Award was made on 12.12.1997, i.e., five years and more prior to the commencement of the New Act and since neither compensation has been paid nor physical possession of the land has been taken, the acquisition proceedings are deemed to have lapsed. It is further submitted that the petitioners are the subsequent purchasers of the land in question. Further, in the Award, the names of the petitioners have been shown as persons interested and compensation has been assessed in their names. It is further submitted that compensation has not been tendered, which is evident from the fact that no notice was issued to the petitioners under Section 12(2) of the Old Act. Admittedly, the compensation was neither tendered nor offered to the

petitioners at any stage. It is also the case of the petitioners that neither at the time of the passing of the Award, there was any litigation pending challenging the acquisition nor there was any stay or injunction order by any Court.

8. Mr. Sapra, learned Senior Counsel also contends that there is no dispute regarding entitlement to receive the compensation as the compensation has been assessed in the name of the petitioners, no claim has been filed by the predecessors-in-interest or any other person claiming compensation. Resultantly, no reference of any nature has been sent by the LAC regarding dispute pertaining to entitlement under Section 31 of the Old Act. It is also submitted by the learned Senior Counsel that the predecessors-in-interest of the petitioners have received the entire sale consideration executing a sale deed in favour of the petitioners and parted with the physical possession and thus, they would not be defined as interested persons. Mr. Sapra submits that the compensation was neither paid nor tendered, which is also evident from the fact that immediately before coming into force of the New Act on 28.12.2013, the Union of India through LAC filed a petition being CM(M).1409/2013 before this Court and sought leave to deposit the compensation amount under Sections 30 and 31 of the Old Act. This petition was accompanied by a Memorandum of the Award. The Memorandum also mentioned in the column "particulars of dispute" '*as beneficiary not coming forward to receive the amount*'. However, it is highlighted that admittedly, at the time of passing of the Award, neither any notice under Section 12(2) was issued to the petitioners nor any compensation was offered or tendered to the petitioners. Since the names of the petitioners is reflected in the Memorandum of the

Award, it cannot be said that the petitioners have no *locus standi* to pray for relief under Section 24(2) of the New Act as it is also the case of the respondents that at least upto 28.12.2013 that petitioners are the only beneficiaries/interested persons entitled to compensation. In fact, Mr. Sapra submits that even after the passing of the order of the Supreme Court of India on 15.07.2008, it was the clear understanding of the respondents that the petitioners alone were the beneficiaries and interested persons.

9. Additionally, it is contended by Mr. Sapra, learned Senior Counsel for the petitioners that the petitioners alone are in physical occupation, possession and control of the land in question since 1980 till date and hence they are the only persons entitled to receive the compensation. Mr. Sapra also submits as per the mandate and requirement of the standing instructions/guidelines dated 12.05.2006 framed by Land and Building Department, under the order dated 05.05.2005 of a Division Bench of this Court in WP(C).1161/1988 titled as *Uday Singh v. UOI*, it has been directed that if the person interested is not coming forward for taking compensation amount and payment cannot be made within 60 days, then compensation amount should be deposited in the court within next 15 days. However, no such deposit in the Court was made by the respondents in this case.
10. Mr. Sapra, learned Senior Counsel also submits that the second ingredient of Section 24(2) of the New Act has also not been complied with. The physical possession of the land in question has not been taken till date. It is pointed out that the land in question comprises of built-up residential house, basement, servant room, out houses, temporary sheds, all surrounded by boundary wall with three

different gates. It is submitted that on 31.12.2013, the respondents tried to take forcible possession but were able to demolish only one gate and one temporary shed by the time the stay order dated 31.12.2013 was granted for maintenance of *status quo* and was conveyed to the authorities at the spot. The entire built-up area remains intact, including household articles, and continues to remain in possession and control of the petitioners. Reliance is placed on the possession proceedings dated 31.12.2013 to show that the same does not mention demolition of the built-up structures. Moreover, the alleged possession proceedings are not legal and valid in law as the same have not been signed by any independent witnesses as mandatorily required under law.

11. Mr. Sapra, learned Senior Counsel further submits that the so-called possession proceedings alleges that the demolishing team reached the spot at 11:30 a.m. and at 12.00 noon, the ADM, LAC arrived at the site, Police force was called and with the help of demolition squad and police force, the main gate, nearby boundary wall and tin shed were demolished and proceedings completed at 12:40 p.m. However, the falsity of the same is evident from the RTI reply by Delhi Police wherein it has been mentioned that the police force proceeded from P.S. Vasant Kunj for the demolition action at 12:30 p.m., which makes it evident that the alleged possession proceedings are ante-timed. The photographs of the demolition proceedings filed by the respondent no.4 also reflects that the demolition proceedings were confined and limited only to a small portion of the boundary wall, one gate and a tin shed and there was neither any demolition of the remaining structure which is heavily built-up, including the residential house, out houses and servant room, nor there was any

ouster/eviction of the petitioners/occupants and their belongings from the land in question. Hence, the alleged possession proceedings dated 31.12.2013 are only paper proceedings procured by the concerned officials to create false evidence. Further, the photographs filed by the respondent authorities reflects only the boundary wall and the gate of the land in question and does not reflects anywhere that the structure existing over the land in question was demolished or that the petitioners/occupants were evicted from the land in question or that physical possession thereof has been taken. The learned Senior Counsel submits that had it been a case that the authorities had taken the actual physical possession of the said property, they would have taken the photographs of the demolished building/structure and goods of the petitioners removed from the said land. On the contrary, the photographs filed by the petitioners reflect and establish that the house/structure is intact and still existing over the land in question, which itself falsifies the alleged paper possession proceedings prepared by the authorities with the mala fide intention to take a false plea before this Court pertaining to the issue of physical possession. The learned Senior Counsel further contends that there is no averment pleaded in the counter affidavit that the petitioners had re-entered in the property in question after the alleged possession thereof had been taken by the authorities, nor there is any proof with regard to above proceedings in any nature, whatsoever nor there is any contempt application filed by the authorities against the petitioners. Mr. Sapra submits that the Supreme Court of India in the case of *M/s Magnum Promoters Pvt. Ltd. v. Union of India & Ors.*, reported at AIR 2015 SC 444 has given a finding to the effect that the possession proceedings such as those allegedly carried out by

the State authorities on 31.12.2013, in the present case, being only an attempt to circumvent the consequences under the New Act and to deprive the land owners of the beneficial provisions thereof, have no effect in the eyes of law.

12. Per contra, the common stand of the learned counsels for the respondents is firstly that the petitioners have no *locus standi* to file the present writ petition on the ground that they are subsequent purchasers of the land in question and consequently the land having been purchased during acquisition proceedings, their sale deeds have been declared as null and void by the Supreme Court of India in the judgment dated 15.07.2008 in the case of ***Meera Sahni & Anr. v. Lt. Governor of Delhi & Ors***, reported as (2008) 9 SCC 177. It is also submitted that the petitioners are guilty of concealment and misrepresentation of material facts. It is submitted that the compensation has been deposited by the LAC in terms of section 31 of the Old Act in the reference court on 30.12.2013. It is further the stand of the respondents that possession of the land in question has already been taken and thereafter the petitioners have illegally re-entered the land in question and thus, they are mere trespasser.
13. Mr. Ajay Verma, learned Senior Standing Counsel appearing for the DDA submits that the petition filed by the petitioners is liable to be dismissed as the petitioners have come to this Court with unclean hands, as they have concealed and mis-represented material facts. Mr. Verma contends that the petitioners did not implead DDA as a party and obtained an interim order dated 31.12.2013 behind the back of DDA. The *mala fide* and ulterior intention of the petitioners was evident from the fact that a copy of the order dated 31.12.2013 was sent to the DDA even though DDA had not been impleaded as a

party. Counsel submits that the petitioners did not disclose that in the earlier proceedings culminating in the Supreme Court of India in the case of *Meera Sahni & Anr.*(supra), it was held that the petitioners had no right, title or interest in the land in question and the mutation of the same in favour of the petitioners was without jurisdiction. Mr. Verma submits that the petitioners concealed and mis-represented material facts by not disclosing the decision of the Supreme Court of India but brazenly in the teeth of the same claim themselves to be the recorded owners, particularly when the mutation itself was illegal and non-est in view of the judgment of the Supreme Court of India in the case of *Meera Sahni & Anr.*(supra). Counsel further submits that the petitioners are not persons interested in terms of Section 3(x) of the New Act. He submits that assuming, without admitting, petitioners had any right regarding the compensation, such right or other right, if any, which the petitioners may have had or may have claimed in the land in question got extinguished on 15.07.2008 by the judgment of the Supreme Court in the case of *Meera Sahni* (supra). It is contended that the New Act does not resurrect or create a right once the definitive pronouncement of the Supreme Court had observed that no such right existed, therefore, the New Act cannot be read to create a right which was not in existence on 01.01.2014.

14. Mr. Verma, learned counsel for the DDA further contends that the petitioners cannot claim any right in the land in question or arising therefrom by way of adverse possession. He submits that the petitioners filed the present writ petition as their being owners of the land in question. Counsel submits that the petitioners cannot subsequently take a contrary plea and set up a right in the land in

question or arising therefrom on the plea of adverse possession that too by means of an additional affidavit dated 17.10.2016 filed by the petitioners without leave of the Court. In the additional affidavit the petitioners admitted that the same had been filed with a view to counter the submissions of respondent that petitioners had no *locus standi* to file the present petition particularly after the judgment of the Supreme Court of India on 15.07.2008. Counsel contends that the petitioners cannot claim any right based on the alleged adverse possession because adverse possession is a defence, it can be used as a shield not as a sword, adverse possession has to be pleaded and proved, which cannot be done in a writ petition. It is also argued that adverse possession must start with a wrongful dispossession of the rightful owner. Mr. Verma submits that the petitioners did not disclaim their rights under the sale deeds with the original owners, in fact the petitioners asserted themselves to be recorded owners. Counsel contends that the petitioners are barred from setting up such a plea on the basis of constructive res judicata under Explanation IV of Section 11 CPC having failed to plead so in the earlier proceedings and obdurately refused to implead the original owners despite an inquiry from this Court.

15. The present writ petition is strongly opposed by counsels appearing for LAC and respondents no.1, 2 & 4.
16. Mr. Poddar, learned Senior Counsel appearing for the LAC submits that the present writ petition is not maintainable and the same is liable to be rejected as the acquisition proceedings stand upheld by the Supreme Court of India. He points out that the petitioners had challenged the acquisition proceedings initially vide two separate writ petitions bearing W.P.(C) Nos.1002/1983 and 1003/1983, which

were dismissed by a common judgement reported as ***Roshnara Begum v. UOI***, 1996 (61) DLT 206, which was affirmed by the Supreme Court of India in the case of ***Murari vs. Union of India***, reported in (1997) 1 SCC 15. The acquisition proceedings, thus, stood upheld upto the Supreme Court and in terms thereof, the Land Acquisition Collector made his award under Section 11 of the Land Acquisition Act, 1893 on 12.12.1987. The petitioners filed review petition bearing no. 103 and 104 of 1999 before this Court questioning the said award. Simultaneously, they filed a substantive Writ Petition bearing no.5918/1999 inter alia seeking an order restraining the Land Acquisition Collector from taking possession of the land under Section 16 of the Act pursuant to the award.

17. The said review petitions as well as the writ petition were taken up for final hearing by the Full Bench of this court and vide judgment dated 21.12.2000 reported as ***Meera Sahni & Anr. v. Lt. Governor of Delhi & Ors.***, reported at 89 (2001) DLT 484(FB), dismissed the appeal with costs. The order dated 21.12.2000 was challenged by the petitioners before the Supreme Court which also dismissed the writ petition with costs vide judgment dated 15.07.2008, which is reported as in the case of ***Meera Sahni v. Lt. Governor of Delhi & Ors.***, (2008) 9 SCC 177.
18. Mr. Poddar had drawn our attention to paras 33, 34, 36, 37 and 39 of the judgment to contend that the Supreme Court came heavily upon the conduct of the petitioners.
19. Mr. Sanjay Poddar had also contended that the petitioners have suppressed and concealed the facts regarding dismissal of their appeal by the Supreme Court of India vide judgment dated 15.07.2008 by which the Supreme Court rendered the sale deeds as

null and void. It is submitted that the petitioners have misled this Court by wrongly portraying themselves to be the recorded owners of the land in question despite the order dated 15.07.2008 passed by the Supreme Court of India.

20. It was further submitted by Mr. Poddar that the Supreme Court, after examining the case set up by the petitioners, *inter alia*, held in para 36 that the agency registering the sale deed in favour of the petitioner had no authority to register the sale document. In para 37, the Supreme Court observed that the petitioner had falsely stated in the sale deed that no notification under Section 4 and 6 of the Land Acquisition Act had been issued in relation to the land in question and the transfer was sought on the basis of wrong representation of material facts and misrepresentation. It was also noticed in para 34 that the petitioner suppressed the copies of the application filed before the Registering authority seeking permission to transfer the land. Mr. Poddar has also pointed out the observation made in para 38 that the transfer made in favour of the petitioners by the original land owners by execution of the sale deeds are illegal and without jurisdiction. No title could be conveyed or would pass to the petitioners on the basis of such transfer and thus the consequential mutation in favour of the petitioners was held to be without jurisdiction. Mr. Poddar has further pointed out the observation made in para 39 that since there was no valid transfer in favour of the petitioners, the question of granting any directions to the respondent to allot alternative land to them does not arise.
21. In this backdrop, Mr. Poddar submitted as under:
  - (i) Writ petition is not maintainable;
  - (ii) Petitioners cannot get the benefit of New Act; and

(iii) As Sale Deed has been declared null and void, there was no occasion on the part of the LAC to offer compensation to the petitioners and consequently, the possession of the petitioners is illegal and even otherwise they could not have re-entered the property.

22. It was next contended by Mr. Poddar, learned Senior Counsel appearing for the LAC that the present writ petition has been filed with vague averments inasmuch as in para 19 that petitioners have stated that they came to know from reliable sources that possession would be taken on 31.12.2013. An objection has been taken in the counter affidavit filed by respondent No.4 calling upon the petitioners to disclose the source. However, no explanation has been tendered.
23. It was also pointed out by Mr. Poddar that the petitioners served the advance copy of the petition on respondent No.1 without impleading other necessary parties. This was done to ensure that there is no representation from the said respondents at the time of hearing of the writ petition and with a view to seek ex-parte relief.
24. Mr.Poddar submitted that admittedly the officials of the concerned department visited the site on 31.12.2013, demarcated the land and demolished the boundary wall, main gate and a tin shed of the property in question. Besides this, the occupants of the building were also removed from the same as reflected in the photographs filed on record prior to the interim order passed by this Court. The respondents have taken a specific plea that the petitioners have re-entered the property on the strength of the interim order; still an incorrect statement has been made by the petitioners.

25. Mr. Poddar submitted that this writ petition suffers from concealment of material facts as was done by the petitioners and also in the earlier round of litigation by the Apex Court. Still the petitioners resorted to the same deceitful practices in the present proceedings and, thus, have rendered themselves disentitled to the equitable relief. In this behalf, attention of this Court was drawn to paragraphs 8 and 9 of the counter affidavit filed on behalf of respondents no.1 and 2. Thus, the petitioners, in view of their conduct, rendered themselves disentitled to be heard on merits in the present proceedings. Reliance was placed on paras 16 to 18, 20, 21 and 24 of the judgment in the case of ***Ramjas Foundation & Anr. v. Union of India & Ors., (2010) 14 SCC 38.***
26. Mr. Poddar also stated that a faint argument has been raised in the original writ petition filed as also in the amended writ petition that the petitioners came to know in the year 2012 only that their land was not acquired and in fact was required to be left out of the acquisition process in view of the Consolidation Scheme framed by the competent authority to acquire land only upto 1000 ft. of the South of Mehrauli-Mahipalpur road under the Land Acquisition Act. Predicating the relief on these averments, the petitioners sought an order from this Court prohibiting the respondents from taking the forcible possession of the land in question under the Land Acquisition proceedings. It is submitted that same relief was sought for by the petitioners in the earlier second round of the litigation which was ultimately decided in the year 2008 against the petitioners.
27. It was pointed out by Mr. Poddar that the petitioners have not abandoned this ground even in the amended writ petition. He

submitted that on the one hand, the petitioners are alleging that their land has not been acquired under the provisions of Land Acquisition Act and, on the other hand, they are seeking relief under Section 24 of the new Act. It was submitted that the petitioners persuaded this Court to pass an interim order on the strength of the allegations that the land of the petitioners is outside the acquisition proceedings and thus the Land Acquisition Collector cannot take possession of the land under the acquisition proceedings. This Court, believing the averments made by the petitioners on oath and acting upon the same, passed the interim order on 31.12.2013. It was submitted that the petitioners, during the course of arguments at this stage have confined the relief to an issue relatable to Section 24 of the New Act. It is therefore clear that these averments have been made only for the purpose of misleading this Court to pass an interim order.

28. It was also submitted by Mr. Poddar that the petitioners sought to raise this issue in the rejoinder arguments as well as in the written submissions. Even this ground is not available to the petitioners as submitted in the counter affidavit of respondents no.1 and 2 wherein in paras 10 to 12, it is stated the grounds now sought to be raised by the petitioners were available to them, when the first writ petitions were filed in the year 1983, still the petitioners did not raise such a plea and on the contrary admitted that the land in question is covered by the said notifications and in fact sought quashing of the acquisition proceedings. Similar ground has already been rejected by this Court in the case of *Shashi Jai Krishna v. Land Acquisition Collector & Ors.*, reported as (2005) 82 DRJ 383 wherein it, challenge was to the notification under Section 4 of the Land Acquisition Act. The award of acquired land was already made in

1983 and propriety possession of the land taken over. The challenge on the ground that the petitioner is in possession was rejected by holding the same shall not render the acquisition illegal. It was submitted that this Court is examining such a ground relating to the same acquisition proceedings but different award.

29. It was submitted by Mr. Poddar that the petitioners have been enjoying the interim order which was passed due to the misrepresentation of facts and, thus, is liable to be vacated. The petitioners are not entitled to derive or retain any benefit pursuant thereto. The undeserved and unfair advantage gained by the petitioners in this behalf is required to be neutralized in view of the law laid down by the Supreme Court in the case of ***Kalabharati Advertising vs. Hemant Vimalnath Narichania & Ors.***, reported at (2010) 9 SCC 437 wherein, it is held that dismissal/withdrawal of petition culminates in automatic nullification of interim order.
30. Mr. Poddar submitted that the petitioners have no locus standi to file the present writ petition. It was pointed out that the petitioners in para 3 of the original petition as well as in the amended petition have stated that they are recorded owners of the land in question. However, no document in support of this contention was placed on record. The petitioners at no point of time placed reliance on the sale deeds dated 05.06.1980. The title document was not filed along with the amended writ petition and the petitioners have failed to state the basis on which such claim was made by them, though for some other purpose the copies of khasra girdawaris and bills etc. have been filed on record. It was submitted that in order to challenge the acquisition proceedings it is incumbent upon the petitioner to plead and place on record the title document as the basis of the claim. Reliance is

placed on paragraph 23 of the judgement of the Supreme Court in the case of ***Rajendra Kumar Gupta Vs. UOI & Ors.***, reported at (2010) 9 SCC 46 wherein it is held that the land acquisition proceedings can be challenged only by the person interested and none else.

31. Mr. Poddar further pointed out that in order to meet the objection of the respondent in his behalf, the petitioners subsequently filed an additional affidavit on 17<sup>th</sup> October 2016. In this affidavit, the petitioners have categorically taken a positive stand in paras 6 and 7, that the petitioners are claiming interest in the land on the basis of being in adverse possession for over last 34 years. In paras 7 of the affidavit, it has been categorically stated that petitioners came into physical possession, not being referable to any legal title, and the same was prima facie adverse to the legal title of the original seller/vendor from the inception and that their possession has been continuous, undisputed and peaceful for over 34 years, which has not been denied by the respondents. It was also pleaded by them that the petitioners are maintaining possession *nec vi nec clam precario* and have acquired title by way of adverse possession and thus have the locus standi to maintain this writ petition for all purposes. The petitioners took a positive stand claiming their interest in the land in question on the basis of their open and hostile possession, adverse to the true owner while giving up their interest on the basis of the sale deed. According to Mr.Poddar it is well settled law that the claims on the basis of title document and by way of adverse possession are mutually destructive and inconsistent please. It is also well settled law that the claim on the basis of adverse possession does not begin to operate until the claim on the basis of title is renounced. It was submitted that a person when lays a claim on the basis of adverse

possession, he, by necessary implication, abandons/renounces his claim on the basis of title document and vice-versa. It is not permissible to such person to either change his stand subsequently or to withdraw the claim laid earlier. The petitioners having taken a stand based on adverse possession are now estopped from claiming their title on the strength of sale deeds which were never relied upon by the petitioner.

32. Mr. Poddar contends that in the event of petitioners claiming interest on the basis of adverse possession the same is required to be proved by leading evidence in a competent court after impleading necessary parties and the same cannot be agitated in writ proceedings. The plea of adverse possession is required to be proved and cannot be presumed. It was submitted that till a declaration is obtained by the petitioners from a competent court they cannot maintain the present writ petition questioning the acquisition proceedings. Reliance is being placed on the judgement of this Court in the case of **Balwan Singh v. UOI & Ors.**, [LPA No.458/2004 decided on 14/12/2009] wherein, it is held that writ proceedings are resorted to enforce legal rights and not create legal rights and then enforce the same. Further surreptitious acts of possession not to the knowledge of the owner of the property are not enough to sustain the plea of adverse possession. It is also a settled law that the plea of adverse possession cannot be used as a sword.
33. Mr.Poddar further contended that in order to overcome the above objections, the petitioners in the rejoinder argument as well as in para 5 at page 9 of the written submission, sought to withdraw the said affidavit on various pleas. These pleas are after thought and are liable

to be rejected in view of the judgements in the cases of ***L.N. Aswathama and Anr. v. P. Prakash***, reported at (2009) 13 SCC 229; ***Mrs. Adarsh Kaur Gill Vs. Smt Surjeet Kaur Gill & Ors.*** [FAO(OS)No.634/2009 decided on 15/01/2010. SLP (C) No. 7766/2010]; ***Mawasee (deceased) through LR's & Ors. Vs. Jamia Milia Islamia University & Ors.***, reported at 167 (2010) DLT 393 and ***Bharat Bhushan Jain & Anr. Vs. UOI & Ors.***, reported at 212 (2014) DLT 593. Relying on the judgements, it was contended by Mr. Poddar that having taken a positive stand with regard to adverse possession by the petitioners in their affidavit, it is not open for them to withdraw the same even by way of amendment. In fact, the petitioners in order to keep the petition alive took the said stand and at this belated stage they cannot withdraw the same. It is well settled law that statements are made in the court of law on solemn affirmation and parties cannot be allowed to shift their stand as per their convenience to prolong the litigation. Reliance was also placed on the judgement in the case of ***Mumbai International Airport (P) Ltd v. Golden Chariot Airport***, reported at (2010) 10 SCC 422, to contend that the petitioners cannot be allowed to travel beyond the pleadings and make out a new case at a later stage. Reliance was also placed in this regard on the judgment in the case of ***Municipal Corporation of the City of Jabalpur vs. State of Madhya Pradesh***, reported at AIR 1966 SC 837.

34. Mr. Poddar submitted that the reliance placed by the petitioners on the judgement of Supreme court in the case of ***Govt. of NCT of Delhi vs. Manav Dharam Trust & Ors.***, reported at AIR 2017 SC 2450 is misconceived and misplaced in as much as in that case the Supreme

Court was not examining the case of a petitioner claiming adverse possession but was examining the claims of such persons who were seeking release of the land on the basis of their title document like sale deeds/GPA/Sale transactions, which were void, having been executed during the pendency of acquisition proceedings. In the present case the petitioners have already given up their claim on the basis of sale deeds and in fact never relied upon the same in the pleading. It is well settled law that the enunciation of the reasons or principle on which a question before a court has been decided is alone a binding precedence and not what logically follows from the various observations made in the judgement. Reliance in this regard was placed on the judgement in the case of ***Rajender Kumar Aggarwal Vs. Lt Governor of Delhi***, reported at 2010 (5) ILR (DEL) 148, more particularly, paragraph 25 to 27. It was submitted that this Court relied upon certain precedents of the Apex Court while coming to the said conclusion. Therefore, ***Manav Dharam's*** case (supra) is not applicable to the present case.

**A. On the issue of petitioners' entitlement to invoke Section 24 of the new Act.**

35. Mr. Poddar, counsel for the LAC submitted that the title and rights of the petitioners were adjudicated by the Supreme Court in the case of ***Meera Sahni and Another vs. Lt. Governor of Delhi and Others*** 2008 (9) SCC 177. The lis between the parties came to an end. The provision of Section 24 does not invalidate courts' judgment/order in which rights have been finally adjudicated and lost. Counsel submitted that no relief can be granted to the petitioners relying on Section 24 of the new Act. Reliance is also placed upon the judgment of the Supreme Court of India in the case of ***Mahabir & Ors. v.***

*Union of India & Anr.*, decided on 08.09.2017 to contend that the case is liable to be dismissed on the ground of delay and laches as well.

**B. On the issue of possession**

36. As stated in paras 9 to 13 of counter affidavit and in paras 6 & 7 of the additional affidavit of respondent No.4, physical possession of the land was taken on 31.12.2013 by the Land Acquisition Collector and possession proceedings were recorded on the spot. The possession thereafter was handed over to the officials of the Land & Building Department who in turn handed over the possession to the beneficiary, i.e. the DDA. The officials present at the site signed the proceedings sheet on spot and which is placed on record. The land was also demarcated at the site by the field staff.
37. It was submitted that the finding of the Apex Court cannot be put to naught as the dispute between the petitioners and the respondents stood settled in the case of *Meera Sahni & Anr.* (supra) and the same has attained finality.
38. Mr. Poddar submitted that possession of the land was taken after demolishing the boundary wall, main gate and tin shed as mentioned in the possession proceedings. The officials entered the property and the occupants found in the property were also evicted as is reflected in the photographs placed on record. According to him as submitted in the additional affidavit, the petitioners have re-entered the property after possession proceedings on the strength of the interim order and such occupation of the petitioners has been considered to be illegal from time to time. It has been held that once possession of

the land is taken over under Section 16 of the Land Acquisition Act, the same vests with the Government free from all encumbrances. Similar possession proceedings evidencing taking over possession under Section 16 of the Act and handing over to the beneficiary have been held to be valid document in a series of judgments by this Court as well as Supreme Court. It has been held that once possession is taken and the owner re-enters the property, the same being illegal, cannot be considered to be a valid possession. Reliance was being placed on the following judgments:

- (i) ***Bal Mukund Khatri Educational & Industrial Trust, Amritsar vs. State of Punjab***, reported at (1996) 4 SCC 212.
- (ii) ***Sita Ram Bhandar Society vs. Government of NCT of Delhi & Ors.***, reported at (2009) 10 SCC 501.
- (iii) ***Ram Singh vs. Jammu Development Authority***, reported at (2017) 13 SCC 474.
- (iv) ***Kathuria Public School vs. Union of India & Ors.***, reported at 2015 (149) DRJ 362. This judgment has been rendered in the context of Section 24 of the new Act and has been upheld by the Hon'ble Supreme Court in SLP (C) No.13774/2015 vide order dated 06.05.2015.
- (v) ***Kathuria Public School vs. Union of India***, (2010) 10 SCC 305.
- (vi) ***Shashi Jai Krishna v. Land Acquisition Collector & Ors.***, (2005) 82 DRJ 383.

39. According to Mr.Poddar, the land in question stands vested in the Government free from all encumbrances under Section 16 of the Land Acquisition Act and thereafter, re-entering by the petitioners will not divest the Government from the land in question and therefore, the plea of the petitioners in this behalf is liable to rejected. Similarly, reliance of the petitioners to the judgment in the case of ***M/s Magnum Promoters Pvt. Ltd.*** (supra) is also misconceived and

misplaced inasmuch as in the said case, possession of the land was taken in violation of the interim order, but in the present case, possession has not been taken in violation of any order. On the contrary, the petitioners have re-entered the property in violation of the status quo order dated 31.12.2013.

40. Mr. Poddar further submitted that the submission of counsel for the petitioners that they are in actual physical possession of the subject land is without any basis as the physical possession of the land was taken on 31.12.2013 by the Land Acquisition Collector. Possession proceedings were recorded at the spot. The possession was thereafter handed over to LAC, who in turn handed over the possession to the beneficiary i.e. DDA.

**C. On the issue of payment of compensation**

41. Mr. Poddar would submit that after the dismissal of the second petition the respondents were entitled to take possession of the land. However, the petitioners kept on making representations under Section 48 of the Act on various grounds including on the ground that the land in question is outside the land acquisition proceedings in view of the Consolidation Scheme. He submitted that the award, which is an offer of the Collector, was well within the knowledge of the petitioners as they had a copy of the same, still they disclosed an intention to retain the land and failed to give consent to receive the compensation determined under the Land Acquisition Act, in the award, that too when the title of the petitioners was set aside by the Supreme Court in their case as mentioned above.

42. It was submitted by counsel for the LAC that the submission made with regard to compensation having not been paid would not apply to the case of the petitioners.

### **CONCLUSION**

43. We have heard the learned counsels for the parties and considered their rival submissions. The arguments of Mr.Sapra, learned Senior Counsel, appearing for the petitioner can be summarised as under :
- (i) The petitioners are in actual physical possession of the land.
  - (ii) The compensation has not been tendered by the respondents and
  - (iii) The petitioners are entitled to a declaration under Section 24 (2) of the new Act.
  - (iv) The petitioners fall within the definition of an interested person.
44. Submissions of Mr. Ajay Verma, learned counsel for the DDA and Mr. Poddar, learned Senior Counsel for the LAC can be summarised as under :
- (i) The petitioners have approached this Court with unclean hand. They have concealed the material facts; have made a misrepresentation and obtained an ex-parte order on 31.12.2013. The earlier proceedings have been concealed. The petitioners have remained unsuccessful upto the Supreme Court and even the review petition stands dismissed. Thus, section 24 of new Act would not apply.
  - (ii) Petitioners cannot be allowed to raise a plea of an adverse possession.

- (iii) Actual physical possession was taken by the LAC on 31.12.2013. On the basis of an interim order, the petitioners have re-entered the property.
- (iv) Compensation stands tendered by depositing it in reference Court under Sections 30 & 31 of the Land Acquisition Act.
- (v) In view of the observations of the Supreme Court, the petitioners are not the rightful owners of the land and thus, there was no requirement to offer compensation to the petitioners.

### **ISSUES**

- 45. First question which arises for our consideration is (a) whether the petitioners have locus standi to file the present writ petition, which will further require us to examine (b) if the petitioners are owners of the land in question by virtue of a sale deed or (c) are they in adverse possession.
- 46. It is an admitted position that prior to this writ petition, the petitioners had challenged the acquisition proceedings by filing two separate writ petitions being W.P. (C) 1002/1983 & W.P. (C) 1003/1983. Both these writ petitions were dismissed by a common judgment passed in the case of **Roshnara Begum** (*supra*). The order so passed was affirmed by the Supreme Court in the case of **Murari** (*supra*). The effect of dismissal of the writ petition is that the acquisition proceedings stood upheld upto the Supreme Court and award was made on 12.12.1997. It may also be noted that a review petition filed was also rejected. Another writ petition bearing W.P. (C) 5918/1999 was filed and was rejected. The prayer made in this writ petition was to restrain the LAC from taking possession of the land under section 16 of the Land Acquisition Act. Pursuant to the

award, this writ petition was also dismissed with cost by a judgment dated 21.12.2000. Some of the observations made in the relevant portion of para 7 of the said judgment rendered in the case of *Meera Sahni & another Vs. Lt. Governor of Delhi & others*, 2000 SCC OnLine Del 997 are reproduced as under:

“7.... We are of the view that NOC is of no legal consequence. We also hold that no permission under Section 5 of the 1972 Act was ever sought regarding transfer of the land in question nor any permission was granted. The alleged transfer, therefore, is clearly in violation of the provisions of the 1972 Act. It has no legal validity. The Act does not envisage any NOC. Section 5 only recognises a permission in writing for transfer of lands under Sections 4 and 6 notifications and the permission is to be granted by the Competent Authority under the Act alone. In fact the learned counsel for the petitioner did not dispute that permission was a sine qua non. His entire case, however, was that the alleged NOC amounted to permission under Section 5 of the Act. We are unable to accept this. The onus was clearly on the petitioners to show that they had applied for permission under Section 5 and they had obtained the same in accordance with the provisions of Section 5 of the 1972 Act. The petitioners have miserably failed to discharge this onus. The very object of the 1972 Act was to curb such illegal transactions of sale and purchase of lands and to protect unwary customers in this behalf. The object of the Act is given in the preamble which runs as under:

“An act to impose certain restrictions on transfer of lands which have been acquired by the Central Government or in respect of which acquisition proceedings have been initiated by that Government, with a view to preventing large scale transactions of purported transfers, or, as the case may be, transfers of such lands to unwary public.”

The transaction of the type involved in the present petition were really intended to be curbed by the Act. Unfortunately, the desired result could not be achieved because ways were found to circumvent the provisions of the Act.

In view of our finding regarding permission under Section 5 of the Act being not there, the arguments based on permission are not open to the petitioners. Nothing else was urged on behalf of the petitioners. This petition is accordingly dismissed. Since we find that the present is a totally false and frivolous case, we award costs in favour of the respondents. Counsel fee Rs. 5,000/- to each counsel, i.e. counsel for the Land Acquisition Collector and the counsel for the Delhi Development Authority.”

47. The appeals before the Supreme Court also met the same fate of dismissals. The Supreme Court in its judgment **Meera Sahni (2008)** (*supra*), has in paras 33, 34, 36, 37 and 39 held as under:

“**33.** On perusal of the documents placed on record we find that the permission/NOC which is referred to and relied on by all the appellants herein appears to have been issued not by the Additional District Magistrate, who is the competent authority in the present case. The same appears to have been issued by some person signing for the Tahsildar and for the Additional District Magistrate. In any case the Tahsildar is also not authorised to act as a competent authority as envisaged under Sections 5, 6 and 8 of the Delhi Lands Act. Neither were we informed nor was any evidence placed on record identifying the authority or the person on whose instructions the aforesaid two documents were prepared. Therefore, the aforesaid documents which are relied on cannot be said to be valid and legal permission granted by the competent authority under the provisions of the Act permitting transfer of land by way of sale to the present appellants.

**34.** It may also be pointed out that neither an application, as envisaged under Section 5(1) is filed on

record, nor has any documentary proof been placed on record to indicate that any enquiry was made which is required to be done in the manner provided under Section 5(2) of the Act. Three applications were placed by the three companies, namely, M/s Sapphire Sales (P) Ltd., M/s Zircon Trading (P) Ltd. and M/s Eternal Agency (P) Ltd. A bare perusal of the contents of the said applications shows that they are not the applications which are required to be filed under Section 5 of the Delhi Lands Act. Those applications were not submitted in the form as is prescribed in Form I. Mrs Meera Sahni and Mrs Padma Mahant have not filed copies of any such application before us. There is nothing on record to show that the said applications were produced and presented before the competent authority as pointed out in terms of Section 2(b) of the Delhi Lands Act. None of the aforesaid applications also indicate that the land in respect of which permission/NOC is sought for is the subject-matter of acquisition proceedings.

**36.** The registering officer who is required to register a document whereby the land is purported to be transferred by sale, mortgage, gift, lease or otherwise was statutorily under an obligation not to register any such document unless the person seeking to transfer the land produces before such registering officer a legal, valid and statutory permission in writing of the competent authority for such transfer. The aforesaid exception provided in the Delhi Lands Act for grant of permission despite acquisition is a statutory exception and should be construed strictly in the light of the said provisions, namely, in the light of provisions of Sections 5 and 8 of the Delhi Lands Act.

**37.** In the sale deeds referred to and relied upon by the appellants it was stipulated and mentioned that no notifications under Sections 4 and 6 of the Land Acquisition Act have been issued in relation to the land in question prior to the said alleged transfer. The said transfer is on a wrong representation of material facts, and in fact on a misrepresentation. In the present case, the registering officer appears to have registered the

sale deeds illegally and without jurisdiction, as in our considered opinion, none of the prerequisite conditions laid down under Sections 4, 5 and 8 of the Act, which are required to be strictly complied with for obtaining permission to sell or transfer and also for registering the said documents was not complied with, as is required to be done.

**39.** We have also given our consideration to the contention of learned Senior Counsel Dr. A.M. Singhvi that it is a case of remand to the High Court so as to enable the High Court to enquire into factual aspect as to whether or not there was a proper application and that whether or not, permission as required, was granted by the competent authority. The facts delineated hereinabove clearly and explicitly prove and establish that the same did not happen and all the statutory requirements were totally ignored and overlooked by the appellants and also by the registering authority. Therefore, it cannot be a case for remand under any circumstances. The responsibility, if any, was on the appellants to prove and establish that necessary permission/NOC was granted by the competent authority. They have also failed to prove that the certificate, which is annexed and signed on behalf of the Additional Magistrate/Tahsildar, could be considered as a permission/NOC, as envisaged under the Act. There was no valid transfer in favour of the appellants and, therefore, there is no question of issuing any direction to the respondents to allot any alternative land to the appellants. So far as the prayer for granting liberty to the appellants to make an application under Sections 4 and 5 of the Delhi Lands Act is concerned, we do not make any observation thereto except for saying that if a statutory remedy is provided for to a person, he is always entitled to take recourse to such remedy in accordance with law.”

(Emphasis added)

48. From the above, it is seen that strong observations have been made by the Apex Court against the petitioners herein.

49. So, it follows the submissions of Mr. Sapra, learned counsel for the petitioners have to be considered in the light of three most important factors. Firstly, the acquisition proceedings were challenged by the petitioners initially by two separate writ petitions being W.P. (C) 1002/1983 and 1003/1983. It is an admitted position that these writ petitions were dismissed by a common judgment rendered in the case of **Roshnara Begum** (*supra*). The judgment of the High Court was affirmed by the Supreme Court in a judgment rendered in the case of **Murari** (*supra*). Resultantly, the acquisition proceedings pertaining to the subject land stand upheld to the Supreme Court of India. A review petition bearing nos.103 and 104 of 1999 filed before this court stand dismissed. Additionally, a writ petition being W.P. (C) 5918/1999 inter alia sought an order restraining the Land Acquisition Collector from taking the possession under Section 16 of the Act pursuant to the award. This writ petition was also dismissed with cost. The order of dismissal was assailed before the Supreme Court in a judgment rendered in the case of **Meera Sahni** (*supra*).
50. The submission of Mr. Poddar that having regard to the acquisition proceedings having been upheld upto the Supreme Court and therefore, also another writ petition having been filed and dismissed by the High Court as well as by the Supreme Court with strong observations having been made against the petitioners herein, the petitioners are disentitled to the benefit under section 24(2) of the New Act as the Supreme Court has conclusively given a finding with regard to the title over the subject land in the appeal. Thus, to say that petitioners are in physical possession of the land is without any basis nor possession (if any) shall ensue to their benefit as their possession by re-entry and after the possession was taken by the

Government, is illegal. It was also the submission of Mr. Poddar that the belief because the names of the petitioners are mentioned as 'interested persons' in the award and the compensation was not tendered to them, they would be entitled to a declaration under section 24 (2) of the New Act is misplaced for the same reason that the Apex Court has completely dealt and decided the issue with regard to title. Thus, the showing of the names of the petitioners as 'interested persons' or the compensation was not offered to them is of no consequence. Any mechanical endorsement made in the award cannot confer title or make the petitioners 'interested persons' on account of the strong observations by the High Court/Supreme Court and any other interpretation given, would show disregard to the final decision of the Supreme Court.

51. Mr. Sapra had placed strong reliance on the case of *Manav Dharma (supra)*. The following paragraphs have been relied upon :

**24.** The 2013 Act has made a sea change in the approach on the acquisition of land and compensation thereof. The only lapse under the 1894 Act was under Section 11-A where what would lapse is the ... "*entire proceedings for the acquisition of land*" whereas under Section 24(2) of the 2013 Act, what gets lapsed is the land acquisition proceedings initiated under the 1894 Act which has culminated in passing of an award under Section 11 but where either possession was not taken or compensation was not paid within five years prior to 1-1-2014. In other words, the land acquisition proceedings contemplated under Section 24(2) of the 2013 Act would take in both, payment of compensation and taking of possession within the five year period prior to 1-1-2014. If either of them is not satisfied, the entire land acquisition proceedings would lapse under the deeming provision. The impact of deemed lapse under Section 24(2) is that pervasive. To quote R.F. Nariman, J. in *DDA v. Sukhbir Singh* [*DDA v. Sukhbir*

*Singh*, (2016) 16 SCC 258 : (2016) 8 Scale 655] : (SCC p. 283, para 26)

“26. ... As is well settled, a deeming fiction is enacted so that a putative state of affairs must be imagined, the mind not being allowed to boggle at the logical consequence of such putative state of affairs. ... In fact, Section 24(2) uses the expression “deemed to have lapsed” because the legislature was cognizant of the fact that, in cases where compensation has not been paid, and physical possession handed over to the State, vesting has taken place, after which land acquisition proceedings could be said to have been ended.”

Thus, on account of the lapse, the encumbrance created in favour of the State comes to an end, and resultantly, the impediment to encumber the land also comes to an end. Even, according to the appellants, the transfers were illegal and void for the reason that there was an impediment for the transfer. Once the acquisition proceedings lapse, all impediments cease to exist.

**28.** Thus, the subsequent purchaser, the assignee, the successor in interest, the power-of-attorney holder, etc., are all persons who are interested in compensation/landowners/affected persons in terms of the 2013 Act and such persons are entitled to file a case for a declaration that the land acquisition proceedings have lapsed by virtue of operation of Section 24(2) of the 2013 Act. It is a declaration qua the land wherein indisputably they have an interest and they are affected by such acquisition. For such a declaration, it cannot be said that the respondent-writ petitioners do not have any locus standi.

52. Having noted the relevant paras on which reliance was placed by Mr.Sapra, we note that alongwith writ petition, copies of documents on which the petitioners claim title have not been filed. In fact, an additional affidavit has been filed raising a diametrical opposite and in fact mutually destructive plea that the petitioners are in adverse possession of the land. We have extracted in detail in para 46 above,

the observations made by the Supreme Court with regard to title of the petitioners. It has been observed that the permission/NOC was not issued by the Additional District Magistrate, who was the competent authority, but was issued by some person signing for Tehsildar and for Additional District Magistrate. The Supreme Court also observed that the Tehsildar was also not authorised to act as the competent authority as envisaged under sections 5 & 6 of Delhi Land Reforms Act, 1954. The Supreme Court further observed that the documents relied upon cannot be said to be valid and legal and that whether permission as required was granted by the competent authority under the provisions of Act permitting transfer of land by way of sale to the present petitioners. The Supreme Court has also taken note amongst others, the fact that the sale deeds referred to and relied upon by the petitioners herein mentioned that no notification under sections 4 and 6 of the Land Acquisition Act has been issued in relation to the land in question prior to the said alleged transfer, which, the Supreme Court observed, was a wrong representation of material facts and in fact a misrepresentation. The Apex Court observed *“in the present case, the registering officer appears to have registered the sale deeds illegally and without jurisdiction, as in our considered opinion, none of the prerequisite conditions laid down under sections 4, 5 and 8 of the Act, which are required to be strictly complied with for obtaining permissions to sell or transfer and also for registering the said documents was not complied with, as is required to be done.”* The effect of such strong observation is that no court, no authority is entitled to and can venture into rendering a finding with regard to legality of the sale deed, which is one of the basis of which the petitioners claim title, to naught. In fact the senior

counsel who appeared for the petitioners before the Supreme Court made a prayer that the matter may be remanded back to the High Court so as to enable the High Court to inquire into factual aspect as to whether or not there was a proper application and whether or not permission as required was granted by the competent authority. The Supreme Court answered by observing “*the facts delineated hereinabove clearly and explicitly prove and establish that the same did not happen and all the statutory requirements were totally ignored and overlooked by the appellants and also by the registering authority. Therefore, it cannot be a case for remand under any circumstances. The responsibility, if any, was on the appellants to prove and establish that necessary permission/NOC was granted by the competent authority....*”.

53. So the plea raised by Mr. Sapra based on the case of ***Manav Dharma*** (*supra*) is liable to be rejected. Firstly, in the case of ***Manav Dharam Trust & Ors.***(*supra*), the plea of adverse possession was not urged and secondly, in view of the strong observations of the Supreme Court declaring the Sale Deed sought to be relied upon by the petitioners as only null and void. This aspect gains further importance as repeated objections were taken by the respondent with regard to locus standi of the petitioners and the maintainability of the writ petition on their behalf. It is then that an additional affidavit dated 17.10.2016 was placed on record. In this affidavit, a stand was taken that the petitioners claim interest in the land on the basis of being an adverse possession for the last 34 years so the initial plea with regard to being in possession by virtue of sale deed was in one way given up.

54. Even the plea of adverse possession of the petitioners in their additional affidavit to justify their locus standi to maintain the writ petition is concerned, the same is also without merit. It is settled law that a person who claims ownership on the basis of title of documents and alternatively by way of adverse possession cannot succeed, as both the pleas are mutually destructive and inconsistent. The claim on the basis of adverse possession cannot begin to operate until the former is renounced.
55. In the case of *L.N. Aswathama and Anr. v. P. Prakash*, reported at (2009) 13 SCC 229, para 17 reads as under:

“17. The legal position is no doubt well settled. To establish a claim of title by prescription, that is, adverse possession for 12 years or more, the possession of the claimant must be physical/actual, exclusive, open, uninterrupted, notorious and hostile to the true owner for a period exceeding twelve years. It is also well settled that long and continuous possession by itself would not constitute adverse possession if it was either permissive possession or possession without *animus possidendi*. The pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Unless the person possessing the property has the requisite animus to possess the property hostile to the title of the true owner, the period for prescription will not commence. (Vide *P. Periasami v. P. Periathambi* [(1995) 6 SCC 523], *Md. Mohammad Ali v. Jagadish Kalita* [(2004) 1 SCC 271] and *P.T. Munichikkanna Reddy v. Revamma* [(2007) 6 SCC 59].)

56. Similarly, the Supreme Court in the case of *Mawasee(deceased) through LR's & Ors. v. Jamia Milia Islamia University & Ors.*, reported at 167(2010) DLT 393 has in Paragraphs 3 and 4 observed as under:

“3. The principal contention raised by the petitioners before the Estate Officer and the learned Additional District Judge was that the petitioners have become owners of the land in their occupation by adverse possession and they have constructed buildings on the said land. The said contention has been examined at length both by the Estate Officer and learned Additional District Judge. Claim for adverse possession or title by prescription is established only when the claimant is in actual physical possession, exclusive, open, uninterrupted, notorious and hostile to the true owner for a period exceeding 12 years. Long and continuous possession by itself does not constitute adverse possession, if it is either permissive possession or possession without *possendendi*. Further lis based on title and adverse possession are mutually inconsistent and the latter does not begin to operate till the former is renounced. Unless the person in possession of the property has requisite animus to possess the property, hostile to the title of the owner, period of prescription does not commence [Refer, *L.N. Aswathama v. P. Prakash*, JT 2009 (9) SC 527 and other cases referred to in the said judgment].

4. Onus to prove that the petitioners have been in occupation of the land and their possession was open, hostile to the true owner was on the petitioners. The Estate Officer and the learned Additional District Judge have both held after examining the evidence on record that the petitioners have not been able to discharge the said onus. In fact the plea of the petitioners before the Estate Officer and the learned Additional District Judge was that they have been in possession of land under the title inherited from their forefathers and the respondent-University is not owner of the said land. Plea of adverse possession and of title are mutually inconsistent. A person claiming title and right there under should be clear about the origin of the title of the property and the claim should be elucidated. When a plea of adverse possession is projected, it is inherent in the plea itself that someone else is the owner of the property and the claimant can plead and prove his assertion of independent, hostile adverse possession to the knowledge of the actual owner during the entire period of 12 years.”

57. In the case of ***Bharat Bhushan Jain & Anr. v. UOI & Ors.***, reported at 212(2014) DLT 593, para 5 reads as under:

“5. The aforesaid conclusions are unimpeachable and this Court will hereinafter refer to the relevant portions of the impugned judgment of the first appellate court, however, it requires to be noted that actually the plea of ownership by purchase and the plea of ownership by adverse possession are not inconsistent stands but mutually destructive stands. In law, alternative and inconsistent stands can be raised but mutually destructive stands cannot be taken up in the pleadings. This is for the reason that pleadings have to be substantiated by evidence and once the appellants/plaintiffs take up plea of adverse possession and depose to the same, they are destroyed by their own evidence/deposition/testimonies of their case of ownership by purchase under the sale deed dated 25.03.1946. This aspect itself is, in my opinion, sufficient to dismiss the case of the plaintiffs on the ground of ownership by purchase because once a plea of adverse possession is pleaded and then sought to be proved, the depositions to substantiate the plea of adverse possession destroys and proves false the case of ownership by purchase of the suit plot.”

58. In fact, we find force in the submission of Mr. Poddar that in the event, the petitioners claim interest in the land on the basis of adverse possession, the same is required to be proved by leading evidence in a competent court in the presence of necessary parties. Till such declaration is obtained from the competent court, the plea of adverse possession cannot be raised.
59. In the case of ***Balwan Singh v. UOI & Ors.***, LPA 458/2004, decided on 14.12.2009, paras 17, 19, 21, 23 to 25 read as under:

“17. In respect of enforcing the possessory right of the appellant, it was urged that being in adverse possession of the said land for a continuous period of more than 30 years, the appellant acquired the title to the land by adverse

possession or alternatively became an occupancy tenant under Section 5- 1(A) of the Punjab Tenancy Act. Counsel urged that a perusal of the award shows that no compensation was assessed by the Land Acquisition Collector in respect of the subject land for the reason he held that the land was of the Central Government.

19. But, the question arises whether at all the appellant can retain possession in respect of the land claiming adverse possession or alternatively a declaration that he is entitled to be declared as a permanent occupant of the land under Section 5-1(A) of the Punjab Tenancy Act in a writ proceedings.

21. We need not dwell much on the contentions urged for the reason whether or not Roop Chand and thereafter Balwan Singh were in possession of the land in question requires evidence to be led with respect to the entries in the remarks column of the khasra girdawaris showing possession of Roop Chand. Evidence would be required as to how possession came to be recorded without any entry of what was being cultivated on the land in question. Further evidence would be required as to how come, after recording the land as banjar pahad i.e. uncultivated rocky hill, possession of Roop Chand came to be recorded. Further evidence would be required as to whether at all Roop Chand was in possession of the land or whether the entries are manipulated. It may be highlighted that we find it extremely strange that for uncultivated rocky hill land, without recording any cultivation, possession of some person other than the recorded owner finds entered recorded in the khasra girdawaris.

23. It is settled law that writ proceedings are resorted to enforce legal rights and not to create legal rights and then enforce the same.

24. Issues of adverse possession and acquisition of title by prescription required evidence to be led on the point, whether at all the claimant was in possession of the land and whether or not the possession was open and hostile to the knowledge of the recorded owner. Surreptitious acts of

possession not to the knowledge of the owner of the property are not enough to sustain a plea of adverse possession.

25. The learned Single Judge was perfectly correct in passing the order dated 27.2.2002 when he noted that such a claim could never be adjudicated in a writ proceedings.”

60. The petitioners cannot be allowed to raise a mutually destructive plea and even otherwise in the writ petition itself, such a right cannot be claimed/created nor such an adjudication can be granted. The petitioners have again while filing a rejoinder summersaulted to withdraw the affidavit in view of the serious objections raised by Mr. Poddar. The petitioners cannot be allowed to take a shifting stand.
61. In the case of *Mumbai International Airport(P) Ltd v. Golden Chariot Airport*, reported at (2010) 10 SCC 422, paras 43 to 54 read as under:

“43. Now the question is whether the contesting respondent on a complete volte face of its previous stand can urge its case of irrevocable licence before the Estate Officer and now before this Court? The answer has to be firmly in the negative.

44. Is an action at law a game of chess? Can a litigant change and choose its stand to suit its convenience and prolong a civil litigation on such prevaricated pleas?

45. The common law doctrine prohibiting approbation and reprobation is a facet of the law of estoppel and well established in our jurisprudence also. The doctrine of election was discussed by Lord Blackburn in the decision of the House of Lords in *Scarf v. Jardine* [(1882) 7 AC 345 : (1881-85) All ER Rep 651 (HL)] wherein the learned Lord formulated: (AC p. 361)

“... a party in his own mind has thought that he would choose one of two remedies, even though he has written it down on a memorandum or has indicated it in some other way, that alone will not bind him; but so soon as he has not only determined to follow one of his remedies but has

communicated it to the other side in such a way as to lead the opposite party to believe that he has made that choice, he has completed his election and can go no further; and whether he intended it or not, if he has done an unequivocal act ... the fact of his having done that unequivocal act to the knowledge of the persons concerned is an election.”

**46.** In *Tinkler v. Hilder* [(1849) 4 Exch 187] Parke, B. stated that where a party had received a benefit under an order, it could not claim that it was valid for one purpose and invalid for another. (See p. 190.)

**47.** In *Clough v. London and North Western Railway Co.* [(1861-73) All ER Rep 646] the Court referred at All ER p. 651 F to *Comyn's Digest*, wherein it has been stated:

“If a man once determines his election, it shall be determined forever.”

In the said case, the question was whether in a contract of fraud, whether the person on whom the fraud was practised had elected to avoid the contract or not. The Court held that as long as such party made no election, it retained the right to determine it either way, subject to the fact that an innocent third party must not have acquired an interest in the property while the former party is deliberating. If a third party has acquired such an interest, the party who was deliberating will lose its right to rescind the contract. Once such party makes its election, it is bound to its election forever. (See All ER p. 652.)

**48.** In *Harrison v. Wells* [(1967) 1 QB 263; (1966) 3 WLR 686 : (1966) 3 All ER 524 (CA)] Salmon, L.J., in the Court of Appeal, observed that the rule of estoppel was founded on the well-known principle that one cannot approbate and reprobate. The doctrine was further explained by Salmon, L.J. by holding: (QB p. 277 G)

“It is founded also on this consideration, that it would be unjust to allow the man who has taken full advantage of a lease to come forward and seek to evade his obligations under the lease by denying that the purported landlord was the landlord.” (See All ER p. 530.)

**49.** In *Kok Hoong v. Leong Cheong Kweng Mines Ltd.* [1964 AC 993 : (1964) 2 WLR 150 : (1964) 1 All ER 300 (PC)] the Privy Council held that: (AC p. 1018)

“... a litigant may be shown to have acted positively in the face of the court, making an election and procuring from it an order affecting others apart from himself, in such circumstances that the court has no option but to hold him to his conduct and refuse to start again on the basis that he has abandoned.”

**50.** Ashutosh Mookerjee, J. speaking for the Division Bench of the Calcutta High Court in *Dwijendra Narain Roy v. Joges Chandra De* [AIR 1924 Cal 600] , held that it is an elementary rule that a party litigant cannot be permitted to assume inconsistent positions in court, to play fast and loose, to blow hot and cold, to approbate and reprobate to the detriment of his opponent. This wholesome doctrine, the learned Judge held, applies not only to successive stages of the same suit, but also to another suit than the one in which the position was taken up, provided the second suit grows out of the judgment in the first.

**51.** It may be mentioned in this connection that all the proceedings pursued by the contesting respondent in which it took the plea of irrevocable licence were virtually in clear contradiction of its stand which it took before the Bombay High Court on 12-7-2001 where it had given up the plea of “irrevocable licence”. It is on this plea that its suit again became triable by the Bombay City Civil Court and all subsequent proceedings pursued by the contesting respondent followed thereafter.

**52.** This Court has also applied the doctrine of election in *C. Beepathuma v. Velasari Shankaranarayana Kadambolithaya* [AIR 1965 SC 241 : (1964) 5 SCR 836] wherein this Court at AIR p. 246, para 17 relied on *Maitland* as saying:

“That he who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it.” (*Maitland's Lectures on Equity*, Lecture 18.)

**53.** This Court in *C. Beepathuma case* [AIR 1965 SC 241 : (1964) 5 SCR 836] at AIR p. 246, para 17 also took note of the principle stated in *White & Tudor's Leading Case in Equity*, Vol. 18th Edn. at p. 444, wherein it is stated:

“Election is the obligation imposed upon a party by courts of equity to choose between two inconsistent or alternative rights or claims in cases where there is clear intention of the person from whom he derives one that he should not enjoy both ... That he who accepts a benefit under a deed or will must adopt the whole contents of the instrument.”

**54.** In *New Bihar Biri Leaves Co. v. State of Bihar* [(1981)1 SCC 537] this Court observed that it is a fundamental principle of general application that if a person of his own accord, accepts a contract on certain terms and works out the contract, he cannot be allowed to adhere to and abide by some of the terms of the contract which proved advantageous to him and repudiate the other terms of the same contract which might be disadvantageous to him. The maxim, *qui approbat non reprobat* (one who approbates cannot reprobate), applies in our laws too.”

62. In the case of *Municipal Corporation of the City of Jabalpur v. State of Madhya Pradesh*, reported at AIR 1966 SC 837, para 10 reads as under:

“10. The question as to who a transferor is obviously a question of fact or at best a mixed question of law and fact and when a party in a writ petition does not allege any such fact, it stands to reason that he ought not to be permitted to travel beyond the facts stated, at the stage of the arguments, To confine a party to his pleadings, particularly to his allegations as regards facts is dictated not merely by the need for orderliness in these proceedings but for avoiding surprise to the other party and consequent injustice resulting therefrom. Save in exceptional cases, parties should be held strictly to their pleadings and if owing to discovery of new matter or grounds, there is need to add to or to modify the allegations either in the petition or in the counter- affidavit, the Court should insist on formal amendments being effected, for this would enable each party to state its case with precision and definiteness and the other side would have a proper opportunity to know this case and meet it with appropriate defences. This salutary rule was not adhered to

in this case, and the departure from the pleadings which the appellant was permitted to adopt during the course of its arguments before the High Court has led to injustice because thereby the Counsel for the State who was apparently not prepared, to meet an argument not raised in the petition, made submissions at the spur of the moment which were not justified by the true state of affairs. In our opinion, on the allegations made in the petition by the appellant Corporation it ought not to have been permitted to put forward a case that the State Government was not the transferor of the property and the learned Judges of the High Court should have proceeded on the basis of the pleadings in the case.”

63. Further a closely connected argument of Mr.Sapra is that the petitioners are entitled to a declaration having regard to the fact that they continue to remain in actual physical possession. Mr. Sapra has contended that no doubt the respondents had attempted to take possession on 31.12.2013, but a timely order of stay was granted by this Court directing parties to maintain status quo. Mr. Sapra had contended that the land in question comprises of a built-up residential house, basement, servant rooms, out houses, temporary sheds, all surrounded by boundary wall with three gates. While attempting to take forcible possession, the respondents were able to demolish only one gate and one temporary shed by the time the order of injunction was served upon the respondents. Since the balance area remained intact, the petitioners continue to reside in the subject property with all their household articles. He submitted that the possession proceedings do not mention that the build up area was demolished. Even otherwise, the possession proceedings are not legal and valid, not signed by the independent witnesses. It was also pointed out that as per the possession proceedings, the demolition

team reached at the spot at 11:30 A.M. and at 12.00 noon, the ADM, LAC arrived at the site, Police force was called upon and with the help of demolition squad and police force, the main gate; nearby boundary wall and tin shed were demolished and proceedings completed at 12:40 p.m. Mr. Sapra submits that the proceedings are manipulated which is evident from an RTI filed to the Delhi Police wherein it is mentioned that the police force proceeded from P.S. Vasant Kunj for the demolition action at 12:30 P.M. It is, thus submitted that the possession proceedings are ante-timed. Photographs are also relied upon to show that only boundary wall and the gate of the land in question was demolished and there is nothing to show that the occupants were evicted. It has also been argued that the structure continues to remain intact. It is neither pleaded nor the case of the respondents that the petitioners have re-entered the property. Reliance is placed by Mr. Sapra on *M/s Magnum Promoters Pvt. Ltd.* (supra) to contend that the officers are required to maintain public record, honestly, truly and correctly. They by falsifying the record cannot deny the legitimate right of the petitioners. The relevant paragraphs read as under:

“15. We have carefully gone through the legal submissions made by the learned counsel on behalf of the parties in respect of the application filed by the appellant under Section 24(2) of the Act of 2013 with reference to the averments made therein and the objection statement filed by respondent Nos. 2-4 and response affidavit of the Land Acquisition Collector. The official original record produced before us for our perusal as per our direction, discloses that the "Kabza Karyavahi" or possession taking proceedings of the acquired land was started on 27.12.2013. As per the record, on 27.12.2013, the taking over of possession was done only to the extent of the vacant portion of the

appellant's land whereas the building structure situated on the land could not be taken on that day as the demolition squad was not available for respondent No.4. Thus, it is clear from the said document available on record that the possession of the building structure situated on the appellant's land was not taken by him on 27.12.2013. As per the possession memo available in the record, it is recorded in the said proceeding that the further action for taking over possession in respect of the land were to be continued by the Land Acquisition Collector on 28.12.2013 and there is no record to show as to whether the action continued on 28.12.2013 in this regard. The alleged taking over of possession of the land involved in this appeal was done on 31.12.2013, as per the document annexure R-1 memo of possession taking possession of the acquired land in Award no.07/98-99 is signed by the officers of the Land and Building Department of the third respondent; the same was alleged to have immediately been delivered to the DDA officials i.e. respondent no.5 on the same day. According to respondent Nos. 3 and 4, the possession of the land involved in this appeal has been allegedly taken by them without any objections being raised by the appellant-owner. The above said plea taken by them cannot be accepted by us as the same is wholly contrary to the factual position regarding possession of the land. The question of raising objection to respondent Nos. 3 and 4 for taking possession of the land by the appellant did not arise at all for the reason that notice in this regard was not issued to it calling upon it to handover possession of the land to the Land Acquisition Collector. The reasons stated at paragraphs 8 and 9 in the response affidavit filed by one Mr. Vivek Kumar Tripathi, who is the Land Acquisition Collector-respondent No. 4 in these proceedings with regard to limits of the then existing sub-divisions Tehsils in Delhi being modified, consequently the revenue estate of the boundaries of village Malikpur Kohi Rangpuri which previously formed part of District South, due to the said reorganisation, sub-division, Delhi Cantonment and sub-division, Vasant Vihar which were earlier part of District of South West have become part of District New Delhi. Resultantly, village Rangapuri which was part of sub-division Vasant Vihar under the jurisdiction

of Land Acquisition Collector, South-West fell under the jurisdiction of District New Delhi. The notification dated 11.09.2012 was issued by the first respondent creating 11 districts by altering sub- divisions Tehsils in Delhi. Land Acquisition of the land involved in these proceedings was transferred from District South-West to the office of respondent no.4 on 21.12.2012 and remaining records on 14.01.2014. The above said make believe story narrated by the Land Acquisition Collector in his affidavit is a deliberate intention to misrepresent facts to justify the alleged taking over possession of the land on 31.12.2013. The aforesaid explanation furnished by the Land Acquisition Collector in his affidavit for the alleged taking over possession of acquired land is wholly unnecessary and irrelevant. Therefore, the said explanation by him cannot be accepted by us. The averments made at para 10 of the response affidavit of Land Acquisition Collector are contrary to the "Kabza Karyavahi (possession taking over proceedings) dated 27.12.2013 and the reason stated in the said memo is that the Land Acquisition Collector could not take possession of the building structure situated on the acquired appellant's land, as the demolition squad was not available on that day. The possession of the land taking over document Annexure R-1 to the response affidavit dated 31.12.2013 produced by the Land Acquisition Collector in which it is stated that the possession of the land of the appellant has been taken on 31.12.2013 the said averment in the affidavit is contradictory to the "kabza karyavahi" document dated 27.12.2013 available in the original record. The contradictory statements made by the Land Acquisition Collector in his response affidavit at para 10 cannot be accepted by us. The plea sworn by the Land Acquisition Collector in the affidavit is a false statement of fact for the reason that the physical possession of the land is in fact not taken and could not have been taken by the Land Acquisition Collector from the appellant when the interim order of "status quo" with regard to the possession of land of the appellant was passed by this Court on 04.08.2008. The said order being well within the knowledge of the respondent Nos. 2-5 is evident from the record of proceedings of this Court dated 24.09.2010 as the names of

learned counsel on behalf of the respondent Nos. 1-5 is shown in this Court's record of proceedings. The further plea taken by him at para 10 of the said affidavit that the second respondent enquired about the litigation status in respect of the order passed in relation to this case and other cases of village Rangpuri from the 5th respondent-DDA and did not receive any response from it is once again a false statement of fact. Therefore, the office of the 3rd respondent being unaware of any interim order of "status quo" is once again a false statement and the same has been deliberately made by him to justify his action as stated in the respondent affidavit. Hence, the statement of facts sworn to at paras 8-10 are liable to be rejected and accordingly rejected. Therefore, the plea of the Additional District Collector/Land Acquisition Collector and its officers to have allegedly taken over possession of the land as stated at paragraph 10 of the response affidavit is false and it amounts to contempt of this Court committed by them, as they have wilfully disobeyed the interim order of this Court dated 04.08.2008. Therefore, the plea of taking over possession of land of the appellant either on 27.12.2013 as per the original record or on 31.12.2013 as per document Annexure R1 cannot be accepted by us. The respondents have misrepresented certain relevant facts to this Court by filing the above referred response affidavit with an oblique motive to deny the valuable statutory right accrued in favour of the appellant under Section 24(2) of the Act of 2013. Hence, the conduct of respondent No. 4 and officials of respondent No.3 in misrepresenting facts is deprecated by us.

16. The document of Annexure R-1 to the response affidavit has been falsely created by respondent Nos. 3 and 4 with a malafide intention not only to defeat the statutory right of the appellant-land owner accrued in its favour under the provision of Section 24(2) of the Act of 2013, but it is a clear case of misrepresentation of facts to this Court with an oblique motive to deprive the valuable constitutional right of the appellant to the land involved in these proceedings. This conduct of the ADM/Land Acquisition Collector is highly objectionable and reprehensible as his action in creating false official documents to deny the legitimate right

accrued in favour of the appellant, which conduct of him amounts to breach of trust reposed with him by the public to discharge his public functions in the larger interest of public. The public officers are required to maintain the public record honestly, truly and correctly, the Additional District Magistrate cadre indulging in such unlawful acts will discredit the credibility of the public office from maintaining trust and confidence in the public office which is most important and necessary for the good administration of the second respondent. This has not been done in the case on hand by the Land Acquisition Collector which cannot be appreciated by this Court.”

64. In this regard, we may point out that it is the consistent stand of both the parties that the demolition team had arrived at the subject property on 31.12.2015 and further the photographs show that the part of the boundary wall, one gate and one tin shed was demolished. The learned Senior Counsel for the petitioners has urged that the possession proceedings were ante-timed as the police force proceeded from P.S. Vasant Vihar at 12:30 P.M.
65. Since the petitioners have admitted that part demolition had been carried out, the aforesaid fact is of little significance. It is conceded fact that the petitioners had challenged the acquisition proceedings in the year 1983 when first two writ petitions were filed which were later dismissed. Another writ petition was filed, being W.P.(C).5918/1999, inter alia, seeking an order restraining the Land Acquisition Collector from taking possession of the land under Section 16 of the Act pursuant to the Award. That writ petition was also dismissed with costs. Special Leave Petition was filed in the Supreme Court of India which was also dismissed by means of a reported judgment in the case of *Meera Sahni v. Lt. Governor of Delhi & Ors*, reported at (2008) 9 SCC 177. No protection with

regard to the possession was granted. It is the stand of the petitioners that only part of the property was demolished but the occupants continue to remain in the building, while it is the stand of the respondents that armed with the interim order, the petitioners re-entered the suit property.

66. Mr. Poddar, learned Senior Counsel had urged before us that the petitioners cannot derive any benefit from the stay order which was granted for the reason that in case there was no order of stay, the entire possession would have been taken. He also contended that in case the writ petition is allowed the order of injunction would be confirmed. But, in case the writ petition is dismissed, the interim order would be automatically vacated/nullified. In other words, his submission was based on the order of stay, the petitioners cannot be allowed to raise the plea that since the possession is with them, they should be given benefit of Section 24 of the Act. The said submission of Mr. Poddar is appealing and justified. He rightly relied upon this judgment of the Supreme Court in the case of ***Kalabharati Advertising v. Hemant Vimalnath Narichania & Ors.***, reported at (2010) 9 SCC 437, wherein the Supreme Court in paras 15 to 22 held as under:

“15. No litigant can derive any benefit from the mere pendency of a case in a court of law, as the interim order always merges into the final order to be passed in the case and if the case is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs by getting an interim order and thereafter blame the court. The fact that the case is found, ultimately, devoid of any merit, or the party withdrew the writ petition, shows that a frivolous writ petition had been filed. The maxim *actus curiae neminem gravabit*, which means that the act of the court shall

prejudice no one, becomes applicable in such a case. In such a situation the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a party by the delayed action of the court. [Vide *A.R. Sircar (Dr.) v. State of U.P.* [1993 Supp (2) SCC 734 : 1993 SCC (L&S) 896 : (1993) 24 ATC 832] , *Shiv Shankar v. U.P. SRTC* [1995 Supp (2) SCC 726 : 1995 SCC (L&S) 1018 : (1995) 30 ATC 317] , *Arya Nagar Inter College v. Sree Kumar Tiwary* [(1997) 4 SCC 388 : 1997 SCC (L&S) 967 : AIR 1997 SC 3071] , *GTC Industries Ltd. v. Union of India* [(1998) 3 SCC 376 : AIR 1998 SC 1566] and *Jaipur Municipal Corpn. v. C.L. Mishra* [(2005) 8 SCC 423] .]

**16.** In *Ram Krishna Verma v. State of U.P.* [(1992) 2 SCC 620] this Court examined the issue while placing reliance upon its earlier judgment in *Grindlays Bank Ltd. v. ITO* [(1980) 2 SCC 191 : 1980 SCC (Tax) 230 : AIR 1980 SC 656] and held that no person can suffer from the act of the court and in case an interim order has been passed and the petitioner takes advantage thereof, and ultimately the petition stands dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised. A similar view has been reiterated by this Court in *Mahadeo Savlaram Shelke v. Pune Municipal Corpn.* [(1995) 3 SCC 33]

**17.** In *South Eastern Coalfields Ltd. v. State of M.P.* [(2003) 8 SCC 648] this Court examined this issue in detail and held that no one shall suffer by an act of the court. The factor attracting the applicability of restitution is not the act of the court being wrongful or a mistake or error committed by the court; the test is whether an act of the party persuading the court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage it would not have otherwise earned, or the other party suffering an impoverishment which it would not have suffered but for the order of the court and the act of such party. There is nothing wrong in the parties demanding to be

placed in the same position in which they would have been had the court not intervened by its interim order, when at the end of the proceedings, the court pronounces its judicial verdict which does not match with and countenance its own interim verdict. The injury, if any, caused by the act of the court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences.

**18.** The Court further held: (*South Eastern Coalfields Ltd. case* [(2003) 8 SCC 648] , SCC pp. 664-65, para 28)

“28. ... Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated....”

**19.** In *Karnataka Rare Earth v. Deptt. of Mines & Geology* [(2004) 2 SCC 783] a similar view has been reiterated by this Court observing that the party who succeeds ultimately is to be placed in the same position in which they would have been if the court would not have protected them by issuing interim order.

**20.** The aforesaid judgments are passed on the application of legal maxim *sublato fundamento, cadit opus*, which means in case a foundation is removed, the superstructure falls.

**21.** In *Badrinath v. State of T.N.* [(2000) 8 SCC 395 : 2001 SCC (L&S) 13] this Court observed that once the basis of a proceeding is gone, all consequential acts, action, orders would fall to the ground automatically and this

principle of consequential order which is applicable to judicial and quasi-judicial proceedings is equally applicable to the administrative orders.

***Court cannot be used only for interim relief***

**22.** It is a settled legal proposition that the forum of the writ court cannot be used for the purpose of giving interim relief as the only and the final relief to any litigant. If the court comes to the conclusion that the matter requires adjudication by some other appropriate forum and relegates the said party to that forum, it should not grant any interim relief in favour of such a litigant for an interregnum period till the said party approaches the alternative forum and obtains interim relief. (Vide *State of Orissa v. Madan Gopal Rungta* [AIR 1952 SC 12] , *Amarsarjit Singh v. State of Punjab* [AIR 1962 SC 1305] , *State of Orissa v. Ram Chandra Dev* [AIR 1964 SC 685] , *State of Bihar v. Rambalak Singh "Balak"* [AIR 1966 SC 1441 : 1966 Cri LJ 1076] and *Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke* [(1976) 1 SCC 496 : 1976 SCC (L&S) 70 : AIR 1975 SC 2238] .)"

67. A complete analysis of the law, which has been discussed in the case of ***Kalabharati Advertising***(supra) is, that the interim order merges into the final order and when ultimately the writ petition is dismissed, the interim order would stand nullified automatically. The question would thus arise that whether a party can be allowed to take advantage of its own wrong. The answer is no. The respondents cannot be made to suffer and their rights cannot be prejudiced in case an interim order was passed at the instance of the petitioners and that too on the grounds other than the grounds before us at this stage after the writ petition was amended, and any advantage which accrued to the petitioners must be neutralised, moreso, as the petition is dismissed. An advantage happened in this case, when stay was granted there were no grounds, nor any relief pertaining to Section

24(2) were taken/sought. The same was incorporated for the first time by way of an amendment. When the writ petition was filed, the stand of the petitioners was that possession is being taken of land, which is not the subject matter of acquisition; this ground was not urged at the time of final hearing of the petition. Thus, we are of the view that the status quo order which was granted to the petitioners on 31.12.2013 and on the basis of which the petitioners had gained advantage cannot be converted into a ground for the relief which was not sought earlier but taken by way of an amendment. In this regard, we may refer to the judgment of the Supreme Court in ***Karnataka Rare Earth***(supra) wherein it was held that the party who succeeds to be placed in the same position in which they would have been if the Court would not have protected them by issuing an interim order. The aforesaid judgment is based on the application of legal maxim '*sublato fundamento, cadit opus*', which means that once the foundation is removed, the structure must fall. Thus, the plea of the petitioners that they are in settled possession on the basis of status quo granted by this Court cannot be accepted.

68. The other ingredient of Section 24 of the Act is with regard to compensation not being paid. Mr. Sapra, learned Senior Counsel has contended that it is an admitted position that compensation was never offered, tendered to the petitioners in terms of the mandate to Section 31(1) of the Old Act and depositing the same in the Court on 31.12.2013 just before coming into force of the New Act without any contingencies under Section 31(2) of the Old Act would not result in a valid deposit.
69. It is not in dispute that compensation was not paid or offered to the petitioners. It is also not in dispute that immediately, before coming

into force of the New Act, the Union of India, on 28.12.2013, through Land Acquisition Collector filed a petition bearing CM(M).no.1409/2013 in this Court seeking leave to deposit the compensation amount under Section 30, 31 of the Old Act. Mr. Sapra has highlighted the fact that this petition was accompanied by a Memorandum of Award recording the name of the petitioners as the persons interested to receive the compensation. It is also pointed out that the Memorandum mentions the particulars of dispute as “beneficiary not coming forward to receive the amount”. Mr. Sapra has also drawn the attention of the Court to the fact that neither notice under Section 12(2) was issued to the petitioners nor any offer/tender of compensation was made. It is thus, submitted by the learned Senior Counsel that having regard to the Memorandum of Award, it stands proved that the petitioners alone have the locus standi to pray for the relief under Section 24(2) of the New Act and even on 28.12.2013, the respondents themselves admitted that the petitioners are the only beneficiaries/persons interested and entitled to compensation even after the order dated 15.07.2008 passed by the Supreme Court of India and thus, the objection with regard to locus standi of the petitioners as not falling in the definition of interested persons cannot be raised by the respondents.

70. Although the submission made by Mr. Sapra, learned Senior Counsel for the petitioners appears attractive, but on a deeper consideration mere mechanical endorsement of the petitioners’ names in the Memorandum of Award cannot ensue to the benefit of the petitioners. This endorsement has to be examined and appreciated in the light of the detailed judgment rendered by the Supreme Court of India on 15.07.2008, wherein strong observations have been made

against the petitioners. The litigants who have successfully derailed the possession pursuant to acquisition since the year 1983, when the two writ petitions were filed and the fact acquisition proceedings having been upheld by the Supreme Court of India, cannot take advantage of their name having been mentioned in the Memorandum of Award. This we say so as the impact of the order of the Supreme Court is that the Sale Deeds on the basis of which initially the petitioners had claimed title over the land have been declared as a nullity in the eyes of law. Further, a mutually destructive plea having been raised with regard to the petitioners being in adverse possession of the land without any declaration in any competent court of law shall not entitle the petitioners to any compensation. In fact, the claim of compensation would be in the teeth of the order of the Supreme Court of India, being untenable it bodes a contemptuous act. Thus, the compensation was rightly not offered to the petitioners. The deposit of compensation on the last date without having been offered to the petitioners cannot be raised by the petitioners. The petitioners in our view have for almost 35 years been able to scuttle acquisition proceedings by filing frivolous writ petitions in this Court and the Supreme Court of India and delayed the possession.

71. One ground raised by Mr. Poddar, learned Senior Counsel opposing the plea of compensation having not been tendered to the petitioners, is that even after the second round of litigation came to an end in the year 2008, the petitioners failed to secure an order restraining the respondents from taking possession of the land. So it follows, the respondents were well within their right to take possession. However, the petitioners kept on making representations under

Section 48 of the Act and other grounds, including the ground that the land in question is outside the land acquisition proceedings in view of the consolidation scheme which plea was unsustainable. Mr. Poddar was justified in contending that the question of compensation in view of the judgment of the Supreme Court would automatically become a question of dispute, inasmuch as in the absence of title being with the petitioners, the question of apportionment, if any, was to be decided by the court of competent jurisdiction. The stand of the respondents is that Land Acquisition Collector was justified in depositing the compensation under Section 31 of the Land Acquisition Act. The said Section provides that the same can be deposited without tender in the following contingencies:

- a) If the land owners shall not consent to receive it;
- b) If there being no person competent to alienate the land;
- c) If there being any dispute as to the title to receive the compensation; or
- d) If there being any dispute as to the apportionment of the compensation.”

72. We agree with the contention of Mr. Poddar that the Collector rightly deposited the compensation before the Reference Court in terms of the orders passed by the High Court in the CM(M).no.1409/2013, which fact is not in dispute. Mr. Poddar submitted that the conduct of the petitioners would show that they were not interested to receive the compensation as they were seeking release of the land. In other words, the ground of non-tendering of compensation is not available to the petitioners. we agree with the same. This submission, Mr. Poddar in the alternative as he had argued that the petitioners are not

entitled to receive the compensation in view of the decision rendered by the Supreme Court declaring their Sale Deeds to be a nullity.

73. Having held that the fate of the petitioners stood sealed when all efforts to challenge the acquisition proceedings failed, including the two Writ Petitions, Review Petition and Special Leave Petition before the Supreme Court of India and correspondingly the acquisition proceedings stood upheld and the sale deeds were held to be nullity. We are of the view that filing of the present writ petition was misconceived. The grounds raised under Section 24 of the Act were added subsequently, post the grant of stay order after the part demolition proceedings dated 31.12.2013 were held pursuant thereto, the petitioners having re-entered the property and the writ petition is required to be dismissed. Ordered accordingly. It is made clear that the dismissal of the writ petition would remove any advantage gained by the petitioners of the interim order and the respondents would in effect deemed to be in possession of land.

74. No cost.

भारतमेव जयते

**G.S.SISTANI, J**

**V. KAMESWAR RAO, J**

**JULY 9<sup>th</sup>, 2019/pst/ck**