IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 15735 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 11931 of 2019
With
CIVIL APPLICATION (FOR CLARIFICATION) NO. 2 of 2019
In
R/SPECIAL CIVIL APPLICATION NO. 11931 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 15543 of 2019
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2020
In
R/SPECIAL CIVIL APPLICATION NO. 15543 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 23122 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 19708 of 2019
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In
R/SPECIAL CIVIL APPLICATION NO. 19708 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 19707 of 2019
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In
R/SPECIAL CIVIL APPLICATION NO. 19707 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 19706 of 2019
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In
R/SPECIAL CIVIL APPLICATION NO. 19706 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 19705 of 2019
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2020
In
R/SPECIAL CIVIL APPLICATION NO. 19705 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 19704 of 2019
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2020
In
R/SPECIAL CIVIL APPLICATION NO. 19704 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 19703 of 2019
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2020
In
R/SPECIAL CIVIL APPLICATION NO. 19703 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 19714 of 2019
With

CIVIL APPLICATION (FOR STAY) NO. 1 of 2020
In
R/SPECIAL CIVIL APPLICATION NO. 19714 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 19712 of 2019
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CIVIL APPLICATION (FOR STAY) NO. 1 of 2020
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In
R/SPECIAL CIVIL APPLICATION NO. 19709 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 19713 of 2019
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2020
In
R/SPECIAL CIVIL APPLICATION NO. 19713 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 23116 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH
and
HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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Appearance:
DR BALRAM D JAIN, ADVOCATE for the petitioners
MR MB GANDHI, SENIOR ADVOCATE ASSISTED BY MR CHINMAY M GANDHI, ADVOCATE for the respondent GIDC
MR JK SHAH, ASST. GOVERNMENT PLEADER for the State respondents
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CORAM: **HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH**
And
HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI

Date : 24/12/2020

CAV JUDGMENT
(PER : HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH)

1. This group of petitions has been preferred under Article 226 of the Constitution of India by erstwhile landowners of different parcels of land said to have been acquired by the State for the benefit of the Gujarat Industrial Development Corporation (for short "GIDC") sometime in the year 1987. Total land acquired was 1347 Hectares 88 Aare and 44 sq.mtrs. It was situated in four villages. The details of the same are provided below :

Sr. No.	Village	Total land
1	Ichchapore	400-95-61
2	Bhatpore	171-69-76
3	Kawas	347-19-07
4	Mora	428-04-00

2. Special Civil Application No.11931 of 2019 is taken up as the lead matter for recording of brief facts. The

reliefs claimed by means of this petition is firstly to issue a writ of mandamus commanding the respondents not to demolish properties in question, not to destroy the standing crops, not to destroy or cut 1400 palm trees and other trees standing in the land in question and not to destroy the *tabela* for buffaloes and cows of the petitioners. The second relief claimed is to direct the respondents to regrant/reallot the land in question to the petitioners as the object of the land acquisition has lapsed. In other petitions also similar reliefs have been claimed.

3. The main ground on which these petitions are filed is that although the land was acquired in 1987 for the benefit of the GIDC, but in fact, no development activity was carried out by the GIDC, the land is still lying unutilized, it is still in possession of the petitioners who were the landowners and the object of the acquisition having frustrated, the land so acquired deserves to be returned to the petitioners. In other words, it has been prayed that the land in question be

regranted/reallotted to the petitioners.

4. The GIDC filed counter affidavit according to which, notifications under sections 4 & 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the 1894 Act) were issued on 22.01.1987 and 21.03.1988 respectively (page-41). Later on two awards dated 09.05.1989 and 19.07.1989 were passed. It is stated in paragraph-4 of the counter affidavit that possession was also handed over to the State Government and thereafter to the GIDC. It is further stated that for substantial area of land acquired, there were consent awards, which were executed pursuant to which possession was given and in all the revenue records, name of the GIDC has already been recorded. The Sanad along with the revenue records incorporating the name of the GIDC is filed as Annexure – R/2. In effect, according to the GIDC, as the land in question stands absolutely vested in the State and thereafter in the GIDC free from all encumbrances, the petitioners have no right, title or interest in the land in question.

4.1 In paragraph-5 of the counter affidavit, it has been stated that apart from the regular awards, there were consent awards and each and everyone had been paid compensation. A chart is also annexed as Annexure-R/1 along with the counter affidavit giving details. According to the table, it contains details of 30 transactions with date of the consent award and its details along with the compensation determined and the details of its payment by cheques. It is also stated that some of the landowners did not accept the payment and the amounts of compensation have been deposited in the Court.

4.2 In paragraphs-6 and 7 of the counter affidavit, it is stated that the GIDC has developed the land and further allotted it to different parties. There have been issues where possession was obstructed with respect to NSP Infrastructure Private Limited for which police help was required, details of which are stated in the said paragraphs. The correspondence in that respect is collectively annexed as Annexure – R/3.

4.3 In paragraph-8 of the counter affidavit, reference is given of two Special Civil Applications bearing Nos. 27212 and 27313 of 2007 wherein similar challenge was made to resist the eviction and demolition with respect to certain plot numbers. A Division Bench of this Court dismissed the said Special Civil Applications by order dated 12.05.2008, a copy of the said judgment is filed as Annexure:G to the writ petition. The Division Bench recorded that the challenge to eviction could not be sustained as the challenge to acquisition had failed right up to the Hon'ble Supreme Court, the possession was taken over as far back as in 1994. It also referred to two orders passed by this Court dated 07.05.2004 and 14.12.2006 wherein right of the petitioners was not recognized at all. The Division Bench, however, granted time till 31.05.2008 to vacate the land in question leaving it open to the petitioners therein to pursue their representation for allotment of land provided they had any such right or the GIDC had any

such policy. It would be worthwhile to reproduce the order dated 12.05.2008 passed by the Division Bench. (Pages 37 and 38). The said order dated 12.05.2008 passed in Special Civil Application Nos. 27212 and 27313 of 2007 reads as under:

> *"In these petitions under Article 226 of the Constitution,the petitioners have challenged their threatened eviction from the land bearing Revenue Survey Nos.190 and 193 of Village Icchapore, Taluka Choriyasi, District Surat and demolition of the petitioners' dwelling units on the said lands. In the affidavit in reply dated 23rd October 2007 filed on behalf of the Gujarat Industrial Development Corporation (GIDC) it is pointed out that Revenue Survey Nos.190 and 193 of Village Icchapore, Taluka Choriyasi, District Surat are the lands already acquired for the purpose of GIDC Estate after following the procedure under the Land Acquisition Act, 1894,and the acquisition was finalised as far back as in 1988 and challenge to this acquisition failed right upto the Hon'ble Supreme Court. It is also stated that possession of the land was taken over as far back as in 1994. It is also stated in the said affidavit that the officers of the GIDC had prepared report dated 27.11.2007 and as per the said report there is adjoining land bearing Revenue Survey No.192, admeasuring 1 hector,28 Are, i.e. about 12,800 sq. meters and that in the area admeasuring 36 Are (equivalent to 3,600 sq. meters), there are dwelling units. It is also stated that the area admeasuring91 Are, i.e. 9,135 sq. meters is lying open. It implies that in Revenue Survey No.192, "Ahir Vas' occupies about 1/3rdportion of the said Revenue Survey Number and the rest of the area is open land.*

2. The petitioners had earlier filed petitions which were disposed of by orders dated 07.05.2004 and 12.04.2006. Both those petitions were disposed of and in none of the orders any right of the petitioners over the land in question was recognised.

3. In this view of the matter, the petitioners have no right to challenge the eviction. Both these petitions are therefore, summarily rejected. Notice is discharged. In the facts and circumstances of the case, however, the petitioners shall not be evicted till 31st May 2008. It will be open to the petitioners to pursue their representations for allotment of land, if the petitioners have any such right or if the GIDC has any such policy."

5. We may now refer to the two orders dated 07.05.2004 and 12.04.2006. The order dated 07.05.2004 was passed by learned Single Judge in Special Civil Application No. 3588 of 2003. The opening part of the said order clearly mentions that the petitioner had given up the prayer regarding the claim for re-grant of the land in question. However, the only observation made was that representation of the petitioners therein to allot any other land as per the prevailing policy of the GIDC should be considered within two months. Accordingly, the learned Single Judge disposed of the petition as withdrawn subject to liberty to the petitioners to file a fresh petition challenging the order

which may be passed on the representation made by them regarding allotment of any other land. The order dated 07.05.2004 passed in Special Civil Application No. 3588 of 2003 reads as under :

> *"Sr. Advocate Shri Sanjanwala appearing for the petitioners has submitted that the petitioners give up the prayers in the petition as well as the claim for regrant of subject-matter lands.*
>
> *In view of the aforestated statement made by Sr. Advocate Shri Sanjanwala, Shri S.N.Shelat, Advocate General, and learned advocate Shri N.V.Anjaria appearing for respondent No. 2, GIDC, have submitted that the case of the petitioners will be considered in their capacity as land-losers as per the prevailing policy of GIDC. The representation made by the petitioners to allot any other land will be considered and decided within two months from today as submitted earlier.*
>
> *In view of the above order, the petition stands disposed of as withdrawn with a liberty to file a fresh petition if the order, which might be passed by the respondents, is adverse to the petitioners. It is hoped that if any adverse order is to be passed, the respondents shall support the same with reasons.*
>
> *The petition stands disposed of as withdrawn. Notice is discharged. Ad-interim relief stands vacated. D.S. permitted."*

6. The other order dated 12.04.2006 was passed by a Division Bench of this Court in Special Civil Application No. 16414 of 2004. The Division Bench

dismissed the petition in limine recording that the petitioners having earlier given up their challenge to acquisition of land, fresh petition again challenging the acquisition could not have been maintained. The said order 12.04.2006 passed by a Division Bench of this Court in Special Civil Application No. 16414 of 2004 reads as under:

> *"The petitioners are the agriculturists whose lands have been acquired for the purpose of the respondent –Gujarat Industrial Development Corporation (hereinafter referred to as,* ***"the Corporation"****). The said acquisition was challenged by the petitioners in Special Civil Application No.3588/2003. The said petition came to be decided on 7th May, 2004 (Coram: A.R.Dave, J.). Before the Court, the learned advocate submitted that* ***"the petitioners give up the prayers in the petition as well as the claim for regrant of subject-matter lands."*** *Having conceded on acquisition, the petitioners pressed for grant of land in the GIDC Estate in the capacity of landlosers as per the prevailing policy of the Corporation. Thereupon, it was directed that the representation made by the petitioners for allotment of any other land would be considered and decided within two months from the date of the order. Pursuant to such representation, by communication dated 11th August, 2004, the Corporation had called upon the petitioners to submit further information as to the choice of land and other requirements.*
>
> *Feeling aggrieved, the petitioners have preferred the present petition. In the present petition, the petitioners have once again challenged the acquisition of the lands and the reservation made under the Town*

Planning Act in connection with their lands.

As recorded hereinabove, the petitioners had given up their challenge to the acquisition of the lands. The present petition is, therefore, barred by principle analogus to that of constructive res judicata. The petition is accordingly dismissed in limine. Notice is discharged."

7. The GIDC has specifically stated in paragraph-12 of the counter affidavit that there was no policy of re-grant or providing alternative land. In paragraph-18, it is stated that the said Special Civil Application bearing No. 12448 of 2016 related to claiming the benefit under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "2013 Act"). The said matter had been adjourned *sine die* and directed to be listed after disposal of the matters pending before the Hon'ble Supreme Court.

8. The petitioners filed a rejoinder affidavit. In rejoinder affidavit, the petitioners have denied the stand of the GIDC that it is already in possession. It is again stated that the petitioners are still in possession and now after lapse of almost 30 years, the GIDC is trying to take

possession which clearly shows that the purpose of the land for which it was acquired stands defeated. It is also reiterated by the petitioners that they have vested right to their property. The GIDC filed an additional counter affidavit to which a further affidavit was filed by the petitioners. The pleadings are complete.

9. In the additional counter affidavit, the GIDC has provided the details of the allotment made in paragraph 3 thereof, the same is reproduced hereunder :

Sr. No.	Name of allottee	Area (Hect.) (Tentative)	Allotment Date
1	Goyal M.G. Gases	1.41	11.04.1997
2	Bharat Petroleum	17.59	09.02.1993
3	HPCL	20.06	08.11.1994
4	IOC	41.6	22.06.1992
5	IOC Greenbelt	33.62	01.11.1994
6	IOC Part C	7.72	
7	IBP Co. Ltd.	10	06.06.1996
8	GEB	12.19	27.02.1989
10	IOC Bhatpore	41.63	04.06.1985
11	GAIL	37.8	02.01.1986
12	ONGC	264.56	24.01.1997
13	ABG Shipyard (Institute)	12.09	26.10.2007
14	JHM Hotel Ltd.	46.67	26.10.2004

15	Hira Bourse	96.97	02.04.2004
16	RJD (SITP 1)	22.64	23.06.2008
17	Sayan Textile (SITP 3)	22.69	21.05.2008
18	Bharat Gas	16	24.03.2000
19	G.S.E.G.	29.48	22.11.1999
		4.02	03.08.2006
20	Reliance Petro Chem Ltd.	6.92	19.11.1990
		2.84	04.03.1991
		16.18	22.10.1993
21	L & T (Plot No.9)	45.55	29.11.2005
	L & T (Plot No.10)	11	03.08.2006
22	M/s. NSP Infrastructure Pvt. Ltd.	25.47	11.02.2016

It may be noted that there were total 21 allotments as there is no serial number 9 which is missing.

10. It has also given the details of the various petitions filed by different landowners and it is also stated that all those petitions have been disposed of. The challenge to acquisition had failed. The prayer for regrant/ allotment of alternative land had also failed. It is also stated that in majority of the cases the landowners have received compensation also and where they have not received compensation it is lying in deposit with the Court. It is also stated that

different landowners have been agitating for their claim from time to time but in none of the cases the Court has interfered. The only attempt on the part of the petitioners is to somehow or the other stall the development work. Lastly, it is stated that the status of the petitioners even if they are as alleged to be in possession although it is not admitted, would be that of rank trespasser and they cannot derive any benefit out of it.

11. We have heard Dr. Balram D. Jain, learned counsel for the petitioners in all the petitions, Shri M.B.Gandhi, learned Senior Advocate assisted by Shri Chinmay Gandhi, learned counsel for the respondent GIDC in all the petitions and Shri J.K.Shah, learned Assistant Government Pleader for the State respondents.

12. At the time of reserving judgment vide order dated 04.03.2020, we had given liberty to the learned counsels for the parties to submit their written submissions within two weeks. Mr. Gandhi submitted the written brief on 09.03.2020 whereas the

petitioners' counsel had failed to submit the written brief. In the meantime, everything was locked down on account of pandemic of COVID-19. Later on, in August – September, 2020, Dr. Jain was requested to submit his written brief which he submitted in the month of September, 2020.

13. We have considered the submissions advanced and have also perused the material placed on record. We may record here that Dr. Jain, learned counsel for the petitioners has submitted extremely lengthy written brief running into 70 pages and annexing documents with the written brief running into another 134 pages. Dr. Jain has also segregated the group of petitions into three separate categories and has submitted three separate written submissions. We may only mention here that there may be some fine distinction in segregating the group of petitions into three categories but the substantive argument remains the same that on account of the petitioners continuing in possession and the land having not been developed or allotted for

the purpose for which it was acquired for almost 30 years, the purpose stands frustrated and as such the land should be regranted to the petitioners or in the alternative allotment be made as per the policy.

14. Without going into any factual dispute as to whether the petitioners are still continuing in possession or not or the possession stands legally vested with the State and thereafter with the GIDC, we are of the firm view that this group of petitions are an abuse of the process of law. The issue of possession already stands settled as recorded in the previous orders passed in the earlier round of litigation.

15. By filing repeated petitions, the petitioners are only abusing the process of law having lost on all counts in the earlier rounds of litigation which we will discuss a little later. We may also record here that even if some of the petitioners had not approached the Court earlier in the previous rounds of litigation, that would not enure any benefit to them for reasons which we will

record hereinafter.

16. Dr. Balram D. Jain, learned counsel for the petitioners has also placed reliance upon a number of judgments of the Supreme Court. Without burdening our judgment, we may only mention that the judgments relied upon do not at all have facts similar to the facts of the present case. It is well-settled that law can be applied only in the facts of the matter and not without reference to facts. We may only mention the list of judgments relied upon by Dr. Jain and briefly state how they are not relevant which are as follows :

(i) For the proposition that if a statute requires a particular act to be done in a particular manner it has to be done in that manner only or not at all, Dr. Jain has relied upon the following judgments :

(1) Babu Verghese and others vs. Bar Council of Kerala and others, (1999) 3 SCC 422.

(2) Rao Shiv Bahadur Singh and another vs. State of Vindhya Pradesh, 1954 SCR 1098.

(3) Deep Chand vs. State of Rajasthan, 1962

(1) SCR 662.

(4) Uttar Pradesh vs. Singhara Singh and others, AIR 1964 SC 358.

Dr. Jain while canvassing this argument has apparently failed to consider the facts of the present case that the challenge to the acquisition and the relief for regrant/allotment of alternative land stood already closed and concluded in the previous rounds of litigations. The above principle canvassed has no application in the present case.

(ii) For the proposition that for the interpretation of provisions of law a **'literal meaning'** is to be given that is to say that the statute should be read as it is without distorting or twisting its language. For the said proposition Dr. Jain has relied upon the following judgment :

(1) Raghunath Rai Bareja and another vs. Punjab National Bank and others, (2007) 2 SCC 230.

We may again reiterate that all these judgments have no relevance or applicability in the facts of the

present case.

17. In the present case the challenge to the acquisition has already attained finality upto the Supreme Court which is not disputed. The challenge to acquisition had failed.

18. In 2003, some of the landowners came up with a petition praying for regrant of the land and in the alternative for allotment of alternative land. This petition being Special Civil Application No.3588 of 2003 was withdrawn as recorded in the order dated 07.05.2004. The petitioners were held to be land losers and in that capacity if they had any right as per the prevailing policy of the GIDC, their representation for allotment of any other land was to be considered. The said order is already reproduced above in paragraph 5.

19. The second one is an order passed by a Division Bench of this Court on 12.04.2006 in Special Civil Application No.16414 of 2004. It records that the petitioners had again challenged the acquisition which

was not permissible as it was barred by principles of constructive *res judicata*. The said petition was accordingly dismissed *in limine*. The said order has been reproduced in paragraph 6 above.

20. The third one is an order passed by a Division Bench of this Court on 12.05.2008 in two connected matters, being Special Civil Application Nos. 27214 and 27313 of 2007. It again refers to the previous orders and accordingly both the petitions were summarily rejected. The only liberty granted was that the petitioners to pursue their representation for allotment of land if they had any such right or if the GIDC had any such policy. The said order is reproduced above in paragraph 4.3.

21. Once again the petitioners after lapse of more than 10 years approached this Court by way of the present group of petitions again claiming regrant which relief had earlier been denied. We are of the firm view that this group of petitions not only is an abuse of the

process of law but ultimately result into loss of valuable time of the Court and such petitions having been filed irresponsibly by such unscrupulous litigants knowing fully well that their rights had already been crystalized long back, would deserve dismissal with heavy costs.

22. Shri Gandhi, learned Senior Counsel has placed reliance upon the following judgments in support of his submissions which are being briefly referred to :

(1) Once the acquisition is complete, the possession taken, award made and compensation paid and the land having fully vested in the State, there can be no way that it could be reconveyed to the original landowners. The Supreme Court in the case of **Uma Shankar & Ors. Vs. R. Hanumaiah, AIR 2017 SC 2887,** has dealt with an issue where after deposit of the amount to the State Government, the State had exercised the power under Section 48 of the 1894 Act reconveying the land by cancelling the earlier

notification. It was held impermissible exercise of power. Paragraphs – 46 to 52, 55, 58 and 61 are relevant paragraphs which are reproduced below :

*"46. The possession of the land in question was taken in the year 1966 after the passing of the award by the Land Acquisition Officer. Thereafter, the land vested in the Government which was then transferred to CITB, predecessor-in-interest of the appellant. /**After the vesting of the land and taking possession thereof, the notification for acquiring the land could not be withdrawn or cancelled in exercise of powers under Section 48 of the Land Acquisition Act. Power under Section 21 of the General Clauses Act cannot be exercised after vesting of the land statutorily in the State Government.***

47. The High Court also erred in holding that land acquisition process and the vesting process became incomplete since the landowners were asked to redeposit the amount of compensation. The High Court failed to take notice of Section 31 of the Land Acquisition Act. Section 31 contemplates that on making of an award under Section 11 the Collector shall tender amount of compensation awarded by him to the person interested and entitled thereto according to the award and shall pay to them unless prevented by any one or more of the contingencies mentioned in the subsequent clauses. None of those contingencies arose in the present case. Thus, once the amount was tendered and paid the acquisition process was complete. After making the award under Section 11 the Collector can take possession of the land under Section 16 which shall thereupon vest absolutely in the Government free from all encumbrances. In the instant case, after making the payment in terms of the award, possession was

taken. The acquisition process stood completed. The subsequent development will not alter the fact that the acquisition was complete.

48. This brings us to the last contention raised by the counsel for the respondent. The respondent placed on record copy of Letter No. UDD/260/2005 dated 12-7-2005 addressed by the Principal Secretary to the Government, Urban Development Department, Bangalore to the Commissioner, Bangalore Development Authority, Bangalore. This letter was addressed by the Urban Development Department with reference to Chief Minister's Note No. CM/SCM-2/49/BDA/05 dated 5-7-2005. The letter reads as under:

> *'With reference to the above subject the copy of the note under reference is enclosed along with this letter and the subject is self-explanatory.*
>
> *I have been directed to inform you that in the light of the order of the Hon'ble Chief Minister, an extent of 6 acres 20 guntas of land should be reconveyed to Shri R. Hanumaiah in accordance with the decision rendered by the High Court of Karnataka in R. Hanumaiah v. BDA [R. Hanumaiah v. BDA, 2001 SCC OnLine Kar 817] , dated 9-7-2001/10-7-2001, you should take necessary action immediately and send a report to the Government regarding the action taken.'*

49. The Bangalore Development Authority sent their reply contending inter alia that the directions issued by the Chief Minister were contrary to law and the third-party rights had set in and therefore, not capable of being implemented. Thereafter, there has been no communication from the office of the Chief Minister to BDA.

50. The letter was written on behalf of the Government in purported exercise of its power under Section 65 of the Act which reads:

> *'65. Government's power to give directions to the Authority.—The Government may give such directions to the Authority as in its opinion are necessary or expedient for carrying out the purposes of this Act, and it shall be the duty of the Authority to comply with such directions.'*

51. We do not agree with the contention raised by the counsel for the respondent that the directions issued by the Chief Minister through his note were binding on BDA or that BDA was bound in law to reconvey the land in terms of the directions issued in the impugned judgment. It has not been shown that the Chief Minister was authorised to issue the directions to BDA to reconvey the land. Under Section 65 the Government can give such directions to the Authority which in its opinion are necessary or expedient for carrying out the purpose of the Act. It is the duty of BDA to comply with such directions. Contention that BDA is bound by all directions of the Government irrespective of the nature and purpose of the directions cannot be accepted. Power of the Government under Section 65 is not unrestricted. Directions have to be to carry out the objective of the Act and not contrary to the provisions of the Act. The Government can issue directions which in its opinion are necessary or expedient for 'carrying out the purposes of the Act'.

52. Directions issued by the Chief Minister in the present case would not be to carry out the purpose of the Act rather it would be to destroy the same. Such a direction would not have the sanctity of law. Directions to release the lands would be opposed to the statute as the purpose of the Act and object of

constituting BDA are the development of the city and improvement of the lives of the persons living therein. The Authority vested with the power has to act reasonably and rationally and in accordance with law to carry out the legislative intent and not to destroy it. Directions issued by the Chief Minister run counter to and are destructive of the purpose for which BDA was created. It is opposed to the object of the Act and therefore, bad in law. Directions of the Chief Minister are to reconvey the land in terms of the decision rendered by the High Court in the impugned judgment [R. Hanumaiah v. BDA, 2001 SCC OnLine Kar 817] i.e. Writ Appeal No. 727 of 1989. Since we are setting aside the impugned judgment, BDA as per directions issued by the Chief Minister cannot reconvey the land to the respondent in terms of the decision rendered by the High Court in the impugned judgment [R. Hanumaiah v. BDA, 2001 SCC OnLine Kar 817] i.e. Writ Appeal No. 727 of 1989.

55. It is not in dispute that Section 48 of the Land Acquisition Act would apply to the acquisitions made under the 1976 Act and in that view of the matter the State could exercise its jurisdiction for reconveyance of the property in favour of the owner thereof only in the event possession thereof had not been taken. Once such possession is taken even the State cannot direct to reconvey the property. It has been accepted before us that Section 21 of the General Clauses Act has no application but reliance has been sought to be placed on Section 65 of the 1976 Act which empowers the Government to issue such directions to the Authority as in its opinion are necessary or expedient for carrying out the purpose of the Act. The power of the State Government being circumscribed by the conditions precedent laid down therein, thus, the directions can be issued only when the same are necessary or expedient for carrying out the purpose of the Act. In a case of this nature, the State

Government did not have any such jurisdiction and, thus, the Bangalore Development Authority has rightly refused to comply therewith.

58. The Bangalore Development Authority has been constituted for specific purposes. It cannot take any action which would defeat such purpose. The State also ordinarily cannot interfere in the day-to-day functioning of a statutory authority. It can ordinarily exercise its power under Section 65 of the 1976 Act where a policy matter is involved. It has not been established that the Chief Minister had the requisite jurisdiction to issue such a direction. Section 65 of the 1976 Act contemplates an order by the State. Such an order must conform to the provisions of Article 166 of the Constitution

61. We accept this appeal and set aside the judgment of the High Court as well as the directions issued by the State Government on the asking of the Chief Minister vide letter dated 12-7-2005 to BDA to reconvey the land measuring 6 acres, 20 guntas and 42 sq yds to the 1st respondent. The judgment [R. Hanumaiah v. BDA, 2001 SCC OnLine Kar 817] under appeal is set aside and that of the Single Judge is restored. The writ petition is dismissed except to the extent that the first respondent would be entitled to reclaim the amount of compensation along with interest as indicated in the earlier paragraphs. Parties shall bear their own costs."

(2) Shri Gandhi, learned Senior Advocate further placed reliance upon the judgment of the Supreme Court in the case of **Sita Ram Bhandar Society, New Delhi V. Lt.Governor, Govt.Of N.C.T, AIR 2010 SC**

1143, for the proposition that for large tract of land such as the present one which is more than 1300 Hectares possession is to be taken by way of Panchnama and that would be deemed to be sufficient proof and evidence of taking over of the possession. Encroachment over small portion of land would not extend any benefit to the petitioners. In the present case the GIDC has already filed documents to show that possession was taken by way of Panchnama. The relevant extract as contained in paragraph 9 of the judgment is reproduced below :

> *"(9) It would, thus, be seen from a cumulative reading of the aforesaid judgments, that while taking possession of a large area of land with a large number of owners, it would be impossible for the Collector or the Revenue Official to enter each bigha or biswas and to take possession thereof and that a pragmatic approach has to be adopted by the Court. It is also clear that one of the methods of taking possession and handing it over to the beneficiary department is the recording of a Panchnama which can in itself constitute evidence of the fact that possession had been taken and the land had vested absolutely in the Government.*
>
> *Mr. Gupta has, with great emphasis, pointed out that from the affidavit dated 30th July 1996 sworn by Mr. G.S.Meena, Under Secretary, Land and Building Department, it was clear that the appellant continued*

to remain in possession on account of the stay of dispossession granted by the High Court on 15th July 1981 in WP No. 2220/1981 and the confirmation of the said order on 16th September 1982 and as such the stand of the appellants that possession had been taken was not correct. We have, however, already observed that possession had been taken between 20th and 24th June 1980, and the acquired land thus stood vested in the State free from all encumbrances under Section 16 of the Act. It is also relevant that the afore-referred writ petition was dismissed meaning thereby that the said order should automatically be vacated as well. Even assuming for a moment that the petitioner had re-possessed the acquired land at some stage would be of no consequence in view of the provisions of section 16 ibidem. In Narayan Bhagde's case (supra) one of the arguments raised by the land owner was that as per the communication of the Commissioner the land was still with the land owner and possession thereof had not been taken. The Bench observed that the letter was based on a misconception as the land owner had re-entered the acquired land immediately after its possession had been taken by the government ignoring the scenario that he stood divested of the possession, under Section 16 of the Act. This Court observed as under:

*"**This was plainly erroneous view, for the legal position is clear that even if the appellant entered upon the land and resumed possession of it the very next moment after the land was actually taken possession of and became vested in the Government, such act on the part of the appellant did not have the effect of obliterating the consequences of vesting."**)*

(3) Shri Gandhi also placed reliance upon the judgment in the case of **Smt.Chandrakantaben J.**

Modi and Narendra Jayantilal Modi V. Vadilal Bapalal Modi and others, AIR 1989 SC 1269, for the proposition that the incorporation of the name of the State/Beneficiary in revenue entries proved the possession as well. There can be no restitution after land has vested in the State and compensation paid.

(4) Shri Gandhi has also placed placed reliance upon the judgment of the Supreme Court in the case of **Ravi Khullar V. Union Of India, AIR 2007 SC 2334,** for the proposition that the present petitions would not be maintainable on the ground of delay and latches and are liable to be dismissed on this ground alone.

23. Another benefit sought to be taken by the petitioners as addressed by Dr. Jain was with respect to the benefit of Section 24(2) of the 2013 Act. The benefit has been sought on the ground firstly that the petitioners are still in possession and secondly that they have not received compensation. The benefit

extended under the judgment of the **Pune Municipal Corporation & another Vs. Harakchand Misrimal Solanki & others**, **(2014) 3 SCC 183**, no longer exists in view of the Constitution Bench judgment of the Supreme Court in the case of **Indore Development Authority vs. Manoharlal and others, (2020) 8 SCC 129**. The Constitution Bench proceeded to lay down the ratio while answering the questions in its judgment in paragraph 363 which are reproduced hereunder :

> *"363. In view of the aforesaid discussion, we answer the questions as under:*
>
> *1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.*
>
> *2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.*
>
> *3. The word 'or' used in Section 24(2) between possession and compensation has to be read as 'nor' or as 'and'. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor*

compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

4. The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the Act of 1894.

5. In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013.

6. The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part of Section 24(1)(b).

7. The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) is by drawing of inquest report/ memorandum. Once award has been passed on taking possession under Section 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).

8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority as on 1.1.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

9. Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition."

24. The Constitution Bench has clearly held that no right would accrue to erstwhile landowners whose lands had been acquired and compensation paid to claim benefits of Section-24(2) only on the ground of possession. Such claimants would have to establish and pass both the tests of compensation not being paid to them and also that they are continuing in possession. The

Constitution Bench further held that deposit of the compensation with the Treasury under Section-31(1) would be sufficient compliance of the fact that compensation has been paid. In the present case, GIDC has specifically stated on oath and has also filed documents to show that compensation was paid to and received by majority of the landowners and for the remaining few it was deposited in the Court. The Constitution Bench had further held that compensation offered and not received by the claimant would amount to compensation having been paid. Insofar as possession is concerned that issue also stands closed as discussed above.

25. In the present case it is a specific case of GIDC that most of the landowners have received the compensation and few of them who have not received, the compensation is lying in deposit with the Court after they refused to accept the same. The petitioners would thus be not entitled to any benefit of Section 24(2) of the 2013 Act on account of non-fulfillment of both the conditions being not satisfied and not existing.

26. For all the reasons recorded above, we do not find any merit in this group of petitions. We are of the view that these petitions for reasons recorded above deserve to be dismissed with costs which we quantify as

Rs.10,000/- (Rupees Ten Thousand only) per every petitioner in each of the cases. Consequently, the connected Civil Applications also stand disposed of.

(VIKRAM NATH, CJ)

(ASHUTOSH J. SHASTRI, J)

FURTHER ORDER

After pronouncing the above judgment, Dr. Balram Jain, learned counsel for the petitioners made a request that the operation of the order may be stayed for four weeks. We do not find any merit in the said submission in view of the findings recorded in our judgment. Request is accordingly declined.

(VIKRAM NATH, CJ)

(ASHUTOSH J. SHASTRI, J)

A. B. VAGHELA/PIRZADA/GAURAV