

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 10.09.2020

Pronounced on 15.09.2020

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WP.No.10712/2020 & WMP.No.13011/2020

1.K.Saraswathi

2.K.Balan @ Vijayakumar

... Petitioners

Versus

1.The State of Tamil Nadu
rep.by its Secretary to Government
Housing and Urban Development Department
Secretariat, Fort St George
Chennai 600 009.

2.The Special Tahsildar [LA]
Housing Schemes No.3
TATABAD, Sivanandha Colony
Coimbatore 641 012.

3.The Executive Engineer & Administrative Officer
Coimbatore Housing Unit, Tamil Nadu Housing Board
TATABAD, Sivanandha Colony
Coimbatore 641 012.

4.The Superintending Engineer
Tamil Nadu Housing Board
Salem Region, Coimbatore 641 002.

5.The Tahsildar,
Coimbatore North Taluk
Coimbatore.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Declaration to declare the entire land acquisition proceedings relating to proceedings covered in Award No.2/99 dated 31.12.1999 of the 2nd respondent in respect of the lands belonging to the petitioners comprised in SF.No.6/2A to an extent of Acre 1.82 cents situated in Vellakinaru Village, Coimbatore District, become lapsed, by virtue of the operation of the provisions contained in Section 24[2] of the Right to

Fair Compensation and Transparency in Land Acquisition,
Rehabilitation and Resettlement Act, [Act 30/2013].

For Petitioner : Mr.Ar.L.Sundaresan
Senior Counsel assisted by
Mr.G.Sankaran

For Respondents: Mr.Vijay Narayan
Advocate General assisted by
Mr.E.Manoharan
Special Government Pleader for
RR 1, 2 & 5 &
Dr.R.Gouri, Standing counsel for
RR 3 & 4

ORDER

- (1) This writ petition has been filed for the issue of a Writ of Declaration to declare that the land acquisition proceedings relating to the subject property has lapsed by virtue of the operation of the provisions contained in Section 24[2] of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [hereinafter called as 'The Act'].
- (2) The case of the petitioners is that the subject property situated at SF.No.6/2A, measuring to an extent of 1.82 acres at Vellakinaru Village, Coimbatore District, originally belonged to the father-in-law of the 1st petitioner, viz., Thiru.Palani Gounder [late] and after his lifetime, the property devolved on the husband of the 1st petitioner. After his death, the 1st petitioner and her son/2nd petitioner herein, inherited the subject property. The revenue records also stood in their names. The further case of the petitioners is that the property in question is an agricultural land.
- (3) The subject property along with a large extent of lands were acquired under the Land Acquisition Act, 1894 [hereinafter called as 'the 1894 Act'] for the formation of Vellakinaru Neighbourhood Scheme. Section 4[1] Notification was issued on 18.12.1996 and Section 6 Declaration was made on 24.12.1997. The Award enquiry was conducted under Section 11 of the 1894 Act and the Award was passed on 13.12.1999. The specific case of the petitioners is that they were never served with any notice at any stage of the proceedings even though they are the record tenure holders of the land in question. The petitioners further state that when the acquisition proceedings were started, there was a lot of resistance on the ground that fertile agricultural lands are being taken away and the petitioners were under the impression that the entire

proceedings has been abandoned and the petitioners continued to utilise the lands for agricultural purposes. To substantiate the same, the Patta and Adangal extract have been filed, which shows that the names of the petitioners continued to be recognised as the notified owners of the subject property.

(4) The officials belonging to the Tamil Nadu Housing Board [TNHB] came to the subject property and informed the petitioners that the property has already been acquired by the Government and the possession has been handed over to the TNHB and they wanted to proceed further to implement a project. It also came to the notice of the petitioners that the TNHB has issued a Tender Notification on 03.06.2020 inviting tenders for development of the Housing Scheme in the subject property. The petitioners also came to understand that the patta has been transferred in the name of the TNHB by virtue of the orders passed by the 5th respondent on 15.06.2020. A Public Notice was also issued by the Town and Country Planning Authority, Coimbatore with regard to the change of user of land from agricultural to residential and objections were called for from the general public. According to the petitioners, it is only at this point of time, they came to understand that an Award has been passed behind their back and the petitioners were kept in the dark for so many years and neither compensation was paid to them nor the possession was taken from them.

(5) Aggrieved by the action taken by the respondents, the present writ petition has been filed for the issue of a writ of Declaration to declare that the entire land acquisition proceedings with regard to the subject properties as lapsed by virtue of the operation of provision under Section 24[2] of the Act.

(6) The 3rd respondent has filed counter affidavit and the relevant portions in the counter affidavit are extracted hereunder:-

'6 It is submitted that the dry lands in SF.No.6/2A to an extent of 1.82 acres of lands possession which vested with the Government and taken over by the Land Acquisition Officer along with other dry lands to an extent of 7.82 acres was handed over to the Tamil Nadu Housing Board evidencing Possession Certificate on 16.12.2005 as per Land Acquisition Act, from that the peaceful possession is vested with Tamil Nadu Housing Board.

7 It is submitted that the compensation amount of cheque Rs.1,33,370/- for the SF.No.6/2A was deposited under 30 and 31 of

the Land Acquisition Act, 1894 in Coimbatore Principal Subordinate Court, bearing No.973400 dated 01.06.2000 with the acknowledgment of Principal Subordinate Court dated 04.06.2000.

20 It is submitted that the Draft Notification under Section 4[1] of the Land Acquisition Act was approved by the Government in G.O.Ms.No.495, Housing and Urban Development Department dated 14.11.1996. The Draft Notification under section 4[1] of the Land Acquisition Act was published at pages 1 and 2 of Part B Section II of the Tamil Nadu Government Gazette dated 18.12.1996 and also published in the Tamil dailies, viz., 'Pirpagal' and 'Malaimurasu' on 03.01.1997. The substance of the 4[1] Notification was also published in the locality on 06.01.1997.

21 It is submitted that the Powers conferred on the Land Acquisition Officer, an enquiry under section 5[A] of the Land Acquisition Act was conducted by the Land Acquisition Officer and Special Tahsildar [LA], Housing Scheme, Unit 1, Coimbatore, on 31.03.1997 and 16.04.1997.

22 It is submitted that the Copy of Statements of objections obtained from the land owners during 5[A] enquiry were communicated to the Executive Engineer and Administrative officer, Coimbatore Housing Unit on 16.06.1997 for his remarks. The Executive Engineer and Administrative Officer in his Letter No.LA.2/3775/97 dt.26.07.97 has offered his remarks to the objections raised by the land owners against the acquisition requesting to overrule all the objections as they are general in nature. The proceeding of the Land Acquisition Officer under section 5-A of the Land Acquisition Act were drawn up and issued on 31.10.1997 by overruling the objections and further action was taken to proceed the acquisition under section 6 of the Land Acquisition Act.

23 It is submitted that the Draft Declaration under section 6 of the Land Acquisition Act was approved by the Government in G.O.Ms.No.442, Housing and Urban Development Department [LA3][2] dated 23.12.1997. The Draft Declaration under section 6 of the Land Acquisition Act was published on 24.12.1997 in the Tamil Nadu Government Gazette issue No.634

at pages 2 and 3 and also published in the two Tamil Dailies, viz., 'Pirpagal' and 'Malaimurasu' on 29.12.1997. The substance of the Draft Declaration was also published in the locality on 02.01.1998.

24 It is submitted that the Draft Direction under section 7 of the Land Acquisition Act was approved by the Collector, Coimbatore in his proceedings No.51898/93/F5 dt.26.03.1998. Notice under section 9[1] of the Land Acquisition Act was published in the two village to inform the persons interested on the covered under acquisition about the enquiry under section 11 of the Land Acquisition Act individual notice under section 9[1] of the Land Acquisition Act were served on the persons interested over their rights on the lands under acquisition in appear in person for enquiry before passing the Award. The Enquiry under section 11 of the Land Acquisition Act was conducted by the Land Acquisition Officer and Special Tahsildar [LA] Housing Scheme Unit 1, Coimbatore on 26.11.1999.

25 It is submitted that the notified persons for the subject dry land [SF.No.6/2A] to an extent of 0.74.0 hectares are:-
1.K.Saraswathi, W/o.Kurunthachalam
2.Balan alias K.Vijayakumar, Minor by guardian mother Saraswathi,

It is submitted that the petitioner is guilty of suppression of material facts and has not approached the Court with clean hands. It is submitted that the petitioners statement that she has not received notices and that the entire LA proceedings has been done at the back of the petitioner is false statement. It is submitted that the petitioner has received the notice u/s.9[3] and 10 on 29.10.1999, but she did not turn up for enquiry. Therefore, the entire allegation raised by the petitioner that she has not received any notices and the proceedings of Land Acquisition Act has been done without her knowledge is false and the text of the affidavit before the Hon'ble High Court is false.

26 It is submitted that the Award was passed by the proceedings of the Land Acquisition Officer and Special Tahsildar [LA], Housing Scheme, Unit-1, Coimbatore, vide Award No.2/99 dated 31.12.1999. The compensation amount of cheque Rs.1,33,370/- for the

SF.No.6/2A was deposited under 30 and 31 of the Land Acquisition Act 1894 in Coimbatore Principal Subordinate Court bearing No.973400 dated 01.06.2000 with the acknowledgment of Principal Subordinate Court dated 04.06.2000. The possession of the land was taken over by Special Tahsildar [Land Acquisition which is vested with Government and handed over to the Tamil Nadu Housing Board on 16.12.2005 vide possession certificate evidence as per Land Acquisition Act. From the date of taken over of Possession to till date, the land and its physical possession is vested with Tamil Nadu Housing Board.

27 It is submitted that the subject lands are situated at the vantage point and the exclusion of the lands will affect the comprehensive nature of the scheme.

28 It is submitted that the Revenue records was also stands in the name of Tamil Nadu Housing Board from the year of 2000 [Patta No.2803].

29 It is submitted that the subject lands are dry lands, there is no agricultural activities happened before and after the Land Acquisition Proceedings. From the March in Corona days taking advantage of the period the trespass was attempted by third parties and are being prevented by the authorities since it is an ongoing scheme project. From Government approved Detailed Development Plan [Master Plan of Coimbatore Local Planning Area] in the year of 1987 indicates that this land categorised as residential zone. Since the contentions raised about the agricultural land are not maintainable. The Land Acquisition proceedings were made as per provisions contemplated in the Land Acquisition Act.

30 It is submitted that along with the subject land and adjacent lands, the Tamil Nadu Housing Board proposed to implement Thudiyalur and Vellakiner Neighbourhood Scheme to an extent of 66.13 acres. The scheme was announced in the floor of the assembly on 24.03.2020. The tender was also called for the scheme works on 26.06.2020 and tender opened by the Superintending Engineer, Salem Circle on 26.06.2020 @ 11.15 a.m. The scheme works like surveying, bushes cleaning and other works are going on in the site.'

(7) Mr. Ar. L. Sundaresan, learned Senior counsel assisted by Mr. G. Sankaran, learned counsel for the petitioners, made the following submissions:-

- The petitioners are the original owners of the subject property and they have not received notice at any point of time right through the proceedings. In order to substantiate the said submission, the learned Senior counsel specifically relied upon the Award proceedings dated 31.12.1999 and the relevant portion is extracted hereunder:-

'''III.S.F.No.6/2A-0.74.0 Hec.

Tmt.K.Saraswathi, W/o.Kurunthachalam and Balan alias K.Vijayakumar, minor by guardian mother Saraswathi are the notified persons for the acquisition field. Though notice was served on the notified persons, she did not turn up for enquiry on 26.11.99. Though the names of the notified persons find a place in the revenue records, the possession and enjoyment of them over the acquisition field could not be ascertained in their absence to produce documentary evidence. During enquiry, it is decided to deposit the amount into a Civil Court for disposal. Accordingly, it is hereby ordered that the entire amount of compensation in respect of 0.74.0 Hectares in SF.No.6/2A is worked out below be deposited into the civil court u/s.30 and 31[2] of the Land Acquisition Act.'''

- The revenue records like the Patta and Adangal stood in the names of the petitioners right through and even as late as in the month of July 2020, electricity charges were paid by the 1st petitioner in respect of the service connection that stood in the name of the petitioners for the subject property.
- No steps were taken at any point of time to take possession and pay compensation to the petitioners.
- There is absolutely no document to prove as to when the State had taken possession of the subject property from the petitioners and the only document that has been filed by the respondents pertains to a Possession Certificate issued by the Assistant Grade Revenue Inspector from the O/o.The Special Tahsildar [LA] to the Surveyor, belonging to the O/o. The Executive Engineer and Administrative Officer, Coimbatore Housing Unit, dated 16.12.2005. This document is an internal document between the Acquiring Authority and the Requisitioning Body and this does not evidence the fact regarding taking possession from the petitioners.

- A reading of the Award proceedings shows that no one was present at the time of enquiry and the compensation amount is said to have been deposited by way of a cheque before the Principal Subordinate Court, Coimbatore, during the month of June 2000. This has been done even without issuing notice under Section 12[3] of the 1894 Act and till date, there is no information from the Court as to what happened to the so-called petition filed before the Court under the provisions of Sections 30 and 31[2] of the 1894 Act.
 - Admittedly, only a cheque is said to have been forwarded along with the requisition before the Court and there is nothing to show that this amount was actually received by the petitioners. This petition ought to have been enclosed with 'Form-D' which will contain the name of the party in whose favour the cheque was drawn and even those particulars are not available and it has not been produced before this Court. Therefore, no compensation has been paid / tendered to the petitioners in the manner known to law.
 - The petitioners are entitled to the benefit of Section 24[2] of the Act by operation of law, since neither the possession has been taken nor the compensation has been paid / tendered to the petitioners.
 - As an alternative submission, the learned Senior counsel submitted that compensation in respect of the majority of the land holdings has not been deposited in the account of the beneficiaries and therefore, even if this Court is to hold that the acquisition proceedings has not lapsed, the petitioners will be entitled for compensation in accordance with the 2013 Act. The learned Senior counsel specifically relied upon the proviso to Section 24[2] of the Act to substantiate this submission.
- (8) Mr. Vijay Narayan, learned Advocate General assisted by Mr. E. Manoharan, learned Special Government Pleader appearing on behalf of respondents 1, 2 & 5 / State and Dr. R. Gouri, learned Standing counsel appearing on behalf of respondents 2 & 4 / TNHB made the following submissions:-
- The Government acquired nearly 370 acres of lands under the Thudiyalur - Vellakiner Neighbourhood Scheme. The possession was taken and handed over to the Requisitioning Body, viz., TNHB. The Scheme is implemented in a phased manner from the year 1995 onwards and till the year 2017, 104.753 acres have been utilised in five phases and the plots have been allotted to the general public and shelterless persons. Even while the schemes were implemented in a phased manner, in the year 2009 itself, it was proposed to implement Phase VI to X for another extent of 129.82 acres and thereby, it was proposed to develop 1637 plots. The layout was also prepared and the preliminary work was also started in the year 2013-14.

Since some of the land owners had approached the Court, the Housing Board was not able to implement Phase VI to X. The respondents identified litigation free lands to an extent of 66.13 acres and decided to proceed further with the scheme.

- The scheme was announced in the Floor of the Assembly on 24.03.2020. The tender was called for handing over the work on 03.06.2020 and on allotment of the work to the successful bidders, the preliminary work like surveying, clearing of bushes and other works have been taken up in the site.
- The subject properties involved in the writ petitions was handed over to the TNHB as early as on 16.12.2005 and the Possession Certificate, evidencing the same, has been produced to substantiate this submission.
- The entire compensation amount has been deposited in the Court on 04.06.2000 since the notified persons did not turn up during enquiry and there was no record available to prove their possession and enjoyment of the subject property.
- The petitioners have sought for a declaration, to declare that the acquisition proceedings as lapsed by virtue of the operation of Section 24[2] of the Act and in order to take advantage of the said provision, the petitioners will have to establish that both, the physical possession of the property has not been taken as well as the compensation has not been paid and that both the ingredients are not satisfied in the present case.
- If at all there was any illegality in the payment of compensation and taking of possession, the petitioners ought to have questioned the same during the contemporaneous time and the same cannot be questioned after nearly 14 years and the very claim made by the petitioners is stale and hit by laches.
- The petitioners cannot reopen concluded proceedings since in the present case, the Section 4 Notification and Section 6 Declaration was upheld by this Court and thereafter, the Award was passed and it was also deposited in the Court and the possession was also taken, thereby, the entire property has vested with the Government under Section 16 of the 1894 Act.
- The petitioners are also not entitled for the alternative relief claimed by them under the proviso to Section 24[2] of the Act since the provision itself categorically states that it will apply only where the compensation has not been deposited in respect of majority of land holdings and in the present case, there is absolutely no data provided by the petitioners to substantiate that majority of the land holdings have not been paid compensation.
- The learned Advocate General, in order to substantiate all

his submissions, heavily relied upon the Judgment of the Constitution Bench of the Hon'ble Supreme Court of India in Indore Development Authority V. Manoharlal and Others reported in 2020 SCC Online SC 316.

(9) This Court has carefully considered the submissions made on either side and the materials available on record.

(10) Before going into the issues raised in this writ petition, it will be more beneficial to take note of the judgment of the Constitution Bench of the Hon'ble Supreme Court of India in Indore Development Authority Vs Manoharlal and Others reported in 2020 SCC Online SC 316. The questions raised for consideration of the Constitution Bench are found at paragraph Nos.4 and 5 of the judgment and the same are extracted hereunder:-

'4 Later, in Indore Development Authority v. Shyam Verma (SLP No. 9798 of 2016) considered it appropriate to refer the matter to Hon'ble the Chief Justice of India to refer the issues to be resolved by a larger Bench at the earliest. Yet again in State of Haryana v. Maharana Pratap Charitable Trust (Regd) (CA No. 4835 of 2015) referred the matter to Hon'ble the Chief Justice of India to constitute an appropriate Bench for consideration of the larger issue. These batch appeals were referred to a five Judge Bench, which after hearing counsel, framed the following questions, which arise for consideration:

"1. What is the meaning of the expression paid'/tender' in Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act of 2013') and Section 31 of the Land Acquisition Act, LA (Act of 1894')? Whether non-deposit of compensation in court under section 31(2) of the Act of 1894 results into lapse of acquisition under section 24(2) of the Act of 2013. What are the consequences of non-deposit in Court especially when compensation has been tendered and refused under section 31(1) of the Act of 1894 and section 24(2) of the Act of 2013? Whether such persons after refusal can take advantage of their wrong/conduct?

2. Whether the word 'or' should be read as conjunctive or disjunctive in Section 24 (2) of the Act of 2013?

3. What is the true effect of the proviso, does it form part of sub-Section (2) or main Section 24 of the Act of 2013?

4. What is mode of taking possession under the Land Acquisition Act and true meaning of expression the physical possession of the land has not been taken occurring in Section 24(2) of the Act of 2013?

5. Whether the period covered by an interim order of a Court concerning land acquisition proceedings ought to be excluded for the purpose of applicability of Section 24(2) of the Act of 2013 ?

6. Whether Section 24 of the Act of 2013 revives barred and stale claims? In addition, question of per incuriam and other incidental questions also to be gone into."

5. Question nos. 1 to 3 are interconnected and concern the correct interpretation of Section 24 (2) of the Act of 2013. Following questions are required to be gone into to interpret the provisions of Section 24(2) of the Act of 2013:

(i) Whether the word "or" in Section 24(2) of the Act of 2013 used in between possession has not been taken or compensation has not been paid to be read as "and"?

(ii) Whether proviso to Section 24(2) of the Act of 2013 has to be construed as part thereof or proviso to Section 24(1) (b)?

(iii) What meaning is to be given to the word "paid" used in Section 24(2) and "deposited" used in the proviso to Section 24(2)?

(iv) What are the consequences of payment not made?

(v) What are the consequences of the amount not deposited?

(vi) What is the effect of a person refusing to accept the compensation?''

(11) These questions were answered by the Constitution Bench at paragraph No.402 of the judgment and the same is extracted hereunder:-

''402. 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.'

(12) For the purpose of deciding the issue in the present writ petition, Clauses [3], [4], [5], [7] and [9] at paragraph No.402 requires proper understanding.

(13) The Hon'ble Supreme Court, while clarifying the purport of the word 'or' used in Section 24[2] of the Act, held that it has to be read as 'nor' or as 'and'. Therefore, any person who wants to claim the benefit of Section 24[2] of the Act, must satisfy both the requirements of taking possession as well as payment of compensation and mere fulfillment of one of the conditions will not render the acquisition proceedings lapsed.

(14) There are four important issues which requires consideration in the present writ petitions and they are [a] whether the physical possession of the subject properties was taken by the State from the owners of the properties? ; [b] whether the compensation has been paid by the State to the owners of the properties? ; [c] whether the petitioners are trying to reopen / revive concluded proceedings ? ; and [d] whether the petitioners have come to this Court at a belated stage seeking for the relief under Section 24[2] of the Act and ought to have challenged the illegality in taking possession or payment of compensation at the contemporaneous time?.

(15) In order to understand the first issue with regard to taking of physical possession, it is important to unravel from the judgment of the Constitution Bench and find out what act of the State constitutes taking possession from the owner of the property. For this purpose, the relevant portions in the judgment are extracted hereunder:-

''278. Section 16 of the Act of 1894 provided that possession of land may be taken by the State Government after passing of an award and thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of urgency in Section 17(1). The word "possession" has been used in the Act of 1894, whereas in Section 24 (2) of Act of 2013, the expression "physical possession" is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2) requires actual physical possession to be taken, not the possession in any other form. When the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances.

279. The question which arises whether there is any difference between taking possession under the Act of 1894 and the expression "physical possession" used in Section 24(2). As a matter of fact, what was contemplated under the Act of 1894, by taking the possession meant only physical possession of the land. Taking over the possession under the Act of 2013 always amounted to taking over physical possession of the land. When the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any re-entry is made on the land or someone starts cultivation on the open land or starts

residing in the outhouse, etc., is deemed to be the trespasser on land which in possession of the State. The possession of trespasser always inures for the benefit of the real owner that is the State Government in the case.

287. Under section 16 of the Act of 1894, vesting of title in the Government, in the land took place immediately upon taking possession. Under Sections 16 and 17 of the Act of 1894, the acquired land became the property of the State without any condition or limitation either as to title or possession. Absolute title thus vested in the State.

292. The word 'vest' has to be construed in the context in which it is used in a particular provision of the Act. Vesting is absolute and free from all encumbrances that includes possession. Once there is vesting of land, once possession has been taken, section 24(2) does not contemplate divesting of the property from the State as mentioned above.

293. Now, the court would examine the mode of taking possession under the Act of 1894 as laid down by this Court. In Balwant Narayan Bhagde (supra) it was observed that the act of Tehsildar in going on the spot and inspecting the land was sufficient to constitute taking of possession. Thereafter, it would not be open to the Government or the Commission to withdraw from the acquisition under Section 48(1) of the Act. It was held thus:

"28. We agree with the conclusion reached by our brother Untwalia, J., as also with the reasoning on which the conclusion is based. But we are writing a separate judgment as we feel that the discussion in the judgment of our learned Brother Untwalia, J., in regard to delivery of "symbolical" and "actual" possession under Rules 35, 36, 95 and 96 of Order 21 of the Code of Civil Procedure, is not necessary for the disposal of the present appeals and we do not wish to subscribe to what has been said by our learned Brother Untwalia, J., in that connection, nor do we wish to express our assent with the discussion of the various authorities made by him in his judgment. We think it is

enough to state that when the Government proceeds to take possession of the land acquired by it under the Land Acquisition Act, LA, it must take actual possession of the land since all interests in the land are sought to be acquired by it. There can be no question of taking "symbolical" possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land. How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of. There can be no hard and fast rule laying down what act would be sufficient to constitute taking of possession of land. We should not, therefore, be taken as laying down an absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise would be sufficient to constitute taking of possession of land in every case. But here, in our opinion, since the land was lying fallow and there was no crop on it at the material time, the act of the Tehsildar in going on the spot and inspecting the land for the purpose of determining what part was waste and arable and should, therefore, be taken possession of and determining its extent, was sufficient to constitute taking of possession. It appears that the appellant was not present when this was done by the Tehsildar, but the presence of the owner or the occupant of the land is not necessary to effectuate the taking of possession. It is also not strictly necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken at a particular time, though it may be desirable where possible, to give such notice before possession is taken by the authorities, as that would eliminate the possibility of

any fraudulent or collusive transaction of taking of mere paper possession, without the occupant or the owner ever coming to know of it."

294. In Tamil Nadu Housing Board v. A. Viswam (supra) it was held that drawing of Panchnama in the presence of witnesses would constitute a mode of taking possession. This court observed:

"9. It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or Panchnama by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not cooperate in taking possession of the land."

(emphasis supplied)

295. In Banda Development Authority (supra) this Court held that preparing a Panchnama is sufficient to take possession. This Court has laid down thus:

"37. The principles which can be culled out from the above noted judgments are:

(i) No hard-and-fast rule can be laid down as to what act would constitute taking of possession of the acquired land.

(ii) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.

(iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the

occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

(iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

(v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the court may reasonably presume that possession of the acquired land has been taken."

305. In the decision in Raghbir Singh Sehrawat v. State of Haryana 178, the observation made was that it is not possible to take the possession of entire land in a day on which the award was declared, cannot be accepted as laying down the law correctly and same is contrary to a large number of precedents. The decision in Narmada Bachao Andolan v. State of M.P. 179, is confined to particular facts of the case. The Commissioner was appointed to find out possession on the spot. DVDs and CDs were seen to hold that the landowners were in possession. The District Judge, Indore, recorded the statements of the tenure-holder. We do not approve the method of determining the possession by appointment of Commissioner or by DVDs and CDs as an acceptable mode of proving taking of possession. The drawing of Panchnama contemporaneously is sufficient and it is not open to a court Commissioner to determine the factum of possession within the purview of Order

XXVII, Rule 9 CPC. Whether possession has been taken, or not, is not a matter that a court appointed Commissioner cannot opine. However, drawing of Panchnama by itself is enough and is a proof of the fact that possession has been taken.

311. The court is alive to the fact that there are a large number of cases where, after acquisition land has been handed over to various corporations, local authorities, acquiring bodies, etc. After depositing compensation (for the acquisition) those bodies and authorities have been handed possession of lands. They, in turn, after development of such acquired lands have handed over properties; third party interests have intervened and now declaration is sought under the cover of section 24(2) to invalidate all such actions. As held by us, section 24 does not intend to cover such cases at all and such gross misuse of the provisions of law must stop. Title once vested, cannot be obliterated, without an express legal provision; in any case, even if the landowners' argument that after possession too, in case of non-payment of compensation, the acquisition would lapse, were for arguments' sake, be accepted, these third party owners would be deprived of their lands, lawfully acquired by them, without compensation of any sort. Thus, we have no hesitation to overrule the decisions in Velaxan Kumar (supra) and Narmada Bachao Andolan (supra), with regard to mode of taking possession. We hold that drawing of Panchnama of taking possession is the mode of taking possession in land acquisition cases, thereupon land vests in the State and any re-entry or retaining the possession thereafter is unlawful and does not inure for conferring benefits under section 24(2) of the Act of 2013.

- (16) A close reading of all the above portions culled out from the judgment, clearly point out the fact that drawing of Panchnama of taking possession is the correct mode of taking possession in land acquisition cases, more particularly where the property acquired is a vacant land or a large tract of land. Taking possession by adopting to this mode, gives a lot of authenticity to prove that the land has been taken possession. Under the Transfer of Property Act, in cases of vacant land, possession always follow title. However, in the land acquisition proceedings, it works the other way round and here the title vests with the State only after taking

possession. In other words, title follows possession. This position is very clear on a bare reading of Section 16 of the 1894 Act.

- (17) While applying the above principles to the facts of the present case, it is seen that the only document that is available in order to prove the taking of possession is the Possession Certificate dated 16.12.2005 issued by the Assistant Grade Revenue Inspector, O/o. The Special Tahsildar [LA], Housing Scheme, to the Surveyor of the O/o. The Executive Engineer and Administrative Officer, Coimbatore Housing Unit. This is the document that has been produced evidencing the handing over of the property by the revenue to the Requisitioning Body, viz., the TNHB. Even in paragraph No.6 of the counter affidavit filed by the 3rd respondent, this is the only document relied upon by the respondents to prove taking of possession.
- (18) The State Government has not filed any counter affidavit in the present case. There is no material available and nowhere any statement has been made as to when the State took possession of the properties from the land owners. The insistence made under Section 24[2] of the Act as well as the judgment of the Constitution Bench is with regard to taking of possession by the State from the land owners. The handing over of possession by Acquiring Body to the Requisitioning Body may not be very relevant for this purpose since it is an internal document between two Departments. This handing over of the properties to the Requisitioning Body will happen only after the possession is taken by the State from the owners of the lands and therefore, it is more consequential in nature.
- (19) Unfortunately, in this case, the learned Advocate General made a very shocking revelation during the course of hearing that the entire original records have gone missing and it is not traceable. This reveals the shocking state of affairs on the side of the respondents and it is not known whether the original records are genuinely missing or it has gone missing due to the intervention of some human agency. Due to the non-availability of the original records, this Court is not in a position to ascertain as to when the State had taken possession of the properties from the land owners and the mode that was adopted for taking possession. In the absence of the State not filing any counter and not coming out with a clear stand as to when the possession was taken from the land owners and the mode that was adopted for taking possession, this Court is not in a position to satisfy itself with regard to the taking of possession of the property by the State from the land owners.
- (20) In order to understand the second issue with regard to payment of compensation by the State to the owners of the properties, it is important to unravel from the judgment of the Constitution Bench and find out as to when it constitutes tendering/paying/depositing compensation. For this purpose,

the relevant portions in the judgment are extracted hereunder:-

'229. Section 24(2) deals with the expression where compensation has not been paid. It would mean that it has not been tendered for payment under section 31(1). Though the word 'paid' amounts to a completed event however once payment of compensation has been offered/tendered under section 31(1), the acquiring authority cannot be penalized for non-payment as the amount has remained unpaid due to refusal to accept, by the landowner and Collector is prevented from making the payment. Thus, the word 'paid' used in section 24(2) cannot be said to include within its ken 'deposit' under section 31(2). For that special provision has been carved out in the proviso to section 24(2), which deals with the amount to be deposited in the account of beneficiaries. Two different expressions have been used in section 24. In the main part of section 24, the word 'paid' and in its proviso 'deposited' have been used.

255. The land owners had argued that the obligation to pay gets discharged only when compensation is actually paid and/or deposited. Even if it is received under protest under Section 31(1), it is finally accepted by the landowners post-settlement by the Reference Court. We are not able to accept the submission as Section 34 of the Act of 1894, is clear even if the amount is not paid or deposited, it carries interest. The logic behind this is that if the State is retaining the amount with peace and its liability to pay does not cease, but it would be liable to make the payment with interest as envisaged therein. Once tender is made, obligation to pay is fulfilled so that the amount cannot be said to have been paid, but obligation to pay has been discharged and if a person who has not accepted it, cannot penalise the other party for default to pay and non-deposit carries only interest as money had been retained with the Government.

256. Thus, in our opinion, the word "paid" used in Section 24(2) does not include within its meaning the word "deposited", which has been used in the proviso to Section 24(2). Section 31 of the Act of 1894, deals with the deposit as envisaged in Section 31(2) on being 'prevented' from making the payment even if the amount has

been deposited in the treasury under the Rules framed under Section 55 or under the Standing Orders, that would carry the interest as envisaged under Section 34, but acquisition would not lapse on such deposit being made in the treasury. In case amount has been tendered and the landowner has refused to receive it, it cannot be said that the liability arising from non-payment of the amount is that of lapse of acquisition. Interest would follow in such a case also due to non-deposit of the amount. Equally, when the landowner does not accept the amount, but seeks a reference for higher compensation, there can be no question of such individual stating that he was not paid the amount (he was determined to be entitled to by the collector). In such case, the landowner would be entitled to the compensation determined by the Reference court."

(21) The conclusion of the above findings culminates at Clause [4] in paragraph No.402 of the judgment. Once the compensation amount is tendered to the land owner, as provided under Section 31[1] of the Act, the obligation to pay gets fulfilled. If it is refused to be received by the land owner, that cannot be put against the State and that will not amount to non-payment of the compensation amount. Again, where the compensation is refused to be received and the land owner seeks for enhancement of compensation, that will also not amount to non-payment of compensation. Section 31[2] of the Act provides different situations where the compensation tendered by the State does not actually reach the land owner under the following circumstances:-

- i. If the land owner does not consent or receive it ;
- ii. No competent person having title is available to receive the compensation ;
- iii. There is dispute as to title over the property among various persons claiming right over the property ; and
- iv. There is dispute with regard to the apportionment of compensation among the co-owners of the property.

In all the above four contingencies, the District Collector will have to deposit the amount of compensation in the Court to which a reference under Section 18 of the Act is normally preferred.

(22) While applying the above principles to the facts of the present case, it is seen that the only document that is available to prove payment of compensation, is found at Page Nos.59 to 61 of the typed set of papers filed by the 3rd respondent. A reading of the Award proceedings dated 31.12.1999 reveals the fact that the petitioners were

recognized as the notified persons of the subject property and it is stated that no one turned up for the enquiry that was conducted on 26.11.1999. It is further stated that it was decided to deposit the amount into the Civil Court under Sections 30 and 31[2] of the 1894 Act.

(23)The Scheme of the 1894 Act shows that after the Award enquiry is concluded under Section 11 of the Act and the compensation is determined, Section 12[2] mandates the Collector to give immediate notice of his Award to such of the persons who are interested and who were not present personally or through their representatives when the Award was made. In the counter affidavit, it has been stated that the compensation amount of a sum of Rs.1,33,370/- was deposited by way of a cheque under Sections 30 and 31[2] of the 1894 Act, before the Principal Subordinate Court, Coimbatore on 04.06.2000.

(24)The 3rd respondent, except filing the relevant document in the typed set of papers, has not furnished any details with regard to the actual deposit of the compensation, reference that was made under Sections 30 and 31[2] of the 1894 Act and also as to whether the compensation amount is still lying in the Court deposit or not. It is to be borne in mind that what was handed over to the Court was only a cheque. A cheque deposited will constitute tendering the amount and it will not amount to actual deposit like that of a revenue deposit. This deposit is said to have taken place twenty years back and till date, there is not even a scrap of paper to show that the petition was taken on file by the Court and notice was issued to the petitioners and the petitioners also received the amount from the Court deposit. There is no material to show that even a single pie had actually gone out of the revenue and reached the petitioners towards the acquisition of the subject property. The petitioners were not issued with any notice by respondents 1 and 2 with regard to the reference being sent to the Court and this is where the notice under Section 12[2] of the 1894 Act becomes significant and there is absolutely no proof to show that this notice was issued to the petitioners.

(25)When such a deposit is made before the Court, there is a very important document which accompanies the petition and that is 'Form - D'. A format of the said Form-'D' is reproduced hereunder:-

FORM D	
Name of work for which land has been acquired.	for the formation of Neighbourhood Scheme, Coimbatore.

To
The Judge of the Court at The Principal Sub-
ordinate Judge Court,
Coimbatore.

The sum of Rs.

On account of compensation for the land taken up for the above purpose payable as detailed below is tendered for deposit in court under Section 31[2] of the Act I of 1894.

S.No.in Award Stateme nt	Name of Parties	Area of land	Amount payable to each	Remarks
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Dated _____ Land Acquisition
Officer _____

Special Tahslidar [LA]
Housing No.III
Coimbatore-18.

Received the above amount for credit in civil
court deposits.

Note: _____ JUDGE

This form should be used when the amount of
compensation due are sent to a Civil Court for
deposits.

Laid by Cheque No. _____ Decree dt. _____
On the treasury.

(26) The above said Form has necessary particulars with regard to the name of the parties, amount payable etc. At the bottom of the Form, the Court is also supposed to acknowledge the receipt of the amount to the credit of Court deposit. This is the most crucial document which will show that the amount deposited, was received in the Court. Unfortunately, this Form is not available. Therefore, what ultimately comes out of the statement made by the 3rd respondent in the counter affidavit and the document filed in the typed set of papers is that some application has been thrown into the Court along with a cheque and thereafter, no one bothered to follow it up and see that the amount actually reached the land owners. The petitioners cannot be blamed for this, since there is no proof to show that

the petitioners were put on notice under Section 12[2] of the 1894 Act, before this so-called Court deposit was made by the respondents.

(27) The next question is whether this deposit made by the respondents satisfies the requirement of tendering / paying the compensation to the land owner. The learned Advocate General submitted that even assuming without admitting that the respondents did not follow the correct procedure for deposit of the compensation amount, the same cannot be questioned at this length of time and it should have been questioned during the contemporaneous time at which it was deposited. In order to appreciate this submission made by the learned Advocate General, this Court must clearly enunciate as to what constitutes tendering / paying of compensation amount to a land owner after the compensation is fixed in the Award Proceedings under Section 11 of the 1894 Act.

(28) The term 'tendering of amount' involves an offer made for payment of money to the person who is entitled to receive the same. That would mean that the Collector must be armed with the amount of compensation payable to the persons interested and sufficient notice must be given to them to assemble in a place in order to receive the compensation amount. It is only for this purpose, Section 12[2] of the 1894 Act provides for issuance of notice to the land owner after the Award enquiry and determination of compensation and if this notice is issued and the land owner, either refuses to receive this amount or does not appear even after the receipt of the notice, the Court deposit made thereafter, will amount to a proper tendering/paying of the compensation amount. Even for the sake of arguments if the contention raised by the learned Advocate General that the deposit made without strictly following the letter of law will not vitiate the deposit, is taken as it is, that stage will be reached only if a notice is given to the land owner asking him to receive the compensation under Section 12[2] of the 1894 Act and admittedly, in the present case, no such notice has been issued to the land owners. Therefore, the land owners may not even be knowing that the compensation amount has been deposited in some account. When the State with its eminent domain powers, acquires the land of a person, it is the duty of the State to tender/pay the compensation by calling the owner of the property and the owner of the property is not expected to voluntarily go and stand before the authority with a begging bowl. This position of law has been made clear by the following judgments of the Hon'ble Supreme Court of India:-

(a) DDA V. Sukhbir Singh reported in 2016 [6] SCC 258 : 2017 [5] SCC [Civ] 779 : 2016 SCC Online SC 929 at page 270 and the relevant portion is extracted hereunder:-

'9. The scheme of the Land Acquisition Act, insofar as the making of award and the payment of compensation to persons interested,

is as follows. On the day fixed, the Collector after the inquiry that is contemplated under Section 11, has to make an award which must contain the necessary ingredients mentioned in Section 11. As soon as the award is made, under Section 12(2) of the Act, the Collector is to give immediate notice of the award to such of the persons interested as are not present personally. This provision, when read with Section 31 of the Act, makes it clear that the statutory scheme is that the Collector is to tender payment of compensation awarded by him to the persons who are interested and entitled thereto, according to the award, on the date of making the award itself. It is, therefore, clear that under the statutory scheme, the Collector must be armed with the amount of compensation payable to persons interested as soon as the award is made. Such persons have to be paid the sum mentioned in the award, it being well settled that the award is only an offer which may be accepted or rejected by the claimants. If accepted, whether under protest or otherwise, it is the duty of the Collector to make payment as soon as possible after making the award. It is only in a situation where the persons interested refuse consent to receive monies payable, or there be no person competent to alienate the land, or if there be any dispute as to title to receive compensation or its apportionment, is the Collector to deposit the amount of compensation in the Reference Court. It is only after these steps have been taken that the Collector may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances. The Act further makes it clear, on a reading of Section 34, that where such compensation is neither paid or deposited on or before taking possession of the land, interest is payable @ 9% p.a. for one year and 15% p.a. thereafter. This is because a person becomes divested of both possession and title to his property without compensation having been paid or deposited, as the case may be. This statutory scheme has been adverted to in some of the decisions of this Court."

The Court then considered the provisions of the Standing Orders applicable to the NCT of Delhi and observed as under :

17. Far from the aforesaid Standing Order coming to the assistance of the appellants, it is clear that the said Standing Order fleshes out Section 31 of the Land Acquisition Act by insisting that compensation must be paid as soon as the award is announced, vide Para 71. Sufficient notice must be given to enable all payees to assemble at a place where they will receive their dues immediately. It is emphasised by the said paragraph that much trouble will be avoided if the principle that payment of compensation should be made at the time of the award, is strictly observed. Also, it is important that the authorities draw in advance a sum sufficient to cover the probable amount of the award and to make payments."

- (b) The expression "tender" occurring in Section 31(2) was considered by a three judge Bench in Indore Development Authority v. Shailendra, (2018) 3 SCC 412. Arun Mishra, J has observed as under :

"Meaning of "paid" in Section 31 of the 1894 Act and Section 24(2) of the 2013 Act

34. The question arises what is the meaning of the expression "paid" in Section 24 and "tender" in Section 31(2) of the 1894 Act. Whether the tender of compensation amount to discharge of obligations to make payment. The meaning of expression "tender": is when a person has tendered the amount and made it unconditionally available and the landowner has refused to receive it, the person who has tendered the amount cannot be saddled with the liability, which is to be visited for non-payment of the amount. "Tender" has been defined in Black's Law Dictionary thus:

"tender, n. (16c) 1. A valid and sufficient offer of performance; specific, an unconditional offer of money or performance to satisfy a debt or obligation a tender of delivery. The tender may save the tendering party from a penalty for non-payment or non-performance or may, if the other party unjustifiably refuses the tender, place the other party in default. Cf. offer or performance; consignment."

(emphasis supplied)

It is apparent from aforesaid that "tender" may save the tendering party from the penalty for non-payment or non-performance or penalty if

another party unjustifiably refusing the tender, places the other party in default. A formal offer duly made by one party to another especially an offer of money in discharge of liability fulfils the terms of the law and of the liability. Tender is to offer money in satisfaction of a debt, by producing and showing the amount to a creditor or party claiming and expressing verbally, willingness to pay it. The expression "tender" has been used in Section 31. The concept of deposited in court is different from tender and "paid".

In his supplementing opinion Shantanagoudar, J has also adverted to the essentials of a valid "tender" in the following passage

"238. The definition of "tender" has been outlined by this Court in *Tata Cellular v. Union of India* [*Tata Cellular v. Union of India*, (1994) 6 SCC 651] as follows: (SCC p. 675, para 69)

"69. A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated, the following are the requisites of a valid tender:

1. It must be unconditional.
2. Must be made at the proper place.
3. Must conform to the terms of obligation.
4. Must be made at the proper time.
5. Must be made in the proper form.
6. The person by whom the tender is made must be able and willing to perform his obligations.
7. There must be reasonable opportunity for inspection.
8. Tender must be made to the proper person.
9. It must be of full amount.

(29) It is clear from the above judgments that it is the duty of the Collector to make payment by issuing proper notice to the concerned land owner and calling him to receive the compensation amount. Unless this crucial step is followed, the land owner may not even know whether it was deposited and if so, when the amount was deposited. Even if a notified person or his representative participates in the Award proceedings, that will not amount to a presumption that he has the notice of the compensation amount being readily available for payment. That is why Section 12[2] of the 1894 Act specifically mandates issuance of such notice. If the notice is issued and thereafter, the land owner refuses to receive the compensation

or does not come to the specified place to receive the compensation and the compensation amount gets deposited in a Treasury account or the Court, as the case may be, the land owner cannot be permitted to turn around at a later point of time and complain that the compensation amount was not tendered / paid to him.

(30) In the facts of the present case, the deposit made in the Court on 04.06.2000 by the Special Tahsildar [LA], Housing Scheme Unit 1, Coimbatore, does not amount to a valid tender/payment of compensation. This finding is given not by finding fault in the procedure adopted in the deposit of amount in the Court, but based on the most crucial fact that there was no notice issued to the land owners after the Award Proceedings, under Section 12[2] of the 1894 Act and therefore, there was no valid tender/payment of the compensation to the land owners. The judgments cited supra and the judgment of the Constitution Bench clearly supports this finding on the issue of valid tender/payment of compensation.

(31) The third and fourth issues can be taken up together since they are in a sense, inter related. In order to properly understand the scope of these two issues, it is important to unravel the meaning assigned to the terms 'concluded proceedings' and 'revival of stale claims'. The relevant portions in the judgment of the Constitution Bench are extracted hereunder:-

'275 It is clear that once land is acquired, award passed and possession has been taken, it has vested in the State. It had been allotted to beneficiaries. A considerable infrastructure could have been developed and a third-party interest had also intervened. The land would have been given by the acquiring authorities to the beneficiaries from whose schemes the land had been acquired and they have developed immense infrastructure. We are unable to accept the submission that merely by deposit of amount in treasury instead of court, we should invalidate all the acquisitions, which have taken place. That is not what is contemplated under Section 24(2). We are also not able to accept the submission that when law operates these harsh consequences need not be seen by the court. In our opinion, that submission is without merit in as such consequences are not even envisaged on proper interpretation of Section 24(2), as mentioned above.

276 The proviso to Section 24(2) of the Act of 2013, intends that the Collector would have

sufficient funds to deposit it with respect to the majority of landholdings. In case compensation has not been paid or deposited with respect to majority of land holdings, all the beneficiaries are entitled for higher compensation. In case money has not been deposited with the Land Acquisition Collector or in the treasury or in court with respect to majority of landholdings, the consequence has to follow of higher compensation as per proviso to Section 24(2) of the Act of 2013. Even otherwise, if deposit in treasury is irregular, then the interest would follow as envisaged under Section 34 of Act of 1894. Section 24(2) is attracted if acquisition proceeding is not completed within 5 years after the pronouncement of award. Parliament considered the period of 5 years as reasonable time to complete the acquisition proceedings i.e., taking physical possession of the land and payment of compensation. It is the clear intent of the Act of 2013, that provision of Section 24(2) shall apply to the proceeding which is pending as on the date on which the Act of 2013, has been brought into force and it does not apply to the concluded proceedings. It was urged before us by one of the Counsel that lands in the Raisina Hills and Lutyens' Zones of Delhi were acquired in 1913 and compensation has not been paid. The Act of 2013 applies only to the pending proceedings in which possession has not been taken or compensation has not paid and not to a case where proceedings have been concluded long back, Section 24(2) is not a tool to revive those proceedings and to question the validity of taking acquisition proceedings due to which possession in 1960s, 1970s, 1980s were taken, or to question the manner of deposit of amount in the treasury. The Act of 2013 never intended revival such claims. In case such landowners were interested in questioning the proceedings of taking possession or mode of deposit with the treasury, such a challenge was permissible within the time available with them to do so. They cannot wake from deep slumber and raise such claims in order to defeat the acquisition validly made. In our opinion, the law never contemplates-nor permits-misuse much less gross abuse of its provisions to reopen all the acquisitions made after 1984, and it is the duty

of the court to examine the details of such claims. There are several litigations before us where landowners, having lost the challenge to the validity of acquisition proceedings and after having sought enhancement of the amount in the reference succeeding in it nevertheless are seeking relief arguing about lapse of acquisition after several rounds of litigation.

277 The expression used in Section 24(1) (b) is 'where an award under Section 11 has been made', then 'such proceedings shall continue' under the provisions of the said Act of 1894 as if the said Act has not been repealed'. The expression "proceedings shall continue" indicates that proceedings are pending at the time; it is a present perfect tense and envisages that proceedings must be pending as on the date on which the Act of 2013 came into force. It does not apply to concluded proceedings before the Collector after which it becomes functus officio. Section 24 of the Act of 2013, does not confer benefit in the concluded proceedings, of which legality if question has to be seen in the appropriate proceedings. It is only in the pending proceedings where award has been passed and possession has not been taken nor compensation has been paid, it is applicable. There is no lapse in case possession has been taken, but amount has not been deposited with respect to majority of land holdings in a pending proceeding, higher compensation under the Act of 2013 would follow under the proviso to Section 24(2). Thus, the provision is not applicable to any other case in which higher compensation has been sought by way of seeking a reference under the Act of 1894 or where the validity of the acquisition proceedings have been questioned, though they have been concluded. Such case has to be decided on their own merits and the provisions of Section 24(2) are not applicable to such cases.

374 Before proceeding further, in our opinion, Section 24 contemplates pending proceedings and not the concluded ones in which possession has been taken, and compensation has been paid or deposited. Section 24 does not provide an arm or tool to question the legality

of proceedings, which have been undertaken under the Act of 1894 and stood concluded before five years or more. It is only in cases where possession has not been taken, nor compensation is paid, that there is a lapse. In case possession has been taken, and compensation has not been deposited with respect to majority of landholdings, the beneficial provision of the statute provides that all beneficiaries shall be paid compensation as admissible under the Act of 2013. The beneficiaries, i.e., landowners contemplated under the proviso to Section 24(2), are the ones who were so recorded as beneficiaries as on the date of issuance of notification under Section 4 of the Act of 1894. The provision is not meant to be invoked on the basis of void transactions, and by the persons who have purchased on the basis of power of attorney or otherwise, they cannot claim the benefit under Section 24 as is apparent from proviso to Section 24(2) and the decision in Shiv Kumar v. Union of India²²⁸.

375 This Court is cognizant that Section 24 is used for submitting various claims, by way of filing applications in the pending proceedings either before the High Court or this Court. There are cases in which in the first round of litigation where the challenge to acquisition proceedings has failed, validity has been upheld, and possession has been taken after passing of the award. It is contended that drawing of panchnama was not the permissible mode to take possession, and actual physical possession remains with such landowners/purchasers/power of attorney holders as such benefit of Section 24 should be given to them notwithstanding the fact that they have withdrawn the compensation also.

376 This Court is cognizant of cases where reference was sought for enhancement of compensation, money was deposited in the treasury, enhancement was made, and possession was taken. Yet, acquisitions have been questioned, and claims are being made under Section 24, that acquisition has lapsed, as the deposit (of compensation amount) in the treasury was not in accordance with the law, the amount should have been deposited in reference court.

Further, this Court also notes that there have been cases in which after taking possession, when development is complete, infrastructure has developed despite which claims are being made under Section 24, on the ground that either the possession has not been taken in accordance with law or compensation has been deposited in the treasury, thus questioning the acquisitions. The decision in Mahavir v. Union of India²²⁹ was an instance in which a claim was made that acquisition was made more than a century ago, and compensation has not been paid as such acquisition has lapsed relating to the land of Raisina Hills in New Delhi. The importance of Raisina Hills is well-known to everybody. The grossest misuse of Section 24 has been sought to be made, which is intended to confer benefit. It was never intended to revive such claims and be used in the manner in which it has been today, where large numbers of acquisitions and development projects, such as construction of roads, hospitals, townships, housing projects, etc., are sought to be undone, though such acquisitions have been settled in several rounds of litigation. In several matters, the validity has been questioned under the guise as if the right has been conferred for the first time under the Act of 2013, claiming that such acquisitions have lapsed. There are also cases in which the claims for release of land under Section 48 of the Act of 1894 have been dismissed. Now, claims are made that as land is open and landowners/intermediaries/POA holders continue to be in physical possession, thus, it should be returned to them, as the acquisition has lapsed under Section 24(2). Before us also arguments have been raised to grant relief in all such cases by making purposive interpretation of benevolent provisions. It was urged that this Court is bound to give relief as Section 24 is retrospective in operation, and the authorities have not cared to take possession for more than five years or more, and they have not paid the compensation and deposited it in treasury which cannot be said to be legal. It is declared that the acquisition has lapsed, and the land is given back to them. In case any infrastructure is existing, the State Government should acquire the land afresh after following the process of Act of 2013.

Earlier, injustice was done to landowners, as observed in various decisions mentioned above. We should not disturb the decisions of this Court and are bound to follow the law laid down in Pune Municipal Corporation (supra) and the principle of stare decisis.

380 Section 24(2) is sought to be used as an umbrella so as to question the concluded proceedings in which possession has been taken, development has been made, and compensation has been deposited, but may be due to refusal, it has not been collected. The challenge to the acquisition proceedings cannot be made within the parameters of Section 24(2) once panchnama had been drawn of taking possession, thereafter re-entry or retaining the possession is that of the trespasser. The legality of the proceedings cannot be challenged belatedly, and the right to challenge cannot be revived by virtue of the provisions of Section 24(2). Section 24(2) only contemplates lethargy/inaction of the authorities to act for five years or more. It is very easy to lay a claim that physical possession was not taken, with respect to open land. Yet, once vesting takes place, possession is presumed to be that of the owner, i.e., the State Government and land has been transferred to the beneficiaries, Corporations, Authorities, etc., for developmental purposes and third-party interests have intervened. Such challenges cannot be entertained at all under the purview of Section 24(2) as it is not what is remotely contemplated in Section 24(2) of the Act of 2013.'

The above discussion on these issues ultimately culminates into an answer at clause [9] of paragraph No.402 which has already been extracted supra.

(32)A careful reading of the above findings of the Hon'ble Supreme Court of India clearly points out to the fact that the term 'concluded proceedings' will take within its fold Section 4[1] Notification, Section 6 Declaration, Section 11 - Award proceedings, Section 12 - Notice of the Award to the persons notified or their representative, Section 31 - payment of compensation or Section 32 - deposit in the Court, Section 16 - taking of possession. Once all this process is complete and the land ultimately vests with the State absolutely under Section 16 of the 1894 Act, the same will be construed to be

conclusive proceedings. The Constitution Bench of the Hon'ble Supreme Court in more than one place, has categorically held that such concluded proceedings cannot be permitted to be reopened and Section 24[2] of the Act cannot be used as a tool to revive those proceedings and to question the validity of the same. The Hon'ble Supreme Court gives various instances where the lands are acquired and thereafter it is handed over to the Requisitioning Body and the project also starts or in some cases where the land owners have sought for a reference for higher compensation and thereafter turned around to take advantage of Section 24[2] of the Act and in all those instances, the Hon'ble Supreme Court has come down very heavily and said that Section 24[2] of the Act should not be allowed to be misused and no land owner should be permitted to revive concluded proceedings.

(33) The observations made by the Hon'ble Supreme Court and which has been extracted supra, also makes it very clear that stale claims should never be allowed to be made by taking advantage of Section 24[2] of the Act. The Hon'ble Supreme Court quotes the instance of a claim that was made for an acquisition that took place a century ago and for which, it was alleged that no compensation was paid. The Hon'ble Supreme Court also took into consideration cases where, after the acquisition of the property development projects such as construction of roads, hospitals, townships, housing projects etc., are sought to be undone even after such acquisitions have been settled in several rounds of litigations earlier. The Hon'ble Supreme Court said that Section 24[2] of the Act does not confer any new right and thereby, stale claims cannot be revived.

(34) The learned Advocate General vehemently argued that the petitioners have knocked the doors of this Court at a very belated stage and are claiming the benefits of Section 24[2] of the Act. He would further contend that the cause of action for the petitioners to have taken the benefit of Section 24[2] of the Act arose immediately after the 2013 Act came into force with effect from 01.01.2014. The petitioners never chose to file any writ petition before this Court seeking for the benefit of Section 24[2] of the Act. They have filed the present writ petition after nearly six years after the 2013 Act came into force. Therefore, the learned Advocate General would submit that the claims made by the petitioners has become stale and it is hit by laches and there is an unexplained and inordinate delay in approaching this Court and therefore, this writ petition must be dismissed on that ground alone. The learned Advocate General would further submit that the project has been undertaken in different phases right from the year 1995 to 2017 and therefore, the petitioners were aware about this work undertaken by the TNHB and in spite of it, they never chose to come before this Court and question with regard to

taking of possession and payment of compensation if it is not done in accordance with law, at the contemporaneous period of time. The learned Advocate General submitted that the Hon'ble Supreme Court has frowned upon and cautioned the Courts about the delays and has held that delay is fatal in questioning the land acquisition proceedings and it should not be entertained by the Courts if it is not questioned within a reasonable time and the parties choose to approach Courts after a lapse of several decades.

(35) As per the counter affidavit filed by the 3rd respondent and also the Status Report filed by the 3rd respondent, it is seen that the proposal to carry on with the housing scheme came up for discussion before the Assembly only in the month of March 2020. It is thereafter that the Housing Board started calling for tender in order to undertake the scheme work and the tender is said to have been opened on 26.06.2020. Right from the year 1998, when the Section 4[1] Notification was issued, upto the year 2020, the revenue records stood in the name of the original owners. In fact, even some Sale Deeds have been entertained and transactions have taken place and for the first time, the name of the TNHB finds its place in the Patta only after the proceedings of the 5th respondent dated 15.06.2020. This is much after the discussion that took place in the Assembly for undertaking the project, during the month of March 2020. Therefore, for a very long time, there was absolutely no indication from any quarters about the TNHB taking possession of the subject property or paying compensation to the petitioners and the petitioners continued to enjoy the subject property. Since the original records have gone missing, this Court is not able to get any particulars from the State with regard to the taking of possession or payment of compensation and this Court does not have the advantage of looking into the records due to the fact that it is not available. It is not known as to whether the records are intentionally concealed in order to prevent this Court from taking cognizance of some very material facts. This Court is forced to make such an observation since it is nothing but recklessness on the part of the officials to come and state before a High Court that the records are missing, more particularly, when it is claimed that the project is being undertaken in a phased manner from the year 1995 onwards.

(36) Section 24[2] of the Act was brought into force in order to meet those cases where the authorities have failed, due to their inaction, to take possession and to pay compensation for five years or more before the 2013 Act came into force. The Constitution Bench, in more than one place categorically states that Section 24[2] of the Act is a penal provision to punish the Acquiring Authority for its lethargy in not taking physical possession nor paying the compensation after making the award five years or more before the commencement of the 2013 Act.

This observation made by the Hon'ble Supreme Court has a lot of significance in the facts of the present case. In the present case, the respondents have not only shown recklessness when it came to not taking possession in the manner known to law and not paying/tendering compensation in the manner known to law, but also it continues till date when they come and tell this Court that the entire original records has gone missing. Such an attitude on the part of the respondents really requires penal consequences as provided under Section 24[2] of the Act.

(37) Section 24[2] of the Act provides for a deemed lapse of the entire acquisition proceedings where the conditions stipulated therein are fulfilled. Such a deemed lapse happens by operation of law. In other words, it does not require a specific declaration by the Court to declare that the acquisition proceedings has become bad unless the situation warrants. The Statute has created such a provision contemplating deemed lapse on the coming into force of the 2013 Act where the conditions stipulated under Section 24[2] of the Act are fulfilled, viz., not taking possession and non payment of compensation. In the present case, this Court has already held that the possession has not been taken and compensation has not been paid in the manner known to law. At the risk of repetition, this Court again reiterates that this court is not trying to pin point some mistakes committed by the authorities while taking possession or paying / tendering compensation. This Court is holding that the possession which has to be taken in a particular mode and the payment of compensation which has be tendered/deposited in a particular mode, has not been done in the facts of the present case and therefore, there is no taking of possession and payment/tendering of compensation in the eye of law. Therefore, the deeming provision under Section 24[2] of the Act automatically comes into play in favour of petitioners by operation of law.

(38) The cause of action arose for the petitioners to approach this Court only when the officials of the Housing Board started entering into the property and doing some work and when the name in the revenue records was changed in favour of the TNHB and a Tender Notification was issued. Such action taken on the part of the respondents, made the petitioners come before this Court and question the action of the respondents on the ground that they are not entitled to do so by virtue of the acquisition itself getting lapsed by operation of law under Section 24[2] of the Act. Therefore, this Court in answer to the third and fourth issues, hereby holds that the petitioners are not reopening any concluded proceedings and the petitioners are not reviving any stale claims and they knocked the doors of this Court at the right time when the respondents started performing certain actions from the month of June 2020.

(39) In view of the above discussion, this Court holds that the petitioners satisfy the twin requirements of Section 24[2] of

the Act, viz., that the physical possession of the lands was not taken and the compensation has not been paid/tendered/deposited in accordance with law. This Court further holds that the petitioners are not reopening any concluded proceedings and they are not reviving any stale claims and they have approached the Court at the right time. These findings are rendered in line with the judgment of the Constitution Bench of the Hon'ble Supreme Court referred supra. The petitioners are entitled for the relief claimed by them in this writ petition and the acquisition proceedings insofar as the petitioners are concerned stands lapsed by operation of law under Section 24[2] of the Act.

(40) Before parting with this case, this Court wants to express its deep anguish at the sorry state of affairs that is prevailing in some of the State Undertakings. Even if the State Government wants to implement projects taking into consideration the public interest, there are black sheeps, both at the level of the Government as well as the State Undertakings who will put spokes into those developments for their self aggrandizement. This is a classic case which falls under this category.

(41) There shall be a direction to the State Government to immediately initiate an enquiry into the missing records and take all attempts to trace the original records and also initiate departmental action against persons who were instrumental in ensuring that the original records went missing. This Court is confident that the original records are not actually missing, but safely available with someone and probably after this order, attempts may also be made to destroy the original records. If the State finds that private parties are also involved in this illegal act, criminal complaint shall be initiated and they should be brought to books. If such stringent actions are not taken, the black sheeps will go scot-free and this type of illegal activities will continue and ultimately, it will have a direct impact on the public interest. This Court, therefore, expects the State to act with alacrity immediately after the receipt of this order.

(42) In the result, the writ petition stands ALLOWED. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government
State of Tamil Nadu
Housing and Urban Development Department
Secretariat, Fort St George
Chennai 600 009.
- 2.The Special Tahsildar [LA]
Housing Schemes No.3
TATABAD, Sivanandha Colony
Coimbatore 641 012.
- 3.The Executive Engineer & Administrative Officer
Coimbatore Housing Unit, Tamil Nadu Housing Board
TATABAD, Sivanandha Colony
Coimbatore 641 012.
- 4.The Superintending Engineer
Tamil Nadu Housing Board
Salem Region, Coimbatore 641 002.
- 5.The Tahsildar,
Coimbatore North Taluk
Coimbatore.

WP.No.10712/2020

ln[co]
srg 06/10/2020

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