IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : 11.11.2020

CWP-8878-2018

Sehdev Singh and others …….Petitioners

Versus

State of Haryana and others …….Respondents

CWP-10000-2018

Vinay Jain and others …….Petitioners

Versus

State of Haryana and others …….Respondents

CWP-10077-2018

Harish Pal and others …….Petitioners

Versus

State of Haryana and others …….Respondents

CWP-10084-2018

Sher Singh and others …….Petitioners

Versus

State of Haryana and others …….Respondents

CWP-10281-2018

Tilak Raj and others …….Petitioners

Versus

State of Haryana and others …….Respondents

CWP-10286-2018

Ashok Pal …….Petitioner

Versus

State of Haryana and others …….Respondents

CWP-11078-2018

Om Parkash Kataria …….Petitioner

Versus

State of Haryana and others …….Respondents

CWP-11152-2018

Ashok Pal and another …….Petitioners

Versus

State of Haryana and others …….Respondents

CWP-11292-2018

Mahender Singh and others …….Petitioners

Versus

State of Haryana and others …….Respondents

CWP-8911-2018

Sudama …….Petitioner

Versus

State of Haryana and others …….Respondents

CWP-8879-2018

Satbir @ Dharambir and others …….Petitioners

Versus

State of Haryana and others …….Respondents

CWP-11568-2018

Mahavir and others …….Petitioners

Versus

State of Haryana and another …….Respondents

CWP-8947-2018

Balram …….Petitioner

Versus

State of Haryana and others …….Respondents

CWP-9126-2018

Ashwani Kumar …….Petitioner

Versus

State of Haryana and others …….Petitioners

CWP-9144-2018

Krishna …….Petitioner

Versus

State of Haryana and others …….Respondents

CWP-9161-2018

Lachmi Devi and others …….Petitioners

Versus

State of Haryana and others …….Respondents

CWP-9179-2018

Raj Pal Singh and another …….Petitioners

Versus

State of Haryana and others …….Respondents

CWP-9281-2018

Satish and others …….Petitioners

Versus

Union of India and others …….Respondents

CWP-9349-2018

Kanta …….Petitioner

Versus

State of Haryana and others …….Respondents

CWP-9358-2018

Mahender Kumar …….Petitioner

Versus

State of Haryana and others …….Respondents

CWP-9479-2018

Likhi and others …….Petitioners

Versus

State of Haryana and others …….Respondents

CWP-9480-2018

Ram Dhan and others …….Petitioners

Versus

State of Haryana and others …….Respondents

CWP-9523-2018

Ram Kumar and others …….Petitioners

Versus

State of Haryana and others …….Respondents

CWP-9552-2018

Sat Dev and others …….Petitioners

Versus

State of Haryana and others …….Respondents

CWP-9597-2018

Ombir and others …….Petitioners

Versus

State of Haryana and others …….Respondents

CWP-9627-2018

Chuni Lal and others …….Petitioners

Versus

State of Haryana and others …….Respondents

CWP-9810-2018

Bhim Singh …….Petitioner

Versus

State of Haryana and others …….Respondents

CWP-9823-2018

Kanwal Singh and another …….Petitioners

Versus

State of Haryana and others …….Respondents

CWP-9975-2018

Vineet Aggarwal and others …….Petitioners

Versus

State of Haryana and others …….Respondents

CWP-9981-2018

Dharampal …….Petitioner

Versus

State of Haryana and others …….Respondents

CORAM: HON'BLE MR.JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI, JUDGE

Present: Mr. Ram Bilas Gupta, Advocate, for the petitioners
in CWP-8878-2018, 9281-2018 and 9523-2018;

Mr. Ranjit Saini, Advocate for the petitioners
in CWP-9975-2018 and 10000-2018;

Mr. Shiv Kumar, Advocate for the petitioners
in CWP 10077-2018, 10084-2018, 10286-2018, 11152-2018, 8911-2018, 9179-2018, 9552-2018, 9597-2018 and 9480-2018.

Mr. C.L.Sharma, Advocate, for the petitioners
in CWP 10281-2018;

Mr. M. L. Sharma, Advocate, for the petitioners
in CWP-11078-2018;

Mr. Lalit Singla, Advocate for the petitioners in CWP-11292-2018

Mr. Shekhar Verma, Advocate for the applicants
in CM-8157-CWP-2020, 8158-CWP-2020 and 8159-CWP-2020
in CWP-11292-2018;

Mr. S.P.Khatri, Advocate, for the petitioners,
in CWP-8879-2018, 9126-2018, 9144-2018, 9349-2018 and
9358-2018

Mr. Rajesh Lamba, Advocate for the petitioners
in CWP-11568-2018;

Mr.Sanjay Vashisht and Mr. Akash Vashisth, Advocates,
for the petitioners in CWP-8947-2018;

Mrs. Anita Balyan, Advocate, for the petitioners
in CWP-9161-2018;

Mr. Vikram Singh, Advocate, for the petitioners
in CWP-9479-2018;
Mr. Manoj Kaushik, Advocate, for the petitioners
in CWP-9267-2018;

Mr. Naresh Kaushik, Advocate, for the petitioner,
in CWP-9810-2018;

Mr. H.S.Sandhu, Advocate for the petitioners in CWP-9823-2018

Mr. Avnish Mittal, Advocate for the petitioner in CWP-9981-2018;

Mr. Ankur Mittal, Additional Advocate General, Haryana

(The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual Court).

1. The controversy in the present batch of 30 writ petitions revolves around the applicability of the deemed fiction of lapsing of the acquisition proceedings in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter to be referred as the Act of 2013). All these writ petitions were filed seeking lapsing of the acquisition proceedings undertaken in the Land Acquisition Act 1894 (hereinafter to be referred as the Act of 1894) in their respective cases either owing to the alleged physical possession not been taken or the compensation neither been paid nor deposited, or both, wherein the award has been announced

prior to 5 years or more from the date of commencement of the Act of 2013 w.e.f. 01.01.2014.

2. Notably, Land Acquisition Act, 1894 remained the leading law in the country governing acquisition of land by the State (s) for over a century, and it would be no gainsaying that the Act of 1894 entails an era of compulsory acquisition, and several times the acquisition carried therein have went through the judicial scrutiny either on the ground of discrimination or on the ground of non-adherence to the statutory provisions, besides various other virtues and vices. During this era, the acquisition proceedings came to be challenged, which were upheld by this Court as well as Hon'ble Supreme Court. Admittedly, as far as taking possession of the acquired land under the Act of 1894 is concerned, there was no word called 'physical' and the drawing of 'panchnama' in the form of rapat roznamcha was considered to be a valid and legal mode of taking possession. Section 48 of the Act of 1894 granted the liberty to the State to withdraw from the acquisition either in part or whole, however with the rider that possession had not been taken. There is no dispute about the fact that even though the acquisition had been upheld and the rapat roznamchas also been drawn, instances came to the light wherein in some cases, the revenue record was not updated or some of the landowners kept on sitting on the land acquired whose possession had already been taken and also, the acquisition stood upheld. Many authoritative judicial pronouncements saw the light of the day to hold that once the possession of acquired land had been taken the land acquired vest in the State and once vested it cannot be divested or returned to the landowner. As far as the payment of compensation for the acquired land is concerned, the consequences of non-payment before taking possession were prescribed in section 34 of the Act of 1894. Merely the factum of non-payment or non deposit in the Reference Court was never resulting into invalidating the acquisition. The Act of 1894 also provided for

the lapse of acquisition proceedings, however, limiting it to on account of failure of the government authorities to act within the limitation provided.

3. After having seen the era of compulsory acquisition for good 120 years, the Parliament in its wisdom, in order to overcome the shortcomings that the Act of 1894 proffered, replaced it by Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Besides, making revolutionary changes in the Act with respect to the matters related to compensation, inclusion of the concept of social impact assessment, providing statutory recognition to rehabilitation and resettlement etc., a special provision in the form of section 24 was introduced in respect of cases of acquisition of land initiated/culminated under the Act of 1894. This comprises of three parts, firstly where the acquisition process had been initiated by way of issuance of notification under Section 4 of the Act of 1894 prior to coming into effect of Act of 2013 on 01.01.2014, i.e. Section 24(1)(a) wherein it has been provided that in such scenario, the compensation for the land acquired will have to be assessed under the provisions of the Act of 2013. Secondly, section 24(1)(b) which is in respect of those cases wherein the award under section 11 of 1894 Act had been announced prior to coming into effect of the new Act. It provides that all further proceedings will continue under the 1894 act only, as if the said Act was never repealed.

4. Thirdly, Section 24(2) of the Act of 2013 which while entailing the provision for a deeming fiction, grants the right to the landowner to seek the declaration that the acquisition proceedings qua his/her land have lapsed with the prerequisite condition of either the physical possession has not been taken or the compensation has not been paid or both. This section 24(2) of the Act of 2013 is the core issue for consideration in the present matters. The country has seen huge

amount of litigation owing to the deeming fiction created by virtue of section 24(2). In the period of last almost 7 years, this law had seen many changes by way of various judicial pronouncements from the Hon'ble Supreme Court of India. After travelling a lot, the controversy cropped up around section 24(2) and its correct interpretation, has been put to rest by the Hon'ble 5 judges bench of Hon'ble The Supreme Court of India in ***Indore Development Authority v. Manoharlal AIR 2020 SC 1496,*** and accordingly, all these matters are being taken up for disposal after evaluating as to how and in what manner, and more precisely, by which of the directions of the Hon'ble Supreme Court, the respective cases are covered.

5. Though this Court had the occasion to go through and examine the detailed and exhaustive judgment passed by the Hon'ble Supreme Court of India in ***Indore Development Authority (supra)*** while deciding the batch of 126 writ petitions with the lead case being ***CWP no 18718 of 2016 titled as 'Daya Ram and others v. State of Haryana and other***', however, while deciding the present batch of writ petitions, Mr. Ankur Mittal has taken us to the statutory provision of section 24 in its entirety, in the light of the Constitution Bench judgment of ***Indore Development Authority (supra).***

6. To begin with, Mr. Mittal has read the provisions of section 24 of the Act of 2013 which is reproduced herein below:

> ***"24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.–(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—***
>
> ***(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or***
>
> ***(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.***

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

7. While referring to the provisions of section 24(1)(a) of the Act of 2013, he has submitted that the provisions of Act of 2013 would apply only to the extent for determining the compensation, in the cases, wherein no award under section 11 of the Act of 1894 had been announced, and thus, the question of invoking the proceedings afresh under the Act of 2013 in such cases would not accrue because of its limited applicability.

Section 24(1)(b) of the Act of 2013 is a kind of saving clause which saves those cases wherein the award under section 11 of the Act of 1894 had been announced prior to the coming into effect of Act of 2013 and the proceedings in such cases will continue as if the Act of 1894 was never repealed.

8. He further stated that section 24(2) of the Act of 2013 starts with a *non obstante* clause in respect of the provisions of section 24(1) of the Act of 2013 meaning thereby that it is to be read as an exception to what has been provided under sub section (1). The pre-requisite for invoking the provisions of section 24(2) of the Act of 2013 is that there must be an award under section 11 of the Act of 2013 prior to coming into effect of the new act; with a further rider that such award passed must have been five years or more old as on 01.01.2014. Further the

legislature has provided two contingencies with the word "***or***", namely, physical possession had not been taken or the compensation has not been paid or both, in eventuality of which the acquisition proceedings will be deemed to have lapsed. The sub section (2) of section 24 is carrying a proviso which can be easily termed as an exception to section 24(2) itself. It provides that if either or both the contingencies as provided under sub section (2) of section 24 are fulfilled, this will not automatically result in lapsing, rather if the award has been announced and the compensation in respect of the majority of landholdings has not been paid then instead of lapsing, all the beneficiaries in the said notification will be entitled for the compensation in accordance with the provisions of Act of 2013.

9. He further submitted that for the first time, the provisions of Section 24 of the Act of 2013 were interpreted by the Hon'ble Supreme Court of India in ***Pune Municipal Corporation and Anr. v. Harakchand Misrimal Solanki and others, 2014(3) SCC 183.*** The said decision was followed in a spate of decisions by the Hon'ble Supreme Court of India and by the High Courts in the country including this Court; resulting into lapsing of the acquisition proceedings even in those cases wherein the acquisition stood upheld not only by High Court but even by the Hon'ble Supreme Court of India. So much so, while computing the pre-requisite gap period of five years between the date of award and the commencement of the new Act, even the stay/ status quo orders passed by the Courts were not excluded. Reference in this regard is made to ***Sree Balaji Nagar Residential Association v. State of Tamil Nadu and others, (2015) 3 SCC 353.***

10. In the case ***Yogesh Neema and others v. State of Madhya Pradesh (2016) 6 SCC 387***, a two judges bench of the Hon'ble Supreme Court doubted the decision of ***Sree Balaji Nagar Residential (supra), (***which has followed ***Pune Municipal Corporation (supra)*** and held that Section 24(2) of the Act of 2013

does not exclude any period during which the land acquisition proceeding might have remained stayed on account of stay or injunction granted by any Court, and referred the issue to the larger bench. Later, in another appeal, arising out of ***SLP (C) no. 2131 of 2016 Indore Development Authority v. Shailendra (dead) through LR's and others 2018 SCC online SC 100***, the matter was referred to a larger bench on 7.12.2017 with the following reference:

> ***'…cases which have been concluded are being revived. In spite of not accepting the compensation deliberately and statement are made in the Court that they do not want to receive the compensation at any cost, and they are agitating the matter timeand again after having lost the matters and when proceedings are kept pending by interim orders by filing successive petitions, the provisions of section 24 cannot be invoked by such landowners….'***

Accordingly, three judges bench was constituted which was of the view that the judgment in Pune Municipal Corporation (Supra) did not consider several aspects related to the interpretation of section 24 of the Act of 2013. Subsequently in ***Indore Development Authority v. Shyam Verma and other SLP 9798 of 2016***, a reference was sent to Hon'ble The Chief Justice of India to refer the issue to a larger bench. Similarly, in ***State of Haryana v. Maharana Partap Charitable Trust (Regd. and Another CA no. 4835 of 2015***, the matter was referred to Hon'ble The Chief Justice of India for constitution of an appropriate bench for consideration of the larger issue. And this is how Hon'ble five judges Constitution Bench was constituted for the interpretation of section 24 of the Act of 2013 and all the judicial pronouncements passed in respect to the said provision. Before adverting to the conclusions and the principles as has been laid down by the Hon'ble Court, we feel it imperative to first examine and deliberate as to how the entire controversy was put forth by the parties before the Hon'ble Supreme Court, and the deliberations made by the Hon'ble Court ultimately culminating into the guiding principles detailed out in para 363 of the judgment. This is necessary so as to understand the true depth and scope of the judgment and all the issues it has dealt with in detail.

Submissions on behalf of Landowners before SC

11. Before the Hon'ble 5 judges Constitution Bench, on behalf of the landowners it was argued that the Act of 2013 is welfare state law and not a colonial law unlike the Act of 1894. While referring to the judgment of the Hon'ble Supreme Court in ***Dev Sharan v. State of Uttar Pradesh (2011) 4 SCC 769*** and ***Radhey Shyam v. State of U.P. (2011) 5 SCC 553***, it was argued that the Act of 1894 was enacted more than 116 years ago to facilitate acquisition of land and immovable properties, for construction roads, canals, railways etc. Several rounds of repeated litigation on various aspects, such as payment of compensation, lack of legislatively mandated timelines for completion of acquisition proceedings etc. resulted in amendments in the Act of 1894 but the same too get mired in litigation. It was argued that in the recent years there is acquisition of large tracts of land in rural part of the country in the name of development and they are transferred to private entities, who utilize it to construction of multi-storied complexes etc. While referring to the Statement of Objects and Reasons of the Act of 2013, it was contended that the new law was framed in recognition of the concerns expressed by the property owners of forcible acquisition without following due process and without paying appropriate compensation affecting livelihood of such owners. In support of section 24 of the Act of 2013, it was contended that it constitutes an exception to the general rule i.e. lapsing of all acquisition proceedings. It was urged that there was no doubt in the mind of Parliament that lapsing of acquisition proceedings was intended to ensue in the event compensation was not paid, or possession was not taken, in respect of awards made 5 years or more prior to coming into force of the Act of 2013. It was argued

that having regard to the salient feature, the provision should be literally construed except to the extent that the term, 'paid' occurring in section 24(2) would also cover cases where a deposit is made before the reference court in situations covered by section 31 (2) of the Act of 1894. It was further argued that decision in ***Pune Municipal Corporation (Supra)*** was itself conscious of section 31 and the contingencies or eventualities contemplated under section 31(2) of the Act of 1894.

12. On behalf of landowners it was further placed that section 24 covers three situations namely, cases where the land acquisition process shall be deemed to have lapsed, cases where landholders are entitled to compensation in accordance with the provisions of Act of 2013 and cases where the acquisition proceedings will continue under the Act of 1894 as if it has not been repealed. The first set of cases are covered by section 24(2), second are covered by section 24(1)(a) and third covers the situation where the acquisition proceedings will proceed as if the Act of 1894 was never repealed. As regards the component of compensation being '*paid*', it was submitted that the words paid and deposited in the account of the beneficiaries' are two permissible modes of making compensation available to landowners. The deposit of compensation in treasury is not to be considered as paid within the scope of section 24(2) and the obligation of making the payment is met only when the amount is actually paid to the land owners. In case not paid, then it should have been deposited in the Reference Court in accordance with the provisions of section 31 of the Act of 1894. A strong objection was taken by the landowners with regard to the deposit of compensation in the treasury on the ground that neither the Act nor any rule under Land Acquisition Act, 1894 envisage the deposit of compensation in the treasury.

13. With respect to taking the possession the land, the landowners submitted that while interpreting the word '*physical possession'* occurring in the

section 24(2) of the Act of 2013, the conscious note is to be taken of the word 'physical' in relation to possession. They submitted that even if it is conceded that drawing of a Panchnama is a valid mode of initially taking possession of vast tracts of vacant land, the intention of the legislature is that over a period of five years, such possession must transform to evident and demonstrable '***physical'*** possession i.e., the manifestation of actual control and dominion over the subject land(s).

14. While arguing on the point of exclusion of stay period, the landowners urged that time during which the interim order/ status quo was operating, it need not to be excluded while determining the 5 year window period under section 24(2) of the Act of 2013, because Parliament did not expressly exclude such a period in Section 24. Wherever under the Act of 2013, the legislature did want to exclude the period of a stay or injunction, it has done so by using express words such as in the proviso to Section 19 and the explanation to Section 69 of the Act of 2013. Further, it was urged that the maxim "***actus curiae neminemgravabit***" which means that "***the act of court shall prejudice no one***" has no application here, as this is a maxim which is applied generally as a principle of equity in individual cases to ensure that there is no injustice. The maxim rarely, if ever, is applied to interpret a statute. In the whole, the contention put forth on behalf of the landowners was that the intent of the parliament by enacting Act of 2013 was to benefit the landowners and the deeming provision with its clear and verifiable benchmarks on the five-year cut-off period, physical possession and payment is easy to operate. Introducing notions such as exclusion of time due to pending litigation would complicate the working of the statute.

Submissions on behalf of Union/States/Acquiring Bodies before SC

15. Mr. Mittal has taken us to the arguments placed on behalf of the union, States and various acquiring authorities before the Hon'ble Supreme Court

of India as noticed in para 9 onwards of the judgment wherein it was argued that the ratio in ***Pune Municipal Corporation (supra)*** and all the judgments which followed it should be overruled as the various interpretations of section 31 of Act of 1894 were not considered. It was further urged that in the said judgment, the provisions of Act of 2013 vis-à-vis the timelines and consequences that would ensue if the acquisition proceedings prolong, were not examined. It was further argued that a strong presumption is always there in favour of restricted retrospective applicability of any provision in an enactment unless a contrary intention appears. It was argued that it is the stage of passing of award under section 11 of the Act of 1894 that represents the determinative factor in segregation for the applicability of the provisions of the Act of 2013 and the Act of 1894. It was urged that the opening part of the provisions in section 24(1) is a non obstante clause provided for a limited overriding effect of the Act of 1894 in case of the contingencies mentioned in section 24(1)(a) and (b) of the Act of 2013. As far as section 24(1)(a) is concerned, it contemplates that where no award under section 11 of the Land Acquisition Act has been made, the provisions of Act of 2013 would apply only to the limited aspect i.e. for the determination of the compensation and where the award has been announced under section 11 of the Land Acquisition Act 1894, in that eventuality Act of 2013 has no application. In that essence, when the provisions of section 24(2) are read down, same are in the nature of exception to section 24(1)(b) wherein the land acquisition proceedings would lapse in certain contingencies even when an award under section 11 of the Act of 1894 has been announced.

16. It was submitted on behalf of the State that the `contingencies. prescribed under the Act of 2013 are to be interpreted in the manner so as to save the past transactions to the extent that they can be saved as the intention of the Act of 2013 was never to tide over all past transactions. Further proviso to section

24(2) carves an exception to section 24(2) that where the award has been made and the compensation qua the majority of the landholders has not been deposited in the account of beneficiaries, in that case the beneficiaries are entitled for higher rate of compensation. It was submitted by the State that Section 24(1)(a) and Section 24(2) are balancing provisions controlling the extent of retrospectivity and curtailing the effacement of rights. Such balance of protecting acquisitions under the LA Act in some defined circumstances whilst providing the enhanced compensation provisions under the Act of 2013 under some defined circumstances is the “***middle path***” that Parliament adopted.

17. It was further submitted that in Pune Municipal Corporation (supra) and all other judgments following the same, factum of Section 24(1) starting with a non obstante clause to all other provisions of Act of 2013 and section 24(2) again starting with the non obstante clause in respect of 24(1) has not been taken into consideration. Similarly, the para materia provisions of the Act of 2013 to the Act of 1894 which do not provide any lapsing in respect of acquisition taken place under the Act of 2013 were also not taken into consideration. It was further placed that keeping in view the settled principles of law, the Parliament could not have been intended that settled matters should be undone and whatever had attained finality in acquisition matters should be reopened. It was further placed that the word ‘***or***’ occurring in two contingencies mention in section 24(2) needs to be read as ‘***and***’ so as to make them conjunctive so that if both the contingencies are fulfilled, in that event only, the lapsing of acquisition proceeding can be claimed. This was further supplemented by arguing that if this is not read as conjunctive, the consequences would be barely anomalous, to exemplify it was argued that there would be a case where the possession has been taken and despite tendering the compensation amount, the landowner has not taken it and filed reference for higher compensation, the land stands utilized wherein the development has also taken

place and third party rights have also been created. If the contingencies would be read as disjunctive, this would entitle even that landowner to seek lapsing. This can never be the intention of the legislature. Similar is the situation in the reverse scenario wherein the compensation has been accepted and by virtue of re-entering in the land acquired, the lapsing is being sought.

18. Apart from the above, while referring to three situations visualized in the Act of 1894 with regard to the modes of payment recognized by the law, it was contended that expression 'paid' should be construed reasonably as any other interpretation accepted ignoring the recognized mode of payment in the Act of 1894 would result in the drastic consequences of lapsing. Similarly, the word 'deposit' as mentioned in the proviso to section 24(2) cannot mean 'deposit in the court' as the only consequence of non-deposit in the court is provided under section 34 of the Act of 1894. With regard to the proviso of section 24(2), it was empathetically argued that even from the plain language of the body of the section, the intent of legislature is clear that the proviso is to be interpreted to be a proviso to section 24(2). On the question related to the mode of taking possession, it was submitted that when the State is involved in taking the possession of the property acquired, it can take possession by drawing a panchnama as it is not feasible for the State to put anybody in the possession of the large tract of land acquired and even if somebody re-enters the possession, starts cultivating or residing in the house, the lawful possession would always be deemed to be of the State. Also, it was submitted that an interim order passed by the Court merges into the final decision. Once the landowner remains unsuccessful, they cannot draw the benefit of an interim order passed in their favour and thus, it would be legal and justified to exclude the same while computing the pre-requisite gap period of 5 years between the award and the commencement of the Act of 2013.

19. In order to interpret the provisions of Section 24(2) of the Act of 2013, the Hon'ble Constitution Bench of the Hon'ble Supreme Court of India framed the following issues to be answered:

> ***"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…"***

20. The Hon'ble Supreme Court of India took note of various related provisions from the Act of 1894 as well as Act of 2013. The salient features of the Act of 2013 were discussed to observe that undoubtedly the Act of 2013 has provided safeguards, in the form of higher compensation and provisions of rehabilitation. While noticing the provisions of section 24 of the Act of 2013, the Hon'ble Court discussed all three parts of section 24 very minutely. Various Judicial pronouncements were taken note of so as to reach to the correct

interpretation of deeming fiction created by section 24(2) of the Act of 2013; thereby providing lapse of acquisition proceedings undertaken under the Act of 1894. The Hon'ble Supreme Court while discussing the provisions of section 11, 16, 17, 31 and 34 of the Act of 1894 observed that under the Act of 1894 once possession is taken under section 16, the owner of the land loses title to it and the government becomes the absolute owner of the land. In other words, the land vests in the State Government. It was further observed that taking possession is not dependent on payment which has to be tendered under section 31 unless the Collector is 'prevented from making payment', as provided under section 31(2) of the Act of 1894. In case of failure to pay the compensation under section 31(1) or to deposit under section 31(2), the compensation has to be paid along with interest at the rate of 9% for the first year from the date it ought to have been paid and thereafter 15%. The non-compliance of section 31 did not provide any lapsing. The relevant paras from the judgment are reproduced herein below (**para 115 to 118**)

> *'….115. It is apparent from a plain reading of Section 16 (of the Act of 1894) that the land vests in the Government absolutely when possession is taken after the award is passed. Clearly, there can be lapse of proceedings under the Act of 1894 only when possession is not taken. The provisions in Section 11A of the Act of 1894 states that the Collector shall make an award within a period of two years from the date of the publication of the declaration under Section 6 and if no award is made within two years, the entire proceedings for acquisition of the land shall lapse. The period of two year excludes any period during which interim order granted by the Court was in operation.* ***Once an award is made and possession is taken, by virtue of Section 16, land vests absolutely in the State, free from all encumbrances. Vesting of land is automatic on the happening of the two exigencies of passing award and taking possession, as provided in Section 16. Once possession is taken under Section 16 of the Act of 1894, the owner of the land loses title to it, and the Government becomes the absolute owner of the land.***
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> *116. Payment of compensation under the Act of 1894 is provided for by Section 31 of the Act, which is to be after passing of the award under Section 11. The exception, is in case of urgency under Section 17, is where it has to be tendered before taking possession. Once an award has been passed, the Collector is bound to*

tender the payment of compensation to the persons interested entitled to it, as found in the award and shall pay it to them unless "prevented" by the contingencies mentioned in sub-section (2) of Section 31. Section 31(3) contains a nonobstante clause which authorises the Collector with the sanction of the appropriate Government, in the interest of the majority, by the grant of other lands in exchange, the remission of land revenue on other lands or in such other way as may be equitable.

117. Section 31(1) enacts that the Collector has to tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay such amount to a person interested in the land, unless he (the Collector) is prevented from doing so, for any of the three contingencies provided by sub-section (2). Section 31 (2) provides for deposit of compensation in Court in case State is prevented from making payment in the event of (i) refusal to receive it; (ii) if there be no person competent to alienate the land; (iii) if there is any dispute as to the title to receive the compensation; or (iv) if there is dispute as to the apportionment. In such exigencies, the Collector shall deposit the amount of the compensation in the court to which a reference under Section 18 would be submitted.

118. Section 34 deals with a situation where any of the obligations under Section 31 is not fulfilled, i.e., when the amount of compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of 9% per annum from the time of so taking possession until it shall have been so paid or deposited; and after one year from the date on which possession is taken, interest payable shall be at the rate of 15% per annum. ***<u>The scheme of the Act of 1894 clearly makes it out that when the award is passed under Section 11, thereafter possession is taken as provided under Section 16, land vests in the State Government. Under Section 12(2), a notice of the award has to be issued by the Collector. Taking possession is not dependent upon payment. Payment has to be tendered under Section 31 unless the Collector is "prevented from making payment," as provided under section 31(2). In case of failure under Section 31(1) or 31(3), also Collector is not precluded from making payment, but it carries interest under Section 34 @ 9% for the first year from the date it ought to have been paid or deposited and thereafter @ 15%.</u>*** *Thus, once land has been vested in the State under Section 16, in case of failure to pay the compensation under Section 31(1) to deposit under Section 31(2),compensation has to be paid along with interest, and due to noncompliance of Section 31, there is no lapse of acquisition.* ***<u>The same spirit has been carried forward in the Act of 2013 by providing in Section 24(2). Once possession has been taken though the payment has not been made, the compensation has to be paid along with interest as envisaged under section 34, and in a case, payment has been made, possession has not been taken, there is no lapse under Section 24(2). In a case where possession has been</u>***

> ***taken under the Act of 1894 as provided by Section 16 or 17(1) the land vests absolutely in the State, free from all encumbrances, if compensation is not paid, there is no divesting there will be no lapse as compensation carries interest @ 9% or @ 15% as envisaged under Section 34 of the Act of 1894. Proviso to Section 24(2) makes some wholesome provision in case the amount has not been deposited with respect to majority of landholdings, in such an event, not only those persons but all the beneficiaries, though for minority of holding compensation has been paid, shall be entitled to higher compensation in accordance with the provisions of the Act of 2013.*** *The expression used is "all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act", i.e., Act of 1894, means that the persons who are to be paid higher compensation are those who have been recorded as beneficiaries as on the date of notification under Section 4. The proviso gives effect to, and furthers the principle that under the Act of 1894, the purchases made after issuance of notification under Section 4 are void. As such, the benefit of higher compensation under the proviso to Section 24(2) is intended to be given to the beneficiaries mentioned in the notification under Section 4 of the Act of 1894…'*

21. The Hon'ble Supreme Court further took note of the fact that section 31 of the Act of 1894 is para materia with the provisions of section 71 of the Act of 2013; section 34 of the Act of 1894 is para materia with section 80 of the Act of 2013. The provisions are identical concerning the rate of interest in case there is a failure to make payment of compensation before taking possession of the land, thus, even under the Act of 2013, for the acquisition proceedings undertaken under the said Act, no lapsing is provided. The Hon'ble Supreme Court further took note of the fact that either under the Act of 1894 or the Act of 2013, there is no provision for the refund of compensation made and thus if the lapsing is permitted as being claimed by the landowners, it would not only result in lapsing of those proceedings wherein the land stood vested in the State besides the undue enrichment of the land owners because in the absence of any provision for refund or recovery the State will have to resort to the remedy of the suit, which can potentially result in litigation of enormous proportions.

22. In response to the arguments made by the landowners that in case the State had taken possession without paying compensation as required under the Act

of 1894, there cannot be absolute vesting free from all encumbrances under section 16, the Hon'ble Supreme Court clearly observed that vesting under section 16 of the Act of 1894 does not depend on payment of compensation. Vesting takes place as soon as possession is taken after the passing of the award. No doubt, the compensation has also to be paid and for that, the provisions have been made in section 31 and 34 of the Act of 1894. The effect of vesting under no circumstances, is taken away due to non-compliance of section 31(1) or 31(2) and the natural consequence of non-compliance of the said sections is provided in section 34 of the Act of 1894. Para 133 is reproduced herein below:

> *'….133. It was submitted that in the case State had taken possession without paying compensation as required under the Act of 1894, there cannot be absolute vesting free from all encumbrances under Section 16. It is clear that vesting under Section 16 of the Act of 1894 does not depend upon payment of compensation. Vesting takes place as soon as possession is taken after the passing of the award. Undoubtedly, compensation has also to be paid. For that, provisions have been made in Sections 31 and 34 of the Act of 1894. Section 31(1) requires tender and payment, which is making the money available to the landowner and in case State is prevented: i.e., in case the landowner does not consent to receive it for three other exigencies provided in Section 31(2), the amount has to be deposited in the court. Deposit in the court absolves the Government of liability to make payment of interest. However, if payment is not tendered under Section 31(1) nor deposited in court as envisaged under Section 31(2) from the date of taking possession, the interest for the first year is 9% and thereafter 15% per annum follows. The effect of vesting, under no circumstance, is taken away due to non-compliance of Section 31(1) or 31(2) as the case may be as the payment is secured along with interest under the provisions of Section 34 read with Section 31. The State cannot be asked to restore possession once taken but in case it fails to make deposit under Section 31(3) or otherwise with respect to majority of the landholdings, in that exigency, all the beneficiaries as on the date of notification under Section 4 shall be entitled to higher compensation under the Act of 2013 and there would be no lapse in that case…'*

23. In respect to issue of vesting and divesting of the land acquired, the Hon'ble Supreme Court took note of plethora of judgments as discussed from para 135 to 140. The reference in this regard was made to the decisions in ***Satendra Prasad Jain and others v. State of U.P and others (1993) 4 SCC 369***; ***Tilak Ram***

and others v. State of Uttar Pradesh and others (2009) 10 SCC 689; ***Pratap &Anr. V. State of Rajasthan and others (1996) 3 SCC 1***; ***Awadh Bihari Yadav and others v. State of Bihar and others (1995) 6 SCC 31***; ***P. Chinnanna and others v. State of A.P and others (1994) 5 SCC 486*** and ***May George v. Special Tahsildar &Ors. (2010) 13 SCC 98***; After having gone through all these judgments, the Hon'ble Court clearly opined in para 141 that once the land vests in the State, it cannot be divested, even if there is some irregularity in the acquisition proceedings.

24. As far as the main issue under consideration of the Hon'ble Supreme Court i.e. section 24(2) of the Act of 2013 is concerned, the Hon'ble Court took note of the legislative history of the Act of 2013 including the provisions of section 24 as introduced in the Parliament by way of Bill no. 77 of 2011. The objective of the Act was also taken into consideration. The proviso to section 24(2), the respective arguments from both the sides i.e. submissions on behalf of the acquiring authorities/ states that the proviso needs to be read along with the main provisions of section 24(2) and cannot be read with section 24(1)(b) as well as the submissions made on behalf of the landowners that the proviso is in accord with section 24(1)(b) and hence to be read as part of it besides the use of punctuation marks in the body of the section were taken note of and went on to opine in para 195 that the proviso is capable of being harmoniously construed with section 24(2) and not with section 24(1)(b), once the interpretation of the word 'or' used in section 24(2) is interpreted as 'and'.

25. The detailed discussion were made for giving correct interpretation to the word '*paid*' used in section 24(2) and the word '*deposited*' used in proviso to section 24(2) from para 198 onwards and ultimately concluded its finding in para 224 of the judgment. The relevant paras are reproduced herein below:

'….198. Connected with this issue are questions like what is the consequence of payment not being made under section 31(1) and what are the consequences of amount not deposited under section 31(2). The provision of section 24(2) when it provides that compensation has not been paid where award has been made 5 years or more prior to the commencement of the Act of 2013. In contradistinction to that, the proviso uses the expression "an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries". We have to find out when an amount is required to be deposited under the Act of 1894 and how the payment is made under the Act of 1894. The provisions of Section 31 of the Act of 1894 are attracted to the interpretation of provisions of section 24(2) to find out the meaning of the words 'paid' and 'deposited'. ***Section 31(1) makes it clear that on passing of award compensation has to be tendered to the beneficiaries and Collector shall pay it to them. The payment is provided only in section 31(1). The expression 'tender' and pay to them in section 31(1) cannot include the term 'deposited.'***

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200. 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*

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203. The word "paid" in Section 31(1) to the landowner cannot include in its ambit the expression "deposited" in court. Deposit cannot be said to be payment made to landowners. Deposit is on being prevented from payment. ***However, in case there is a tender of the amount that is to mean amount is made available to the landowner that would be a discharge of the obligation to make the payment and in that event such a person cannot be penalised for the default in making the payment****. In default to deposit in court, the liability is to make the payment of interest under Section 34 of Act of 1894. Sections 32 and 33 (which had been relied upon by the landowners' counsel to say that valuable rights in here, in the event of deposit with court, thus making deposit under Section 31 mandatory) provide for investing amounts in the Government securities, or* *seeking alternative lands, in lieu of compensation, etc. Such deposits, cannot fetch higher interest than the15 per cent contemplated under Section 34, which is pari materia to Section 80 of Act of 2013. Section 34 is pari materia to section 80 of Act of 2013 in which also the similar rate of interest has been specified. Even if the amount is not deposited in Reference Court nor with the treasury as against the name of the person interested who is entitled to receive it, if Collector has been prevented to make the payment due to exigencies provided in Section 31(2), interest to be paid.* ***However, in case the deposit is made without tendering it to the person interested, the liability to pay the interest under section 34, shall continue****. Even assuming deposit in the Reference Court is taken to be mandatory, in that case too interest has to follow as specified in section 34. However, acquisition proceeding cannot lapse due to non-deposit.*

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206. It was submitted that mere tender of amount is not payment. The amount has to be actually paid. In our opinion, when amount has been tendered, the obligation has been fulfilled by the Collector. Landowners cannot be forced to receive it. In case a person has not accepted the amount wants to take the advantage of non-payment, though the amount has remained due to his own act. It is not open to him to contend that amount has not been paid to him, as such, there should be lapse of the proceedings. ***Even in a case when offer for payment has been made but not deposited, liability to pay amount along with interest subsist and if not deposited for majority of holding, for that adequate provisions have been given in the proviso also to Section 24(2).*** *The scheme of the Act of 2013 in Sections 77 and 80 is also the same as that provided in Sections 31 and 34 of the Act of 1894….'*

Ultimately, the Hon'ble Court concluded its finding in para 224 of the judgment, wherein it has been categorically held that in case the amount was tendered but landowner refused to receive the same or in case he filed the reference under section 18 of the Act of 1894, the lapsing of the acquisition is not the consequence. To quote para 224:

*'….224. 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.* ***<u>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</u>****….'*

26. After elaboratively discussing the rules framed under section 55 of the Act of 1894 and the standing orders issued by the State Government regarding the mode of payment, Hon'ble court went on to observe that the rules and the standing orders are binding on the concerned authorities and they have to follow them. The amount is deposited in the court only when the reference for higher compensation is sought and not otherwise. Even if person refuse to accept it and the amount is deposited in Court or even if it is not tendered only higher interest follows under section 34. After having held that there is distinction between 'paid' and 'deposited', the Hon'ble Supreme Court observed that if the amount is deposited as per rules in the treasury or as per the standing orders considering the scheme of section 31 read with section 34 of the Act of 1894, which are para materia to section 77 and 80 of the Act of 2013, the acquisition cannot be invalidated. Para 229 and 230 are reproduced herein below:

> *'….229. Rules and the Standing Orders are binding on the concerned Authorities and they have to follow them. They deposit the amounts in court only when a reference (for higher compensation) is sought, not otherwise. Even if a person refuses to accept it and the amount is deposited in court or even it is not tendered, only higher interest follows under Section 34. Once Rules have prevailed since long and even if it is assumed that deposit in court is mandatory on being prevented from payment as envisaged under Section 31(1), the only liability to make the payment of higher interest is fastened upon the State. The liability to pay the amount with interest would subsist. When amounts are deposited in court, there would occur a procedural irregularity and the adverse consequence envisaged is under Section 34 of the Act of 1894. The consequence of non-deposit in the court is that the amount of the landowner cannot be invested in the Government securities as envisaged under Sections 32 and 33 of the Act of 1894, in which interest is not more 15 per cent. Thus, no prejudice is caused to the landowners rather they stand to gain and*

still payment is safe as it is kept in the court. We have already held that there is a distinction between the expression "paid" and "deposited", thus the amount being deposited as per Rules in the treasury or as per the Standing Orders considering the scheme of Section 31 read with Section 34 of the Act of 1894, which are parimateria to Sections 77 and 80 of the Act of 2013. We are of the considered opinion that acquisition cannot be invalidated, only higher compensation would follow in case amount has not been deposited with respect to majority of land holdings, all the beneficiaries would be entitled for higher compensation as envisaged in the proviso to Section 24(2).

230. Deposit in treasury in place of deposit in court causes no prejudice to the landowner or any other stakeholder as their interest is adequately safeguarded by the provisions contained in Section 34 of the Act of 1894, as it ensures higher rate of interest than any other Government securities. Their money is safe and credited in the earmarked quantified amount and can be made available for disbursement to him/them. There is no prejudice caused and every infraction of law would not vitiate the act…'

27. It is important to highlight here that, the Hon'ble Court while interpreting the word 'paid' occurring in Section 24(2) and the word 'deposited' used in proviso to section 24(2) of the Act of 2013 has very categorically observed the meaning and the effect of both in para 242 of the judgment. While the Hon'ble Court observed that the word 'paid' does not include deposit and in case the amount has been tendered, the obligation to pay is fulfilled and the non-deposit of money carries interest as provided under section 34 of the Act of 1894; however while interpreting proviso to section 24(2) of the Act of 2013, the Hon'ble Court has observed in para 242 that the consequence of higher compensation will follow when the money is not deposited with the Land Acquisition Collector or in the treasury or in the court with respect to majority of landholdings; to mean that the word 'deposit' includes deposit with LAC, treasury and the court. Para 242 of the judgment is reproduced herein below:

'….242. 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…'*

It is also relevant to observe that the Hon'ble Court has further observed that the section 24(2) of the Act of 2013 cannot be used as a tool to revive the concluded proceedings and especially the ones which concluded way back in 1960's, 1970's and 1980's as the landowners cannot wake from deep slumber and challenge the acquisition.

28. While interpreting the word '***physical possession'*** the Hon'ble Court held that the recording of panchnama is valid mode of taking

possession and explained that once the possession of the land is taken, the land vests in the State and if thereafter the possession is retained by the erstwhile landowner or any other person, it is only in the capacity of trespasser and thus, the person cannot be said to have claim that the physical possession of the land was never taken by the State or its agencies. The detailed observations made by the Hon'ble Court in this regard are reproduced herein below:

> *"…244. 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.* ***<u>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</u>.***
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> *245. 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 drawns up a memorandum of taking possession, that amounts to taking the physical possession of the land.* ***<u>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.</u>***

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256. Thus, it is apparent that vesting is with possession and the statute has provided under Sections 16 and 17 of the Act of 1894 that once possession is taken, absolute vesting occurred. It is an indefeasible right and vesting is with possession thereafter. The vesting specified under section 16, takes place after various steps, such as, notification under section 4, declaration under section 6, notice under section 9, award under section 11 and then possession. ***The statutory provision of vesting of property absolutely free from all encumbrances has to be accorded full effect. Not only the possession vests in the State but all other encumbrances are also removed forthwith. The title of the landholder ceases and the state becomes the absolute owner and in possession of the property. Thereafter there is no control of the landowner over the property. He cannot have any animus to take the property and to control it. Even if he has retained the possession or otherwise trespassed upon it after possession has been taken by the State, he is a trespasser and such possession of trespasser enures for his benefit and on behalf of the owner.***

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277. The court is alive to the fact that 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…'

29. Further the Apex Court has analyzed the effect of the interim order staying the dispossession of the landowner from the acquired land and by applying the principle of ***'actus curaieneminengravabit'*****,** the Hon'ble Court held that the

period during which stay was in operation has to be excluded while determining the five years window period as provided under section 24(2) of the Act of 2013. The detailed discussion with regard to the exclusion of interim order has been made from para 278 to 331 of the judgment, however the relevant from these are reproduced herein below:

> *'….297. In cases where some landowners have chosen to take recourse to litigation (which they have a right to) and have obtained interim orders on taking possession or orders of status quo, as a matter of practical reality it is not possible for the authorities or State officials to take the possession or to make payment of the compensation. In several instances, such interim orders also impeded the making of an award. <u>Now, so far as awards (and compensation payments, pursuant to such proceedings were concerned) the period provided for making of awards under the Act of 2013 could be excluded by virtue of Explanation to Section 11A. Thus, no fault of inaction can be attributed to the authorities and those who had obtained such interim orders, cannot benefit by their own action in filing litigation, which may or may not be meritorious. Apart from the question of merits, when there is an interim order with respect to the possession or order of status quo or stay of further proceedings, the authorities cannot proceed; nor can they pay compensation.</u> Their obligations are intertwined with the scheme of land acquisition. It is observed that authorities may wait in the proceedings till the interim order is vacated.*
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> *331. For all these reasons, it is held that the omission to expressly enact a provision, that excludes the period during which any interim order was operative, preventing the State from taking possession of acquired land, or from giving effect to the award, in a particular case or cases, cannot result in the inclusion of such period or periods for the purpose of reckoning the period of 5 years. Also, merely because timelines are indicated, with the consequence of lapsing, under Sections 19 and 69 of the Act of 2013, per se does not mean that omission to factor such time (of subsistence of interim orders) has any special legislative intent. This Court notices, in this context, that even under the new Act (nor was it so under the 1894 Act) no provision has been enacted, for lapse of the entire acquisition, for non-payment of compensation within a specified time; nor has any such provision been made regarding possession. Furthermore, non-compliance with payment and deposit provisions (under Section 77) only results in higher interest pay-outs under Section 80. The omission to provide for exclusion of time during which interim orders subsisted, while determining whether or not acquisitions lapsed, in the present case, is a clear result of inadvertence or accident, having regard to the subject matter, refusal to apply the principle underlying the maxim actus curaeneminemgravabit would result in injustice….'*

30. Being cautioned of the fact that many writ petitions claiming lapsing of acquisition came to be filed before the Hon'ble Court wherein in earlier round of litigation the acquisition proceeding were upheld, the Hon'ble Court categorically observed that such landowners cannot take the umbrella of section 24(2) to claim the lapsing of acquisition proceedings. The Hon'ble Court also observed in para 337 of the judgment that section 24(2) contemplated 'pending proceedings' and not the 'concluded ones', while holding so the Apex Court observed that the beneficiaries contemplated under proviso to section 24(2) are the ones who were so recorded as beneficiaries on the date of issuance of notification under section 4 of the Act of 1894 and it is not meant to be invoked by the persons who have purchased the land subsequently or on the basis of power of attorney or otherwise. Further while dealing with stale and barred claims the Hon'ble Court has discussed various situations which will fall within the category of '***stale claims***' and thus, such landowners are estopped from claiming lapsing of acquisition proceedings. Such circumstances are detailed out as follows:

a. The cases where the landowners challenged the acquisition proceedings, they failed and the possession was taken after the announcement of award cannot take benefit of section 24(2) of the Act of 2013. **(para 338)**

b. The cases where the beneficiaries/ landowners filed references and sought the enhancement of compensation, enhancement was made and the compensation was deposited in the treasury and thereafter the lapsing has been sought. **(para 339)**

c. Where after taking the possession of the land, development is complete, infrastructure has been developed and the challenge has been made to the acquisition proceedings under section 24(2). **(para 339)**

d. The cases wherein the claims for release of land under section 48 of the Act of 1894 have been dismissed and thereafter the claims have been made to declare the acquisition proceeds as has been lapsed. **(para 339)**

After having taking note of the aforesaid cases, the Hon'ble Court held that the legality of the concluded cases cannot be questioned under the guise of section 24(2) of the Act of 2013. The relevant para from the judgment is reproduced herein below:

> ***'….342. 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.***
>
> ***XXXXX XXXXX XXXX***
>
> ***359. We are of the considered opinion that Section 24 cannot be used to revive dead and stale claims and concluded cases. They cannot be inquired into within the purview of Section 24 of the Act of 2013. The provisions of Section 24 do not invalidate the judgments and orders of the Court, where rights and claims have been lost and negatived. There is no revival of the barred claims by operation of law. Thus, stale and dead claims cannot be permitted to be canvassed on the pretext of enactment of Section 24. In exceptional cases, when in fact, the payment has not been made, but possession has been taken, the remedy lies elsewhere if the case is not covered by the proviso. It is the Court to consider it independently not under section 24(2) of the Act of 2013….***

31. The Apex Court after having discussed the law in detail, has expressly overruled the decision in ***Pune Municipal Corporation (supra), Sree Balaji Nagar residential Association (supra)*** and all the decisions following the ratio laid therein and ***Indore Development Authority v. Shailendra (dead) (supra)*** as the aspect of whether 'or' is to be read as 'and' or 'nor' was not considered therein. The principles promulgated in the judgment have been emphatically summarized in para 363, which is imperative to be referred to:

> ***'….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'.

32. Having bestowed our thoughtful consideration and after having gone through the judgments of the Hon'ble Supreme Court, it is unambiguously clear that each and every word and each and every line from section 24 of the Act of 2013 has been interpreted by the Hon'ble Supreme Court of India. This has been crystallized that all the three limbs of section 24 operates in three different fields. The principles laid down by Hon'ble Court are encapsulated herein below:

(a) In all those cases wherein the acquisition process had been initiated but the award has not been announced under section 11 of the Act of 1894, on the date of commencement of the Act of 2013 i.e. 01.01.2014, there is no lapse of proceedings and the same will continue, however, with the rider that the compensation has to be determined under the provisions of Act of 2013.**(para 363 (1))**

(b) All those cases wherein the award under section 11 of the Act of 1894 has been announced prior to commencement of the Act of 2013, the provisions of the Act of 2013 would have no bearing or application and the proceedings will continue in respect of those cases, as if, the Act of 1894 has not been repealed.

(c) The word 'or' used in between the both the contingencies of section 24(2) of the Act of 2013 is to be read as ***'nor'*** or as ***'and'*** which means that to seek lapsing of the acquisition proceedings both the contingencies must be fulfilled. Meaning thereby, that if the possession had been taken but the compensation was not received, there would be no lapse. Similarly, if compensation has been accepted but the possession has not been taken, there would be no lapsing. ***(reference to para 99 and 363(2) of the judgment in Indore Development Authority (supra)***

(d) As far as the aspect of compensation for the land acquired is concerned, the Hon'ble Supreme Court of India has categorically observed that 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. What is required to be proved is that the compensation amount was tendered which has been explained in ***para 203*** that the tendering of the amount would mean that the amount is made available to the landowner and that would be a discharge of the obligation to make the payment and in that event such a person cannot be penalized for the default in making the payment. While referring to section 31(1), 31(2), 34 of the Act of 1894 and comparing them with the para materia provisions i.e. section 71 and 80 of the Act of 2013, the Hon'ble Apex Court has clarified that the only consequence of non-payment of compensation is to make the payment of interest as per section 34 of the Act of 1894. Even the Hon'ble SC has further clarified that once the payment of compensation has been offered/tendered under section 31(1), the acquiring authority cannot be penalized for non-payment as the amount has remain unpaid due to refusal to accept by the landowner. To clarify it further, the Hon'ble SC has further observed that if a landowner has filed the reference for higher compensation he cannot claim that he was not paid the amount. ***(para 224 of the judgment)***

(e) While reading the proviso to section be part of section 24(2) of the Act of 2013, the Hon'ble Supreme Court has clarified that in case, the offer for payment has been made but not deposited, liability to pay amount along with interest subsist and if not deposited for 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. Regarding the deposit, it has been clarified in ***para 242*** of the judgment that for the higher compensation to follow, the money should not have been deposited with the Land Acquisition Collector or in the treasury or in the Court with respect to majority of land holdings, meaning thereby if it was deposited in any of the three modes with respect to majority of holdings, the higher compensation will not follow, but interest under section 34 of the Act of 1894 would be the consequence.

(f) As regards the mode of taking possession, the Hon'ble Supreme Court had clarified that drawing of inquest report/ memorandum would mean that physical possession has been taken. The law with regard to vesting of land has once again be reiterated to hold that once the possession has been taken under section 16 of the Act of 1894, the land vest in the State and there cannot be any divesting or lapsing. ***(para 244, 245 and 363(7) of the judgment)***

(g) While computing the gap period of five years between the date of award and commencement of the Act of 2013, any interim order subsisting is to be excluded which means that after excluding the interim order, the pre-requisite gap period of 5 years is not there, the provisions of section 24(2) cannot be invoked. ***(para 363(4) of the judgment)***

(h) The Hon'ble Court has further clarified that if the acquisition of land had earlier been challenged and the acquisition was upheld, which means the proceeding stood concluded, the umbrella protection of section 24(2) of the Act of 2013 cannot be invoke as it does not revive stale and time barred claims. ***(Para 359 and 363(9) of the judgment)***

(i) In **para 337**, the Hon'ble Court has made it clear that the provision of section 24(2) of the Act of 2013 is meant to be invoked by the beneficiaries i.e. landowners who were recorded so at the time of issuance of notification under section 4 of the Act of 1894. Any subsequent purchaser, POA holder or otherwise, cannot invoke the provisions of section 24(2) of the Act of 2013.

Factual Evaluation of the cases at hand

33. Suffice to mention that in this Court *matters seeking lapsing of the acquisition proceedings under Section 24(2) of the Act of 2013 were kept pending awaiting the decision in Yogesh Neema & Ors. V. State of Madhya Pradesh SLP (C) 10742 of 2008; Indore Development Authority v. Shailendra (dead) through Lrs. &ors. SLP(C) 2131 of 2016; State of Haryana v. Maharana Pratap Charitable Trust (Regd) & Anr. Civil Appeal No. 4835 of 2015; State of Haryana vs. G.D. Goenka Tourism Corporation Ltd. and Anr. SLP(C) CC no. 8453 of 2017. Out of the aforementioned cases three cases i.e. Yogesh Neema&Ors. Vs. State of Madhya Pradesh SLP (C) 10742 of 2008, Indore Development Authority v. Shailendra (dead) through LRs. &ors. SLP(C) 2131 of 2016 and State of Haryana v. Maharana Pratap Charitable Trust (Regd) &Anr. Civil Appeal No. 4835 of 2015 were referred to the Constitution Bench and the same were accordingly decided vide judgment dated 06.03.2020. As far as State of Haryana v. s G.D Goenka Tourism Corporation Ltd. and Anr. SLP(C) CC no. 8453 of 2017 is concerned, it was not referred to larger bench and was kept pending to be taken after the decision of the Constitution Bench in Indore Development Authority v. Manoharlal & Ors.* Since the controversy has now been decided, all these petitions are now listed for the final disposal in the terms of the aforesaid judgment and thus, it would be imperative to examine each case against the touchstone of these guiding principles. Mr. Mittal has submitted a detailed synopsis giving details of each and every case and the same is taken on record for the disposal of the present bunch of writ petitions.

34. In the present bunch two writ petitions bearing CWP no. 9281 of 2018 and CWP no. 9523 of 2018 the lapsing of the acquisition made in 1970's has been challenged. In ***CWP No. 9281 of 2018*** the lapsing of the acquisition proceedings

initiated vide notification dated 15.01.1971 issued u/s 4, followed by declaration u/s 6 dated 15.01.1971 and award dated 28.04.1971 for public purpose namely construction of third line between Ballabgarh and Tuglakabad on the ground that neither the possession of the land was taken nor the compensation was paid to the petitioners.

Similarly, **in CWP no. 9523 of 2018** the land was acquired vide notification dated 19.09.1972 and 05.06.1973 issued under section 4 and 6 of the Act of 1894 followed by award dated 28.05.1973 for the public purpose namely, construction of tubewell feeder. The compensation qua the claimed land has already been taken by the father of the petitioner as has been admitted by the petitioner in para 15 of the petition.

At the very outset, these writ petitions deserves to be dismissed as the same are barred by delay and laches, as for almost 49 years the petitioners never challenged the acquisition proceedings and kept sleeping over the rights. The Hon'ble Constitution Bench has specifically taken note of such cases and observed that such challenges cannot be entertained at all under the purview of Section 24 (2) of the Act of 2013. The Hon'ble Court has observed in para 242 of the judgment in Indore Development Authority (supra) as has also been discussed in para 28 of this judgment, the matters of land acquisition concluded in 1960's, 1970's and 1980's cannot be opened. In case possession has not been taken in accordance with law and vesting is not in accordance with Section 16, proceedings before courts are to be initiated within reasonable time, not after the lapse of several decades. In view thereof, the present petitions are hereby dismissed.

35. Further, six petitions in the present batch arises out of the same acquisition proceedings initiated vide notification dated 30.04.1986 under section 4 of Act of 1894 followed by declaration under section 6 of the Act of 1894 for the

public purpose namely, development of Residential area in sector 46 Faridabad. Subsequently the award came to be announced on 28.12.1988. The individual facts are dealt herein below:

(i) In **CWP no 8878 of 2018**, the petitioner has challenged the order dated 11.01.2018 passed by the respondent authorities whereby his claim under section 24(2) of the Act of 2013 has been rejected and further prayed for declaring the acquisition proceedings qua his land as deemed to have been lapsed in view of the provisions of section 24(2) of the Act of 2013 on the ground that the physical possession of the land is with the petitioner and neither the compensation has been deposited in the Court nor has been offered/ paid to the petitioner. The perusal of the speaking order dated 11.01.2018 annexed in the petition as Annexure P-1 shows that the possession of the land was taken vide Rapat no 188 dated 28.12.1988 and the possession of the entire land of the petitioner was offered to him. However, the compensation qua the land measuring 3 kanal was taken and the compensation qua 7 kanal 17.5 marla was not received by the petitioner. It being so, the petitioner could not have invoked the provision of section 24(2) of the Act of 2013, as he himself chose to not take the compensation though the same was offered. Further he challenged the acquisition proceedings in CWP no 2454 of 1988, which was dismissed for non prosecution on 11.04.2008, however was later restored and the same came to be partly allowed vide order dated 08.08.2013 as the land measuring 1 kanal 10 marla was released and the acquisition qua the rest of the land was upheld by this Court.

In view thereof, the case of the petitioner is squarely covered by the Indore Development Authority (supra) as the possession of the land duly stands taken by recording rapat Roznamcha and further the acquisition qua the claimed land has already been upheld in the earlier round of litigation and therefore we have no hesitation to hold that the petition deserves dismissal as none of the contingencies prescribed under section 24(2) is fulfilled. Hence accordingly dismissed.

(ii) In **CWP no. 10077 of 2018**, the petitioner has filed the writ petition praying therein to declare the acquisition proceedings to have been lapsed in view of section 24(2) of the Act of 2013. Suffice to mention that the possession of the land was taken vide Rapat no. 188 dated 28.12.1988, and thus the land vested in the State once the panchnama in the form of rapat was drawn. As far as the compensation is concerned, the Ld. State Counsel has stated that the petitioner have chosen not receive it though the majority of the compensation amount pertaining to this acquisition has already been disbursed to the landowners, which shows that the compensation was available with LAC and the same was duly tendered. In view thereof, the present petition is squarely covered by the judgment passed in Indore Development Authority (Supra) and in specific the directions stated in para 363(5) and 363(7) of the judgment as the possession stands taken by recording the panchnama and the compensation has been duly tendered therefore, none of the contingencies mentioned in section 24(2) of the Act of 2013 are fulfilled and accordingly the petition is hereby dismissed.

(iii) The writ petition **CWP no. 10084 of 2018** has been filed claiming quashing of the acquisition proceedings in view of the section 24(2) of the Act of 2013 and to quash the order dated 11.01.2018 whereby the claim of the petitioner under section 24(2) has been rejected by passing a speaking order. From the perusal of the order it transpires that the possession of the land was taken by recording rapat no. 188 dated 28.12.1988. As far as the compensation is concerned, the same was not taken by the petitioner, however majority of the compensation stands already disbursed to the land owners, which shows that the amount of the compensation was duly tendered. In view of the principles laid down by the Hon'ble SC, both the contingencies prescribed in section 24(2) of the Act of 2013 remains unfulfilled as the possession stands taken by drawing panchnama and the compensation was duly tendered and in accordance with the principles laid down in para 363 (5) and 363 (7) of the Indore Development Authority (supra) the present petition is hereby dismissed as squarely covered by the said directions.

(iv) The petition bearing **CWP no. 10286 of 2018** also arises out of the same acquisition proceedings. The petitioner has claimed the lapsing of acquisition qua his land by averring that both the contingencies provided in section 24(2) of the Act of 2013 stands fulfilled as neither the compensation was received by the petitioner nor was the possession of the land taken. It has been stated by the Ld. State Counsel that the possession of the land already stands taken vide Rapat no. 188 dated 28.12.1988 and as has been noticed above, the majority compensation already stands disbursed and has been deposited with LAC, though the petitioner has not received the same despite it being available with the LAC. On evaluating the facts of the case against the principles enshrined in ***Indore Development Authority (supra)***, it transpires that the present petition is squarely covered by direction 363(5) and 363(7) of the judgment and therefore nothing survives in the petition and thus it is accordingly dismissed.

(v) The petitioner in **CWP no. 8911 of 2018** has approached this Court challenging the speaking order dated 11.01.2018 and has claimed the lapsing of acquisition proceedings under section 24(2) of the Act of 2103 on the ground that neither the possession has been taken nor the compensation has been paid to the petitioner. We have perused the speaking order, as per which on the objections being filed by the petitioner under section 5-A of the Act of 1894, 166 sq. yards was released and admittedly the writ petition filed by the petition challenging the acquisition in CWP no. 1700 of 1988 was dismissed vide order dated 14.12.2009, thereby upholding the acquisition proceeding. In the present facts and circumstances, it is clear that the petitioner had earlier challenged the acquisition proceedings and lost, meaning thereby that the acquisition proceedings qua the land of the petitioner already stood upheld and thus in view of para no. 359 of the judgment, the petition seeking lapsing under section 24(2) of the Act of 2013 is not even maintainable. Further the possession of the land was taken by recording rapat Roznamcha no. 188 dated 28.12.1988 and thus the land thereafter vested in the State as has been held by the Apex Court in para 363(7), and hence, nothing survives in the petition and is, thus, hereby dismissed.

(vi) In **CWP no. 9179 of 2018**, the petitioners have challenged the speaking order rejecting the claim of the petitioners to release the land under section 24(2) of the Act of 2013. The earlier petition filed by the petitioners challenging the acquisition proceedings i.e. CWP no. 1699 of 1998 was dismissed vide order dated 16.12.2010 and the acquisition proceedings qua the claimed land was thus upheld. The land already stands vested in the State as the possession was taken vide rapat no. 188 dated 28.12.1988. Therefore in view of para 359 and 363 (7) and (9) of the judgment, no ground has been made therein to seek lapse of acquisition under section 24(2) of the Act of 2013 and is thus dismissed.

36. In the writ petition bearing **CWP no. 10000 of 2018**, the petitioner has again challenged the order passed by the respondent authorities thereby rejecting his claim for release of land under section 24(2) of the Act of 2013 and has accordingly sought lapsing of the acquisition proceedings under section 24(2) on the account that the compensation was not deposited in the court and the possession of the land was not taken. Suffice to mention that the land of the petitioner was acquired vide notification dated 02.05.2001 and 30.04.2002 issued under section 4 and 6 of the Land Acquisition Act, 1894 followed by the award dated 27.04.2004 for the public purpose namely, development of Residential Commercial Sector 15 Jagadhari. The perusal of the speaking order dated 29.09.2016 would show that the possession of the land was taken on 27.04.2004 and has also been apprised by the Ld. State Counsel the factum of taking possession was recording in rapat no. 1346 dated 27.04.2004; the compensation though offered was not received by the petitioner, which is now lying deposited

with LAC and further even constructed portion of the land in Khasra no. 75 already stands released and the rest of the land which is vacant was acquired and the same affects the site reserved for show rooms, parking, building and road.

We find no cogent reason to interfere with the finding of the respondent authorities as the possession of the land stands duly taken by recording rapat Roznamcha and as held in para 363(7) it is the valid mode of taking possession, therefore the contingencies prescribed in section 24(2) of the Act of 2013 remains unfulfilled and thus nothing survives in the petition and the same is hereby dismissed.

37. The petitioners in **CWP No. 9975 of 2018** has sought the lapsing of the acquisition proceedings under Section 24 (2) of Act of 2013 on the ground that neither the possession of the land was taken nor the compensation was paid with respect to the claimed land in the petition. The land of the petitioners was acquired vide notifications dated 02.05.2001 and 30.04.2002 issued under section 4 and 6 of the Land Acquisition Act, 1894. Subsequent to this the award dated 27.04.2004 was announced and the possession of the land was taken by the State by recording the same in the panchnama in the form of Rapat No. 1346 dated 27.04.2004. Since the possession of the land was duly taken and accordingly, the land vested in the State, one of the ingredient for seeking lapsing of acquisition under Section 24 (2) of the Act of 2013 remains unmet and therefore, in view of the principles laid down by the Hon'ble Supreme Court in para 363(7) and 363 (3), the acquisition proceedings cannot lapse in terms of Section 24 (2). Accordingly, the present writ petition is dismissed being squarely covered by the ratio of the Hon'ble Supreme Court in Indore Development Authority (supra).

38. Further six petitions in the present batch of writ petitions arise out of the acquisition proceedings commenced vide notification dated 02.08.1999 issued

under Section 4 of the Act of 1894, followed by the declaration dated 01.08.1990 for the public purpose namely development of land as residential and commercial Sector – 45, Faridabad. Subsequent thereto, the award was announced on 07.10.1991 ultimately acquiring the land. The facts of each case are dealt herein below:

(i) The petitioners in **CWP no. 10281 of 2018** have sought the lapsing of acquisition under Section 24 (2) of the Act of 2013 on the ground that neither the possession of the land was taken by the State nor the compensation was paid to the petitioners. The petitioners have also assailed the speaking order passed by the respondent authority thereby rejecting the claim of the petitioners, from the perusal of which it transpires that the possession of the land claimed in the petition was taken vide Rapat No. 66 dated 07.10.1991. Though 81.67% of the total compensation land already stands disbursed, the petitioners have chosen not to take the compensation amount. It is further pertinent to mention here that the acquisition qua the claimed land came to be challenged before this Court in CWP No. 1906 of 1991 which was decided on 03.08.2010 and accordingly, the constructed area was allowed to be released and the acquisition qua the vacant land was upheld by this Court. In view of Para 359 of the judgment as has been discussed above, the petitioners have no right to claim the lapsing of acquisition under Section 24 (2) of the Act of 2013. Further more, the possession of the land has also been taken by recording panchnama in the form of rapat and the amount of compensation stands duly tendered, therefore even otherwise the acquisition qua the land of the petitioners cannot lapse as none of the contingencies prescribed in section 24(2) of the Act of 2013 are fulfilled.

In view of the fact that the acquisition qua the claimed land has already been upheld by this Court and taking note of the fact that the land in question affects alignment of sector dividing roads and further the approach to Plot No. 269-P to 272-P carved out by the respondents, this court sees no grounds to interfere in the acquisition which already stands concluded. In view thereof, the present petition stands dismissed.

(ii) **CWP no. 11152 of 2018** also arises out of the aforesaid acquisition proceedings. The petitioner has challenged the speaking order dated 11.01.2018 rejecting his claim under section 24(2) of the Act of 2013 and further has also prayed for declaring that the acquisition proceedings qua his land stand lapsed in terms of section 24(2) of the Act of 2013. We have perused the speaking order, as per which the possession of the land was taken vide rapat no. 66 dated 07.10.1991 and the compensation was duly tendered, however the same has not been taken by the petitioners yet, though 81.67% of the total compensation already stands disbursed. The case in hand is therefore squarely covered by direction 363(2), 363(5) and 363(7), none of the contingencies in section 24(2) is fulfilled and hence the present petition is hereby dismissed.

(iii) The petitioners in **CWP no. 9480 of 2018** are praying to quash the acquisition proceedings in terms of section 24(2) of the Act of 2013 on the ground that neither the possession of the land was taken nor the compensation was paid and thus, is covered by deeming fiction of section 24(2) of the Act of 2013, in addition to this, the petitioners have also challenged the speaking order vide which their claim has been rejected by the respondent authorities. It is imperative to mention that from the perusal of the speaking order it becomes clear that none of the grounds mentioned in section 24(2) of the Act 2013 for declaring the acquisition proceedings as have been lapsed because the possession of the land duly stands taken vide rapat no. 66 dated 07.10.1991 and the compensation though tendered, was not received by the petitioners and the same is lying with LAC. The site in question affects the planning 18 metres and 9 metres wide sector road and is thus essential for the development purposes. Accordingly there is no doubt that the case is duly covered by the judgment passed by the Hon'ble Supreme Court in specific by para no. 363(3), 363(5) and 363(7) as the due possession has been taken and the compensation is deposited with LAC and thus is hereby dismissed.

(iv) In **CWP No. 9522 of 2018**, the petitioners have assailed the speaking order dated 11.01.2018 and has prayed to declare that the acquisition proceedings qua their land stands lapsed in view of Section 24 (2) of the Act of 2013. As far as the petitioners land is concerned, the possession of the land was taken vide Rapat No. 66 dated 07.10.1991, the amount of compensation though tendered was not received by the petitioners. The land of the petitioners affects the planning of Group Housing Site, 9 metres wide and 19 metres wide road, part of primary school site, plotting area and approach to Plot No. 319 and 320-P of Sector 45, Faridabad. On an earlier occasion the acquisition proceedings qua the claimed land was challenged before this Court in CWP No. 1992 of 1991 which was disposed of vide order dated 03.08.2010 in pursuance to which the area measuring 800 square yards was released by the government and rest of the land was acquired.

In view thereof, there is no doubt in accordance with para 359 of the judgment in Indore Development Authority (Supra) the petitioners cannot claim the lapsing of acquisition once the acquisition proceedings were upheld by this Court and therefore the present petition is hereby dismissed.

(v) The prayer in the petition **CWP no. 9597 of 2018** is to quash the speaking order passed by the respondent authorities rejecting the claim of the petitioner and further to grant relief in view of section 24(2) of the Act of 2013. The possession of the land stands taken vide rapat no. 66 dated 07.10.1991 and the compensation stands paid to the petitioner. Therefore, in view of para 363(5) and 363(7) none of the contingencies provided in section 24(2) of the Act of 2013 is fulfilled and thus accordingly the present petition is dismissed in terms of the judgment passed by the Hon'ble Apex Court.

39. Further, 4 matters in this batch i.e. **CWP no. 9126 of 2018, 9144 of 2018, 9349 of 2018 and 9358 of 2018** pertain to the acquisition proceedings initiated vide notification dated 18.10.2002 and 08.09.2003 issued under section 4 and 6 of the Land Acquisition Act, 1894 followed by award dated 05.09.2005 for the public purpose namely, development and utilization of land for sector 16 Sonepat. The common prayer in these petitions pertains to lapsing of acquisition proceedings under section 24(2) of the Act of 2013. The Ld. State Counsel has apprised that the in all these cases the possession of the land was duly taken by recording panchnama in the form of rapat no. 11 dated 05.09.2005, and the

compensation is lying deposited in the LAC account, therefore in view of para 363(7) of the judgment, due possession of the land stands taken and therefore in accordance with para 363(3), the lapsing of the acquisition cannot be sought as none of the contingency mentioned in section 24(2) of the Act of 2013 stands fulfilled and accordingly, the petitions are hereby dismissed.

40. The petitioner in **CWP no. 11078 of 2018** is claiming lapsing of the acquisition proceedings on the ground that the possession of the land has not been taken and neither the compensation has been paid or deposited in the reference court in accordance with the provisions of section 31 of the Act of 1894. The land of the petitioner was acquired vide notifications dated 28.03.1985 and 16.01.1986 issued under section 4 and 6 of the Land Acquisition Act, 1894 followed by award dated 14.01.1988 for the public purpose namely, development and utilization of land for Residential and Commercial area at Gurgaon. As has been apprised by the Ld. Addl. Advocate General Haryana, the possession of the land in question was duly taken by recording the panchanama in the form of rapat roznamcha no. 321 dated 14.01.1988. The compensation though tendered was not taken by the petitioner and the same is lying deposited in the account of LAC. In terms of para 363(3), 363(5) and 363(7) of Indore Development Authority (supra), none of the contingencies as prescribed in section 24(2) of the Act of 2013 exists and thus, the same is hereby dismissed.

41. The petition bearing **CWP no. 11292 of 2018** arises out of notification dated 09.06.2003 and 02.06.2004 issued under section 4 and section 6 of the Act of 1894 respectively, followed by the award dated 2012.2005 for the public purpose namely development of Sector 57 part Gurugram. The petitioner has sought lapsing on the twin grounds i.e. neither the possession of the land has been taken nor the compensation was paid. However from the perusal of the

speaking order, which has also been assailed by the petitioner in the instant petition, it transpires that the possession of the land was taken vide rapat no. 155 dated 20.12.2005 and the compensation is lying deposited in the account of LAC. As has been held by the Hon'ble Apex Court in Indore Development Authority (Supra) in para 363(7) that the possession taken by drawing panchnama is valid mode and the and thereafter vests in the State, and further as has been held that when the compensation has been tendered, it cannot be said that that compensation has not been paid, in view thereof it can safely concluded that nothing survives in the present petition. It is further pertinent to mention that in this case, the application was moved by the allottee to whom the plot has been allotted from the aforesaid land. Therefore, in view of the facts and circumstances this Court finds no merit in the present case, all the more when third party rights have also been created and thus, is accordingly dismissed.

42. The petitioner in **CWP No. 11568 of 2018** has sought the lapsing of the acquisition u/s 24 (2) of Act of 2013 on the ground that neither the possession of the land acquired was taken nor the compensation was either paid or deposited in the court in accordance with Section 31 of the Act of 1894. It is pertinent to mention that the claimed land was acquired vide notifications dated 26.12.1988 and 22.12.1989 issued u/s Section 4 and Section 6 of the Land Acquisition Act, 1894 followed by the award dated 19.12.1991, for the public purpose, development and utilization of land as industrial area in Sector – 58 in District Faridabad. Admittedly the petitioner on an earlier occasion had challenged the acquisition proceedings by filing CWP No. 18817 of 1991 which was dismissed vide order dated 02.02.1993, meaning thereby that the acquisition qua the claimed land was upheld by this Hon'ble Court. As has been apprised by the Ld. Counsel for the State that, the possession of the land of the petitioner was taken vide Rapat No. 270 dated 19.12.1991, therefore, we find no merit in the present petition as the land

duly stands vested in the State as the possession has been taken by recording rapat (para 363(7))and moreover the petitioner has lost the earlier challenge to the acquisition, and accordingly in view of para 359 and 363(9), the petitioner cannot claim the lapsing of acquisition under section 24(2) of the Act of 2013, therefore, the petition is hereby dismissed.

43. **CWP No. 8947 of 2018** arises out of the acquisition proceedings initiated vide notification dated 20.06.2005 issued u/s 4 of the Act of 1894, followed by declaration dated 19.06.2006 issued u/s 6 of the Act of 1894 for the public purpose namely development and utilization of land for residential, commercial, institutional and open spaces for Sector – 52/A, Sector 53 and Sector 54 at Gurugram. The land thereafter, came to be acquired by the award announced u/s 11 on 22.02.2007 and the possession was taken vide Rapat No. 278 dated 22.02.2007. The petitioner admittedly challenged the said acquisition proceedings in this Court by filing CWP No. 2587 of 2007 which was dismissed on 19.02.2008 by this Court thereby upholding the validity of acquisition proceedings. As such the petitioner has no right to claim the lapsing of the acquisition in view of Para 359 of the judgment, having lost the earlier challenge to the acquisition and further the possession already stands taken by the state and thus, the petition is squarely covered by direction in para 363(5) and 363(7) of the judgment and thus the petition is accordingly dismissed.

44. The petitioners in CWP No. 8879 of 2018 have sought lapsing of acquisition qua their land which was acquired by the notifications dated 30.06.2005 and 05.07.2006 issued u/s 4 and Section 6 of the Land Acquisition, 1894 for the public purpose, namely, development of sector 38 Sonepat. The award qua the claimed land was announced on 27.06.2008 and as has been apprised to this Court by the Ld. Counsel appearing for respondents that the possession of the

land was taken vide rapat no. 849 dated 27.06.2008. Admittedly, the compensation stands already received by the petitioners, therefore in view of para 363, none of the contingencies prescribed in section 24(2) of the Act of 2013 is fulfilled and thus the petition is hereby dismissed.

45. In **CWP No. 9161 of 2018** the land of the petitioners was acquired vide notification dated 23.01.2001 and 23.02.2002 issued u/s 4 & 6 of the Land Acquisition Act, 1894 followed by the award dated 20.01.2004 for the public purpose namely development of the industrial area in Sankhol. The petitioner has sought the lapsing of the acquisition only on the ground that the possession of the land has not been taken. However, it is the admitted position that the compensation of the claimed land has already been received by the petitioners. Once the compensation already stands paid to the petitioners, in view of the para 363(3) that for seeking lapsing both contingencies as mentioned in section 24(2) of the Act of 2013 must be fulfilled, since the compensation stands paid to the petitioner and the possession stands taken by recording panchnama, none of the conditions are met and thus, the acquisition in question cannot be declared to have lapsed and the petition is hereby dismissed.

46. In **CWP no. 9627 of 2018**, the land was acquired vide notification dated 03.07.1995 and 02.07.1996 issued under section 4 and section 6 of the Land Acquisition Act, 1894 followed by the award dated 29.06.1998 for the public purpose namely, development and utilization of land as commercial, institutional, recreational and residential purpose sector 20-A, Faridabad. The petitioners have prayed for release of their land in view of section 24(2) of the Act of 2013 on the ground that the possession of the land has not been taken and admittedly the compensation has already been taken by the petitioners as pleaded in para 5 of the writ petition. The challenge has also been made to the speaking order rejecting the

claim of the petitioners, the perusal of which shows that the possession of the land of the petitioners was taken vide rapat no. 568 dated 29.06.1998. In view of para 363(7) of the Indore Development Authority (Supra) the due possession of the land stands taken and further it is being the admitted fact that the compensation has already been received by the petitioner, therefore none of the contingencies as prescribed in section 24(2) of the Act are fulfilled and hence the petition is hereby dismissed.

47. In **CWP no. 9810 of 2018** the petitioner has prayed for releasing the land as have been stood lapsed under section 24(2) of the Act of 2013. The land in question was acquired vide notification dated 22.06.2006 and 20.06.2007 issued under section 4 and 6 of the Land Acquisition Act, 1894 for the public purpose namely Development of Industrial Sector 38 Gurugram, followed by the award dated 28.11.2008. As has been apprised by the Ld. Counsel for Respondents that the possession of the land was taken vide rapat no. 302 dated 28.11.2008 and the compensation is lying deposited with LAC, in view thereof both the requirements of section 24(2) remains unfulfilled and thus no lapsing of the acquisition can be sought pursuant to the directions given by the Hon'ble SC in para 363(3) and 363(7) of the judgment . Accordingly, the writ petition is hereby dismissed.

48. In CWP no. 9823 of 2018, the petitioners has sought lapsing of acquisition proceedings initiated vide notification dated 04.03.1983 and 27.02.1986 issued under section 4 and 6 of the land acquisition act 1894 followed by the award dated 23.02.1988 for the public purpose namely development of residential sector 8 Ambala and the possession of the land was taken vide award no. 13 dated 23.02.1988, the copy of which has been produced before this Court. The compensation is lying with the LAC and in view thereof twin requirements as provided under section 24(2) remains unfulfilled pursuant to the direction in para

363(3), 363(5) and 363(7) of the judgment and thus, the petition is hereby dismissed.

49. In CWP no. 9981 of 2018 the petitioner has sought the lapsing of the acquisition for construction of road between Delhi-Rohtak to Najafgarh road, for which the land was acquired vide notification dated 07.03.2002 and 14.03.2002 issued under section 4 and 6 of the Act of 1894, followed by the award dated 4.10.2002. The acquisition was made invoking the provisions of section 17 of the Act of 1894 and the possession stands taken vide award no. 7 dated 4.10.2002. It is further pertinent to mention that the present writ petition has been filed by the tenant and not the landowner himself. . Suffice to mention that the Hon'ble SC in para 337 of the judgment while referring to the 'beneficiaries' as contemplated in proviso to section 24(2) referred them as the landowners recorded so at the time of issuance of notification under section 4 of the Act of 1894, and thus in view thereof neither the claim is maintainable nor does any of the grounds mentioned in section 24(2) stands fulfilled and accordingly the petition is hereby dismissed.

50. At the time of hearing, the petitioner have sought the liberty to approach the authorities under section 101-A of the Act of 2013 as inserted by Haryana Amendment Act; The similar issue has already been dealt with by this Court in CWP no. 22241 of 2016 titled as Raghubir Singh v. State of Haryana and others, wherein this Court has categorically denied grant of any such liberty, by unambiguously mentioning it as against the spirit of the decision of the Hon'ble Supreme Court in Indore Development Authority (Supra). Accordingly, such request is hereby denied.

In view of the discussions made herein, principles laid down by the Hon'ble Supreme Court in Indore Development Authority (Supra), the factual appraisal all the aforesaid petitions and the reasons assigned in terms of the guiding principles, we dismiss all the petitions in the present batch and accordingly the pending applications, if any, stands disposed of in similar terms, and the interim orders hereby stands vacated.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

11.11.2020
ndj