

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11604 OF 2017**

Haribhau Narayan Chikane)
Age : 57 yrs. Occ: Agriculture)
R/at:Kapurhol, Tal.Bhor,)
Dist : Pune)Petitioner

Versus

1. The State of Maharashtra)
2. The Additional Commissioner,)
Pune Division, Pune.)
3. The Sub-Divisional Officer, Bhor,)
Tal. Bhor, Dist.Pune.)
4. The Tahsildar, Bhor,)
Tal.Bhor, Dist. Pune.)
5. Shri Maruti Chilu Jogade)
6. Shri Kisan C. Jogade)
7. Shri Samaji Namdev Jogade)
8. Shri Suresh S. Jogade)
All Nos.5 to 8, Adult, Pune)
Inhabitant, Residing at Village)
Nivi. Taluka Velhe, Dist.Pune.)Respondents

Mr. Avinash Bhaskar Avhad, Advocate for the Petitioner.

Mr. A. I. Patel, Additional GP with Ms. M. S. Bane, AGP for Respondent Nos.1 to 4 – State.

Mr. Aseem Naphade with Ms. Swati Sawant i/b. S. K. Legal and Associates, Advocates for Respondent Nos. 5 to 8.

CORAM

**: R. D. DHANUKA &
S. G. DIGE, JJ.**

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RESERVED ON : 24th NOVEMBER, 2022.
PRONOUNCED ON : 16th DECEMBER, 2022.

Judgment (Per R. D. Dhanuka, J.):

1. Rule. Mr. Patel, learned Additional Government Pleader waives service on behalf of respondent Nos.1 to 4. Mr. Naphade, learned counsel waives service on behalf of respondent Nos.5 to 8. By consent, the Rule is made returnable forthwith.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks a writ of certiorari for quashing and setting-aside the award bearing No.L.A./S.R./B19/99 dated 30th April, 2001 and seeks writ of mandamus to release the petitioner's land from acquisition and for an order and direction against respondents to carry out the necessary corrections in the record of rights about the release of the petitioner's land from acquisition. The petitioner also prays for an order and declaration that the land acquisition proceedings in relation to the petitioner's land bearing Gat No.295 admeasuring 80 Ares of Village Kapurhol, Taluka – Bhore, District – Pune (hereinafter referred to as "writ property") and the lands stand released from acquisition.

3. Some of the relevant facts for the purpose of deciding this petition are as under:

It is the case of the petitioner that the petitioner and other co-owners are the owners of land bearing Gat No.295 of Village Kapurhol, Taluka – Bhore, District – Pune totally admeasuring 2 Hectares and 15 Are. Out of the said land, an area of 1 Hectare and 60 Are is the subject matter of this petition.

4. According to the petitioner, the land bearing Gat No.295 was originally owned by Shri Narayan Genba Chikane and Shri Pandurang Gen Chikane. On 5th May, 1999, a notification under Section 4 of the Land Acquisition Act, 1894 (for short “the Land Acquisition Act”) came to be issued by the Special Land Acquisition Officer in respect of the writ property. Hearing was given to the petitioner on 10th August, 1999 under Section 5-A of the Land Acquisition Act. Notification under Section 6 of the Land Acquisition Act was published in the Government Gazette on 2nd July, 2000. Notification under Section 9(3) and (4) of the Land Acquisition Act was published on 4th October, 2000. On 30th April, 2001, the Special Land Acquisition Officer made an award in respect of the writ property along with several other properties.

5. It is the case of the respondents that on 6th December, 2000, the petitioner had applied to the Office of the Additional Commissioner, Pune, for offering an alternate land Gat No.293 instead of Gat No.295 to be acquired. On 5th July, 2008, the said application filed by the petitioner was rejected by the Additional Commissioner.

6. According to the respondents, the petitioner thereafter made an application under Section 48(1) of the Land Acquisition Act for offering an alternate land. The said application also came to be rejected. According to the respondents, the petitioner did not challenge the said order dated 5th July, 2008 passed by the Additional Commissioner or the order that was passed on the application under Section 48(1) of the Land Acquisition Act.

7. It is the case of the petitioner that petitioner had made representations on 7th October, 2011, 18th April, 2012 and 31st August, 2012 before the authority. The petitioner received a letter from Talathi, Village Kapurhol, Taluka – Bhore, District – Pune on 24th November, 2011, calling upon the petitioner and other co-owners to submit proposal for exchange of land. On 13th January,

2012, the learned Sub-Divisional Officer, Bhore, addressed a letter to the Deputy Collector (Resettlement) and placed the proposal of the petitioner for exchange of land before the learned Deputy Collector. It is the case of the petitioner that the said representation made by the petitioner to the office of Talathi is not decided till date.

8. It is the case of the petitioner that he made a representation to the learned Additional Collector and learned Sub-Divisional Officer on 2nd June, 2016, 2nd November, 2016 and 22nd November, 2016, stating that in view of the dispute between the co-owners of the land bearing Gat No.295, he was ready and willing to handover an area of 80 Are from the land bearing Gat No.293, belonging to the share of the petitioner instead of acquiring an area of 15 Are from the land bearing Gat No.295 of the share of the petitioner. According to the petitioner, the said representation also has not been decided by the Additional Commissioner, Pune.

9. On 14th April, 2017, the petitioner filed this petition *inter alia* praying for various reliefs. The writ petition is resisted by the respondents by filing affidavits.

10. Respondent Nos.5 to 8 claim to be allottees of the writ property under the provisions of Maharashtra Project Affected Persons Rehabilitation Act, 1989 (for short “the Resettlement Act”).

11. Mr. Avinash Avhad, learned counsel for the petitioner, invited our attention to various documents annexed to the writ petition and also to the affidavits-in-reply filed by the respondents. It is submitted that though the Special Land Acquisition Officer had made an award in respect of the writ property as far back on 30th April, 2001, the possession of the land was never taken by the Special Land Acquisition Officer from the petitioner at any point of time. The petitioner continues to be in possession of the writ property till today. He invited our attention to clause 27 of the award and submitted that the award itself would indicate that the Special Land Acquisition Officer had not taken even advance possession under Section 17 of the Land Acquisition Act from the petitioner.

12. Mr. Avhad, learned counsel for the petitioner, invited our attention to the averments made by respondent Nos.2 and 3 in the

affidavit-in-reply dated 10th November, 2022, more particularly, paragraphs 7, 8 and 9 and submitted that even in the affidavit-in-reply though it was alleged that possession was taken by the competent authority from the petitioner, no proof of taking possession including panchnama has been produced by respondent Nos.2 and 3. It is submitted that the petitioner was not served with any notice under Section 12(2) read with Section 16 of the Land Acquisition Act calling upon the petitioner to collect the compensation amount from the competent authority in pursuance of the said award dated 30th April, 2001 as sought to be canvassed in the affidavit-in-reply. Petitioner was not paid compensation at any point of time.

13. It is not the case of respondent Nos.2 and 3 that the amount of compensation was at any point of time tendered to the petitioner as contemplated under Section 31 of the Land Acquisition Act. It is submitted by learned counsel for the petitioner that the writ petition was already filed by the petitioner on 15th April, 2017. The Special Land Acquisition Officer deposited the amount of compensation with the District Court only on 29th September, 2017 i.e. much after filing of this petition by the petitioner.

14. Insofar as alleged acknowledgment of the petitioner on the notice register relied upon by respondent Nos.2 and 3 is concerned, it is submitted by learned counsel for the petitioner that the petitioner did not receive any such notice purported to have been issued under Section 12(2) of the Land Acquisition Act or calling upon the petitioner to collect compensation under the said award passed on 30th April, 2001.

15. Insofar as the mutation entry relied upon by respondent Nos.2 and 3 in the affidavit-in-reply showing the name of respondent Nos.2 and 3 in the said 7/12 extract is concerned, it is submitted that the said entry in the 7/12 extract in the mutation record of the name of respondent Nos.2 and 3, if any on 23rd September, 2011, would not indicate that the petitioner had handed over the possession of the writ property to respondent Nos.2 and 3 or that respondent Nos.2 and 3 were in possession of the writ property.

16. Learned counsel for the petitioner invited our attention to the civil application filed by respondent Nos.5 to 8 and submitted that even according to respondent Nos. 5 to 8 as far as back on

19th May, 2017, measurements of the writ property which was applied by respondent Nos.5 to 8 had not been taken. Respondent Nos. 5 to 8 had made a grievance in respect of such measurements not having been taken by respondent Nos. 2 and 3 till 13th June, 2017.

17. Learned counsel for the petitioner strongly placed reliance on the judgment delivered by the Constitution Bench of the Supreme Court in the case of **Indore Development Authority versus Manoharlal and ors. (2020) 8 SCC 129.** He relied upon paragraphs 117, 134, 135, 203, 208, 244, 245, 246, 247 and 366 of the said judgment in support of his submission that respondent Nos.2 and 3 not having produced any document in support of the plea that possession of the writ property was taken from the petitioner under the provisions of Land Acquisition Act, 1984 or that the compensation for the writ property acquired was ever tendered to the petitioner, the acquisition proceedings has lapsed. He submitted that even the boundary of the plot was not decided by respondent Nos.2 and 3.

18. It is submitted that even the inquest panchanama, which ought to have been produced by respondent Nos.2 and 3 showing

possession having taken from the petitioner, has not been produced. He submitted that it is not the case of the respondents that the Collector was prevented from depositing the amount during the period between 2001 to 2017.

19. Learned counsel for the petitioner placed reliance on the order dated 13th October, 2022, passed by this Court observing that there were no particulars given by respondent Nos.2 and 3 as to when the notice was issued by respondent Nos.2 and 3, before depositing the amount. The statement made by respondent Nos.2 and 3 is not supported by any documents. This Court granted two weeks' time to the learned AGP appearing for respondent Nos.2 and 3 to file an additional affidavit of the Sub-Divisional Officer placing on record the documents in respect of assertion that notice was issued to the petitioner for collecting compensation but the petitioner never came forward to accept the compensation.

20 It is submitted that though the Sub-Divisional Officer filed an affidavit on 10th November, 2022, in pursuance of the said order dated 13th October, 2022, no such documents were produced in support of the plea that the petitioner was tendered with the amount of compensation under the said award, but the petitioner had

refused to accept such compensation.

21. It is submitted by learned counsel for the petitioner that the acquisition proceedings initiated by respondent Nos.2 and 3 had not been concluded. The representation made by the petitioner under Section 48 of the Land Acquisition Act was not allowed by respondent Nos. 2 and 3. Learned counsel invited our attention to the order dated 21st June, 2022, passed by this Court in this writ petition directing respondent Nos.2 and 3 to decide the representations made by the petitioner for exchange of land within four weeks from the date of the said order. The respondent Nos. 2 and 3 did not decide the said representations.

22. Mr. Patel, learned Additional Government Pleader appearing for respondent Nos.1 to 4, on the other hand, invited our attention to the award dated 30th April, 2001 and, in particular, paragraph 27 thereof and submitted that though it was observed in the said award that advance possession was not taken by respondent Nos.1 to 4 from the petitioner in respect of the writ property before making the said award on 30th April, 2001, possession was subsequently taken from the petitioner.

23. Learned Additional Government Pleader submitted that in view of the notification under Section 11 of the said Resettlement Act issued by the State Government, all the prohibitions prescribed under the provisions of the said Resettlement Act regarding the property in question under Section 12(5) of the said Resettlement Act came into effect. It is submitted that the petitioner had filed an application under Section 48(1) of the Land Acquisition Act on 6th December, 2000 for exchange of land which came to be rejected by the Additional Commissioner on 5th July, 2008. The said decision of the Additional Commissioner has not been challenged by the petitioner till date.

24. It is submitted that on 29th December, 2005, the Special Land Acquisition Officer issued a notice under Section 12(2) read with Section 16 of the Land Acquisition Act to the petitioner. He relied upon the register annexed to the affidavit-in-reply and submitted that a relative of the petitioner had accepted the said notice under Section 12(2) of the Land Acquisition Act. The petitioner, thus, cannot be allowed to urge that the amount of compensation payable to the petitioner under the said award dated

30th April, 2001 was not tendered.

25. It is submitted by learned Additional Government Pleader that the name of respondent Nos.2 and 3 had been also recorded in the mutation entry which would clearly indicate that the possession of the writ property was already taken by respondent Nos.2 and 3 from the petitioner. It is submitted that the mutation entry was recorded as far back as on 23rd September, 2011 and 7/12 extract was issued in the name of the Deputy Collector. It is submitted that once notice under Section 12(2) of the Land Acquisition Act is issued, the property stood vested in the State Government. The said writ property has already been allotted by respondent Nos. 1 to 4 in favour of respondent Nos.5 to 8 under the provisions of the said Resettlement Act.

26. It is submitted by learned Additional Government Pleader that there is gross delay on the part of the petitioner in filing this writ petition. It is submitted that though the award was made on 30th April, 2001, the writ petition came to be filed only in the year 2017. In support of this submission, he placed reliance on the following judgments :

- 1. State of Maharashtra versus Digambar (1995) 4 SCC 683;**
- 2. S. Vaidhyanathan versus Government of Tamil Nadu, Rep. by**

- its Secretary and ors. 2018 SCC Online Mad 11643;*
- 3. Banda Development Authority, Banda versus Moti Lal Agarwal and ors. (2011) 5 SCC 394;**
- 4. U. P. Jal Nigam and anr. versus Jaswant Singh and anr. (2006) 11 SCC 464;**
- 5. G. C. Gupta and ors. versus N. K. Pandey and ors. (1988) 1 SCC 316;**
- 6. P. S. Sadasivaswamy versus State of Tamil Nadu (1975) 1 SCC 152;**
- 7. State of Madhya Pradesh and anr. Versus Bhailal Bhai and ors. (1964) 6 SCR 261;**

27. Learned Additional Government Pleader also placed reliance on the Government Resolution dated 26th October, 2010 in support of his submission.

28. Mr. Aseem Naphade, learned counsel for respondent Nos.5 to 8, on the other hand, vehemently urged that the petitioner has not pleaded any specific case on the issue of applicability of Section 24(2) of the Right to Fair Compensation and Transparency in Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "Fair Compensation Act"). He submitted that respondent Nos.1 to 4 have allotted writ property in favour of his clients vide letters of allotment dated 18th October, 2016, 25th October, 2016 and 27th October, 2016.

29. Learned counsel for respondent Nos. 5 to 8 submitted that the petitioner has not explained the delay of four years in filing this writ petition. Though the provisions of the said Fair Compensation Act came into effect on 1st January, 2014, the writ petition came to be filed by the petitioner only in the year 2017. He submitted that the provisions of the Fair Compensation Act does not create any cause of action for filing petition. He invited our attention to the averments made in paragraphs 10 to 13 of the writ petition filed by the petitioner and submitted that the petitioner had admittedly applied for exchange of writ property by another property of the petitioner which would indicate that the petitioner had accepted the acquisition of the writ property.

30. Learned counsel placed reliance on paragraph 366.5 of the judgment of the Supreme Court in **Indore Development Authority (Supra)** and submitted that since the petitioner had not collected the amount of compensation or had refused to accept the compensation, the petitioner cannot be allowed to now urge that the land acquisition proceedings initiated by respondent Nos. 1 to 4 in respect of the writ property under the provisions of the Land Acquisition Act has lapsed. He submitted that the request made by

the petitioner for exchange of writ property by another property also would clearly indicate that the petitioner wanted to retain the writ property and that the petitioner had not accepted the compensation.

31. It is submitted that the Supreme Court in the judgment delivered in the case of **Indore Development Authority (Supra)** does not say that taking of a physical possession by respondent Nos.1 to 4 was necessary. He submitted that the petitioner has not challenged the allotment of the writ property in favour of respondent Nos.5 to 8 under the provisions of the Resettlement Act in this petition.

32. Upon raising a query by this Court, whether respondent Nos. 5 to 8 have been put in physical possession or symbolic possession of the writ property by respondent Nos. 1 to 4 in furtherance of the letters of allotment issued in their favour by respondent Nos.1 to 4, Mr. Naphade, learned counsel for respondent Nos.5 to 8 fairly stated that his clients are neither placed in physical possession of the writ property nor in symbolic possession. He also stated that his clients did not apply for recording their names in the mutation entry.

33. Learned counsel admitted that on the records of this proceedings, he did not found any inquest panchanama showing the possession of writ property being taken by respondent Nos.1 to 4 from the petitioner or that any application was produced by the State Government to show that the application for mutation entry was made by respondent Nos. 1 to 4 to record the name of the Deputy Collector in respect of the writ property on the basis of physical possession or symbolic possession of the writ property based on any inquest panchanama or on the basis of any possession receipt.

34. Mr. Avhad, learned counsel for the petitioner, in his rejoinder argument, invited our attention to the averments made by the petitioner in paragraph 8 of the writ petition and submitted that it is a specific case of the petitioner that neither the petitioner nor the other co-owners have received the amount of compensation, nor has the Government withdrawn the possession from the petitioner and the co-owners till today. He also invited our attention to prayer clause (c) of the petition and submitted that the petitioner has specifically sought a declaration that the acquisition proceedings in

respect of the writ property have lapsed and the lands stand released from acquisition.

35. Learned counsel for the petitioner submitted that in paragraphs 14 and 15 of the writ petition, the petitioner has explained the delay, if any, in filing this petition. It is submitted by learned counsel for the petitioner that the representation made by the petitioner for exchange of writ property with another property of the petitioner is permissible under the provisions of the said Resettlement Act.

REASONS AND CONCLUSIONS:

36. The short question that arises for the consideration of this Court is whether the acquisition proceedings initiated in respect of the writ property stood lapsed under Section 24(2) of the Fair Compensation Act in view of respondent Nos.1 to 4 having allegedly failed to take possession of the writ property or to pay compensation to the petitioner within the time prescribed under Section 24(2) of the said Act or not?

37. Perusal of the award made by the Special Land

Acquisition Officer on 30th April, 2001 and, more particularly, clause 27 thereof clearly indicates that prior to the date of the said award, advance possession under Section 17 of the Land Acquisition Act was not taken from the petitioner.

38. Next question that arises for the consideration is whether the possession of the writ property was at all taken from the petitioner after making of the said award on 30th April, 2001 by respondent Nos.1 to 4?

39. Before we deal with the issue whether the possession was taken from the petitioner or not within the time prescribed, we shall refer to the principles laid down by the Constitution Bench of the Supreme Court in the case of **Indore Development Authority (Supra)** on this aspect. It is held by the Supreme Court that Section 24(2) carves out an exception to Section 24 (1)(b), where the award has been passed, and the proceedings are pending, but in such proceedings, physical possession of the land has not been taken, or compensation has not been paid, proceedings shall lapse. There are twin requirements for the lapse. Firstly, the physical possession has not been taken and, secondly, the compensation has not been paid.

40. It has been held that, in case, the possession has been taken but compensation has not been paid, there is no lapse of the proceedings. Also it is held that, in case, the compensation has been paid but possession has not been taken, there is no lapse. It is further held that it is the clear intent of the 2013 Act that the provisions of Section 24(2) shall apply to the proceedings which are pending as on the date, on which, the 2013 Act, has been brought into force and it does not apply to the concluded proceedings.

41. It is held by the Supreme Court that under Section 16 of the Land Acquisition Act, the possession of the land may be taken by the State Government after passing of the award and thereupon the land vests free of encumbrance in the State Government. The word “possession” has been used in the Land Acquisition Act whereas under Section 24(2) of the Fair Compensation Act, the expression “physical possession” is used.

42 The Supreme Court in the said judgment reiterated the principles laid down in the case of **Tamil Nadu Housing Board versus A. Vishwam (dead) by legal heirs.(1996) 8 SCC 259**, in which, it was held that the one of the accepted modes of taking

possession of the acquired land is recording of a memorandum or Panchnama by the LAO in the presence of witnesses winged by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land.

43. The conclusion drawn by the Supreme Court in the said judgment in case of Indore Development Authority (Supra) in paragraphs 366.1 to 366.9 are reproduced herein below :

“366.1. 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 2013 Act, there is no lapse of proceedings. Compensation has to be determined under the provisions of 2013 Act.

366.2. 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 2013 Act under the 1894 Act as if it has not been repealed.

366.3. 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 2013 Act 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.

366.4. *The expression 'paid' in the main part of Section 24(2) of the 2013 Act 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 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation under Section 31 of the Land Acquisition Act, 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 2013 Act has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the 1894 Act.*

366.5. *In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, 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 2013 Act.*

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

366.7. *The mode of taking possession under the 1894 Act 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 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).*

366.8. *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 2013 Act 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.*

366.9. *Section 24(2) of the 2013 Act 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.”*

44. The provisions of the Land Acquisition Act, 1894 which are relevant for deciding the matter are reproduced hereinbelow:

“12. Award of Collector when to be final. - (1)....

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

...

***16.Power to take possession. -** When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.*

....

***31. Payment of compensation or deposit of same in Court. - (1)** On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.*

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.”

45. The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 relevant for the purpose of deciding this petition reads as under :

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.

Provided further that, in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a Tribunal for taking possession of such period where possession has been taken but the compensation is lying deposited in a court or in a designated account maintained for this purpose on account of refusal or not coming forward for receiving compensation despite receipt of such notice under sub-section (2) of section 12 of the Land Acquisition Act, 1894, shall be excluded. Also if the said land is mutated within three years after passing the award in the name of acquiring body, it shall be deemed that the possession of the land has been taken.”

46. After considering the principles laid down by the Supreme Court in the case of **Indore Development Authority (Supra)** and

the aspect as to when it could be said that the possession of the land under acquisition had been taken by the Special Land Acquisition Officer or the competent authority, as the case may be, we shall now consider as to whether in the facts of this case, respondent Nos.1 to 4 has produced any material before this Court to show that the possession of the land under acquisition was taken by respondent Nos. 1 to 4 from the petitioner or not.

47. The award dated 30th April, 2001, relied upon by all the parties clearly indicates that no advance possession under Section 17 of the Land Acquisition Act was taken by the Special Land Acquisition Officer prior to the date of award.

48. Insofar as the issue of possession is concerned, respondent Nos.1 to 4 have only placed reliance on the mutation entry dated 23rd September, 2011, annexed to the additional affidavit-in-reply filed by respondent Nos.2 and 3. It indicates that the name of the Deputy Collector was inserted in pursuance of the order passed by the Sub-Divisional Officer and the name of the petitioner and the other co-owners came to be deleted. It is not mentioned in the said mutation entry that the Deputy Collector was in possession of the writ property.

49. This Court repeatedly called upon the learned AGP to produce the application made, if any, by the Special Land Acquisition Officer or the Deputy Collector to record the name of the Deputy Collector in the 7/12 extract or mutation entry based on physical possession or even symbolic possession in respect of the said property, the learned AGP could not produce any such application for the perusal of this Court. Respondent Nos.1 to 4 even could not produce any inquest panchanama for the perusal of this Court in support of their plea that at least symbolic possession of the writ property was taken by them from the petitioner.

50. In our view, mere entry in the mutation record in the name of Deputy Collector in respect of the writ property based on the order passed by the Sub-Divisional Officer would not establish the plea of respondent Nos.1 to 4 that physical possession or symbolic possession supported by inquest panchanama was taken. Be that as it may, under Section 157 of the Maharashtra Land Revenue Code, 1966, the entry in the register of mutation is not conclusive. Be that as it may, the entry in mutation will not conclusively prove the possession of the party whose name is entered in to the mutation records.

51. In view of respondent Nos. 1 to 4, not having produced at least inquest panchanama before this Court or the application made by respondent Nos.1 to 4, if any, to the revenue authorities to enter the name of the Deputy Collector in the record of rights based on any possession receipt or inquest panchanama, we are not inclined to accept the submission made by respondent Nos.1 to 4 that the physical possession or even symbolic possession of the writ property from the petitioner was taken at any point of time till date.

52. Mr. Naphade, learned counsel for respondent Nos.5 to 8, fairly stated on instructions that his clients were not placed even in symbolic possession of the writ property in pursuance of the letters of allotment issued in favour of his clients under the provisions of the said Resettlement Act at any point of time. On the contrary, his clients were making representations for taking measurements of the writ property before placing his clients in possession of the writ property, but even measurement was not carried out.

53. On the principles laid down by the Supreme Court in the case of *Indore Development Authority (Supra)* that the deemed

lapse of land acquisition proceedings under Section 24(2) of the Fair Compensation Act takes place when due to inaction of the authorities for 5 years or more, prior to the commencement of the said Fair Compensation Act, the possession of the land not having been taken nor compensation has been paid within the time prescribed, the acquisition proceeding stood lapsed in this case.

54. Mr. A. I. Patel, Additional Government Pleader for respondent Nos.1 to 4 could not controvert the statement made by Mr. Aseem Naphade, learned counsel for respondent Nos.5 to 8 that his clients were not put in physical possession or even symbolic possession by respondent Nos.1 to 4 in respect of the writ property.

55. According to respondent Nos.1 to 4, the relative of the petitioner had acknowledged the receipt of notice under Section 12(2) of the Land Acquisition Act on 29th December, 2005. Learned AGP could not produce any copy of the said notice alleged to have been received by the petitioner from the Special Land Acquisition Officer. Under Section 12(2) of the Land Acquisition Act, the Collector is required to give immediate notice of his award to such persons interested as are not present personally or by their representatives when the award is made. Respondent Nos. 1 to 4

having not produced copy of any such notice though sufficient opportunities have been granted by this Court, it is not possible to accept the submission of learned Additional Government Pleader for respondent Nos.1 to 4 that the petitioner was called upon to collect compensation in respect of the writ property under the said award dated 30th April, 2001. We shall now consider the issue raised by the petitioner that even compensation was not paid to the petitioner or even tendered at any point of time.

56. The award was admittedly made on 30th April, 2001. Respondent Nos. 1 to 4 have placed reliance on alleged acknowledgment of the petitioner on the register dated 29th December, 2005. The said document, which is relied upon by respondent Nos.1 to 4 in support of the submission that the amount of compensation has been deposited by respondent Nos. 1 to 4, indicates that the said amount was deposited during the pendency of this writ petition i.e. after more than 16 years of the date of award and after 11 years from the date of alleged notice under Section 12(1) of the Land Acquisition Act.

57. Perusal of Section 31 of the Land Acquisition Act indicates that, on making an award under Section 11, the Collector is under

an obligation to tender payment of compensation awarded to the persons entitled thereto, and accordingly, shall pay to them unless prevented by one or more of the contingencies mentioned in Section 31(2) of the Land Acquisition Act. Section 31(2) of the Land Acquisition Act provides that if person entitled to claim compensation shall not consent to receive it, or if there is no person competent to alienate the land, or if there is any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of compensation in the Court to which a reference under Section 18 would be submitted.

58. In this case, there is no material produced by respondent Nos.1 to 4 to show that the petitioner had refused to accept the compensation upon tendering of the such compensation by respondent Nos. 1 to 4 to the petitioner or that there was any dispute about the title of the petitioner to receive such compensation or as to the apportionment of such compensation. Respondent Nos. 1 to 4 deposited the said amount of compensation under Section 31(2) of the Land Acquisition Act during the pendency of this writ petition.

59. The Supreme Court, in the case of **Indore Development**

Authority (Supra), has held that in case a person has been tendered compensation as provided under Section 31 of the Land Acquisition Act, it is not open for him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in the Court. His obligation to pay has been completed by tendering the amount under Section 31(1). In this case, the respondents have failed to prove that the payment of compensation was tendered by respondent Nos.1 to 4 in favour of the petitioner or to the petitioner at any point of time.

60. The principles laid down by the Supreme Court in case of **Indore Development Authority (Supra)** and, more particularly, as to when the acquisition proceedings under Section 24(2) of the Fair Compensation Act would lapse, will apply to the facts of this case.

61. Admittedly, the award was made by the Special Land Acquisition Officer in this case on 30th April, 2001 i.e. much prior to the expiry of five years or more prior to the commencement of the Fair Compensation Act i.e. 1st January, 2014. In this case, neither the possession of the land has been taken from the petitioner, nor any compensation has been paid or tendered within the time

prescribed, the acquisition proceedings initiated by respondent Nos. 1 to 4 in respect of the writ property is deemed to have been lapsed and the petitioner becomes entitled to declaration that the writ property stands released from acquisition and for consequential reliefs.

62. In our view, since the land acquisition proceedings were not concluded prior to 1st January, 2014 in this case, the acquisition proceedings in this case, would be governed by Fair Compensation Act and more particularly under Section 24(2) of the said Act.

63. Insofar as the judgments relied upon by Mr. Patel, learned Additional Government Pleader in support of his submission that there was delay on the part of the petitioner in filing this petition and thus, this Court shall not exercise its discretionary powers under Article 226 of the Constitution of India in this petition while entertaining the petition is concerned, there is no dispute about the proposition of law laid down by the Supreme Court in the judgments relied upon by learned Additional Government Pleader. However, in the facts of this case, respondent Nos. 1 to 4 has neither offered any compensation, nor had taken possession in respect of the writ property and in view of the fact that the petitioner had exercised his

right/remedy available under Section 48 of the Land Acquisition Act, in our view, there is no delay or, in any event, substantive delay in filing this petition as sought to be canvassed by learned counsel for the respondents. Writ petition cannot be dismissed on this ground. Be that as it may, the petitioner has sufficiently explained the alleged delay in the said petition.

64. We, accordingly, pass the following order :

(i) The writ petition is allowed in terms of prayer clauses

(b) and (c) which are extracted as under :

“(b) This Hon’ble Court be pleased to quash and set-aside the award bearing No.L.A./S.R./B19/99 dated 30/4/2001 and release the petitioner’s land from acquisition and be further pleased to direct the respondents to carry out the necessary corrections in the record of rights about the release of the petitioner’s land from acquisition.

(c) This Hon’ble Court be pleased to issue a Writ, Order or direction thereby holding that the land acquisition proceedings in relation to the petitioners land bearing Gat No.295 admeasuring 80R’s of Village Kapurhol,

Taluka Bhore, District Pune, have lapsed and the lands stands released from acquisition.”

(ii) Respondent Nos.1 to 4 shall make an endeavour to allot suitable land to respondent Nos.5 to 8 in pursuance of the letters of allotment issued under the provisions of the said Resettlement Act subject to their eligibility expeditiously.

(iii) Rule is made absolute in the aforesaid terms. There shall be no orders as to costs.

(iv) Parties to act upon the authenticated copy of this order.

(S. G. DIGE, J.)

(R. D. DHANUKA, J.)