IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CM No. 2871-2023 in/and

Civil Writ Petition No. 1**0947 of 2019** (O&M)

Date of Decision: 21.07.2023

Tasvir Singh and others …..Petitioners

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. S.P.Khatri, Advocate, for the petitioners.

Mr. Ankur Mittal, Addl. Advocate General, Haryana with
Mr. Saurabh Mago, Deputy Advocate General, Haryana,
Ms. Kushaldeep Kaur, Advocate and
Mr. Shivam Garg, Advocate, for the respondents.

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RAVI SHANKER JHA, CHIEF JUSTICE

CM No. 2871 of 2023

The instant petition came to be dismissed for want of prosecution vide order dated 23.01.2023. The present application has been filed on behalf of the petitioners seeking restoration of the writ petition. For the reasons set out in the application, the same is allowed and the writ petition is restored to its original number. Main case is taken up for hearing on board today itself and the arguments of the respective parties have been heard with respect to the main petition.

MAIN PETITION

1. The petitioners have approached this Court by filing the instant writ petition praying for quashing of the notifications dated 18.10.2002 and 08.09.2003 issued under Sections 4 and Section 6 of the Land Acquisition Act, 1894 (hereinafter referred as "Act of 1894") respectively, followed by

the award dated 05.09.2005*, inter-alia*, on the ground that acquisition proceedings have lapsed under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation & Resettlement Act, 2013 (hereinafter referred as "Act of 2013") as neither the petitioners have received the amount of compensation awarded by the Collector nor it was deposited in the Court and possession of the acquired land is still with the petitioners.

2. The petitioners claimed to be owners in possession of 280 sq. yards of land comprised in Killa no. 12//9 (8-0) and 12//26 (0-11) and further owners to the extent of their respective shares in Killa no. 12//13(4-0), 18/1 (0-17), 18/2 (1-13), 23 (4-0) total measuring 10 Kanal 10 Marlas situated within the revenue estate of Village Sehjanpur, Tehsil and District Sonepat.

3. As regards the prayer of seeking lapsing of acquisition proceedings under Section 24(2) of Act of 2013, learned counsel for the petitioners fairly concedes that the said prayer is squarely covered against them in terms of the ***Indore Development Authority v. Manoharlal and others (2020) 8 SCC 129***. However, he asserts that there is another plea which the petitioners would like to press as regards to the "*nullity of award*" on account of non-payment of compensation amount.

4. Learned counsel for the petitioners further contends that even though the award was announced on 05.09.2005, but no compensation amount was awarded to the land owners up to 12.07.2007 on account of the fact that the award statement and kabja vasool were not complete and therefore, the Land Acquisition Collector was not in a position to offer any amount to the land owners even after two years from the date of award. In this regard, the petitioners have placed reliance on a letter dated 12.07.2007

written by Land Acquisition Collector, Rohtak, which is appended with the petition as Annexure P-4. Based upon this, learned counsel for the petitioners has contended that the award itself was illegal, non-est in the eyes of law and thus, was a nullity as it was announced without tendering of compensation amount required in accordance with Section 31 of the Land Acquisition Act, 1894. As per the petitioners, the contention of the earlier award being a nullity stands fortified from the fact that the State Government had announced the revised award on 05.06.2015, thereby assessing compensation in accordance with the provisions of Act of 2013. In sum and substance, the contention raised by the learned counsel for the petitioners is that once award itself was a nullity on account of non-compliance of the statutory requirement of section 31 of Land Acquisition Act, 1894, therefore, acquisition proceedings cannot be said to have validly culminated in accordance with law.

5. Even though the petitioners have sought to challenge the award dated 05.09.2005 by terming it to be a nullity, it is pertinent to mention that for all these years, the petitioners did not even plead so and the petition simply got adjourned awaiting the decision of the Apex Court as regards the applicability of Section 24(2) of Act of 2013. As a result of which the instant petition remained pending in this Court awaiting the decision of the Supreme Court of India as regards the interpretation and applicability of Section 24 (2) of the Act of 2013 which came to be decided by a Constitution Bench of the Apex Court in ***Indore Development Authority Vs. Manoharlal and others (2020) 8 SCC 129*** and it was thereafter that the instant petition was taken up for hearing.

6. Controverting the pleas raised by the petitioners, a short reply of the Land Acquisition Collector, Urban Estate Department, Rohtak was filed after the pronouncement of the judgment in ***Indore Development Authority (supra)***. Placing reliance on the same, Mr. Ankur Mittal, learned Additional Advocate General, Haryana has contended that the land claimed in the petition along with other lands was acquired by the State of Haryana through Department of Urban Estates vide notifications dated 18.10.2002 and 08.09.2003 issued under Sections 4 and Section 6 of the Land Acquisition Act, 1894; followed by the award dated 05.09.2005 for the public purpose namely, development and utilization of land as residential, institutional and commercial Sector – 16, Sonepat. Neither any objections were filed under Section 5-A of Act of 1894 nor there was any construction existing on the land claimed in the petition as it was lying completely vacant. After conclusion of the acquisition proceedings and announcement of the award dated 05.09.2005, the possession of the land in question was taken by recording *rapat rojnamcha* No. 20 dated 05.09.2005 which implies that due possession was taken and the land stood vested in the State free from all encumbrances. The compensation amount qua the land in question alongwith other acquired land was duly tendered at the time of announcement of award and was made available to the landowners.

7. Learned State counsel further submits that even though in the head note of the petition, it has been so mentioned by the petitioners that neither the compensation amount was paid nor was deposited in the Court and has sought to lay challenge to the award by terming it as a nullity, however, fact of the matter is that the petitioners have already received the amount of original award dated 05.09.2005 except for Khasra no. 12//26

(0-11). Once the petitioners have received the amount qua majority of the landholding, it does not leave any spec of doubt that the compensation was duly tendered and was made available for disbursement to the landowners. In such an eventuality, the argument being canvassed by the petitioners that the award is nullity on account of non-payment of the compensation amount or depositing it in Reference Court falls flat.

8. Learned State counsel further argued that validity of award is to be seen only against the touchstone of Sections 11 and 11-A of Act of 1894 which primarily would include two aspects i.e., award is announced within 2 years from the last date of publication of declaration under Section 6 of Act of 1894 and the award was announced with approval of the State Government. Validity of award under section 11 of Act of 1894 is not dependent on Section 31 of Act of 1894 which postulates about the manner in which the compensation amount, pursuant to announcement of award is to be paid or deposited in the Court. He places reliance on the observations made by the Supreme Court of India in the case of ***Indore Development Authority v. Manoharlal (Supra)*** to contend that stage of Section 31 i.e., Payment of Compensation under Act of 1894 comes only after the passing of award under Section 11 of Act of 1894, except in the case of invocation of urgency clause under section 17 of Act of 1894, where 80% of estimated compensation amount has to be tendered and paid before taking possession of the land.

9. As per Section 31(1), the Collector has to tender payment of the compensation amount awarded to the persons interested and shall pay such amount unless he is prevented from doing so, for any of three contingencies provided under Sub-Section (2) of Section 31 in which case he

has to deposit the amount of compensation in the Court. The three contingencies are (i) refusal to receive the amount of compensation, (ii) if there is no person competent to alienate the land; (iii) if there is any dispute as to the title to receive the compensation or if there is dispute as to the apportionment. The effect of non-compliance of Section 31 is envisaged in Section 34 of Act of 1894. It deals with a situation where any of the obligations under Section 31 are 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 @ 9% per annum from the time of taking possession until it is paid or deposited and after one year from the date on which possession is taken; interest payable shall be @ 15% per annum. Thus, as per the Scheme of the Act of 1894, when the award is announced under Section 11, thereafter the possession is taken under Section 16, the land vests in the State. At this stage, the announcement of the award and taking of possession is not dependent on the payment of compensation; therefore, the question of compliance of Section 31 of the Act of 1894 does not arise at all. The only consequence of non-compliance of Section 31 is provided under Section 34 of Act of 1894 which can by no stretch of imagination, would relate back to the validity of the award announced under Section 11 of the Act of 1894. Therefore, he prays for rejection of the plea taken by the the petitioners as regards the award being nullity as misconceived and clearly against the scheme of the Act of 1894 itself.

10. As regards the aspect of compensation, learned State counsel submits that pursuant to the announcement of the award on 05.09.2005, the compensation amount was duly tendered and was made available to the

landowners. He has further stated that earlier the award was announced on 05.09.2005 @ Rs. 12,50,000/- per acre. However, since there was a spurt of litigations seeking lapsing of acquisition proceedings under Section 24 (2) of the Act of 2013, only 31.11% of amount of compensation was disbursed among the landowners and as per the law prevalent at that time, the word '*paid*' used in Section 24(2) of the Act of 2013 was interpreted to mean actual payment or deposited in the Court; in order to save the acquisition proceedings from lapsing. The decision was taken by the State Government to pay compensation in accordance with the provisions relating to assessment of compensation of Act of 2013, qua which the directions were also issued by this Hon'ble Court vide order dated 26.05.2014 passed in CWP No. 8052 of 2009. Accordingly, the additional award was announced on 05.06.2015 for the entire acquired land @ Rs. 414/- per square yard as fixed on 03.06.2015 based upon the assessment made by the Court of learned Additional District Judge in reference cases under Section 18 of the Land Acquisition Act, 1894 including 100% solatium multiplier factor and 12% increase in the market value from the actual date of notification under Section 4 of the Act of 1894 till the assessment of compensation as per the Act of 2013. The total amount of the compensation of the additional award i.e., Rs. 1,78,92,06,315/- was also tendered, out of which Rs. 57,25,46,020/- has been disbursed to the land owners. The petitioners are at liberty to receive the compensation amount. No fault can be attributed to the State agencies for non-payment of compensation as they have fulfilled their obligation to pay the compensation amount after tendering the same. He submits that this aspect is also covered by the decision of the Apex Court in ***Indore Development Authority (Supra)*** wherein it was held that the "tender" of compensation is sufficient discharge of the obligation to pay compensation and actual payment or deposit in the Court is not required.

11. In view of the afore-stated facts and placing reliance on the ratio laid down by the Apex Court in ***Indore Development Authority Vs. Manoharlal and others (supra)***, learned Additional Advocate General has contended that none of the grounds seeking lapsing of acquisition proceedings as required under Section 24(2) of the Act of 2013 are fulfilled, as the possession of the land stands duly taken and the compensation amount has also been tendered, besides the land owners are being paid amount assessed in accordance with the provisions of Act of 2013 even though the award under Section 11 of the Act of 1894 was announced way back on 05.09.2005. For declaring the acquisition proceedings to have been lapsed, it is incumbent upon the landowners to show that both the contingencies prescribed in section 24(2) of Act of 2013 i.e. "non-payment of compensation" and "non-taking of possession" co-exist. If one of the contingencies remains unfulfilled, there can be no declaration as regards the lapsing of acquisition proceedings. Since in the case at hand the possession of the land in question stands taken and the compensation also stands tendered, there can be no declaration as to lapsing of acquisition proceedings as none of the contingencies as prescribed in section 24(2) of Act of 2013 is fulfilled.

12. We have heard the arguments made by learned counsel for the respective parties at length. Even though learned counsel for the petitioners has conceded that the matter is covered against the petitioners as regards the plea of lapsing of acquisition proceedings under section 24(2) of Act of 2013 in view of the judgment of the Apex Court rendered in ***Indore***

Development Authority (supra). However, since replies were filed long back and the learned counsel appearing for the State has asserted all claims, we deem it appropriate to deal with issue of lapsing as well, besides considering the issue as to whether non-compliance of the provisions of section 31 of Act of 1894 would render an award nullity.

13. The interpretation of Section 24(2) of Act of 2013 had remained subject matter of controversy for quite a while, until it was settled by a Constitution Bench of the Apex Court in ***Indore Development Authority (Supra).*** The principles of interpreting the provision were summarized in the penultimate paragraph of the judgment cited supra in the manner as follows: -

> *"…**366**. In view of the aforesaid discussion, we answer the questions as under:*
>
> *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 the 2013 Act, there is no lapse of proceedings. Compensation has to be determined under the provisions of the 2013 Act.*
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> *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.*
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> *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 the proviso to Section 24(2) in case it has*

not been deposited with respect to majority of landholdings 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). The landowners 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 the authority concerned 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 2013 Act 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…"*

14. The sum and substance of the interpretation of Section 24 (2) of the Act of 2013 by the Apex Court is that both the contingencies provided i.e., about the physical possession and the payment of compensation are to be fulfilled, meaning thereby, if either of the conditions is not satisfied, there would be no lapsing. As far as the obligation to make the payment in lieu of the land acquired is concerned, it has been clarified that such obligation to pay is complete by tendering the compensation which would mean that the compensation amount was made available to the land owner and if the same has not been accepted, it will not be available for the land owner to claim that the compensation has not been paid. Similarly, word "*deposit*" has been interpreted to mean depositing with the Land Acquisition Collector or the treasury or the Reference Court. Drawing of panchnama has been considered to be a valid proof of taking physical possession and once the land stands vested in the State, there is no divesting provided under Section 24 (2) of the Act of 2013. The Apex Court has further clarified that the period for which any interim order was in operation will be excluded while computing the gap period of five years. Similarly, it has been clarified that Section 24 (2) of the Act of 2013 does not give rise to a new cause of action to question the legality of concluded proceedings of land acquisition as it applies to only those cases wherein the proceedings were pending on the date of enforcement of Act of 2013.

15. Testing the factual matrix of the case against the touchstone of the principles laid down by the Apex Court, it transpires that the possession of the land claimed in the petition was taken by recording rapat No. 20 dated 05.09.2005. The Apex Court in ***Indore Development Authority (Supra)*** has categorically held that recording of panchnama is a valid mode of taking possession of the land and amounts to taking of physical possession of the land. Once the possession of the land is taken, it vests in the State free from all encumbrances and any person who retains the possession of the land thereafter is a trespasser. The reference in this regard is made to the following paragraphs from the judgment:-

> *"...In re Issue 4 : Mode of taking possession under the 1894 Act*
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> *246. Section 16 of the 1894 Act 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 1894 Act, whereas in Section 24(2) of the 2013 Act, the expression "physical possession" is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2) requires actual physical possession to be taken, not the possession in any other form.* ***When the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances****.*
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> *247. The question which arises whether there is any difference between taking possession under the 1894 Act and the expression "physical possession" used in Section 24(2).* ***As a matter of fact, what was contemplated under the 1894 Act, by taking the possession meant only physical possession of the land. Taking over the possession under the 2013 Act always amounted to taking over physical possession of the land. When the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land****. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is*

> *used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof.* ***Thereafter, if any further retaining of land or any re-entry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc. is deemed to be the trespasser on land which is 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."

16. With respect to the status of compensation, there are categorical pleadings in the reply that the amount of compensation for the entire awarded land was made available to all the landowners. Not only this, original amount of award has also been received by the petitioners except for the land comprised in Khasra No. 12//26 (0-11), thus, the compensation was not only tendered but was also paid to the petitioners. In the case at hand, even though there was no requirement in law to announce additional award for paying the compensation in terms of the Act of 2013, yet the State Government in its wisdom took a decision, which is so recorded in the direction issued by this Court in order dated 26.05.2015 passed in Civil Writ Petition No. 8052 of 2009, to announce an additional award by making the assessment of compensation, thereby applying the provisions of determination of compensation of the Act of 2013 i.e. Sections 26 to 30 of the Act. This appears to have happened owing to the perplexity prevailing as regards the interpretation of the proviso to Section 24(2) of the Act of 2013, because as stated before us, the actual payment made to the land owner on the date of coming into effect of 2013 Act, was approximately 31.11% and thus, to save the land in question so as to achieve the public purpose, the Government announced the additional award which in any eventuality will relate back to the original award having been announced on 05.09.2005, as the law contemplates drawn of only one award which had been validly done

in the case at hand in the year 2005. Seeing the same from the perspective of interpretation made by the Indore Development Authority (supra), the State was not under any obligation to announce the additional award but it having done so with the apparent intent to save the acquisition and the same being not an issue before us, we do not want to deliberate any further as regards this aspect except to say that this step of the State Government conclusively indicates the essentiality of the land in question so as to achieve the public purpose for which it was sought to be acquired.

17. It is the stand of the State that the amount due to the petitioners as per additional award is available for disbursement and the petitioners are at liberty to receive the same, this shows that the compensation amount was duly tendered, and the obligation to the State to pay the compensation stands duly discharged. In view of the exposition in ***Indore Development Authority (supra)***, the obligation of the State to pay the compensation is discharged if the amount of compensation is tendered which has been interpreted to mean that the amount was made available to the land owners as observed in Para 205 which is reproduced here in below:-

> *'....205. 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.* ***<u>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</u>****. 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….'*

18. As far as the reliance on Annexure P-9 is concerned, it would have no bearing in view of the fact that it was merely an inter-departmental communication to send the man power for disbursing compensation. It would in no manner imply that the compensation was not tendered and deposited with the Land Acquisition Collector. In view of the said fact, second contingency for claiming the lapsing of acquisition proceedings is also not available to the petitioners.

19. The Apex Court in ***Indore Development Authority v. Manoharlal (supra)*** has clearly observed that for deemed lapsing of acquisition proceedings under Section 24 (2) of the Act of 2013, both the conditions i.e., payment of compensation and taking of possession must not be fulfilled i.e., if either of the condition is fulfilled, the lapsing cannot happen. The Apex Court has observed that word *"or"* occurring in Section 24 (2) of the Act of 2013 must be read as "*and/nor*". Relevant paras from the judgment are reproduced here in below:-

> *'…100. In this Court's considered view, as regards the collation of the words used in Section 24(2), two negative conditions have been prescribed. Thus, even if one condition is satisfied, there is no lapse, and this logically flows from the Act of 1894 read with the provisions of Section 24 of the Act of*

2013. Any other interpretation would entail illogical results. That apart, if the rule of interpretation with respect to two negative conditions qualified by "or" is used, then "or" should be read as "nor" or "and".

xxxx xxxx xxxx xxxx

102. In M/s. Ranchhoddas Atmaram and Anr. v. The Union of India and Ors.77, a Constitution Bench of this Court observed that if there are two negative conditions, the expression "or" has to be read as conjunctive and conditions of both the clauses must be fulfilled. It was observed:

"(13) It is clear that if the words form an affirmative sentence, then the condition of one of the clauses only need be fulfilled. In such a case, "or" really means "either" "or." In the Shorter Oxford Dictionary one of the meanings of the word "or" is given as "A particle co-ordinating two (or more) words, phrases or clauses between which there is an alternative." It is also there stated, "The alternative expressed by "or" is emphasised by prefixing the first member or adding after the last, the associated adv. EITHER." So, even without "either," "or" alone creates an alternative. If, therefore, the sentence before us is an affirmative one, then we get two alternatives, any one of which may be chosen without the other being considered at all. In such a case it must be held that a penalty exceeding Rs. 1,000 can be imposed.

(14) If, however, the sentence is a negative one, then the position becomes different. The word "or" between the two clauses would then spread the negative influence over the clause following it. This rule of grammar is not in dispute. In 1such a case the conditions of both the clauses must be fulfilled and the result would be that the penalty that can be imposed can never exceed Rs. 1,000.'

(15) The question then really comes to this: Is the sentence before us a negative or an affirmative one? It seems to us that the sentence is an affirmative sentence. The substance of the sentence is that a certain person shall be liable to a penalty. Thatis a positive concept. The sentence is therefore not negative in its import."

(emphasis supplied)

<u>Thus, for lapse of acquisition proceedings initiated under the old law, under Section 24(2) if both steps have not been taken, i.e., neither physical possession is taken, nor compensation is paid, the land acquisition proceedings lapse</u>…'

20. Since the possession of the acquired land stands duly taken and the compensation amount has also been tendered and received (original amount of compensation) for majority of land holdings, we hereby hold that none of the conditions prescribed in Section 24(2) of the Act of 2013 are fulfilled, therefore, the said provision cannot be relied upon by the petitioners to claim lapsing of the acquisition proceedings.

21. Even though the petitioners all throughout maintained a stand that the present writ petition is only limited and confined to applicability of Section 24(2) of Act of 2013, yet they have now sought to raise additional plea as regards the *"nullity of award"* on account of non-payment of compensation. It is incomprehensible that plea sought to be raised by the petitioners runs counter to the facts of the case as the petitioners have received the original amount of compensation awarded in the year 2005 for majority of land. Once it is so, aforesaid plea of the petitioners falls flat and shows that they are only making an attempt to keep litigation alive on one ground or the other. It is pertinent to mention that even otherwise such plea cannot be entertained at this stage because if the petitioners were aggrieved of the said fact, they should have approached this Court at the time when the award was announced in the year 2005, whereas they are approaching in 2019 anchoring their claim entirely on Section 24(2) of Act of 2013, which is also barred by delay and laches as cause of action to claim lapsing also had arisen five years back on 01.01.2014. Therefore, observing from every angle, the instant petition deserves dismissal.

22. Nonetheless, even in law the argument of the petitioners that award becomes nullity if compliance of section 31 of Act of 1894 is made, is completely misconceived and rests on faulty foundation and interpretation of

scheme of Act of 1894. We are ad-idem with the submissions made by the learned State counsel that plea sought to be set up by the petitioners runs antithesis to scheme of the Act of 1894. The acquisition proceedings (other than for Company) are carried out under Part-II of the Act of 1894 which commence from Section 4 providing therein the procedure of publication of preliminary notification and culminates with Section 17 which provides for the procedure to be undertaken in case the land is to be acquired in cases of urgency. It is pertinent to note that pursuant to the issuance of notification and declaration under Sections 4 and Section 6 of the Act of 1894 respectively and after undertaking all the procedure prescribed in the Act, the acquisition proceedings are finalized only with the announcement of award under Section 11 of Act of 1894. Requirements of a valid award are twofold i.e., it shall be made with the previous approval of the appropriate Government as provided in Sub Section 1 of Section 11 and further, it shall be announced within a period of 2 years from the last date of publication of declaration under Section 6 of the Act of 1894 as envisaged in section 11-A of Act of 1894. Pursuant to the announcement of award, Section 16 authorizes the Collector to take possession of the land whereafter, the land vests absolutely in the Government free from all encumbrances. Till this stage of announcement of award and taking possession of the acquired land, the legislature has not put any obligation on the collector to pay the compensation amount either at the time of announcement of award or taking possession of the acquired land. It is only in the case of acquisition proceedings undertaken by invoking urgency clause under Section 17 of the Act of 1894 that it is mandatory to tender payment of 80% of compensation for land being acquired and pay it to the person interested unless prevented by one or more of the contingencies mentioned in Section 31 (2) of Act of 1894.

23. The payment of compensation amount is provided in Part V of the Act of 1894. It commences with Section 31, which provides that on making an award under Section 11, the collector shall tender payment of compensation to the interested persons entitled thereto according to the award and shall pay it unless prevented by one or more of the contingencies mentioned in Sub Section (2) of Section 31. Section 31 is extracted herein below for the ready reference:-

"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.

(3) Notwithstanding anything in this section the Collector may, with the sanction of the [appropriate Government] instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof."

24. The very opening line of the aforesaid provision i.e. ***'on making an award under Section 11'*** indicates that the stage of payment of compensation comes only after award under Section 11 is announced. It is after the announcement of award that Section 31(1) requires tender and payment, when the amount is made available to the land owner and in case State is prevented from making such payment owing to any of the three exigencies contemplated in Sub Section (2) of Section 31, the amount has to be deposited in the Court. Failure to do so on the part of the State will result in swinging into motion the provisions of Section 34 of the Act of 1894 which entails payment of interest owing to the delay but in no eventuality, will result into lapsing of the award having been announced validly under Section 11 of the Act of 1894. Much less to claim the award to be a nullity, as being sought to the projected by the counsel for the petitioners which has no legal basis and is completely misconceived. The view taken by us is finding support from a constitution bench judgment of the Apex Court in ***Indore Development Authority (supra)*** wherein the plea raised by the land owner claiming lapsing of award on account of non-payment of compensation and its non-deposit in the reference Court under Section 31 stood conclusively rejected. Relevant extract of the judgment is reproduced herein below:-

> ***'....117.*** ***<u>Payment of compensation under the 1894 Act 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</u>.*** *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 non obstante 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.*

118. *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 the 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.

119. *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 @ 9% p.a. 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 @ 15% p.a. The scheme of the 1894 Act 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%.* ***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 non-compliance of Section 31, there is no lapse of acquisition****. The same spirit has been carried forward in the 2013 Act 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 taken under the 1894 Act 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 1894 Act. The 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 2013 Act. The expression used is "all beneficiaries specified in the notification for* *acquisition under Section 4 of the said Land Acquisition Act" i.e. the 1894 Act, 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 1894 Act, 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 1894 Act.*

120. It is apparent from the 1894 Act that the payment of compensation is dealt with in Part V, whereas acquisition is dealt with in Part II. Payment of compensation is not made precondition for taking possession under Section 16 or under Section 31 read with Section 34. Possession can be taken before tendering the amount except in the case of urgency, and deposit (of the amount) has to follow in case the Collector is prevented from making payment in exigencies as provided in Section 31(3). What follows is that in the event of not fulfilling the obligation to pay or to deposit under Sections 31(1) and 31(2), the 1894 Act did not provide for lapse of land acquisition proceedings, and only increased interest follows with payment of compensation".

25. In view of the above, it is crystal clear that the payment of compensation (either by way of tender, payment to the land owner or deposit in the Reference Court) is an event which follows the announcement of award. Thus, any delay on the part of the State to discharge the obligations towards payment of compensation in either of the form, permitted under law, cannot affect the validity of the award having been announced in accordance with law. If the argument of the counsel for the petitioner is accepted (which otherwise stands rejected) that would mean putting the clock back which is not permissible in law. In the case at hand, all throughout, the petitioners have maintained their challenge on the touch stone of deeming lapsing providing under Section 24(2) of the Act of 2013, however, having confronted with the exposition of law in ***Indore Development Authority (supra),*** they have suddenly changed their course and sought to plead the nullity of award.

26. As a sequel of the aforesaid, as regards the plea of nullity of award, it is held that validity of award announced under section 11 of Act of 1894, consequential action of taking possession of the land under section 16 of Act of 1894 and vesting of same in the State Government is not dependent on compliance of the provisions of Section 31 of Act of 1894 which deals with Payment of compensation. In the scheme of the Act, the effect and consequence of non-compliance of section 31 of Act of 1894 is provided in section 34 of Act of 1894 i.e., payment of interest on the amount of compensation @ 9% per annum for the first year from the date of taking possession and thereafter @ 15% per annum. In no eventuality, does non-compliance of section 31 of Act of 1894 would render the award announced under section 11 of Act of 1894 a nullity or affect the vesting of land in the State Government in any manner.

27. As far as the plea of lapsing is concerned, no declaration as regards the lapsing of acquisition proceedings can be made as none of the conditions prescribed in section 24(2) of Act of 2013 are fulfilled since the possession of the land stands duly taken by recording Rapat No. 20 dated 05.09.2005 and the compensation amount as awarded originally vide award dated 05.09.2005 has been received by the petitioners, rest of the amount is available for disbursement. Even the learned counsel appearing for petitioners does not disputes the fact that aspect of lapsing is covered against the petitioners in view of exposition made in ***Indore Development Authority v. Manoharlal and others (Supra).***

28. Before parting with the judgment, there is yet another aspect which requires consideration which is "essentiality" of the land in question. As stated in para no. 8 of the reply, the land of the petitioners affects the site

of 24 mtr. road, 12 mtr road, site of group housing as per the development plan. This shows that the land is very much viable for the public purpose for which it was acquired, thus, even considering the pre-eminence of the public purpose, present petition deserves to be dismissed as a litigant cannot be allowed to stall the development process for years altogether.

29. As a sequel of the discussions made herein above, the instant petition is hereby dismissed and the pending application if any, shall also meet same fate.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

21.07.2023
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No