

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Jay Sengupta

**WPA 5049 of 2015
Everrise Housing Pvt. Ltd. & Anr.
Vs.
The State of West Bengal & Ors.**

For the petitioners : Mr. Arindam Banerjee
Ms. Arpita Saha,
Ms. Rituparna Chatterjee
.....Advocates

For the State : Mr. Lalit Mohan Mahato,
Mr. P. B. Mahato
.....Advocates

Heard lastly on : 12.08.2024

Judgment on : 08.11.2024

Jay Sengupta, J:

1. This is an application praying for a declaration that an acquisition proceeding in respect of land had lapsed and for direction to return the

premises in question being 200, Harish Mukherjee Road, Kolkata - 700 026 to the petitioners and to compensate them along with interest for damages.

2. Learned senior counsel representing the petitioners submitted as follows. The subject property was the land and three stored building at Municipal Premises No. 200, Harish Mukherjee Toad, Kolkata (hereinafter, referred to “the suit property”). Admittedly, or at any rate, indisputably the suit property was the subject matter of requisition, having been requisitioned under the Defence of India Act, 1939 and the Rules framed thereunder on 24.08.1942 by the then Provincial Government and handed over to the then Corporation of Calcutta; then sought to be released (but not released) from requisition by the Provincial Government with effect from 01.10.1946 and such decision communicated to the owners by notice dated 23.09.1946 of the District Engineer (District-IV) of the Corporation of Calcutta; then governed by the Requisitioned land (Continuance of Powers) Act, 1947 which came into force in 1947 upon the Defence of India Act, 1939 along with its Rules coming to an end in 1947; then made subject matter of the West Bengal Requisitioned Land (Continuance of Powers) Act, 1951 which was enacted by the State Legislature in 1951, after the expiry of the Requisitioned Land (Continuance of Powers) Act, 1947 in April, 1991; then made subject matter of a notice dated 23.09.1983 issued by the Deputy Secretary, Government of West Bengal under Section 3(1) of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947. In the said notice under the purported exercise of power under Section 3(4) of the said Act of 1947, the First Land Acquisition Collector,

Calcutta was, inter alia, directed to take possession of the suit premises, which direction was redundant, since the State was already in possession of the suit premises. By a Notice No. 139 dated 25.03.1983 the owners of the premises were intimated by the First Land Acquisition Collector that possession of the suit property had been taken over under Order No.12/83 of 23.09.1983. There was a candid admission of the State Government that the State Government was already in possession of the suit premise since before. Challenging the said notice of 23.09.1983, the then owners of the suit property filed C.O. No. 2269(W) of 1984 before this Hon'ble Court seeking release from requisition in compliance with Section 4 of the West Bengal Requisitioned Land (Continuance of Powers) Act, 1951 after revision of the rate of compensation with effect from 01.04.1978. A challenge was also made to the constitutional validity of Sections 1 and 2 of the West Bengal Requisitioned Land (Continuance of Powers) Amendment Act, 1979. C.O. 2269(W) of 1984 was disposed of by a judgement and final order dated 22.01.1985 whereby a Learned Single Judge of this Hon'ble Court directed that no effect or further effect be given to the order of requisition of the suit premises and directed delivery of possession of the suit premises to the owners forthwith. The Corporation of Calcutta filed an Intra Court Mandamus Appeal against the said judgement and final order of 22.01.1985, which was tendered as F.M.A.T. No. 236 of 1985. The owners/writ petitioners filed a cross objection in connection with the said appeal. On 30.10.1987, the Hon'ble Division Bench dismissed the Appeal of the Corporation being F.M.A.T. No. 236 of 1985, but did not make any

separate order on the cross objection and disposed of the same. The Calcutta Municipal Corporation filed S.L.P.(C) No. 100 of 1988 against the said judgement of affirmance passed by the Division Bench of this Court, wherein, the Division Bench's order was stayed on condition of payment of monthly compensation of Rs.3000/- to the writ petitioners. Then, the suit property was purportedly attempted to be acquired by the State in the following manner. During pendency of the S.L.P.(C) No. 100 of 1988, a notification dated 30.12.1989 (published on 02.01.1990) under Section 4 of the Land Acquisition Act, 1894 read with Section 17(1) and (4) thereof for the purpose of acquiring the suit premises for a perceived public purpose, namely for providing accommodation to the conservancy and sewerage mazdoors and staff of the Calcutta Municipal Corporation. On 19.01.1990, a declaration dated 15.01.1990 under Section 6 of the Land Acquisition Act 1894 was published in the Calcutta Gazette Extra Ordinary. The Hon'ble Supreme Court, on 22.01.1990, upon hearing that only Rs. 50,000/- had been paid by the Corporation towards the dues of the arrear period, directed Corporation to make the balance payment of Rs. 1,21,000/- within a month. On 05.02.1990, upon noticing that the Notification under Section 4 and Declaration under Section 6 had been issued by the State in respect of the suit property, the Hon'ble Supreme Court, without deciding the correctness of the impugned order of the High Court on merits, set aside the same and directed that acquisition proceedings under the Land Acquisition Act be completed within a period of six months from that day. As regards payment of compensation for wrongful occupation, the Supreme Court directed that

Corporation should keep on making payment at Rs. 50,000/- per month w.e.f. January, 1990. However, the competent authority was directed to fix the appropriate rent/compensation by passing order on that issue without taking into account the statements made by the parties in their affidavits before the Supreme Court. On 15.04.1993, the review petition filed before the Hon'ble Supreme Court was dismissed. On 21.06.1990 the Second Land Acquisition Collector, Calcutta issued notices/requisition under Section 10 of the Land Acquisition Act, 1894 to the owners calling upon them to furnish a statement containing the name of every person possessing any interest in the land or any part thereof. The said notice refers to notice under Section 9 of the Land Acquisition Act, 1890. Further, notices under Section 9(1) and (2) of the Land Acquisition Act, 1894 and under Section 9(3) and (4) of the Land Acquisition Act, 1894 were also issued on 21.06.1990. The aforesaid notices called for personal appearance of the owners before the said Collector on 07.07.1990, when the owners submitted claim for value of the said premises to the said Collector. On 10.07.1990, the Collector called upon the owners to attend a joint inspection scheduled on 18.07.1990, which, one of the then joint owners attended. On 25.07.1990, the Collector issued a notice that an award would be made by the Second L.A. Collector, Calcutta on 27.07.1990 under Section 11 of the Land Acquisition Act. Since the action of service of notice of award was bad, the owners filed C.O. No. 9379(W) of 1990 challenging the same. In C.O. No. 9379(W) of 1990, an interim order in terms of prayer (f) was granted ex-parte by a Learned Single Judge on 26th July, 1990 making the matter returnable

on 01.08.1990. On 03.08.1990 the Learned Single Judge recalled the interim order passed earlier and adjourned the writ petition for a week. On 12.09.1995, C.O. No. 9379(W) of 1990 was dismissed in default, and interim order, if any, was vacated. There was no subsisting interim order, since the same had already been vacated on 03.08.1990. Despite the notice dated 25.07.1990, no award was made or published on the date mentioned in the said notice. No award has at all been made either in terms of the liberty granted by the Hon'ble Supreme Court of India by order dated 5th February, or otherwise. On 05.05.2014, more than 22 years after the proceeding under the Land Acquisition Act, 1894 in respect of the suit property had lapsed on 29.01.1992 by statutory fiction in the manner as mentioned below, the writ petitioner no.1 purchased the suit property from its earlier owner by a registered Conveyance for valuable consideration. On or about 16.02.2015, the writ petitioners filed the instant writ petition. The claim in the writ petition was based on a single substantial point of law i.e., lapse of proceeding under Section 11A of the Land Acquisition Act, 1894. Now, the date of publication of declaration under Section 6 of the Land Acquisition Act, 1894 was 19.01.1990 and the period during which interim order was subsisting in C.O. No. 9379(W) of 1990 was 03.08.1990 – 26.07.1990 = 09 days. Therefore, time within which award under Section 11 of the Land Acquisition Act, 1894 ought to have been published to obviate lapse under Section 11A was 19.01.1990 + 2 years + the time excluded owing to subsistence of interim order in C.O. No. 9379(W) of 1990 = 19.01.1990 + 2 years + 09 days = 19.01.1992 + 09 days = 28.01.1992. Reliance was placed

on judgements in support of lapse under section 11A: Sri Bhabatosh Das Vs. The State of West Bengal and Others reported at 2015 SCC Online Cal 4041; Jayasri Fiscal Services Pvt. Ltd. And Others vs. State of West Bengal and Ors. reported at (2007) 4 CHN 41 (para 23, 27 to 31); M/s Asiatic Investment Limited and Anr. Vs. State of West Bengal and Ors. reported at (2006) 1 ICC 516 (Cal); State of West Bengal and Ors. Vs. M/s Asiatic Investment Ltd. and Ors. reported at AIR 2010 Cal 60. In the course of hearing, the State essentially raised two arguments. The State wrongly argued that by virtue of operation of Section 24 of 2013 Act, the proceedings in the instant case, by virtue of invocation of Section 17(1) of the 1894 Act therein, could not be deemed to have been lapsed. In this context, the State relied on the judgments of U.P. Jal Nigam vs. Kalra Properties reported at (1996) 3 SCC 124 and Indore Development Authority vs. Manoharilal reported at (2020) 8 SCC 129. The State wrongly argued that the said purchase of the petitioner being after the date of issuance of Notification under Section 4 and Declaration under Section 6 of the Land Acquisition Act, 1894, the petitioner no. 1 had not acquired any valid title to the suit land and was a subsequent purchaser not having locus standi to file this writ petition. In this context, the State relied on the judgments of Meera Sahni vs. LG of Delhi reported at (2008) 9 SCC 177, Shiv Kumar vs UOI reported at (2019) 10 SCC 229, Delhi Administration vs. Pawan Kumar reported at (2022) 7 SCC 470, Delhi Development Authority vs. Godfrey Phillips reported at (2022) 8 SCC 771, Delhi Development Authority vs. Damini Wadhwa reported at (2022) 10 SCC 519, Government of NCT of

Delhi vs. Karampal reported at (2023) 1 SCC 39, Land & Building Department, State (NCT) of Delhi vs. Mahipal Singh reported at (2023) 1 SCC 111, Government of NCT of Delhi Vs. Krishna Saini reported at (2023) 1 SCC 170 and Delhi Development Authority Vs. Narendra Kumar Jain reported at (2024) 3 SCC 721. Thus, for the urgency provisions of Section 17 of the Land Acquisition Act 1894 to apply the statute mandatory contemplated tender of 80% compensation for such land to the landloser and payment of the same unless prevented by any of the contingencies under Section 31(2) of the 1894 Act i.e., when the landloser had not consented to receive it, or when there was no person competent to alienate the land, or if there was any dispute as to the title to receive the compensation or apportionment thereof. It was not the case of the State that 80% of estimated compensation was tendered, however the same could not be paid by reason of any of the said contingencies referred to in Section 31(2) of the 1894 Act. Accordingly, the provision of Section 17 of the 1894 Act did not apply to the present case. In fact, the specific question as regards the applicability of Section 11-A of the 1894 Act to acquisition proceedings under the emergency provision of Section 17 thereof arose for consideration in a reference answered in the judgement of Delhi Airtech Services Pvt. Ltd. and Anr. Vs. State of UP and Anr. reported at 2022 SCC Online SC 1408, where a 3-Judge Bench of the Hon'ble Supreme Court specifically took up, inter alia, the following questions for consideration: (a) Was the requirement to tender payment of 80% of the estimated compensation as contemplated under sub-section (3A) to Section 17 of the

Act, 1894, mandatory to ensure absolute vesting of the notified land? (b) Whether the requirement to pass the award within the time frame contemplated under Section 11A applicable to the acquisition notified under Section 17 of Act, 1894? In the said case, upon detailed consideration of the applicable laws and the previous judgments of the Hon'ble Courts, including *Yusufbhai Noormohmed Nandoliya vs. State of Gujarat* reported at (1991) 4 SCC 531 and (2020) 8 SCC 129, the Hon'ble 3-Judges Bench held that upon insertion of sub-section (3A) to Section 17 of the 1894 Act with effect from 24th September 1984, there was no discretion vested in the authority and payment in terms of Section 17(3A) was a sine qua non for taking possession, and it was only thereafter that vesting of land in favour of the State took place. The Hon'ble Court held that in the absence of any one of the sequence, the emergency provision failed. The Hon'ble Court held that it was only if 80% of the estimated compensation was tendered and paid that the vesting would become absolute and Section 11A, though applicable, would not take effect. The Court further held that even if possession was taken without complying with the requirement of sub-section (3A) of Section 17, such possession could not be considered to be legal, and the proceeding would lose its character as one under Section 17 by legal fiction. The Hon'ble Court, in answering the questions in reference, specifically held, inter alia, that the provision contained in Section 11A of the 1894 Act would be applicable to cases in which the acquiring authority had not complied with the requirement of sub-section (3A) to Section 17 of the 1894 Act by tendering and paying 80% of the estimated compensation before taking

possession since possession in such cases could not be considered to be taken in accordance with law and the vesting was not absolute. Accordingly, the argument of the State was squarely answered by the judgment of the Hon'ble 3-Judges Bench reported at 2022 SCC Online SC 1408. Section 11-A of the 1894 was applicable to the present case as the acquiring authority having neither tendered nor paid 80% of the estimated compensation, the acquisition had lost its character as one under the emergency provision of Section 17 of the 1894 Act, and had, by virtue of application of Section 11-A, lapsed on 29.01.1992. The cases cited by the case are distinguishable as none of them considered the special features the special features of Section 11A of the Land Acquisition Act, 1894 or the effect of non payment of payment of compensation under Section 17 thereof. There was no taboo or curse per se attached with the phrase "subsequent purchaser". There was and could be no absolute proposition to the effect that a purchaser subsequent in point of time after publication of notice under Section 4 of the Land Acquisition Act, 1894 had no locus standi to file a writ petition to claim lapse of acquisition proceedings. In fact, none of the judgments relied on by the State had laid down any such absolute proposition of law. On the contrary, in all the judgments, either the award had been passed within the period contemplated under Section 11-A of the 1894 Act, or the subsequent purchaser had purchased the subject matters of the acquisition even before the expiry of the period contemplated in Section 11-A, i.e., when the proceedings were still live, and had, at this stage, challenged the acquisition proceedings. In fact, in any of the said cases, Section 11-A of the 1894 Act

did not even come up for consideration before the Hon'ble Court. The judgment reported at (2008) 9 SCC 177 relied on by the State deals with the Delhi Lands (Restrictions on Transfer) Act 1972. In the said case, it was found on facts that the original owner, while applying for permission under the Delhi Act of 1972 to transfer land under acquisition, had made a misrepresentation in the application form, and in such view of the matter, the Hon'ble Court was pleased to hold that the transfer in favour of the subsequent purchaser was not valid, in such facts, it was held that the subsequent purchaser did not have sufficient locus to approach the Hon'ble Court, having not acquired valid title by reason of such misrepresentation. In the judgement reported at (2019) 10 SCC 229 relied on by the State, the declaration under Section 6 was made on 03.04.2000, and the sale deed in favour of the subsequent purchaser was executed on 05.07.2001 i.e., within one year and three months from the notice under Section 6. Award was made on 03.04.2002 i.e., within two years from the declaration under Section 6. In this case, the Hon'ble Court was pleased to hold that the sale in favour of the subsequent purchaser was a nullity and that such purchaser was not an affected person under the 2013 Act and could not invoke the provision of Section 24 thereof. In the judgment reported at (2022) 7 SCC 470 relied upon by the State, the declaration under Section 6 was made on 20.05.1985 and the Award was made on 14.05.1987 i.e., within the period contemplated under Section 11-A of the 1894 Act. The sale deed in favour of the subsequent purchaser was executed on 25.11.2011 and he thereafter challenged the acquisition proceedings as having lapsed

under Section 24 of the 2013 Act. It was in such circumstances held that the subsequent purchaser having not acquired a valid title, was not entitled to claim lapse of the acquisition proceeding under Section 24 of the 2013 Act. The said judgment did not apply in the instant case. Firstly, the petitioner No. 1 herein was not claiming lapse of the proceeding under Section 24 of the 2013 Act. The petitioner no. 1 herein was basing its claim in the writ petition on the indisputable lapse of proceeding under Section 11A of the 1894 Act. This apart, as already mentioned above, the petitioner herein was not a subsequent purchaser during a live proceeding in that the petitioner herein purchased after more than two decades of statutory lapse under Section 11A of the 1894 Act. Thus, the status of the petitioner No. 1 was different from the purchaser in the instant case. Neither was the petitioner No. 1 a subsequent purchaser within the mischief of the 1894 Act nor was the petitioner No. 1 claiming lapse of a live proceeding by taking recourse to Section 24(2) of the 2013 Act. The judgment reported at (2022) 8 SCC 771 relied upon by the State was also passed in identical situation where the declarations under Section 6 were made between 27.05.1985 and 26.02.1986, and the Award was passed on 20.05.1987 i.e., within two years thereof. It was held that subsequent purchaser having executed sale deeds dated 30.08.1991 and 27.02.1991 did not acquire valid title to the land and was accordingly not entitled to claim lapse of the proceedings under Section 24 of the 2013 Act. In the judgment reported at (2022) 10 SCC 519, the declaration under Section 6 of the 1894 Act was made on 07.06.1985 and the Award was made on 17.06.1987, which was within two years and the

period of stay of operation of the declaration by virtue of an interim order granted by the Court. The original owner entered into an agreement to sell dated 22.05.2016, and in these facts, the Hon'ble Court held that the agreement to sell did not confer any title on the intending purchaser and that he was in any event not entitled to claim lapse of proceedings under Section 24 of the 2013 Act. This judgment did not apply to the present case as here the lapse had occurred by virtue of Section 11A of the 1894 Act as no award was made by the Collector till 28.01.1992, when the period contemplated by Section 11A of the 1894 Act expired by efflux of time. The present writ petitioner had purchased the property more than 22 years after such lapse, and as such, was not a cursed "subsequent purchaser" within the mischief of the said judgment. The correct proposition was that a subsequent purchaser of a property involved in a live proceeding for acquisition (a proceeding which has not lapsed by statutory fiction as on the date of purchase), if purchasing during the subsistence of such proceeding, could not derive any title or gain locus standi to challenge the proceeding. However, if after the proceedings had lapsed under Section 11A of the Land Acquisition Act, 1894, a purchaser purchased the immoveable property, he would certainly have gained title by the said purchase and also acquired locus to claim all rights, benefits, privileges and advantages available to his vendor on the date of the said purchase. In the instant case, the proceedings had lapsed under Section 11A of the 1894 Act on 29.01.1992. The petitioner no. 1 had purchased the subject premises more than 22 years later i.e., on 05.05.2014. Such a purchaser could not be branded as a 'subsequent

purchaser' within the mischief of the Land Acquisition Act, 1894 and neither its purchase nor its locus to file the instant writ petition was in any manner prejudiced by the said lapsed proceeding. The judgment reported at (2023) 1 SCC 39 had been relied upon by the State to contend that non-payment of compensation was not a ground occasioning lapse when possession had been taken and to further reiterate that subsequent purchaser did not have the locus standi to claim lapsed proceeding. In the said case, the subsequent purchaser claimed lapse of acquisition proceedings under Section 24(2) of the 2013 Act on the ground that though possession had been taken, compensation had not been paid. However, relying on the judgment of (2020) 8 SCC 129, the Hon'ble Court upheld the acquisition. The ground of Section 11A of the 1894 Act was completely different, and such lapse under the 1894 Act having already taken place way back on the expiry of 28.01.1992, the judgment relied upon by the State had no application. The other three judgments relied on by the State reported at (2023) 1 SCC 111, (2023) 1 SCC 170 and (2024) 3 SCC 721 also stipulated that non-payment of compensation was not a ground for lapse of acquisition proceedings under Section 24(2) of the 2013 Act when possession has been taken. All the judgments relied upon by the State were distinguishable on facts.

3. Learned senior counsel representing the respondent no. 2 submitted as follows. The writ petitioners namely, Everrise Housing Private Limited being the Petitioner No. 1 and one Sanjay Agarwal, Director Everrise Housing Private Limited came forward before this Hon'ble Court prayed for

declaring the purported proceeding initiated in terms of the alleged notification bearing no. 9817-LA (II) /5 M-1/88 Pt. dated 30th December, 1989 as lapsed. The issue was whether a Post-Acquisition Purchaser or a purchaser after the issuance of a notice under Section 4 and 6 of the Land Acquisition Act, 1894 had any legal right to challenge the acquisition proceeding on the ground of lapse or any other grounds. The answer was 'No'. There was no single instance or any case which had been successfully challenged by the Post Acquisition Purchaser or after the issuance of a notice under Section 4 and 6 of the Land Acquisition Act, 1894, since 1894 till July, 2024 and or the same had been declared as Good Law. On the contrary, there were hundreds of decisions that Post Acquisition Purchaser had no legal standing to the question of acquisition or to its lapse. The reason was that the legal precedent of jurisprudence surrounding the Land Acquisition Act, 1894 had established that a purchaser a land after issuance of notice under Section 4 and 6 of the Act did not have any locus Standi to challenge the acquisition or the lapse of the acquisition proceeding. This was because the right of the original land owner was extinguished upon the acquisition and the purchasers' right were derivative and limited to the extent of their purchase. They were not aggrieved parties therefore, lacked legal capacity to question the acquisition or its lapse. In the case of Shiv Kumar and Another Vs. Union of India and others reported at (2019) 10 SCC 229, it had been clearly stated that admittedly Power under Section 17(4) was exercised dispensing with the enquiry under Section 5A and on service of notice under Section 9 possession was taken

since urgency was acute viz pumping station house to be constructed to drain out flood water. Consequently, the land stood vested in the State under Section 17(2) free from all encumbrances. It was further settled law that once possession was taken by operation of Section 17(2) the land vested in the State free from all encumbrances unless a notification under Section 48(1) was published in the gazette withdrawing the acquisition. Section 11A as amended by Act 68 of 1894 therefore, did not apply and the acquisition did not lapse. The said Judgment held, "It has been laid down that purchasers on any ground whatsoever cannot question proceeding for taking possession. A purchaser after Section 4 notification does not acquire any right in the land as the sale is ab-initio void and has no right to claim the land under policy". Paragraph 22 of the said Judgment stated," a nullity is inoperative and a person cannot claim the land or declaration once no title has been conferred upon him to claim the land should be given back to him". The said judgement was of Three Judges' Bench and had been affirmed the case of Indore Development Authority Vs. Manoharlal reported at (2020)8 SCC 129. In the case of Indore Development Authority Vs. Manoharlal reported in (2020)8 SCC 129 it had been held by the Five Judges' of the Hon'ble Supreme Court "It does not visualise a situation where possession has been taken under the urgency provision of Section 71, but the award has not been made in such case under Section 24(1)(a) of the 2013 Act, there is no lapse of entire proceeding but compensation is to be determined in accordance to the provisions of the 2013 Act. In case of urgency possession is usually taken before the award is passed. Thus,

where no award is passed, where urgency provisions under Section 17(1) of the 1894 Act had been invoked, there is no lapse". In this instant case the provision of Section 17(4) of 1894 Act had been invoked and as such, there could not be any lapse of the proceeding under Section 11A of the Land Acquisition Act in any manner whatsoever. In the case Delhi Development Authority Vs. Godfrey Philips (1) Limited and Others reported at (2022) 8 SCC 771 stated that still further the purchaser had purchased the property after vesting of the land with the State. In fact, none of Dharam Trust earlier Three Judges Bench Judgement in M. Venkatesh was not even referred to the purchaser had no right to claim lapsing of acquisition proceeding in view of the recent Larger Bench Judgement of this Court in Shiv Kumar Vs. Union of India reported in (2019)10 SCC 229 it had been held the purchaser had no right to claim a declaration sought for. In very recent judgement in the case of Delhi Development Authority Vs. Narendra Kumar Jain and Others reported at (2024) 3 SCC 721, it had been held deemed lapse of acquisition proceedings none payment of compensation was not a ground, where possession of land taken furthermore writ petition by subsequent purchaser claiming lapse of proceeding, held not maintainable as such person did not have locus standi to challenge acquisition proceeding and/or pray for deemed lapse of acquisition proceeding. In paragraph 4 of the said judgment it was stated "however, it is required to be noted that the decision of this Court in Manab Dharam Trust which has been relied by the High Court while passing the impugned judgement and order, is held to be not a good law in view of the decision of this Court in Shiv Kumar Vs. Union of

India and subsequent decision of this Court in DDA Vs. Godfrey Philips (1) Limited reported in (2022)8 SCC 771". In paragraph 5 it stated "In Shiv Kumar Vs. Union of India and DDA Vs. Godfrey Philips (1) Limited, it is specifically observed and held that the subsequent purchaser has no locus Standi to challenge the acquisition and/or pray for deemed lapse acquisition". The petitioner relied upon a decision (reportable) in M/S Delhi Airtech Services Pvt. Vs. State of U.P. on 14th October, 2022 by Two Judges Bench without referring and considering the ratio of the Judgment of Shiv Kumar Vs. Union of India reported in (2019)10 SCC 229 which was a larger bench decision. In paragraph no. 26, the concluding paragraph (ii) if the requirement was complied and possession was taken after tendering and paying eighty per centum, though there was need to pass an award and pay the balance compensation within a reasonable time, the rigor of section 11A of Act, 1894 would not apply so as to render the entire proceedings for acquisition to lapse in the context of absolute vesting. The right of land loser in such case was to enforce passing of the award and recover the compensation. The ratio of this case was distinguishable in the facts and circumstances of the case of the petitioner as the right of land loser in such case was to enforce passing of the award and recover the compensation, but the same could not be the right of a Post Acquisition Purchaser under any circumstances and as such, the judgement relied upon by the petitioner was distinguishable and had no manner of application in the facts and circumstances of this case. First of all, it had not considered the judgement passed in the case of Shiv Kumar Vs. Union of India reported at (2019)10

SCC 229 a judgement of Three Judges' Bench and the judgment did not consider paragraph 123 of the case reported in Indore Development Authority Vs. Manoharlal reported at (2020)8 SCC 129 which was a judgement of Five Judges and as such, the writ petition was liable to be dismissed with exemplary costs solely on the ground that the land in possession of the government and notice under Section 17 Sub Section (4) had been invoked and the judgment relied upon by the petitioner was of the judgement of Two Judges Bench without considering the ratio of Three Judges and Five Judges Bench. Furthermore, in the recent judgment of (2024)3 SCC 721 it had affirmed the judgment of Shiv Kumar Vs. Union of India and DDA Vs. Godfrey Philips (1) Limited and as such, the instant writ petition was devoid of merit and was liable to be dismissed with costs. In the case reported at (2011) 5 SCC 394 it was held that once possession had been taken under section 17 section 11A could not be sustained and elaborate explanation had been given.

4. I heard the learned counsels for the parties and perused the writ petition, the affidavits and the written notes of submissions.

5. The facts are indisputable till 2014 when the present petitioners purchased the property in question and as such, need not be adversarially delved into any further.

6. The crux of the petitioners' contention is that the land acquisition proceeding had lapsed under Section 11A of the Act of 1894 and as the petitioners purchased the property on 05.05.2014, more than 22 years after the proceeding had lapsed (on 29.01.1992) by statutory fiction, they cannot

be denied return of the property on the pretext that they were alleged subsequent purchasers.

7. A Three Judges Bench of the Hon'ble Apex Court in Delhi Airtech Services Pvt. Ltd. (supra) held that after insertion of sub section (3A) of Section 17 of the Act of 1894, payments in terms of Section (3A) was the sine qua non for taking possession and it was only thereafter that vesting of land in favour of State took place. It was also held that possession would not be legal after taking it without complying with the requirements of such provision. Among other things, the provision contained in Section 11A of the said Act would become applicable in cases of non-compliance.

8. However, it is also apparent that in Delhi Airtech Services Pvt. Ltd. (supra), the facts were quite distinct and the judgement did not consider, in specific terms, the question of the right of a subsequent purchaser to challenge an acquisition proceeding. But, even there the Hon'ble Apex Court held that only the land loser could challenge such faulty acquisition.

9. On the other hand, in Shiv Kumar (supra) a Three Judges Bench of the Hon'ble Apex Court specifically held that a subsequent purchaser had no locus standi to challenge the acquisition and/or pray for deemed lapse of acquisition.

10. Relevant portions of the decision in Shiv Kumar (supra) may be quoted as under:-

“.....

19. The 2013 Act presupposes that a person is required to be rehabilitated and resettled. Such a person who has purchased after Section

4 notification as sale deed is void under the 1894 Act, cannot claim rehabilitation and resettlement as per policy envisaged under the 2013 Act, as his land has not been acquired, but he has purchased a property which has already been acquired by the State Government, he cannot claim even higher compensation, as per proviso to Section 24(2) under the 2013 Act. An original landowner cannot be deprived of higher value under the 2013 Act, which higher compensation was not so contemplated when the void transaction of sale had been entered, and right is conferred under the proviso to Section 24(2) on recorded owners under the 1894 Act. We have come across instances in which after notifications under Section 4 were issued and, the property was purchased at throwaway prices by the builders and unscrupulous persons, such purchases are void and confer no right even to claim higher compensation under Section 24(2) of the 2013 Act as it is to be given to the owner as mentioned in the notification.

20. Given that, the transaction of sale, effected after Section 4 notification, is void, is ineffective to transfer the land, such incumbents cannot invoke the provisions of Section 24. As the sale transaction did not clothe them with the title when the purchase was made; they cannot claim "possession" and challenge the acquisition as having lapsed under Section 24 by questioning the legality or regularity of proceedings of taking over of possession under the 1894 Act. It would be unfair and profoundly unjust and against the policy of the law to permit such a person to claim resettlement or claim the land back as envisaged under the 2013 Act. When he has not been deprived of his livelihood but is a purchaser under a void

transaction, the outcome of exploitative tactics played upon poor farmers who were unable to defend themselves.

.....”

11. In the recent case of Delhi Development Authority vs. Narendra Kumar Jain and Ors., reported at 2024 3 SCC 721 the view in Shiv Kumar (supra) has been followed. It was held that a subsequent purchaser has no locus to challenge the acquisition and/or pray for deemed lapse of acquisition.

12. The factual distinction sought to be made by the petitioners in this regard do not touch upon the ratio laid down in Shiv Kumar (supra).

13. In fact, in *Lilaram vs. Union of India and Ors.*, (1975) 2 SCC 547, the Hon’ble Apex Court observed that the object of a notification under Section 4 was to give public notice that it was proposed to acquire the land mentioned in the notification and that anyone who dealt in that land subsequent to the notification would do so at his own risk.

14. In view of the above, even if there was a good ground as per Delhi Airtech Services Pvt. Ltd. (supra), it was not open to a subsequent purchaser to take up such ground in challenging an acquisition proceeding and/or in claiming deemed lapse of acquisition.

15. Moreover, as has been contended on behalf of the State respondents, in *Indore Development Authority* (supra), a Constitution Bench of the Hon’ble Supreme Court, among other things, categorically held that in case of urgency, possession was usually taken before an order was passed. Thus,

where no award was passed, but urgency provisions under Section 17(1) of the said Act had been invoked, there was no lapse.

16. There is another angle to the issue at hand. Admittedly, the petitioners purchased the property in question after about 22 years of the claimed lapse of the acquisition proceeding. Therefore, it is evident that the original owners did not claim lapse of proceedings for all these years. Their subsequent claim could have been thwarted by the respondents on the ground of delay. If a subsequent purchaser is permitted to claim such lapse, then any original owner who had not been vigilant to claim such right for so long, 22 years in this case, would easily frustrate the fallout of such inaction by simply selling the property to a third party at any subsequent stage. Such practices should also not be encouraged as these would defeat the whole purpose of the Act.

17. It is true that passing of laws cannot deter individuals from purchasing properties. But, the purchase of the present property by the petitioners on 05.05.2014 only after promulgation of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 that provided for much higher compensation appears to be quite significant, to say the least.

18. In view of the above discussions, this Court does not find any merit in the application. Accordingly, the same is dismissed, however, without any order as to costs.

19. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

(Jay Sengupta, J.)

LATER:

At this stage, learned counsel for the petitioners pray for an order of status quo for a limited period.

The prayer is considered and is rejected.

(Jay Sengupta, J.)