

PALLAVI
MAHENDRA
WARGAONKAR

Digitally signed by
PALLAVI MAHENDRA
WARGAONKAR
Date: 2024.12.11
20:48:39 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6997 OF 2021

Laxman Mahadev Katkar (Since deceased)
Through Legal Representatives,

- 1.1 Vimal Laxman Katkar,
Age 66 yrs, Occ. Agriculturist.
- 1.2 Kaka Laxman Katkar,
Age 45 yrs, Occ. Agriculturist.
- 1.3 Pandurang Laxman Katkar,
Age 42 yrs, Occ. Agriculturist.
All R/o Divad, Tal. Maan,
Dist. Satara.

... Petitioners

Versus

1. The State of Maharashtra,
Through, the Secretary, Revenue Department,
Mantralaya, Mumbai.
2. The Divisional Commissioner,
Pune Revenue Department,
Council Hall, Pune.
3. The Special Land Acquisition Officer,
Phaltan, Tal. Phaltan,
Dist. Satara.
4. The Sub Divisional Officer,
Man-Khatav Sub Division Office,
Dhahivadi, Tal. Maan,
Dist. Satara.

... Respondents

Mr. Nagesh Chavan, a/w. Mr. Rahul Khot, for the Petitioners.

Mr. Rajan S. Pawar, AGP for the Respondents-State.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

JUDGMENT RESERVED ON : 14 NOVEMBER 2024

JUDGMENT PRONOUNCED ON : 11 DECEMBER 2024

JUDGMENT (Per Advait M. Sethna, J.) :

1. Rule, made returnable forthwith. The respondents waive service.
By consent of the parties, heard finally.

2. This petition is filed under Article 226 of the Constitution of India.

A) Issues Before the Court:

3. The present petitioners are legal heirs/representatives of the deceased petitioner no. 1 – Laxman Mahadev Katkar, being the original owner of the land in question which was subject matter of land acquisition for the purpose of Urmodi Project. They have approached this Court in the present proceedings, being aggrieved by an order dated 28 May 2018 (*“impugned order”* for short) passed by respondent no.4. The primary issue for consideration, is whether the entire land acquisition proceedings initiated by

the respondents qua the lands of the petitioners have lapsed, in terms of Section 11 A of Land Acquisition Act, 1894 (***"Land Acquisition Act"*** for short).

4. The substantive prayers in the petition read thus:-

"(b) That this Hon'ble Court may be pleased to issue any appropriate Writ/ Order/ Direction in the like nature of Article 226 of the Constitution of India ;

(i) To hold and declared that the acquisition proceeding initiated by the Respondent No.3 dated 15.10.1999 the land acquisition award bearing No.S.R. No.32/97 passed in respect of the Petitioners lands i.e. suit properties situated at Palashi, Tal. Maan, Dist. Satara has lapsed in view of the Provisions u/s 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;

(ii) To hold and/or declared that the impugned Order dated 28.05.2018 in KR./Punary/Kavi/432/2018 passed by the Respondent No.4 arising out of order dated 31.12.1999 in KR./Punary/Kavi/Review Aarj/434/1999 passed by the Respondent No.2 arising out of the impugned award dated 15.10.1999 in SR/32/97 initiated by the Respondent No.3 under the Land Acquisition Act 1894 in respect of the suit lands is illegal and bad in law;

Amendment carried out as per order dated 21.10.2024

(iii) To hold and declare that impugned acquisition proceeding in respect of petitioners notified lands Gat No.1763, 1776, 1787 situated at Palashi village Tal. Maan, Dist. Satara has deemed to have lapsed in view of the provisions under section 11-A of Land Acquisition Act 1894;"

(B) Factual Matrix:

The relevant facts necessary for adjudication of the present proceedings are :-

5. The land acquisition proceedings in the given case, initiated by the respondents include the lands originally owned by the deceased Laxman Katkar – petitioner no. 1, admeasuring 2.79R out of gat no. 1763, 2H.21 R out of gat no. 1776 and 0H.40R out of gat no. 1787, situated at Palashi Village Tal. Maan, District – Satara (*“The Subject Lands”* for short) The petitioners are the legal heirs and representatives of the deceased, Laxman Mahadev Katkar. The petitioners are Agriculturists who wholly depend upon agricultural income, as stated in the Petition.

6. Respondent no.2 being the Competent Authority under the Land Acquisition Act issued a notification dated 1 January 1998 under Section 4 of the Land Acquisition Act, notifying lands for acquisition for public purpose being rehabilitation of project affected persons by Urmodi project. Subsequently notification dated 11 June 1999 was issued under Section 6 of the Land Acquisition Act declaring acquisition of the larger land including subject land for such public purpose. Respondent no.3 is the Special Land Acquisition Officer who published the land acquisition award dated 15 October 1999. Respondent no.4 is the Sub-Divisional Officer who passed the impugned order dated 28 May 2018 by which the submissions of petitioners filed vide reply dated 17 January 2017 was rejected and directions were passed to enter name of respondents in the documents/ land records qua the petitioners lands.

7. Pursuant to the above, the petitioners being aggrieved by the land acquisition of the subject lands, preferred review/stay application dated 8 October 1999 before respondent no. 2 u/s 48(1) of the Land Acquisition Act. The respondent no. 2 then passed an order of the same date, i.e., 8 October 1999, granting status quo in respect of the subject lands noting the fact that petitioner no. 1 had offered alternate lands for acquisition. Further directions were issued to respondent no. 3 to consider the documents along with the report in respect of land acquisition of the subject lands, within 4 days therefrom.

8. Such land acquisition proceedings initiated by the respondents culminated in publishing of the said award dated 15 October 1999 passed under Section 11 of the Land Acquisition Act. A bare perusal of the said award clearly shows that the subject lands were expressly excluded from such award.

9. Respondent no. 2 finally heard the review, stay application dated 8 October 1999 of the petitioner no.1. Such application of the petitioner no.1 was partly allowed by an order dated 31 December 1999 passed by respondent no.2, considering his offer for alternate land for acquisition and the proceedings were remanded to respondent no.4 for *de novo* hearing and decision on petitioner's objections. The *status-quo* granted in favour of the

petitioner no.1 by order dated 8 December 1999, was vacated by the said order dated 31 December 1999.

10. Pursuant to the above, the respondent no. 4 issued a notice dated 26 December 2016 to the petitioner no.1 to remain present on 17 January 2017 for hearing. The late father of the petitioners accordingly submitted a detailed reply dated 17 January 2017 addressed to the respondent no.4 making out his case against such land acquisition proceedings.

11. The respondent no. 4 by an order dated 28 May 2018 impugned in the petition, by which the submissions of petitioners filed vide reply dated 17 January 2017 was rejected and directions were passed to enter name of respondents in the documents/ land records qua the petitioners lands.

12. After demise of the petitioner's father on 30 April 2019, the petitioners have filed the present petition before this Court on 12 February 2020. On 18 February 2021, an order was passed by a co-ordinate Bench of this Court directing parties to maintain status-quo in respect of the subject lands, until the adjourned date of hearing, which was extended from time to time and continued to operate.

(C) Rival Contentions:-

The case of the Petitioners:-

13. At the very outset, before proceeding to record the submissions of Mr. Chavan, learned counsel for the petitioners, it is necessary to refer to our order dated 5 December 2024. The relevant portion of the order is extracted below:-

- “1. Today, we have listed this petition for directions as we are in the process of delivering a judgment on this petition for seeking clarification from the petitioner in regard to alternate plea is taken by the petitioner namely, applicability of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (“**the Act of 2013**” for short) as also a plea under Section 11A of the Land Acquisition Act, 1894.*
- 2. Learned counsel for the petitioner, on instructions, makes a statement that the petitioner would not press the reliefs asserting its rights and contentions under Section 24(2) of the 2013 Act. Statement as made on behalf of the petitioner is accepted.”*

From the above it is thus, clear that prayer clause b(i) in the petition, which is not pressed, reads thus :-

“ (b)(i) To hold and declared that the acquisition proceeding initiated by the Respondent No. 3 dated 15.10.1999 the land acquisition award bearing No. S.R. No. 32/97 passed in respect of the Petitioners lands i.e. suit properties situated at Palashi, Tal. Maan, Dist. Satara has lapsed in view of the provisions u/s 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;”

Thus, for adjudication of this writ petition we would confine ourselves to prayers b(ii) and b(iii) of the petition and in regard to the provisions of the

Land Acquisition Act, in the context of the grounds raised and reliefs sought in the petition, which revolves around the issue on the issue of lapsing of the land acquisition proceeding, qua the subject lands of the petitioners, under Section 11A of the said Act.

14. According to Mr. Chavan, the impugned order records no reasons, lacks the rationale and justification in rejecting the reply of the petitioner no.1 dated 17 January 2017. It straight away concludes that the names of respondent nos.3 and 4 be inserted in the documents/ land records, qua the subject lands of the petitioners. According to him, a bare perusal of the impugned order reveals that it is passed mechanically without recording a single submission of the petitioners, let alone any findings in support of the conclusion so reached. He would thus submit that the impugned order is completely contrary to the well settled principles of natural justice and on such ground alone the said order deserves to be quashed and set aside.

15. Mr. Chavan would then submit that despite specific non-inclusion/exclusion of the subject lands from the award passed by the respondents dated 15 October 1999, there has been no action taken by the respondents towards acquisition of the subject lands. It was only after a prolonged delay of 17 years that the respondent no.4 issued a hearing notice dated 26 December 2016 to the petitioners. He would also point out that the

status quo in respect of the subject lands granted by an order dated 8 October 1999 was subsequently vacated by an order dated 31 December 1999 passed by respondent no.2. Even thereafter, the respondents not taken any steps towards initiating any fresh acquisition proceedings in respect of the subject lands. There is no explanation whatsoever from the respondents in regard to such inordinate delay and laches on part of the respondents in the given facts and circumstances.

16. Mr. Chavan would then rely on the provisions of Section 11A of the Land Acquisition Act. He would submit that after exclusion and or non-inclusion of the subject lands from the award dated 15 October 1999 by the respondents, there was neither any acquisition proceedings nor any fresh award made in respect of such earlier notified subject lands. He would thus contend that in accordance with the provisions of Section 11A, the entire proceedings for land acquisition qua the subject lands have lapsed. His submission is fortified by the fact that the respondents have not taken physical possession of the subject lands in the manner contemplated in law. The petitioners have neither received any compensation from the respondents, as their lands were specifically excluded from the award furnished on 15 October 1999. He would contend that the respondents have failed to demonstrate any fact and/or legal position to the contrary, which supports his case that the acquisition

proceedings in respect of the subject lands have lapsed, in terms of Section 11 A of the Land Acquisition Act.

17. Mr. Chavan would place reliance on the judgment of the Supreme Court in *Kunwar Pal Singh & Ors. vs. State of U.P. and Ors.*¹. He would place reliance on paragraphs 16 and 17 of the said judgment, which reads thus:

“16. Section 6(2), on a plain reading, deals with the various modes of publication and they are: (a) publication in the Official Gazettee, (b) publication in two daily newspapers circulating in the locality in which the land is situate of which at lease one shall be in the regional language, and (c) causing public notice of the substance of such declaration to be given at convenient places in the said locality. There is no option left with anyone to give up or waive any mode and all such modes have to be strictly resorted to. The principle is well settled that where any statutory provision provides a particular manner for doing a particular act, then, that thing or act must be done in accordance with the manner prescribed therefor in the Act.

17. The provisions of Section 11-A are intended to benefit the landowner and ensure that the award is made within a period of two years from the date of the declaration under Section 6. In ordinary course, therefore, when the Government fails to make an award within two years of the declaration under Section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A, the proceedings will lapse. The period of two years referred to in Section 11-A shall be computed by counting from the last of the publication dates, as per the prescribed modes of publication.”

1. (2007) 5 SCC 85

He would thus submit that the decision in the above case is squarely applicable. As in the present case, there is no award published for the subject lands within two years of its declaration under Section 6 of the Land Acquisition Act, when the subject lands were not included in the award dated 15 October 1999. Thus the subject lands have not vested in the government, the possession of which remained with the petitioners. The acquisition proceedings qua the subject lands have accordingly lapsed, by virtue of Section 11A of the Land Acquisition Act.

18. Mr. Chavan would then refer to the affidavit-in-sur-rejoinder of petitioner No.1 dated 6 December 2022 and also to the respondent's additional affidavit dated 19 November 2022, which is on record of this Court. Relying on petitioner's sur-rejoinder (*supra*) he would submit that, the respondents have filed additional affidavit dated 22 November 2022 without annexing copy of PLA account despite directions of this Court vide order dated 18 October 2022. He would thus submit that there is no question of any compensation amount being deposited or tendered in the account of the petitioners particularly when the subject lands of the petitioners are not included in the award dated 15 October 1999. He would submit that there is nothing in the pleadings on record to controvert this position.

19. Mr. Chavan would further refer to the additional affidavit of the respondents dated 19 November 2022 to rely upon a letter dated 6 February 2010 addressed by the petitioners to the respondents. He would submit that a mere reference to handing over voluntary possession of the subject lands in the said letter of 19 November 2022, by any stretch of imagination, be construed as taking over physical possession of the subject lands by the respondents, as contemplated in law. He would next submit that the possession of the subject lands always remained with the petitioners and thus reliance of the respondents on the said letter of 6 February 2010 is of no assistance to them.

20. Mr. Chavan would accordingly submit, that the land acquisition proceedings in terms of Section 11A of the Land Acquisition Act have clearly lapsed. Thus, it is urged that the impugned order is illegal and devoid of merit. He would pray that the petition be allowed.

Submissions of the Respondents:-

21. Mr. Rajan Pawar, Ld. AGP for the Respondents in response to the above, vehemently opposed the submissions of Mr. Chavan. He would place reliance on affidavit-in-reply of one Mr. Shailesh Suryawanshi, Sub-Divisional Officer filed on behalf of respondent nos. 1 to 4 dated 18 February 2022. In support thereof, he would urge that the notice dated 26 December 2016 issued by respondent no.4 was not belated and was rightly issued within framework of

the Land Acquisition Act, which cannot be faulted with. He would support the impugned order, dated 28 May 2018. According to him, the said order specifically refers to the petitioners' reply dated 17 January 2017. Thus, the petitioners are not correct in attributing arbitrariness, non-application of mind, illegality as alleged and or otherwise to the impugned order. Such order is passed after duly considering the submissions of the petitioners as set out in their reply dated 17 January 2017. Thus, according to him, there is no justification warranting interference of the Court with the impugned order.

22. Mr. Pawar, would then submit that pursuant to passing of the award by respondent no.3 on 15 October 1999, the proceedings of acquisition of the notified lands were initiated. According to him, the status-quo vide order of respondent no.2 dated 8 October 1999 was vacated by an order dated 31 December 1999. Pursuant thereto, a notice of hearing dated 26 December 2016 was issued to petitioner no.1. Reply to such notice dated 17 January 2017 was filed by the petitioner no.1 after which impugned order dated 28 May 2018 was passed by respondent no.4. Thus, the respondents' decision to acquire the subject lands of the petitioners was just, legal and proper. Mr. Pawar would then refer to letter dated 6 February 2010 exhibited to the additional affidavit dated 19 November 2022 filed by the respondent nos.1 to 4. He would contend that as per the said letter dated 6 February 2010, there is a clear inference to the effect that the respondent no.1 was ready and willing to hand

over possession of subject lands to the respondents so as to justify the acquisition proceedings qua the subject lands.

23. Mr. Pawar would then submit that reliance placed by the petitioners on the provisions of Section 11A is completely misplaced. According to him, acquisition proceedings commenced from issuance of Notifications dated 1 January 1998, 11 June 1999 followed by an award dated 15 October 1999 which culminated in the impugned order of 28 May 2018. The petitioners were well aware of all such proceedings, which rightly culminated in the impugned order passed by respondent no. 4. In view thereof, there is no merit in the submission of the petitioners that the entire acquisition proceedings have lapsed. Also, Mr. Pawar would contend that the decisions cited by Mr. Chavan are under different facts and circumstances have no application to these proceedings. He would thus submit that the said decisions do not assist the case of the petitioners in any manner, whatsoever.

24. On the other issue of payment of compensation and/or deposit in the PLA Mr. Pawar would place reliance not only on the affidavit-in-reply of the respondents dated 18 February 2022 but also on the additional affidavit filed by Mr. Shailesh Suryawanshi, Sub Divisional Officer, on behalf of the respondents Nos.1 to 4 dated 19 November 2022 to contend that the amount is already deposited by the respondents in the PLA account. The said affidavit

also stated that the petitioners had voluntarily given possession of the subject lands through their letter dated 6 February 2010. Thus, there is no question of the land acquisition proceedings qua the subject lands to have lapsed under Section 11 of the Land Acquisition Act. He would thus pray that the petition is being devoid of merit, ought to be dismissed in limine.

(D) Analysis:

25. We have heard the learned counsel for the parties at length and with their assistance, perused the record.

26. At the very outset, it appears that the subject lands of the petitioners have been expressly excluded and or not included in the award dated 15.10.1999 passed under Section 11 of the Land Acquisition Act as is evident from a perusal of such award itself. Such fact is not disputed by respondent. Also, there is nothing from the pleadings on record pointed out by Mr. Pawar in these proceedings including the impugned order to contradict or controvert such fact. Thus, the subject notified lands are clearly and unambiguously not a part of such award passed under Section 11 of the Land Acquisition Act. Hence, in law, the subject lands of the petitioners cannot be held to be acquired lands.

27. In the above backdrop, we find that in the present case, the proceedings of land acquisition commenced on 1 January 1998 by issuance of

notification under Section 4 of the Land Acquisition Act. Thereafter, a notification under Section 6 of the said Act was issued declaring that the lands including the subject lands were to be acquired for public purpose. Pursuant thereto, a review/ stay application was preferred by the petitioner no.1 under Section 48(1) of the Land Acquisition Act dated 8 October 1999, before the respondent no.2. By an order of the said date, respondent no. 2 passed orders to maintain status quo in respect of the subject land and the respondent no.3 was directed to consider all documents, report in respect of the acquisition of the subject lands. Thereafter, by an order dated 31 December 1999 respondent no.2 partly allowed the application of the petitioner no.1 filed under Section 48(1) of the Land Acquisition Act, remanding the proceedings for fresh consideration to respondent no.4. At this juncture, it is important to note that only after a long gap of about 17 years from passing of the award on 15 October 1999 which does not include the subject lands, respondent no.4 issued a notice dated 26 December 2016 to petitioner no.1 to remain present for a hearing scheduled on 12 January 2017. From the record, it appears to us that there is no whisper of explanation let alone justification in the impugned order in regard to such inordinate delay in issuing the said notice. Further, it appears that no steps were taken by the respondents concerned to acquire the subject lands in a manner known to law, for this entire period and/or even

thereafter. The position thus being that petitioners continued to be in both *de facto* and *de jure* possession of the subject lands.

28. In the context of the decision in the case of ***Kunwar Pal Singh & Ors.*** [Supra], relied upon by Mr. Chavan, the Supreme Court has held that where any statutory provision provides a particular manner for doing a particular act, then, that thing or act must be done in accordance with the manner prescribed therefor in the Act. This is a well-settled principle laid down by the Court of Chancery in the case of ***Taylor v. Taylor***², which has been time and again referred in catena of judgments and is thus no longer *res integra*. In view thereof, the respondents in the given case have failed to act in a manner, as the law would require them to act in the manner so specified.

29. Adverting to the submission of Mr. Chavan on the impugned order, we find that the impugned order completely fails to consider the above factual and legal position, despite it been duly explained by the petitioner no.1 in his reply dated 17 January 2017 to the hearing notice dated 26 December 2016 issued by the respondent no.4. We have gone through the said reply carefully. Respondent no.4 who passed the impugned order, completely glosses over the crucial aspect of gross and inordinate delay of about 17 years in issuing the hearing notice dated 26 December 2016. Thus, perversity and non-application of mind is writ large in the impugned order. Respondent no.4 has

2. [L.R.] 1 Ch. 426, 431

not even thought it appropriate to record a semblance of reasoning in the impugned order, while rejecting the case of the petitioners who approached the respondents, initially by filing an application dated 8 October 1999 under Section 48(1) of the Land Acquisition Act. Section 48 reads as under :-

“48. Completion of acquisition not compulsory, but compensation to be awarded when not completed

- (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.*
- (2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.*
- (3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.”*

Respondent no.4 has completely lost sight of such clear statutory provision under Section 48(1) of the Land Acquisition Act to the effect that this was a case where the possession of the subject lands always remained with the petitioners as also there was no land acquisition award qua the petitioners lands. Hence, the proceedings initiated by the petitioners under section 48(1) were legal and valid. Despite this, the respondent no.4 simply rushed to conclude in the impugned order that the respondents’ name be entered in the

document/land records qua the petitioners lands. This is nothing but *ipse dixit* of Respondent no.4 who passed the impugned order.

30. It appears to us that there is no reason or finding recorded by the respondent no.4 in coming to an arbitrary conclusion. Such mechanical order bereft of reasons, passed by the respondent no.4 completely failed to consider the reply of the petitioner no.1 dated 17 January 2017 despite being before him, is in the teeth of the well settled legal principles of *audi alteram partem*. At this juncture we may refer to the decision of the supreme court in the case *UMC Technologies Private Limited v/s Food Corporation of India and Another*³ dated 16 November 2022. In this case the Supreme Court noted that the first principle of civilized jurisprudence is that a person against whom any action is sought to be taken or whose right or interest are affected, should be given a reasonable opportunity to defend himself.

31. In the present case, the notice of hearing dated 26 December 2016 issued by the respondent no.4 that too after 17 long years not specifying any reason, reduced hearing to an empty formality. Further, the impugned order of respondent no. 4 compounds such illegality by straight away coming to a conclusion against the petitioner No. 1 without any findings, or setting out any reasons or grounds. We, thus, find substance in the submission of Mr. Chavan to the effect that such hearing notice dated 26 December 2016 issued

3. (2021) 2 SCC 551

after so many years is hit by gross, inordinate delay and laches, in the given facts and circumstances. Moreover, there is no rationale, reasoning offered by the respondents to justify the correctness or legality of the impugned order, in a situation where the petitioners were not afforded a reasonable opportunity to defend himself.

32. From a bare perusal of the impugned order, it is clear that there is not even a remote reference to the petitioners' detailed reply dated 17 January 2017 filed in response to the hearing notice dated 26 December 2016 issued by respondent no.4. We are thus persuaded to accept that the principles of natural justice have been clearly breached by the respondent no.4. Thus, this is a peculiar situation where though hearing was given it was only an empty formality and the petitioners were condemned unheard.

33. We now examine the substantial submission of Mr. Chavan to the effect that the land acquisition proceedings qua the subject lands of the petitioners would also stand lapsed under Section 11A of the Land Acquisition Act and the response of Mr. Pawar on this issue. Section 11A of the said Act reads thus:

“11A. Period shall be which an award within made. - The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land shall

lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), the award shall be made within a period of two years from such commencement.

Explanation - In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.”

A perusal of the above provision would demonstrate that it entails two vital ingredients components. Firstly, the time stipulated in making the award which is to be so made within a period of two years from the date of declaration under Section 6 of the Land Acquisition Act. Consequently thereto, it provides that if no award is made within such stipulated period, the entire proceedings for acquisition of land shall lapse. Coming to the facts of this case, the award passed by respondent no.3 dated 15 October 1999 did not include the subject lands. No steps were taken by the respondents to publish an award qua the subject lands of the petitioners, nor were any fresh acquisition proceedings initiated qua the subject lands within the period of two years from the declaration of section 6 notification. So also, at all material times the physical possession of the subject lands remained with the petitioners and obviously so, as there was no award qua the subject lands. Also as there was no award there was no question of any compensation being paid to the petitioners. It is

pertinent to note that the order granting status quo dated 8 October 1999 which was an order qua the possession of the subject lands and not any step taken towards declaration of an award, which continued at least until 31 December 1999. By an order of the said date, respondent no.2 while partly allowing the application of the petitioner No.1 filed under Section 48(1) of the Land Acquisition Act remanded the proceedings to respondent no.3 for *de novo* hearing, expressly vacating the status quo initially granted on 8 October 1999. In view of lifting of such status quo, there was no fetter legally or otherwise on the respondents to complete the acquisition of the subject lands in the mode and manner stipulated under the provisions of Land Acquisition Act. Thus, in the given facts and circumstances, it is discernible that the provision under Section 11A is rightly invoked by the petitioners and the legal consequences set out therein would necessarily follow more particularly in the absence of any justification in law, by the respondents, in this regard.

34. We have also examined the judgment of the Supreme Court relied on by Mr. Chavan in the case of ***Kunwar Pal Singh vs. State of U.P.*** [*Supra*]. We note that the Supreme Court in the above decision, in the context of Section 11A of the Land Acquisition Act has held that the said provision is intended to benefit the land owner. In other words, Section 11A is held to be a beneficial legislative provision by the Supreme Court to ensure that the award is made within two years from the date of its declaration under Section 6 of the said

Act. This is a case where the award dated 15 October 1999 passed by respondent no.3 expressly excluded the notified, subject lands of the petitioners. Thus, the only alternative for the respondents under the framework of the Land Acquisition Act was to initiate fresh land acquisition proceedings in respect of the subject lands and pass specific award to include the subject lands. This was not so done by the respondents. Thus, the decision of the Supreme Court in the case of *Kunwar Pal Singh vs. State of U.P. [Supra]* becomes relevant and applicable as the subject lands have not vested in the government, title remained with the owners in the absence of acquisition proceedings qua the subject lands of the petitioners. As a result thereof, in our opinion, the provisions of Section 11A of the Land Acquisition Act become applicable, resulting in the lapsing of the entire land acquisition proceedings qua the subject lands of the petitioners.

35. We have noted respondents' reliance on the letter dated 6 February 2010 annexed to their additional affidavit dated 19 November 2022 on the aspect of respondent no.1 handing over symbolic possession of subject lands to the respondents. In this regard, we refer to a judgment of the Supreme Court in the case of *Raghibir Singh Sherawat vs. State of Haryana & Ors.*⁴. The relevant portion is extracted below:-

“Further, this Court held at Parain Raghibir Singh

4. (2012) 1 SCC 792

Sehrawat case as under; (SCC pp. 800-01)

“26. Bhagwati, J. (as he then was) and Gupta, J., who constituted the majority did not agree with the Untwalia, J. And observed as under: (balwant Narayan Bhagde case, SCC p. 711, para 28)

‘28. We think it is enough to state that when the Government proceeds to take possession of the land acquired by it under the Land Acquisition Act, 1894, it must take actual possession of the land, since all interests in the land are sought to be acquired by it. There can be no question of taking “symbolical” possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land. How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of’.

A perusal of the above decision brings to the fore the legal principle to the effect that the meaning of taking over the physical possession of the acquired land would necessarily entail the actual and not just symbolic possession from the land owner, in the manner recognized by law. As held by the Constitution Bench of the Supreme Court, in the case of ***Indore Development Authority vs. Manoharlal & Ors.***⁵ that upon drawing up panchnama of taking possession under the land acquisition cases, the land vests in the State. In the present case, there is no material whatsoever that any panchnama was drawn by the respondents to take over the possession of the

5. (2020) 8 SCC 129

subject lands from the petitioners. Thus, a mere statement/assertion in the affidavit of the respondents that the possession was taken and / or making unilateral revenue entries is of no consequence. In view thereof, mere inference of intent to hand over possession in terms of the petitioners' letter dated 6 February 2010 does not assist the respondents. This in as much as the expression "possession" has to be read, understood and applied in the manner recognized by law and not as the respondents construe it to be.

36. In the context of Section 11A of the Land Acquisition Act, we note the expression "entire proceedings" as appearing in the said provision. In this context, we refer to a judgment of this Court in *Prakash Vishwanath Khute and Others vs. Special Land Acquisition Officer, Buldhana and others*⁶. The relevant portion is extracted below:

"8. It is well-settled principle of law that when a statutory provision for exercise of power requires compliance of certain conditions and such provision also provides for consequences for non-compliance of those conditions, then such provision of law is to be construed as mandatory one. The mandate under such statutory provision cannot be ignored. Indeed, this aspect has been duly considered in detail in the decision delivered by this Court to which one of us had been a party (R.M.S. Khandeparkar, J.) in Mahesh Shivaji Dighe's case (supra). In the said decision, relying upon the decision of the Apex Court in Bihar State Housing Board v. State of Bihar, (2003) 10 SCC 1 it was held that:

"it is mandatory for the authorities to make an award under section 11 within the period of two years as

6. 2006 SCC OnLine Bom. 679

specified under the provision of law comprised under section 11A of the said Act and, in case of failure to make such award, the entire proceedings for acquisition stand lapsed. Secondly, it follows that the period of two years has to be counted from the date of the last declaration of the notification under section 6. Thirdly, that for the purpose of publication and declaration of notification all the three modes as prescribed under the law and clarified by the decision of the Apex Court are required to be followed strictly in consonance with the provisions of law. Any failure in that regard on the part of the authority may prove fatal to the acquisition proceedings and penal consequences may follow.

*“13. A feeble attempt was made to contend that the lapsing will relate only to the land which was the subject-matter of the Writ Petition No. 1372 of 2004 as the possession of the land was not taken in respect of the plot of land which was the subject-matter of the said petition and that, therefore, there was no admission in general as such about non-publication of declaration on 5-11-2001 in Writ Petition No. 1372 of 2004. The submission is totally devoid of substance. The section 11-A clearly states that the lapsing of the acquisition proceedings would be of **“the entire proceedings for the acquisition of the land”**. The expression **“the entire proceedings”** would relate to acquisition of the land which was the subject-matter of the declaration under section 6 read with the Notification under section 4 of the said Act. Referring to the term “the land” following the expression “the entire proceedings for the acquisition of” in section 11-A of the said Act, it was sought to be contended that it will restrict to “the land” which is the subject-matter of dispute and possession of which has not been taken. No such exception can be made only in relation to the land of which possession is not taken or which is the subject-matter of dispute. The section 11-A does not make any such exception in relation to any such land. On the contrary, it relates to the entire proceeding of the acquisition of the land which was the subject-matter of declaration under section 6 of the said Act. The period specified under section 11-A specifically refers to publication of the declaration under section 6 and the consequences con-*

templated under section 11-A are on account of the expiry of the specified period from the date of publication of the declaration under section 6. Being so, the term “the entire proceedings” in the said section 11-A has necessarily to relate to the publication of the declaration under section 6 of the said Act. The section 6 declaration being not related to only land, the possession of which is not taken, but to the entire land which is the subject-matter of the Notification under section 4, consequently, the term “the entire proceedings” will relate to all such pieces of land covered by the declaration under section 6 read with the Notification under section 4 of the said Act, unless it is shown that there are different awards in respect of different pieces of land, some of them being within the period of limitation.

In light of the above, we note that the expression “the entire proceedings” in Section 11A of the Land Acquisition Act necessarily relate to the acquisition of the subject lands of the petitioners, which was the subject matter of declaration under Section 6 read with the notification issued under Section 4 of the said Act. In the given facts, the subject lands though initially being part of the notified land under Section 4 read with the notification issued under Section 6, were expressly excluded by the respondents in the award of respondent No.3 dated 15 October 1999. Thereafter, no fresh proceedings for acquisition of the subject lands were undertaken by the respondents nor was any physical possession of the subject land taken over by the respondents. It is nobody’s case that there were different awards in respect of different pieces of land. In fact, the award dated 15 October 1999 was a composite award which ought to have expressly included the subject lands notified under Section 4

read with the notification under Section 6. In view thereof, the above decision would clearly apply to the given facts leading to the inevitable conclusion that the entire proceedings of land acquisition qua the petitioners' lands have lapsed.

37. We have perused the affidavit-in-reply of the respondents dated 18 February 2022 along with their additional affidavit-in-reply dated 19 November 2022. In this context, we refer to our reasoning above, considering the vital factual position that the subject lands of the petitioners were not included in the award dated 15 October 1999. In view thereof, we find no substance in the pleadings in the form of affidavit-in-reply/additional affidavit of the respondents. As there is no award qua the subject lands of the petitioners, the respondents cannot assert payment of any compensation to the petitioners, under the scheme and framework of Land Acquisition Act. We are thus unable to accept such stand taken by the respondents.

38. We have taken note of the averment in the petition that the petitioners are agriculturists who wholly depend upon the income from such agricultural lands. Such fact has not been denied by the respondents in anywhere in their pleadings filed. In view thereof, we need to be extremely circumspect when we are dealing with the subject lands being the property of the petitioners, falling within the purview and domain of constitutional rights

guaranteed under Article 300A of the Constitution of India. As a sequitur, the petitioners ought not to be deprived of such property in a manner unknown or contrary to law. We are equally mindful of the fact that in such cases where the petitioners wholly depend upon such agricultural land for their survival, the salutary mandate of Article 21 of the Constitution cannot be overlooked. In view thereof, deprivation of such rights of the petitioners contrary to the manner prescribed by law would result in infringement of the petitioners right to livelihood being the fundamental right guaranteed under Article 21 of the Constitution. We also find that the manner in which the impugned order is passed completely relegating the principles of natural justice to thin air, as discussed above, is arbitrary, unreasonable, non-speaking and discriminatory. Thus, the action of the respondents coupled with the impugned order not only mitigates against the letter and spirit of Section 11A of the Land Acquisition Act but infringes upon the fundamental right of the petitioners guaranteed under Article 14 of the Constitution of India. Thus, this is a case where the mandate under Section 11A in regard to lapsing of the subject lands of the petitioner, would come into play and the impugned order of Respondent no. 4 has to be set aside.

E. Conclusion:-

39. In light of the above discussion, we find merit in the case of the petitioners. We hold that the entire land acquisition proceedings qua the subject lands of the petitioners have lapsed. The petition is allowed in terms of prayer clause (b)(ii) and amended prayer clause b(iii). No order as to costs.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)