



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 4039/2023

1. Shri Zamin s/o Sheikh Mohsinali,
Amin Bohari, aged about 72 yrs.,
R/o. Plot No.10, Sial Layout,
Takli Feeder Road, near Nelson
Square, Nagpur.
2. Shri Juzer Amin s/o Sheikh Mohsinali,
Amin Bohari, Aged 70 yrs.,
R/o. 4, Byaramji Town, Chindwada
Road, Nagpur-13.

.... **Petitioners**

VERSUS

1. State of Maharashtra, through
Secretary, Ministry of Urban
Development, Mantralaya, Mumbai.
2. The Collector, Nagpur City,
Civil Lines, Nagpur.
3. The Administrator, Meghdoot
Project, Situated at (CIDCO),
CIDCO Office, CIDCO Colony,
Butibori, Nagpur – 441122.
**(Corrected as per order
dated 13.09.2023.)**
4. Chairman Maharashtra Airport
Development Corporation, Nagpur
8th Floor, World Trade Centre,
Cuff Parade, Mumbai-400005.

....**RESPONDENTS**

Mr. P. N. Kothari, Advocate for petitioners.
Ms. Deepali Sapkal, Assistant Government Pleader for respondent
Nos. 1 & 2.
Mr. C.S. Samurdra, Advocate for respondent No.4

CORAM : **VINAY JOSHI AND**
SMT.M.S. JAWALKAR, JJ.
DATE : **10.09.2024**

ORAL JUDGMENT : (PER VINAY JOSHI, J.)

Rule. Rule made made returnable forthwith. The learned counsel appearing for the parties heard finally with consent.

2. The petitioners' land has been acquired. The Special Land Acquisition Officer has passed an award determining the compensation. The petitioner claims that on introduction of the new Act i.e. the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("the Act of 2013"), acquisition of their land stood lapsed in terms of Section 24(2) of the Act of 2013 for which the declaration has been sought.

3. The facts in brief are that the petitioner No.1 Zamin Sheikh was owner of land bearing Survey No. 151/1 admeasuring 1.09 H.R.

whilst petitioner No.2 Juzer Amin was the owner of land bearing Survey No. 151/2 admeasuring 1.09 H.R. situated at Mouza Khapri (Railway), Tah. Nagpur (Rural) Dist. Nagpur. The said land was came to be acquired by an award of the Special land Acquisition Officer, Nagpur Improvement Trust ("NIT") at the instance of respondent No.3 Administrator. Preliminary Notification under Section 4 of the Land Acquisition Act, 1894 ("the Act of 1894") came to be published on 22.10.1998 followed by publication of proclamation under Section 4(1) of the Act of 1894 on 16.01.1999. The notification in terms of Section 6 of the Act of 1894 was came to be published in the Government Gazette on 20.01.2000. Final, declaration in terms of Section 6(2) of the Act of 1894 was published on 29.01.2000. The land in question was acquired for the purpose of planned expansion and development of the Nagpur City. In the meanwhile, the said land came to be transferred in favour of respondent No.4 Maharashtra Air Port Development Corporation, Nagpur ("MADC").

4. The proceeding was registered as Special Land Acquisition Case No. 2/A-65/1998-99. The Special Land Acquisition Officer has passed an award in the said proceeding on 24.12.2004. Being

dissatisfied with the quantum of compensation, the petitioners have filed a reference in terms of Section 18 of the Act of 1894 before the Collector, who in turn referred the case to the Civil Court which was registered as Land Acquisition case No. 366/2007.

5. During the pendency of reference proceeding before the Civil Court, the new Land Acquisition Act came into force with effect from 01.01.2014. It is the petitioners' contention that by virtue of Section 24(2) of the New Act of 2013, the acquisition is deemed to have lapsed since the award was passed more than five years preceding to the enforcement of the Act of 2013 as well as possession was not taken and compensation was not paid. It is petitioners' contention that in terms of decision of the Supreme Court in case of ***Pune Municipal Corporation Vs. Harak Chand Mistrimal Solanki, (2014) 3 SCC 183***, either of the condition i.e. non-payment of compensation or not taking physical possession gives deeming effect of the lapsing of reservation. In view of said declaration of law, the petitioners have withdrawn reference proceeding by filing pursis which was disposed of by the Reference Court vide order dated 22.11.2017.

6. It is petitioners' contention that they are still in physical possession of the acquired land. No intimation was given about the payment or deposit of the compensation amount. It is contended that the Officers of respondent are visiting the questioned land and are interfering into the petitioners' physical possession. The petitioners would submit that the respondents did not take any action for the period from 2018 to 2023, the petitioners are enjoying the land in the capacity of owner. In substance, by virtue of Section 24(3) of the Act of 2013, the Land Acquisition Case No. 2/A-65/1998-99 declaring the award dated 24.12.2004 and subsequent proceeding stood lapsed. The petitioners seek declaration to that effect and direction to the respondents for not to interfere with the petitioners' peaceful possession over the subject property.

7. Respondent No. 4 Maharashtra Air Port Development Corporation, Nagpur as well as respondent No.2 Collector, Nagpur resisted the petition by filing separate reply affidavit. The petitioners' initial ownership of the subject land is not in dispute. It is stated that Section 4 Notification was published on 22.10.1998 followed by proclamation dated 16.01.1999. Inquiry was conducted under Section

5(c) of the Act of 1894 during the period from 03.03.1999 to 08.03.1999. Final Notification under Section 6 of the Act of 1894 came to be published on 20.01.2000. The inquiry envisaged under Section 9(1) of the Act of 1894 was conducted from 13.03.2000 to 16.03.2000, on which award came to be passed by the Special Land Acquisition Officer on 24.12.2004.

8. It is contended that after publication of Section 4 Notification, the acquisition proceeding was challenged by several land owners. However, those writ petitions were dismissed. Respondent No. 4 MADC was appointed as Planning Authority for development planning and expansion of Nagpur City.

9. In pursuance of award dated 24.12.2004, notices under Section 12(2) of the Act of 1894 were issued to the petitioners to receive compensation determined for acquisition of land. The notices dated 23.09.2005 were issued requiring petitioners to attend the office of the Special Land Acquisition Officer for receiving compensation. In terms of award dated 24.12.2004, compensation of Rs. 5,11,631/- was determined for each of the petitioner. Both the petitioners have received notices, however they failed to approach the

Special Land Acquisition Officer to receive compensation. Since petitioners failed to receive the compensation, the determined amount was duly deposited in the Reference Court on 12.10.2009 in terms Section 31 of the Act of 1894. Likewise, the compensation determined in respect of construction has also been deposited on or before 19.12.2009. It is submitted that by passing separate orders, the Reference Court directed to disburse the amount to the petitioners on verification. It is contended that though petitioners have filed a reference proceeding for enhancement of compensation, however they have withdrawn the references. The respondents categorically denied that the physical possession of acquiring land was not taken and the compensation has not been paid. It is contended that after passing of the award, possession has been taken by the respondent No. 4 MADC. Road was constructed on the part of the acquired land. Likewise, compensation was duly tendered and deposited in the Reference Court.

10. It is contended that the decision rendered by the Supreme Court in case of Pune Municipal Corporation (*supra*) has been overruled by the Constitutional Bench in its later decision in case of

Indore Development Authority Vs. Shailendra, (2018) 3 SCC 412.

The respondents would content that in view of the decision in case of Indore Development Authority (*supra*), there would be no lapsing, if either possession is taken or compensation has been paid. It is submitted that both conditions have been complied and thus there would be no automatic lapsing. With these contention, the respondents seek for dismissal of the petition.

11. It is contended that NIT had taken over the possession of land on 26.07.2006 and handed over to the respondent No.4 MADC on the very day. After taking possession, respondent No.4 MADC has started work for providing civic facilities in respect of the land in question. It is categorically submitted that Section 24(2) of the Act of 2013 would not give rise to new cause of action to the proceeding. In other words, Section 24 of the Act of 2013 would apply to the pending proceeding on the date of enforcement of the Act of 2013. Since the references have been withdrawn and, nothing was pending, the petitioners cannot seek benefit thereof.

12. It is petitioners' case that the land has been acquired for the development project under the Act of 1894. The Special Land

Acquisition Officer has passed an award on 24.12.2004 in terms of the Act of 1894. During the pendency of reference proceeding, new Act of 2013 was enacted by the Parliament, thereby repelling the old Act of 1894. This new legislation made various reforms, importantly Section 24 of the Act of 2013 provides that the land acquisition proceeding initiated under the earlier regime would be deemed to have lapsed in certain cases, including when compensation had not been paid or possession has not been taken.

13. It is petitioners' case that the respondents neither took possession nor paid compensation and thus, the acquisition stood lapsed. Heavy reliance is placed on the decision of the Supreme Court in case of Pune Municipal Corporation (*supra*), wherein it is held that twin conditions i.e. taking of physical possession and payment of compensation have to be complied, failing which the acquisition would be deemed to have lapsed. It is stressed by the petitioners that though the decision rendered by the Supreme Court in case of Pune Municipal Corporation (*supra*) has been overruled by the Constitutional Bench in case of Indore Development Authority (*supra*), however as the matter was concluded before change in law,

the case is well governed by the law declared in case of Pune Municipal Corporation (*supra*). In other words, it is submitted that Section 24(2) of the Act of 2013 gave a deeming fiction of lapsing on the date of introduction of the new Act i.e. 01.01.2014. The acquisition is deemed to be lapsed. Therefore, the lapsing stood concluded before change in the legal position. In other words before the decision in case of Indore Development Authority (*supra*), the matter was already concluded and thus, the law declared in case of Pune Municipal Corporation (*supra*) would apply to the case in hand. It is submitted that the ratio in case of Indore Development Authority (*supra*) would apply to the pending proceeding and not the proceeding and it are concluded and it cannot be reopened.

14. The petitioners have disputed that the actual possession was taken by the Acquiring Body. Though possession receipts have been tendered, they are unilaterally prepared. Panchanama was not prepared in the process of taking possession. The disputed land is still in petitioners' possession, wherein the petitioners are running petrol pump, office, showroom, godown etc. The petitioners have tendered

photographs and tax receipts to show actual physical possession over acquired land.

15. On the second count, it is submitted that the compensation has not been paid despite the award. It is contended that notice dated 23.09.2005 under Section 12(2) of the Act of 1894 was received on 08.12.2005, by which they were summoned to appear on 08.11.2005. Thus, these notices are invalid and it is not a proper tender. It is contended that as per Section 31 of the Act of 1894, compensation has to be paid in full which the respondents did not. According to the petitioners, deposit of compensation amount in the Reference Court in the year 2012 would not save the respondents from automatic lapsing of reservation.

16. It is argued that the petitioners have withdrawn the references made under Section 18 in the year 2017 itself. According to the petitioners, no case was pending at the time of declaration of law by the Supreme Court in case of Indore Development Authority (*supra*) and thus, the petitioners' case is governed by the decision in case of Pune Municipal Corporation. In support of said contentions,

the petitioners have relied on various decisions to which we are coming shortly.

17. The controversy revolves around the lapsing provision as incorporated in Section 24 of the Act of 2013 and the applicability of the decision of the Supreme Court in case of the Pune Municipal Corporation (*supra*) or Indore Development Authority (*supra*). It necessitates us to extract Section 24 of the Act of 2013 for our ready reference which read as below:-

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),—

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said Section 11

has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act.

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

[emphasis supplied]

18. For the sake of convenience, we note some important dates as below:-

Sr. No	DATE	EVENT
1.	29.10.1999	Notification under Section 4(1) of the Act of 1894.
2.	24.12.2004	Land Acquisition Officer has passed an award.
3.	2007	Filed reference under Section 18 of the Act of 1894.
4.	01.01.2014	New Act came into force.
5.	22.11.2017	Reference was withdrawn and disposed of.
6.	24.01.2014	Pronouncement in case of Pune Municipal Corporation.
7.	06.03.2020	Pronouncement in case of Indore Development Authority.

19. The essence of petitioners' submission is about non-compliance of both conditions enumerated in Section 24(2) having effect of lapsing of reservation in terms of decision in case of Pune Municipal Corporation (*supra*). It is petitioners' contention that Section 24(2) of the Act of 2013 gives a deeming effect of lapsing on non-compliance of either of twin conditions. Taking note of the said non-compliance and the provision explained by the Supreme Court in case of Pune Municipal Corporation (*supra*), the petitioners have withdrawn the reference in the year 2017. According to the petitioners though the decision of the Pune Municipal Corporation (*supra*) was subsequently overruled in the year 2020, nothing was pending to apply the changed legal position. It is petitioners' contention that since it is the case of deeming fiction of lapsing the matter is concluded which cannot be reopened after change in position of law by applying the decision of Indore Development Authority (*supra*).

20. In other words, the petitioners would submit that subsequent change of law will not be attracted unless a case is pending before the Competent Authority for adjudication. By fiction of law

already the acquisition has been lapsed which cannot be reopened on the basis of new interpretation given in later decision in case of Indore Development Authority (*supra*). The respondents countered the submission by contending that the law declared by the Supreme Court in case of Indore Development Authority (*supra*) would apply since there was no adjudication to foreclose the issue. It is submitted that yet there is no declaration of lapsing of reservation on the basis of interpretation made in case of the Pune Municipal Corporation (*supra*) and therefore, in absence of such adjudication, the law declared and interpreted in later decision in case of Indore Development Authority (*supra*) would apply with its full force.

21. The learned counsel for petitioners initially relied on the decision of the Supreme Court in case of ***Baburam Vs. C.C. Jacob and others, (1993) 3 SCC 362***, wherein it is observed that the purpose of prospective declaration is to avoid reopening of settled issue and to prevent multiple proceedings. The very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to the date of declaration are validated. On the same line, reliance is placed on the decision of the Supreme Court

in case of *Managing Director, ECIL, Hyderabad etc. Vs. B. Karunakar, etc. AIR 1994 SC 1074*, wherein it is ruled that the pending proceeding shall be disposed of in accordance with the declaration made in the decision. However, the matter which had become final would have no effect on subsequent declaration of changed position of law.

22. The petitioners have heavily relied on the decision of the Supreme Court in case of *Delhi Development Authority Vs. Tejpal & ors*, [Civil Appeal No.-----of 2024 (arising out of SLP (C) No.26697/2019, decided on 17.05.2024) with special emphasis on para 29 to 32 of the decision which read as below:-

“29. Finally, the fourth reason why subsequent overruling of a judgement cannot be a sufficient cause is because when a case is overruled, it is only its binding nature as a precedent that is taken away and the *lis* between the parties is still deemed to have been settled by the overruled case. It is a settled principle of law that even an erroneous decision operates as *res judicata* between the parties. Hence, when *Manoharlal (supra)* overruled *Pune Municipal Corporation (supra)* and *Sree Balaji Nagar Residential Association (supra)*, as well as all other cases relying on them, it only overruled their precedential value, and did not reopen the *lis* between the parties. The mere fact that the impugned orders in the present case were overruled by *Manoharlal (supra)* would

not, therefore, be a sufficient ground to argue that the cases should be reopened.

30. *In this respect, it would be pertinent to highlight an exception—cases that are still pending before this Court. If the lis is still pending and has not reached finality, those cases would be decided on the basis of Manoharlal (supra). This is because a decision on the interpretation of law is applied retrospectively unless the court specifically rules as to its prospective applicability.*

31. *There can, however, be no doubt that a lis will have to be decided as per the new interpretation if during its pendency, the law has been construed in a different manner by a subsequent judgement. We say so for the reason that such new construction shall be deemed to be the correct understanding of the statute from its very inception. We find support in this regard from Shyam Madan Mohan Ruia v. Messer Holdings Ltd., in which the High Court had dismissed the suit based on the decision of this Court in Foreshore Coop. Housing Society Ltd. v. Praveen D. Desai. During the pendency of appeal, Foreshore Coop. Housing Society Ltd. (supra) was overruled in the case of Nusli Neville Wadia v. Ivory Properties. This Court while deciding the issue in Shyam Mohan Ruia (supra), held that since the precedent forming the very basis of the High Court's decision stood overruled, the dispute before it must be decided as per the later decision.*

32. *To sum up, we hold that subsequent change of law will not be attracted unless a case is pending before the competent court awaiting its final adjudication. To say it differently, if a case*

has already been decided, it cannot be re-opened and re-decided solely on the basis of a new interpretation given to that law.”

23. In said case, several appeals have been preferred by the Acquiring Body seeking to reopen the issue of lapsing declared by the Courts in terms of Section 24(2) of the Act of 2013. In the said context, it has been observed that subsequent overruling of a decision has binding nature as a precedent, however the lis between the parties is still deemed to have been settled by the overruled case. If the lis is pending and has not reached the finality those case would be decided on the basis of subsequent change in law. The decision on the interpretation of law would apply retrospectively unless the Court specifically rules as to its prospective applicability.

24. The said decision would not assist the petitioners in any manner as in those cases, Delhi High Court has already declared lapsing of reservation in terms of Section 24(2) of the Act, on the basis of the then prevailing interpretation made by the Supreme Court in case of Pune Municipal Corporation (supra). In that background, it is held that the lis has already been finally decided which cannot be reopened on the basis of new interpretation given to the law.

25. In case at hand, there is no declaration of lapsing so far about the questioned reservation. Undoubtedly, till date, none of the Court has declared that the subject reservation stood lapsed on the basis of interpretation made in case of Pune Municipal Corporation (*supra*). Though nothing is pending on date, however there is no question of reopening of the concluded decision as there is no such a declaration of lapsing so far. Though the petitioners' claim that by deeming fiction of Section 24(2) of the Act of 2013 on introduction of new Act, the reservation has automatically lapsed, however it is a factual aspect which requires adjudication, whether the case in hand would fall within the ambit of Section 24(2) of the Act of 2013. It is petitioners' own interpretation that the twin conditions have not been satisfied and thus, the deeming effect comes into play. We are not ready to accede the submission, as on facts we have to decide whether both conditions or either of them has been or not been complied with.

26. The learned counsel appearing for the respondents would submit that normally, the law declared by the Supreme Court has to be assumed to be the law from inception. In this regard, he relied on the decision in case of *M.A. Murth Vs. State of Karnataka and others*

(2003) 7 SCC 517, wherein it is ruled that the decision of the Supreme Court enunciating a principle of law is applicable to all cases irrespective of such pendency thereof because it is assumed that what is enunciated is, in-fact, the law from inception. We reiterate that if there is declaration of lapsing by the Competent Court then only the matter cannot be reopened. The issue of lapsing has first time come up for consideration by this petition and therefore, the law declared by the Supreme Court which is the law of land in terms of Article 141 of the Constitution of India i.e. the decision rendered in case of Indore Development Authority (*supra*) has to be applied with its full force. It would be erroneous to apply the overruled decision in case of Pune Municipal Corporation in the wake of subsequent decision of the Constitutional Bench interpreting the provisions of law in particular manner. In conclusion, the Constitutional Bench decision in case of Indore Development Authority (*supra*) would govern the field.

27. In case of Indore Development Authority (*supra*) while interpreting Section 24(2) of the Act of 2013, it is ruled that even if one of the two conditions is not satisfied, still there shall be no lapsing. Section 24(2) of the Act of 2013 provides that in case where

award has been made five years preceding to the commencement of the Act, but the physical possession of the land has not been taken or the compensation has not been paid, the said proceeding shall be deemed to have lapsed. While interpreting word “or” used in Section 24(2) between above said two conditions, it is ruled that the word “or” has to be read as “nor” or as “and”. It is explained that where two negative conditions or two prohibitions are coupled by the word “or”, the said “or” has to be read as “and” or “nor”. In other words, it was opined by the Constitutional Bench that compliance of either of the two conditions, that is taking over the possession of the land, or payment of compensation, is good enough to sustain the acquisition. The converse would be the land owner while claiming lapsing has to show failure of the Acquiring Body on both counts.

28. It takes us to the first aspect of taking over the possession of the acquired land. The petitioners land bearing Survey No. 151/1 and 151/2 was partially open as well as partially constructed position. As referred above, the Special Land Acquisition Officer has passed an award on 24.12.2004. The respondents have categorically denied that possession was not taken despite acquisition. It is contended that in

pursuance of award, possession was taken by respondent No.3 Administrator on 26.07.2006 by drawing Panchanama which is annexed (R1) along with the reply-affidavit. It is contended that on the very day, possession was handed over to respondent No.4 MADC. Not only that, the respondent No.4 has also constructed road on part of the acquired land for public utility. The respondents have produced survey map for that purpose. Not only that the respondents have produced mutation entry extract of both survey numbers indicating that on the basis of acquisition, mutation was effected within stipulated period in terms of Maharashtra Amendment to Section 24 of the Act of 2013.

29. The learned counsel appearing for petitioners disputed the factum of taking over possession. It is stated that the alleged possession is taken ex-parte without notices or consent of the petitioners. The panchanama/possession receipts dated 26.07.2007 does not bear signatures of the petitioners. The said action taken behind back of the petitioners is of no avail. It is contended that the petitioners have constructed petrol pump, godown, office, show-room for which photographs have been produced.

30. The learned counsel appearing for petitioners relied on the decision in case of ***Banda Development Authority, Banda Vs. Moti Lal Agarwal and others, (2011) 5 SCC 394*** to contend that there is no hard and fast rule to lay down as to what Act would constitute taking possession, but in case of building or structure, it is not sufficient to have mere entry at the place to show possession. The possession has to be taken in presence of independent witnesses by obtaining their signatures on panchanama. In this regard, our attention has been invited to the observation made in para 37 of the decision.

31. On the other hand, respondents relied on the decision of the Supreme Court in case of ***Land and Building Department through Secretary and another Vs. Attro Devi and others, AIR 2023 SC 1964*** to contend that after passing award, land vests with the State Government. When the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking possession of land. On the large chunk of property, the Government is not supposed to put some other persons or Police Force to retain the possession or cultivate the same. The relevant observation made in para 12 reads as under:-

"12. The issue as to what is meant by "possession of the land by the State after its acquisition" has also been considered by Constitution Bench of Hon'ble Supreme Court in Indore Development Authority's case :(AIR 2020 SC 1496) (supra). It is opined therein that after the acquisition of land and passing of award, the land vests in the State free from all encumbrances. The vesting of land with the State is with possession. Any person retaining the possession thereafter has to be treated trespasser. When large chunk of land is acquired, the State is not supposed to put some person or police force to retain the possession and start cultivating on the land till it is utilized. The Government is also not supposed to start residing or physically occupying the same once process of the acquisition is complete. If after the process of acquisition is complete and land vest in the State free from all encumbrances with possession, any person retaining the land or any re-entry made by any person is nothing else but trespass on the State land. Relevant paragraphs 244, 245 and 256 are extracted below:

"244. Section 16 of the Act of 1894 provided that possession of land may be taken by the State Government after passing of an award and thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of urgency in Section 17(1). The word "possession" has been used in the Act of 1894, whereas in Section 24(2) of Act of 2013, the expression "physical possession" is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2) requires actual physical possession to be taken, not the possession in any other form. 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.

245. The question which arises whether there is any difference between taking possession under the Act of 1894 and the expression "physical possession" used in Section 24(2). As a matter of fact, what was contemplated under the Act of 1894, by taking the possession meant only physical possession of the land. Taking over the possession under the Act of 2013 always amounted to taking over physical possession of the land. When the State Government acquires land and 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."

32. We have also been taken through the decision of the Indore Development Authority (*supra*) to impress that once land vests in the State, it cannot be divested even if there is some irregularity in acquisition proceeding. There is no counter to the submission that on some of the portion of the acquired land roads have been constructed. Though signatures have not been obtained on panchanama, however it is evident that the process was followed and the possession was handed over to respondent No.4 MADC long back in the year 2006. Therefore, by any means, the contention that possession has not been taken, cannot be accepted. Moreover, as noted above, the Government is not supposed to guard entire open land.

33. Coming to the aspect of payment of compensation, it is respondents' contention that in terms of award dated 24.12.2004, compensation of Rs. 5,11,631/- was determined against the land owned by the petitioner No.1 and similar amount was determined for the land owned by petitioner No.2. Notices were issued on 29.09.2005 to both the petitioners in terms of Section 12(2) of the Act of 1894 to approach the Special Land Acquisition Officer on 08.11.2005 for receiving compensation. The copies of notices have

been produced to show that they were received by both the petitioners. It is contended that as both petitioners failed to appear before the Special Land Acquisition Officer for receiving compensation, the said amount was duly deposited in the pending references in terms of Section 31 of the Act of 1894.

34. It is respondents' contention that all the structures have been separately assessed and compensation was determined. Similarly, notices were issued, followed by depositing the entire amount of compensation in the Reference Court in the year 2009 itself. The respondent No. 4 MADC in its affidavit dated 30.11.2023 has specified the amount of compensation and dates of deposit in tabular form. In substance, the entire compensation of Rs. 2,13,31,534/- has been offered and deposited.

35. The learned counsel appearing for the respondents would submit that notice under Section 12(2) of the Act of 1894 dated 23.09.2005 has been received on 08.12.2005 informing to appear on 08.11.2005 for receiving compensation. However, the same does not make any difference since the petitioner never claims that thereafter they had approached to the authority for receipt of compensation

which was denied on account of lapsing of period. The respondents have produced all the notices issued under Section 12(2) as annexure (R2) with reply which is not denied. Moreover, it is evident that compensation has been tendered, and on denial deposited in the Reference Court. It is also brought to our notice that the Reference Court has also permitted for withdrawal of the amount.

36. In this regard, we have been taken to the observations made by the Constitutional Bench in case of Indore Development Authority (*supra*). The relevant observations made in para 366.4 and 366.5 read as below:-

“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.”

37. In case at hand, the acquiring body has complied both conditions, besides that in view of above decision, non-deposit of compensation does not result in the lapse of land acquisition proceedings. We quiet see that the compensation amount has been tendered and on refusal, it was deposited in the Reference Court. Moreover, in above decision, it has been observed that the land owner who refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition had lapsed under Section 24(2) of the Act of 2013.

38. It emerges that the petitioners have initially made a reference in the year 2007 claimed higher compensation, however

after introduction of the Act of 2013 perhaps by relying on the decision of the Pune Municipal Corporation (*supra*) has withdrawn the references. As noted above, since there was no adjudication by any Court, the law declared by the Supreme Court in Indore Development Authority (*supra*) would apply. Needless to say that in absence of clear indication of prospective overruling of the decision, the said law as explained by the Supreme Court has to be assumed to be the law since inception. No doubt, the decision rendered by the Courts cannot reopen, however there is no declaration of lapsing and thus, by applying the law in case of Indore Development Authority (*supra*), there would be no lapsing as both conditions have been complied.

39. In view of above, petition carries no merits, hence dismissed.

Later on:-

40. At this juncture, the learned counsel appearing for petitioners seek to grant protection to the petitioners for two weeks as the petitioners desire to approach to the Higher Forum. In other words, the petitioners seek injunction against respondents for not to disturb petitioners' possession over the subject property. The issue

canvassed before us was of deemed lapsing of the reservation. After analyzing the facts and the law laid down in the field, we held that the possession was taken and the reservation does not lapse. Though the petitioner has initially sought injunction, however no such interim order was passed. In the circumstance, we do not see any propriety in passing further order in the wake of dismissal of petition.

(SMT.M.S. JAWALKAR, J.)

(VINAY JOSHI, J.)