

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

IN THE MATTER OF

WPA 11788 of 2020

Md. Sirajuddin @ Md. Sirajuddin & Ors
Vs.
The State of West Bengal & Ors.

For the Petitioners : **Mr. Saptansu Basu, Adv.,**
Mr. Rabindra Nath Mahato, Adv.,
Mr. Aritra Shankar Ray, Adv.,

For the respondent
No. 8 /KMDA : **Mr. Satyajit Talukdar, Adv.,**
Mr. Arindam Chatterjee, Adv.

For the State : **Mr. Lalit Mohon Mahato, Adv.,**
Mr. Kapil Guha Adv.

For the NHAI : **Ms. Manika Roy, Adv.,**
Ms. Ankita Chowdhury, Adv.,
Mr. Atanu Sur Adv.

Reserved on : **17.06.2025**

Judgment on : **06.08.2025**

Subhendu Samanta, J.

1. Petitioner No. 1 purchased 0.12 acres of land in RS Plot No. 1320 (LR Plot No. 1389), RS Khatian No. 190 (LR Khatian No. 352) under Mouja Unsani, Police Station Jogacha, District Howrah from SK. Amanullah vide registered deed of sale dated 29.05.2015.

2. Petitioner No. 2 purchased 0.10 acres of land in RS Plot No. 1320 (LR Plot No. 1389), RS Khatian No. 190 (LR Khatian No. 3116 and 0.03 acres of land in RS Plot No. 1321 (LR Plot No. 1390) , RS Khatian No. 2164 (LR Khatian No. 3116) both under Mouja Unsani, within Police station Jogacha, Howrah from one S.K Mukshed Ali vide registered deed of sale dated 31.12.2016.

3. Petitioner No. 3 purchased 0.10 acres of land in RS Plot No. 1320 (LR Plot No. 1389), RS Khatian No. 190 (LR Khatian No. 3116) and 0.03 acres of land in RS Plot No. 1321 (LR plot No. 1390), RS Khatian No. 2164 (LR Khatian No. 3116) both the Mouja Unsani within Police Station Jogacha District Howrah from SK Mukshed Ali vide registered deed of sale dated 31.12.2016.

Before purchasing said plots petitioners have inspected the relevant record of rights where the names of the vendors were recorded as riot in respect of the said aforesaid properties. Petitioner after purchased of land applied before BL&LRO, Balli, Howrah for recording their names in records of rights, accordingly the concern record of right has been recorded and mutated in the name of the petition on the basis of such mouja the petitioner has paid taxes to the Government in respect of the aforesaid land to the Dept. concerned. Thereafter, the petitioner applied before the Howrah Municipal Corporation for mutation of the aforesaid land in the name of the petitioners. On the basis of such application Howrah Municipal Corporation has mutated the name of the petitioners in the concerned

registrar. The petitioner has also paid tax in respect of the aforesaid land to the Howrah Municipal Corporation which has been duly received by the said Corporation.

4. It is the contention of the petitioner that in the first part of year 2017 when petitioner started construction of boundary wall over the aforesaid land. Police officials of Jogacha Police Station asked the petitioner not to make any construction upon those lands, as the aforesaid land being acquired by KMDA. Next day the KMDA has put board over the land of the petitioner disclosing that “the land belongs to KMDA,” on query the petitioner came to know that lands in RS Plot No. 1321 was fully acquired in favour of the KMDA for the purpose of Kona express way on August 26, 1987.

5. It is the contention of the petitioner that before purchased he has specifically enquired the concerned record of right in respect of the lands in question. Where the names of the vendors were recorded as riot. No portion of the land in question was acquire by the Government of West Bengal. He also enquired from the vendors who stated that the vendors or their predecessor never paid any compensation amount for alleged acquisition of land in question. However, against the illegal action of the Police Authority, petitioner approached this court through writ petition being WP No. 3103 (W) of 2017, in the said litigation, according to the direction of a Co-ordinate Bench, KMDA has placed an affidavit- in- opposition wherein it has been disclosed that the land acquisition proceeding being LA-18/16

(Act II) of 1975-76 and LA- 18/18 (Act II) of 1975-76, under notification No. 3454 LA (II)/2R-7-87 dated August 19, 1987 published in gazette on August 26, 1987, the lands in RS Plot No. 1320 and 1321 under Mouja Unsani, JL No. 10, Police Station Jogacha, District Howrah was fully acquired by the Government of West Bengal u/s 4(1A) of West Bengal Land (Requisition and Acquisition) Act, 1948 and possession of such land was delivered to KMDA on January 21 of 1976. A possession certificate to that effect was also issued.

It is the further contention of the petitioner that before purchase the land in question, it standing in the name of vendors, and after purchase relevant record of rights of Block Land and Land Reforms Officer as well as the Howrah Municipal Corporation also recorded in the name of the petitioners. The Concerned authority must have enquired about the title of the land before incorporating name of the petitioner; after the mutation, of the State Authority cannot act otherwise. No compensation was paid to either vendor or their predecessor, moreover actual possession in respect of the actual properties not were not delivered to KMDA.

6. Petitioner further submits that there are some civil litigation before the competent court of civil jurisdiction, initiated by the petitioner against some outsiders. Wherein the petitioner has obtained an order of injunction. By such order petitioner has constructed boundary wall. The petitioner submits that suddenly on December 10,

2020 and December 11, 2020 the respondent authority issued two letters for demolition of all structures including boundary wall and also directed the police authority to take proper action to restrain the said construction work immediately.

7. Being aggrieved by those two letters the instant writ petition has been preferred .

8. Mr. Saptagnsu basu Leaned senior counsel appearing on behalf of the petitioner submits that there is a specific manual of instructions of mutation by the Government of West Bengal which is required to be carried out/ followed before mutating name any person in respect of any land; by the said instructions the provision has been made for enquiry and verification before mutation. In this case, the concerned authorities must have conducted due enquiry and verification before recording the name of the petitioner in respect of the disputed land in question.

9. Mr. Basu further argued that the title of the present petitioner is very much clear over the disputed properties the authority concerned cannot stop the construction work of the petitioner over the land in question. He further submits that the alleged land acquisition proceeding has already been lapsed by the operation of law. The KMDA authority has not taken the physical position of the land. Thus, the land in question was correctly recorded as a riot. He submits that according to the provisions of the West Bengal Land (Requisition and

Acquisition) (Amendment) 1996, when no award has been passed within a period of two years from the date of the issue of public notice u/s 9 of the Act (II) of 1948, land acquisition proceeding is liable to lapsed by 31st March, 1997. He further submits that if the land stood vested in State but the possession has not been taken from the riot and the State has accepted rent of the land from the subsequent transferee, the same transferee became tenant under the State and the alleged of the transferee cannot be interfered with.

10. Respondent No. 3 filed affidavit- in- opposition against the writ petition. It is the contention of Respondent No. 3 that the notification under Sub- Section (1A) of Section 4 of the West Bengal Land (Requisition and Acquisition) Act, 1948 issued on August 26, 1987 in respect of Plot No. 1320 and 1321 including other plots of Mouza Unsani, under PS Jogacha, District Howrah. Thus the said land cannot be transferred on and from 26th August 1987 and admittedly the petitioner purchase of the said acquired land in the year 2015 and 2016 is void ab initio.

11. The said lands were acquired vide land acquisition case No. 18/16 (Act II) of 1975-76 and LA case 18/18 (Act II) of 1975-76 respectively for the project of Kona Expressway. The notice acquisition vide Howrah No. 3454- LA (II)/ 9 R-7/1987 dated 19th August 1987 published in Kolkata Gazette extraordinary on 23/8/1987.

It is the further submission of Respondent No. 3 that the possession of said lands were taken over and handed over to the requiring body (KMDA) on 20st of January 1976. Respondent No. 3 further contended that the award was not passed during the life time of LA Act II of 1948, then the LA case was revived under the provisions of West Bengal Land Acquisition (Amendment) Act 1997. Subsequently notices u/s 9(3b) was issued to the interested parties. The award for entries of RS Plot No. 1320 in respect of LA case No. 18/16 (2) of 1975-76 was passed on 22.12.2006 an award in respect of RS Plot No. 1321 in respect of LA case No.-18/18 (Act II) of 1975-76 was passed on 24th August, 2006. It is the further submission of Respondent No. 3 that land acquisition proceeding was completed in the year 2006 by passing an award. The petitioner the lands were vested to the State of West Bengal free from all encumbrances by such operation of law, the Government became the owner of the land since August 26, 1987; therefore, the erstwhile owner of the land has no right title or interest to transfer. the petitioner has acquired no right titled and interest over the disputed properties in question. The alleged deeds in questions are illegal and sham transactions, no right title interests were passed through those deeds. The petitioner cannot claim any right over the properties in question by dint of such Sham deeds.

12. He further contended that subsequent record of right and mutation in the name of the petitioner on the basis of the Sham and void deed in question are also not acted upon.

Respondent No. 8 (the KMDA) filed affidavit in opposition is writ petition and contended that the land in question being RS Plot No. 1320 and 1321 of Mouza Unsani under PS Jogacha, District Howrah was fully acquired for the public purpose for providing facilities for transport communication namely for the construction of Kona expressway in connection with LA case No. 18/ 16 (Act II) of 1975-76 and LA case No. 18/18 (Act II) of 1975-76 respectively. He further submits that a possession of the said land was delivered to KMDA on 20st January 1976. The entire acquisition process of the said land was duly completed and the award of the said land was made on 22.12.2006 for RS Plot No 1320 and 248/2006. It is the contention of the KMDA that thereafter right, title and interest the said land was conveyed and transfer to the answering respondent authority by the Government of West Bengal by deed conveyance being No. 04481 dated 14.04.2014. It is the further contention of respondent No. 8 that the petitioner has no right title interest and possession over the plot in question but he tried to occupy the land by making unauthorised construction. On report of such unauthorised construction the officials of lands of along with the concern Block Land and Land Reforms Officer, Jogacha, has inspected the site and has observed that some portion of the KMDA land has encroached; by that

concerned BL & LRO, Balli has lodged a written complaint to Jogacha P.S requesting to take necessary to stop construction over the Government Land. Thereby unauthorised construction was stopped over the disputed portion. Petitioner being aggrieved by the said action of the KMDA and the State preferred a writ petition before this court being WP 31031(W) of 2017. The said writ petition was come up for hearing as listed motion. A Co-ordinate Bench of this court has not inclined to pass an interim order in favour of the petitioner and directed the respondent authorities to file affidavit in opposition against the writ petitioner. Thereafter, petitioner No. 1 again tried to make some unauthorised construction over the acquired plots of land which was reported by the Additional District Magistrate LA Howrah to the KMDA vide its communication dated 01.12.2020. On verification, it appeared that the petitioner and some peoples are attempting to encroached upon the said vested land by constructing a boundary wall. A written complaint to the inspector in-charge Jogacha, P.S. dated 10.12.2022 was made by concern officer of the KMDA on 10th December 2020. Similarly, District Land and Land Reforms Officer, Howrah has also vide its memo dated 11.12.2020 lodged a written complaint with the Officer-in charge Jogacha, informing that a boundary wall is being contested by petitioner over Government land possession of which was handed over to KMDA. On that score, two impugned letters were issued by the KMDA to the concerned PS. It is the contention of the KMDA that petitioner has no

right or interest over the plots of land. The land in question has already been duly acquired long before the alleged purchase by the petitioner. The alleged vendors had no right to sale of the acquired land. Thus the writ petition is false and frivolous.

13. Respondent No. 9/PUI Kolkata, National Highways of India (NHAI) used affidavit- in- opposition in this matter and contended that plots being No. 1320,1321 and 1326 of Mouza Unsani, PS-Jogacha, District Howrah, was acquired for the project of Kona Express way by Public Works Department (roads) , Government of West Bengal u/s 4(a) of West Bengal Land (requisition and acquisition) Act 1948 by LA case No. 18/16 (Act II) of 1975-76 and LA Case No. 18/18 (Act II) of 1975-76 under notification of 3454 LA (II)/2R-7-87 dated 19.08.1987 which was published in Calcutta Gazette on 26.8.1987.

14. Thereafter the subject Kona Express Way from KM 0.145 to KM 7337 of NH 117 in the State of West Bengal has been handed over by the public works (roads), Government of West Bengal to respondent No. 9 on 04.09.2023. At present the said project i.e. leaning of elevated of Kona Expressway is being developed by respondent No. 9. The said stretch includes and inter alia comprised the subject should Plot No. 1320 1321 and 1326. It is further submitted that respondent No. 9 is now absolute owner of the land acquired by the Public Works Department, Government of West Bengal including the subject plots. The said projects is of national importance and work is being carried out on a war footing basis for timely scheduled completion. It has

been further argued by the respondent No. 9 that the instant writ petition is meritless, payment of compensation in respect of the said plots of land has already been made by the acquiring authority. Petitioner's right on the basis of same sham deeds and documents in questions cannot be entertained. It is further contended by the respondent No. 9 that petitioner is still occupying the subject land. If the physical possession of the said land was not handed over by vacating unauthorised construction of the petitioner, the work of the Government shall heavily hampered and thereby it shall goes delays in the overall development of Kona expressway.

15. Having heard the Learned Counsel for the parties it appears that during the course of arguments learned Counsel for the petitioner has challenged the acquisition proceeding of the Government under the provisions of West Bengal Land (requisition and acquisition) Act, 1984. It has been contended by the learned Counsel for the petitioner that the land was vacant, no possession was taken by the requiring body. Moreover, the record of right was standing in the name of the vendor as "riot" and the earlier owner of the land have never received any award of compensation, as the possessions of the land was not taken from owner- by awarding compensation, the entire proceedings has been lapsed. A further argument was advanced by the Learned Counsel for the petitioners that if the possession of the land shall not taken, the obvious result of the same would be lapsed of the entire acquisition proceeding.

16. In support of his contention he cited a decision of **Loksewa Siksha Mondal Vs. AR Mundra Charitable Trust (2007) 9 SCC 779**

38. It was urged that the term "stay" was interpreted by this Court very widely and it was held that even if stay was limited to maintenance of status quo or against dispossession of the owner, extension of period of limitation would apply. There is no dispute about the said proposition of law. It is also immaterial and irrelevant as to which party had obtained such stay. The only question is whether there was any stay by the High Court. In the case at hand, h to us, the High Court was right and wholly justified in holding that there was no stay of any proceeding and hence, Explanation to Section 11-A had no application. If it is so, it cannot be held that the High Court had committed an error of law or misconstrued Section 11-A by holding that since award was not made within a period of two years from the date of publication of final notification under Section 6 of the Act, the proceedings lapsed. Since the order passed by the High Court impugned in the present appeal by the appellant is in consonance with law, the appeal deserves to be dismissed.

39. For the foregoing reasons, we see no infirmity in the order of the High Court. The appeal deserves to be dismissed and is accordingly dismissed, however, without any order as to costs.

17. Learned Counsel for the petitioner also cited **LLOId PLC VS Imperial Cancer Research Fund and Anr.**

I am bound to say that my initial approach to the meaning of "lapse" in the section was that, as it was wholly unqualified in any way, it therefore meant what it said, i.e. "fail" or "come to an end" or "become void." That these are legitimate meanings to be attributed to the word "lapse" is, I think, supported by dictionary definitions. Thus the Shorter Oxford English

Dictionary includes the following: "3. Law of a devise or grant: To become void. 1726." Stroud's Judicial Dictionary, 4th ed. (1973), p. 1489 contains the following under the heading "Lapse":

18. Learned Senior Counsel for the petitioner further submits that according to the provisions of Section 6, of Act -II of 1948 the award has to be made within 02 years from the date of publication of the declaration u/s 6 from the date of publication to the declaration. In this matter no award has been made. Thus the proceeding has already been lapsed. He referred **Mohan and Anr. Vs. State of Maharashtra (2207) 9 SCC 431**

9. In our opinion under Section 11-A what has to be seen is the date of last publication of the declaration under Section 6, and not any subsequent corrigendum to the said declaration. The only circumstance under which the period between the declaration under Section 6 and the award can be extended is mentioned in the Explanation to Section 11-A which states:

"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."

10. There is no mention in Section 11-A that the period after the publication of the declaration under Section 6 and the publication of any corrigendum to the said declaration has also to be excluded. We will be adding words to the statute if we put such interpretation to Section 11-A, and it is well settled that the court should not add or delete words in a statute.

19. Mr. Saptangshu Basu, Learned Senior Counsel also placed a judgment of this court in **Pradip Kumar Das Vs. West Bengal** reported in **(2001) SCC Online CAL 57** and argued that this court

has a proper finding that if the possession was not taken and as such, State accepted rent from subsequent transferee, transferee became tenant directly under the State.

8. Even assuming that the land stood vested in State, but the possession has not been taken in respect of the alleged surplus land from the raiyat and as the State has accepted rent from the subsequent transferees, the said transferees become tenant direct under the State and the transferees right in respect of such land cannot be interfered with except in accordance with law.

20. Learned Counsel for the petitioner further placed a decision in this court reported in **State of West Bengal Vs. Sabita Mandal (2011) SCC Online CAL 1602** on the principal that those notice which had already been lapsed by Land Acquisition (West Bengal II) Act 1997, no provision has been made for revival of the lapsed notices which stood lapse already on March 31, 1997 for non-compliance of provisions of amendment Act 1996.

20. However, in respect of those notices under sub-section (1a) of section 4 which were issued prior to March 31, 1992 and in respect of which no award had been passed by March 31, 1995, those notices had already lapsed and by the Amendment Act 1997 of the Land Acquisition Act by the West Bengal Legislature, no provision has been made for revival of the lapsed notices which stood lapsed already on March 31, 1997 for non-compliance of the provision of Amendment Act of 1996. By the Amendment Act of 1997 only those

notices under sub-section (1a) of section 4 which would have lapsed on the midnight of March 31, 1997 or on subsequent dates, have been saved.

21. Heard the Learned Counsel admittedly petitioner is a subsequent purchaser, the status of subsequent purchaser over a land which has already been acquired by a specific land acquisition case has been properly dealt with by the Hon'ble Supreme Court in

Delhi Development Authority Vs. Asha Prakash and Ors. (2023)

SCC Online SC 68

4. Under the circumstances, the High Court has committed a grave error in entertaining the writ petition preferred by the respondent No. 1 herein, who is a subsequent purchaser praying for deemed lapse of acquisition. Even otherwise, the decision of this Court in the case of Pune Municipal Corporation (supra) relied upon by the High Court while passing the impugned judgment and order has been specifically overruled by the Constitution Bench of this Court in the case of Indore Development Authority v. Manoharlal, (2020) 8 SCC 129. In paragraphs 365 and 366, the Constitution Bench of this Court has observed and held as under: -

"365. Resultantly, the decision rendered in Pune Municipal Corpn. [Pune Municipal Corpn. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183] is hereby overruled and all other decisions in which Pune Municipal Corpn. [Pune Municipal Corpn. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183] has been followed, are also overruled. The decision in Sree Balaji Nagar Residential Assn. [Sree Balaji Nagar Residential Assn. v. State of T.N., (2015) 3 SCC 353] cannot be said to be laying down good law, is overruled and other decisions

following the same are also overruled. In **Indore Development Authority v. Shailendra** [(2018) 3 SCC 412], the aspect with respect to the proviso to Section 24(2) and whether "or" has to be read as "nor" or as "and" was not placed for consideration. Therefore, that decision too cannot prevail, in the light of the discussion in the present judgment.

366. In view of the aforesaid discussion, we answer the questions as under:

366.1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1-1-2014, the date of commencement of the 2013 Act, there is no lapse of proceedings. Compensation has to be determined under the provisions of the 2013 Act.

366.2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the 2013 Act under the 1894 Act as if it has not been repealed.

366.3. The word "or" used in Section 24(2) between possession and compensation has to be read as "nor" or as "and". The deemed lapse of land acquisition proceedings under Section 24(2) of the 2013 Act takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

366.4. The expression "paid" in the main part of Section 24(2) of the 2013 Act does not include a deposit of compensation in court. The consequence of non-deposit is provided in the proviso to Section 24(2) in

case it has not been deposited with respect to majority of landholdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation under Section 31 of the Land Acquisition Act, 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the 2013 Act has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the 1894 Act.

366.5. In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). The landowners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the 2013 Act.

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

366.7. The mode of taking possession under the 1894 Act and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).

366.8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned as on 1-1-2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

366.9. Section 24(2) of the 2013 Act does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the 2013 Act i.e. 1-1-2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition."

22. Hon'ble Supreme Court again In **Delhi Development Authority Vs. Damini Wadhwa and Ors** Reported (2022) 10 SCC 519 has observed that

13. Be that it may, even considering the fact that the agreement to sell was of the year 2016 and considering the fact that the notification under Section 4 of the 1894 Act was issued on 25-11-1980, therefore, it is apparent that the original writ petitioner allegedly derived the Interest in the lands in question much after the acquisition proceedings were initiated and therefore, Respondent 1 can be said to be subsequent purchaser. In the recent decision of this original writ petitioner Court in Godfrey Phillipss after considering the other decisions on the

right of the subsequent purchaser to claim lapse of acquisition proceedings i.e. Meera Sahni v. Lt. Governor of Delhi and M. Venkatesh V. BDA, it is specifically observed and held that subsequent purchaser has no right to claim lapse of acquisition proceedings. Similar view has been expressed by the larger Bench judgment of this Court in Shiv Kumar v. Union of India.

14. Under the circumstances and even accepting the case on behalf of the original writ petitioner that she might have acquired some interest on the basis of the agreement to sell dated 22-5-2016, being a subsequent purchaser and/or having acquired the interest in the lands in question subsequently, she was not having any right to claim lapse of acquisition proceedings under Section 24(2) of the 2013 Act. Under the circumstances, the High Court erred in entertaining the writ petition preferred by Respondent 1 original writ petitioner claiming lapse of acquisition proceedings under the 2013 Act.

23. Appellant in respect of which acquisition proceeding has been initiated or completed is totally barred as after acquisition the land in question was vested to the State free from all encumbrances the Hon'ble Supreme Court has held in **Mira Sahni Vs. Lieutenant Governor of Delhi** reported in **(2008) 9 SCC 177**

When a piece of land is sought to be acquired, a notification under Section 4 of the Land Acquisition Act is required to be issued by the State Government strictly in accordance with law. The said notification is also required to be followed by a declaration to be made under Section

6 of the Land Acquisition Act and with the issuance of such a notification any encumbrance created by the owner, or any transfer made after the issuance of such a notification would be deemed to be void and would not be binding on the Government. A number of decisions of this Court have recognised the aforesaid proposition of law wherein it was held that subsequent purchaser cannot challenge acquisition proceedings and also the validity of the notification or the irregularity in taking possession of the land after the declaration under Section 6 of the Act.

19. In *Sneh Prabha v. State of U.P.*⁴ it is stated as under: (SCC p. 430,

para 5)

5.....It is settled law that any person who purchases land after publication of the notification under Section 4(1), does so at his/her own peril. The object of publication of the notification under Section 4(1) is notice to everyone that the land is needed or is likely to be needed for public purpose and the acquisition proceedings point out an impediment to anyone to encumber the land acquired thereunder. It authorises the designated officer to enter upon the land to do preliminaries, etc. Therefore, any alienation of the land after the publication of the notification under Section 4(1) does not bind the Government or the beneficiary under the acquisition. On taking possession of the land, all rights, title and interests in land stand vested in the State, under Section 16 of the Act,

free from all encumbrances and thereby absolute title in the land is acquired thereunder."

24. Finally the issue involved regarding possession of a land after acquisition, of subsequent purchaser over a land which was already acquired by the State has been properly dealt with by Constitutional Bench of Hon'ble Supreme Court in **Indore Development Vs. Monoharlal and Ors.** Reported in (2020) 8 SCC 129

123. Section 24(2) of the 2013 Act deals with a situation only where the award has been made 5 years or more before the commencement of the Act, but physical possession of the land has not been taken, nor compensation been paid. It does not visualise a situation where possession has been taken under the urgency provision of Section 17(1), but the award has not been made. In such cases, under Section 24(1)(a) of the 2013 Act, there is no lapse of entire proceedings: but compensation is to be determined in accordance with 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 provision under Section 17(1) of the 1894 Act had been invoked, there is no lapse, only higher compensation would follow under Section 24(1)(a) even if payment has not been made or tendered under Section 17(3-A) of the 1894 Act

146. In State of Punjab v. Sadhu Ram¹³¹, it has been observed that once landowner and the land cannot be de-notified under Section 48(1) and observed possession is taken and the award has been passed, no title

remains with the thus: (SCC p. 545. para 3) disposal of the land acquired by the Government for public purposes, has

"3. The learned Judge having noticed the procedure prescribed in disposal of the land acquired by the Government for public purposes, has held that the said procedure was not followed for surrendering the land to the erstwhile owners. The respondent having purchased the land had improved upon the land and is, therefore, entitled to be an equitable owner of the land. We wholly fail to appreciate the view taken by the High Court. The learned Judge had not referred to the relevant provisions of the Act and law. It is an undisputed fact that consequent upon the passing of the award under Section 11 and possession taken of the land, by operation of Section 16 of the Act, the right, title and interest of the erstwhile owner stood extinguished and the Government became absolute owner of the property free from all encumbrances. Thereby, no one has nor claimed any right, title and interest in respect of the acquired land. Before the possession could be taken, the Government have power under Section 48(1) of the Act to denotify the land. In that event, land is required to be surrendered to the erstwhile owners. That is not the case on the facts of this case. Under these circumstances, the Government having become the absolute owner of the property free from all encumbrances, unless the title is conferred on any person in accordance with a procedure known to law, no one can claim any title much less equitable title by remaining in possession. The trial court as well as the appellate court negatived the plea of the respondent that he was inducted into possession as a lessee for a period of 20 years. On the other hand, the finding was that he was in possession as a lessee on yearly basis. Having lawfully come into possession as a lessee of the Government, Section 116 of the Evidence Act estops him from denying title of the Government and set it up in third party. By disclaiming government title, he forfeited even

the annual lease. Under these circumstances, having come into possession as a lessee, after expiry and forfeiture of the lease, he has no right. Illegal and unlawful possession of the land entails payment of damages to the Government."

366.7. The mode of taking possession under the 1894 Act and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).

25. Upon hearing of Learned Counsel for the parties and upon taking note of the observations of Hon'ble Apex Court, it appears to me that the present petitioner has approached this court challenging two letters dated 10th December, 2020 and 11th December 2020 by respondent No. 8. The justification and legality of those letters have been challenged. One of those letters was issued by executive engineer KMDA and another. was issued by Additional District Magistrate, to the OC Jogacha PS, The letters of contained the fact that the land in question over which petitioner was making construction, is Government Land and they directed petitioner to demolish the structure instantly. The petitioner being aggrieved approached this court and only challenge those letters.

From the pleadings, it appears that petitioner was well aware through previous writ petition that Land in dispute has already acquired by State in respect of LA case No. 18/16/2 of 1975-76 and LA case No. 18/18 (Act II) 1975-76. It further appears that the

petitioner simply challenged validity of the letters issued by the concerned authorities. In true sense, the question whether the suit land was correctly vested, or whether the LA proceedings are lapsed or not- is not a subject matter of challenge in this writ petition, Hence, I refrain myself to adjudicate those issues in this writ petition, when there are no pleadings- or prayers- there should have no interference.

It appears that the concerned authority under their domain has rightfully issued those two letters on the other hand the petitioner has suppressed the fact of Land Acquisition cases by which the land in question has already been acquired. It further appears that though petitioners have some registered deed and record of rights including mutation certificates in respect of the land in question but they are on the basis of deeds executed by a person who had no right whatsoever at the time of execution the vested land. Moreover, dispute question of title cannot, possibly decide in writ jurisdictions.

From the Bar it has been argued that the notice including the LA proceeding has already been lapsed but such issue never raised or pleaded in a writ petition. In **Indore Development (supra)** Hon'ble Constitution Bench has observed that the petitioner being a subsequent purchaser cannot maintain writ petition challenging acquisition proceedings.

26. Under the above observation it appears that the petitioner must have hand in glove with some officials of Government to procure some

documents regarding title of the land which has already been vested to the State and has already handed over to the respondent No. 9.

The respondent No. 9 is statutory authority who entrusted with the development work of widening Kona Express High Way. The conduct of the petitioner regarding encroaching over the Government Land cannot be encouraged in writ court. The title of land is with respondent No.9, the illegal encroachment over the land require to be vacated for larger national importance.

27. Under the above observation I find no justification to entertain the writ petition.

The instant writ petition is disposed of.

Interim order if any passed by this court during the pendency of the writ petition is hereby vacated. Pending applications, if any are also vacated.

The respondent No. 9 may act upon impugned notices by taking immediate possession over the land in dispute.

28. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)