

Delhi Development Authority vs Sukhbir Singh & Ors on 9 September, 2016

Equivalent citations: AIR 2016 SUPREME COURT 4275, AIR 2016 SC (CIVIL) 2664, (2016) 6 ANDHLD 98, (2016) 5 MAD LW 333, (2016) 8 SCALE 655, (2016) 166 ALLINDCAS 12 (SC), (2016) 2 CLR 758 (SC), (2016) 5 ALL WC 4932, 2016 (16) SCC 258, (2016) 4 CURCC 70, (2016) 4 RECCIVR 407, (2016) 3 CURCC 474, (2016) 133 REVDEC 588, (2016) 118 ALL LR 883, 2016 (4) KCCR SN 559 (SC)

Author: R.F.Nariman

Bench: R.F. Nariman, Kurian Joseph

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5811 OF 2015

DELHI DEVELOPMENT AUTHORITY

...APPELLANT

Versus

SUKHBIR SINGH & OTHERS

...RESPONDENTS

WITH

CIVIL APPEAL NO. 8857 OF 2016
(ARISING OUT OF SLP (CIVIL) No. 28304 of 2015)

J U D G M E N T

R.F.Nariman, J.

Leave granted in S.L.P(C) No. 28304 of 2015.

These two appeals revisit the question of the correct construction of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as “the 2013 Act”). We are constrained to observe that we are hearing these matters despite the fact that the law has been settled in *Pune Municipal Corporation v. H.M. Solanki*, 2014 (3) SCC 183, which is now *stare decisis* in that it has been followed in a large number of judgments[1].

3. The facts of the present case are as follows. A Notification under Section 4 of the Land Acquisition Act, 1894, was issued on 24th October, 1961, stating that the public purpose for acquisition was the planned development of Delhi. This Notification covered large tracts of land in and around Delhi. In this case, we are concerned with 33 bighas and 1 biswa of land in the Vasant Kunj area of New Delhi. This Section 4 Notification was followed by a Notification under Section 6 dated 4th January, 1969, which in turn, was followed by notices issued under Section 9 on 26th April, 1983. An award relating to the aforesaid land was then made by the Land Acquisition Collector, New Delhi, only on 12th December, 1997. Possession of the said land, being an open piece of land, was taken by a Panchnama dated 27th January, 2000. An affidavit that has been filed by the Commissioner, Land Management, Delhi Development Authority in this Court, pursuant to an order of this Court dated 17th April, 2015, discloses that the requisite compensation for taking over the said land was deposited by the DDA with the Land Acquisition Collector only in the year 2002. The said affidavit goes on to state that since the land had been sold to Respondent Nos. 3 to 5 in the present case, there was a dispute as to who would receive compensation and that, therefore, compensation could neither be paid nor tendered.

4. On the eve of the coming into force of the 2013 Act (on 1st January, 2014), an application styled as a Petition under Article 227 of the Constitution of India was made by the Land Acquisition Collector in the High Court of Delhi on 27th December, 2013, requesting the High Court of Delhi to accept cheques towards compensation amounts under the award dated 12th December, 1997, stating that non-deposit of compensation on or before 31st December, 2013 would adversely affect the acquisition proceedings inasmuch as the proceedings might lapse in view of the fact that the 2013 Act has been notified to take effect from 1st January, 2014. An order dated 30th December, 2013 was passed by the High Court on this application stating that the petition stands disposed of, recording that without prejudice to the rights and contentions of the land owners, the cheques tendered in each petition would be treated as a tender to the court of the learned Additional District Judge, Delhi as on today i.e. 30th December, 2013.

5. The original land holders thereafter presented a Writ Petition, being Writ Petition No. 4375 of 2014 before the High Court of Delhi, on 26th May, 2014, stating that as possession had not been taken and as compensation had neither been tendered nor paid to the petitioner, the requisite conditions of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 would be met, and that, as a result, the acquisition proceedings had lapsed. No affidavit in reply was filed to the aforesaid writ petition. By the impugned judgment dated 18th November, 2014, the High Court of Delhi allowed the said petition based on the judgment in *Pune Municipal Corporation*, and other judgments following the same, stating:

“5. Without going into the controversy with regard to physical possession, this much is clear that the award was made more than five years prior to the commencement of the 2013 Act and the compensation has also not been paid. The necessary ingredients for the application of Section 24(2) of the 2013 Act, as interpreted by the Supreme Court and this court in the following decisions, stand satisfied:

Pune Municipal Coporation and Anr. v. H.M. Solanki, 2014 (2) SCC 183, Union of India & Ors. V. Shiv Raj & Ors., (2014) 6 SCC 564.

Sree Balaji Nagar Residential Association v. State of Tamil Nadu & Ors.: Civil Appeal No. 8700/2013.

Surender Singh v. Union of India & Others: W.P.(C) No. 2294/2014 decided on 12.09.2014 by this Court; and Gyanender Singh & Ors. V. Union of India & Ors., W.P.(C) No. 1393/2014, 10.09.2014.

6. As a result, the petitioners are entitled to a declaration that the said acquisition proceedings initiated under the 1894 Act in respect of the subject lands are deemed to have lapsed. It is so declared.”

6. The present appeals have, therefore, been filed by both the Land Acquisition Collector and the DDA.

7. Shri Amarendra Sharan, Senior Advocate, appearing for the DDA and Ms. Rachna Srivastava, Advocate, appearing for the Land Acquisition Collector, have argued before us that Pune Municipal Corporation needs to be revisited on essentially two grounds. The first is that at least as far as Delhi is concerned, it is governed by a Standing Order of 26th June, 1909 as amended up to date, in which one method of making payment under Section 31 of the Land Acquisition Act is by deposit in the treasury. The distinguishing feature of this case is, therefore, that unlike in Pune Municipal Corporation, deposit in a treasury is a recognized mode of making payment for the purpose of Section 31 of the Land Acquisition Act, and that this being the case, it is clear that Pune Municipal Corporation would not, therefore, apply to the facts of the present case. A second argument was also made by both the learned counsels to the effect that Pune Municipal Corporation did not notice that since possession had been taken in the facts of the present case, in the year 2000, vesting of the land in the State had already taken place and the original owner had been divested of his title. This being the case, the acquisition proceedings being over in the year 2000, no question of lapse of a proceeding that is already over can possibly take place in the year 2014 after the enactment of the 2013 Act. For the aforesaid proposition, the learned counsel relied upon Satendra Prasad Jain v. State of U.P., (1993) 4 SCC 369. They further argued that, in the present case, a subsequent purchaser had come into the picture by a registered sale deed dated 23rd June, 1992. This being the case, it is clear that the State was in a dilemma as to who should be paid compensation, and it is for this reason that compensation was neither tendered nor paid after the award. For this purpose, they relied upon Meera Sahni v. Lt. Governor of Delhi & Ors., (2008) 9 SCC 177.

8. The submissions of both the learned counsels were rebutted by Shri A.K. Sanghi, Senior Advocate, appearing on behalf of the original owner and Shri V. Giri, appearing on behalf of the subsequent purchasers. Both the learned counsels emphasized the fact that compensation money had neither been tendered or paid in accordance with Section 31 of the Land Acquisition Act. They further went on to state that even possession had not been taken in accordance with law as no notice had been issued to the land owners before taking possession and, that therefore, this was a case which was covered by both contingencies mentioned in Section 24(2) of the 2013 Act. They also argued that it is too late in the day to go back on the ratio of Pune Municipal Corporation, which squarely applies on the facts of the present case, as it has now been followed in a catena of judgments.

9. Having heard the arguments on both sides, it is necessary to first set out the relevant provisions of the Land Acquisition Act. In these appeals, we are directly concerned with Section 11 under which enquiry and award are to be made by the Collector, Section 12 which states that the Collector is to give immediate notice of his award to persons interested who are not present personally when the award is made; Section 16 which deals with the taking of possession and vesting of land; and Sections 31 and 34 which deal with payment of compensation. Accordingly, the said Sections are set out hereinbelow:

“11. Enquiry and award by Collector. - (1) On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objection (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land at the date of the publication of the notification under section 4, sub-section (1), and into the respective interests of the persons claiming the compensation and shall make an award under his hand of-

the true area of the land;

the compensation which in his opinion should be allowed for the land; and the apportionment of the said compensation among all the persons known or believed to be interested in the land, or whom, or of whose claims, he has information, whether or not they have respectively appeared before him :

Provided that no award shall be made by the Collector under this sub- section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorize in this behalf:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

(2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the

award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(4) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under sub-section (2) shall be liable to registration under that Act.

12. Award of Collector when to be final. - (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the appointment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

16. Power to take possession. - When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

31. Payment of compensation or deposit of same in Court. - (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

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

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

34. Payment of interest - When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited:

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.”

10. The scheme of the Land Acquisition Act, in so far as the making of award and the payment of compensation to persons interested, is as follows.

On the day fixed, the Collector after the inquiry that is contemplated under Section 11, has to make an award which must contain the necessary ingredients mentioned in Section 11. As soon as the award is made, under Section 12(2) of the Act, the Collector is to give immediate notice of the award to such of the persons interested as are not present personally. This provision, when read with Section 31 of the Act, makes it clear that the statutory scheme is that the Collector is to tender payment of compensation awarded by him to the persons who are interested and entitled thereto, according to the award, on the date of making the award itself. It is therefore, clear that under the statutory scheme, the Collector must be armed with the amount of compensation payable to persons interested as soon as the award is made. Such persons have to be paid the sum mentioned in the award, it being well settled that the award is only an offer which may be accepted or rejected by the claimants. If accepted, whether under protest or otherwise, it is the duty of the Collector to make payment as soon as possible after making the award. It is only in a situation where the persons interested refuse consent to receive monies payable, or there be no person competent to alienate the land, or if there be any dispute as to title to receive compensation or its apportionment, is the Collector to deposit the amount of compensation in the reference court. It is only after these steps have been taken that the Collector may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances. The Act further makes it clear, on a reading of Section 34, that where such compensation is neither paid or deposited on or before taking possession of the land, interest is payable at the rate of 9 per cent per annum for one year and 15 per

cent per annum thereafter. This is because a person becomes divested of both possession and title to his property without compensation having been paid or deposited, as the case may be. This statutory scheme has been adverted to in some of the decisions of this Court. In *New Riviera Coop. Housing Society v. Special Land Acquisition Officer*, (1996) 1 SCC 731 at para 3, this Court held:

“...Once the award has been made and compensation has been deposited or paid under Section 31 of the Act, the Land Acquisition Officer is entitled to take possession and the possession thereby taken stands vested in the State under Section 16 of the Act free from all encumbrances...” In *Sunder v. Union of India*, (2001) 7 SCC 211 at para 24, this Court held:

“... What the legislature intended was to make the aggregate amount under Section 23 of the Act to reach the hands of the person as and when the award is passed, at any rate as soon as he is deprived of the possession of his land. Any delay in making payment of the said sum should enable the party to have interest on the said sum until he receives the payment. Splitting up the compensation into different components for the purpose of payment of interest under Section 34 was not in the contemplation of the legislature when that section was framed or enacted.” In *Bangalore Development Authority v. R. Hanumaiah*, (2005) 12 SCC 508 at para 47, this Court held:

“...Section 31 contemplates that on making of an award under Section 11 the Collector shall tender amount of compensation awarded by him to the person interested and entitled thereto according to the award and shall pay to them unless prevented by any one or more of the contingencies mentioned in the subsequent clauses. None of those contingencies arose in the present case. Thus, once the amount was tendered and paid the acquisition process was complete. After making the award under Section 11 the Collector can take possession of the land under Section 16 which shall thereupon vest absolutely in the Government free from all encumbrances. In the instant case, after making the payment in terms of the award, possession was taken. The acquisition process stood completed. ...”

11. Given the fact that the State has been prompt in acquiring land for public purposes, but tardy in tendering or paying compensation, the 2013 Act came in as a beneficial legislation to the aid, in particular, of poor farmers whose lands had been acquired under the Land Acquisition Act but compensation had not been tendered or paid as required under the said Act.

With this object in mind, Section 24(2) of the 2013 Act was enacted. Section 24 reads as follows:

“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,—

(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 (1 of 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.”

12. Section 24(1) begins with a non-obstante clause and covers situations where either no award has been made under the Land Acquisition Act, in which case the more beneficial provisions of the 2013 Act relating to determination of compensation shall apply, or where an award has been made under Section 11, land acquisition proceedings shall continue under the provisions of the Land Acquisition Act as if the said Act had not been repealed.

13. To Section 24(1)(b) an important exception is carved out by Section 24(2). The necessary ingredients of Section 24(2) are as follows:

(a) Section 24(2) begins with a non-obstante clause keeping sub-section (1) out of harm's way;

(b) For it to apply, land acquisition proceedings should have been initiated under the Land Acquisition Act;

(c) Also, an award under Section 11 should have been made 5 years or more prior to the commencement of the 2013 Act;

(d) Physical possession of the land, if not taken, or compensation, if not paid, are fatal to the land acquisition proceeding that had been initiated under the Land

Acquisition Act;

(e) The fatality is pronounced by stating that the said proceedings shall be deemed to have lapsed, and the appropriate Government, if it so chooses, shall, in this game of snakes and ladders, start all over again.

14. The picture that therefore emerges on a reading of Section 24(2) is that the State has no business to expropriate from a citizen his property if an award has been made and the necessary steps to complete acquisition have not been taken for a period of five years or more. These steps include the taking of physical possession of land and payment of compensation. What the legislature is in effect telling the executive is that they ought to have put their house in order and completed the acquisition proceedings within a reasonable time after pronouncement of award. Not having done so even after a leeway of five years is given, would cross the limits of legislative tolerance, after which the whole proceeding would be deemed to have lapsed. It is important to notice that the Section gets attracted if the acquisition proceeding is not completed within five years after pronouncement of the award. This may happen either because physical possession of the land has not been taken or because compensation has not been paid, within the said period of five years. A faint submission to the effect that ‘or’ should be read as ‘and’ must be turned down for two reasons. The plain natural meaning of the sub-section does not lead to any absurdity for us to replace language advisedly used by the Legislature. Secondly, the object of the Act, and Section 24 in particular, is that in case an award has been made for five years or more, possession ought to have been taken within this period, or else it is statutorily presumed that the balance between the citizen’s right to retain his own property and the right of the State to expropriate it for a public purpose gets so disturbed as to make the acquisition proceedings lapse. Alternatively, if compensation has not been paid within this period, it is also statutorily presumed that the aforesaid balance gets disturbed so as to free such property from acquisition.

15. The stage is now set to consider the arguments of the appellants before us. Before doing so, it is important to first set out what exactly has been held in the landmark judgment of three Hon’ble Judges (in which one of us Kurian, J. is a member) in the Pune Municipal Corporation case. The Court was concerned with what is the true meaning of the expression “compensation has not been paid” occurring in Section 24(2) of the 2013 Act. It is important first to notice the argument that was made on behalf of the Pune Municipal Corporation and the Land Acquisition Collector which is, in paragraph 7, extracted herein below:

“On the other hand, on behalf of the Corporation and so also for the Collector, it is argued that the award was made by the Special Land Acquisition Officer on 31-1-2008 strictly in terms of the 1894 Act and on the very day the landowners were informed regarding the quantum of compensation for their respective lands. Notices were also issued to the landowners to reach the Office of the Special Land Acquisition Officer and receive the amount of compensation and since they neither received the compensation nor any request came from them to make reference to the District Court under Section 18, the compensation amounting to Rs 27 crores was deposited in the Government treasury. It is, thus, submitted that there was no default on the

part of the Special Land Acquisition Officer or the Government and, hence, the acquisition proceedings have not lapsed. Moreover, reliance is also placed on Section 114 of the 2013 Act and it is argued that the concluded land acquisition proceedings are not at all affected by Section 24(2) and the only right that survives to the landowners is to receive compensation.” [para 7]

16. After setting out Section 24(2), the Court went on to hold:

“Section 24(2) also begins with non obstante clause. This provision has overriding effect over Section 24(1). Section 24(2) enacts that in relation to the land acquisition proceedings initiated under the 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied viz. (i) physical possession of the land has not been taken, or (ii) the compensation has not been paid; such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the appropriate Government still chooses to acquire the land which was the subject-matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the 2013 Act. The proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act an award has been made and compensation in respect of a majority of landholdings has not been deposited in the account of the beneficiaries then all the beneficiaries specified in the Section 4 notification become entitled to compensation under the 2013 Act.

Section 31(1) of the 1894 Act enjoins upon the Collector, on making an award under Section 11, to tender payment of compensation to persons interested entitled thereto according to award. It further mandates the Collector to make payment of compensation to them unless prevented by one of the contingencies contemplated in sub-section (2). The contingencies contemplated in Section 31(2) are: (i) the persons interested entitled to compensation do not consent to receive it, (ii) there is no person competent to alienate the land, and (iii) there is dispute as to the title to receive compensation or as to the apportionment of it. If due to any of the contingencies contemplated in Section 31(2), the Collector is prevented from making payment of compensation to the persons interested who are entitled to compensation, then the Collector is required to deposit the compensation in the court to which reference under Section 18 may be made.

Simply put, Section 31 of the 1894 Act makes provision for payment of compensation or deposit of the same in the court. This provision requires that the Collector should tender payment of compensation as awarded by him to the persons interested who are entitled to compensation. If due to happening of any contingency as contemplated in Section 31(2), the compensation has not been paid, the Collector should deposit the amount of compensation in the court to which reference can be made under Section 18.

The mandatory nature of the provision in Section 31(2) with regard to deposit of the compensation in the court is further fortified by the provisions contained in Sections 32, 33 and 34. As a matter of fact, Section 33 gives power to the court, on an application by a person interested or claiming an interest in such money, to pass an order to invest the amount so deposited in such Government or other approved securities and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider proper so that the parties interested therein may have the benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

While enacting Section 24(2), Parliament definitely had in its view Section 31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word “paid” to “offered” or “tendered”. But at the same time, we do not think that by use of the word “paid”, Parliament intended receipt of compensation by the landowners/persons interested. In our view, it is not appropriate to give a literal construction to the expression “paid” used in this sub-section [sub-section (2) of Section 24]. If a literal construction were to be given, then it would amount to ignoring the procedure, mode and manner of deposit provided in Section 31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view, therefore, that for the purposes of Section 24(2), the compensation shall be regarded as “paid” if the compensation has been offered to the person interested and such compensation has been deposited in the court where reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act.

In other words, the compensation may be said to have been “paid” within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33.

The 1894 Act being an expropriatory legislation has to be strictly followed. The procedure, mode and manner for payment of compensation are prescribed in Part V (Sections 31-34) of the 1894 Act. The Collector, with regard to the payment of compensation, can only act in the manner so provided. It is settled proposition of law (classic statement of Lord Roche in Nazir Ahmad [Nazir Ahmad v. King Emperor, (1935-36) 63 IA 372 : (1936) 44 LW 583 : AIR 1936 PC 253 (2)]) that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

Now, this is admitted position that award was made on 31-1-2008. Notices were issued to the landowners to receive the compensation and since they did not receive the compensation, the amount (Rs 27 crores) was deposited in the Government treasury. Can it be said that deposit of the amount of compensation in the Government treasury is equivalent to the amount of compensation

paid to the landowners/persons interested? We do not think so. In a comparatively recent decision, this Court in *Agnelo Santimano Fernandes* [*Ivo Agnelo Santimano Fernandes v. State of Goa*, (2011) 11 SCC 506 : (2011) 4 SCC (Civ) 268], relying upon the earlier decision in *Prem Nath Kapur* [*Prem Nath Kapur v. National Fertilizers Corpn. of India Ltd.*, (1996) 2 SCC 71], has held that the deposit of the amount of the compensation in the State's revenue account is of no avail and the liability of the State to pay interest subsists till the amount has not been deposited in court.

From the above, it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act. It is also admitted position that compensation so awarded has neither been paid to the landowners/persons interested nor deposited in the court. The deposit of compensation amount in the Government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested. We have, therefore, no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the 2013 Act.” [paras 11, 14 – 20]

17. Both the learned counsels on behalf of the appellants first sought to distinguish the aforesaid judgment with reference to Standing Order No. 28 of 1909 which applies to Delhi. In so far as the said Standing Order is relevant to this case, its provisions are set out hereinbelow:

“71. Payment of compensation when made – As soon as the award has been announced the acquiring officer will proceed to pay the compensation awarded to those persons who are present and who accept the award. Sufficient notice should be given to enable all payees to assemble at the place where they will receive their dues but no time should be wasted on useless endeavours to secure the attendance of absentees. A note shall be made of the names of those persons who refused to accept the amount awarded or who accept it under protest. Much trouble will be avoided if the principle that payment of compensation should be made at the time of award, is strictly observed. Most of the persons interested will then be present and immediate payment will save them the necessity of making frequent journeys to the tehsil. It will usually be found of advantage to draw in advance a sum sufficient to cover the probable amount of the award and to make payments against this especially when the award is announced at a place distant from the headquarters.

73. Statement to be forwarded to the Accountant General – When an award is made under Section 11 of the Act the acquiring officer shall have a statement prepared in the following Form marked AA showing the amounts payable to each person under the award and shall, on the day the award is made, forward a copy of this statement signed by him to the accountant general or other audit officer, with whom he is in account and the Deputy Commissioner concerned simultaneously with a certificate that the land has been taken possession of and mutated in favour of Government fixing the number and date of the attested mutation. On the basis of this certificate, the Deputy Commissioner may forward a proposal to the Financial Commissioner for sanctioning reduction of land revenue under Paragraph 79 infra. Before signing the

copy the Officer should carefully satisfy himself that it correctly shows the amounts due under the award and should himself enter the total of column 6 of the statement in words both in the original and copy. Subsidiary statement in Form AA below, giving particulars regarding the acceptance by the persons concerned of the amounts entered in column 6 of the Award statement should also be furnished to the auditing officer as soon as possible. If the subsidiary statement is not complete on the day that the award is made, the necessary entries in column 7 of the statement in Form A will be made in the auditing office on receipt of the statement in Form AA.

FORM AA Particulars regarding the acceptance by the persons concerned of amounts entered in award statement no. _____ dated _____ 200__ Name of work for which land has been acquired _____ No. and date of declaration in _____ Gazette viz No. _____ dated _____ 1968 _____ page _____

1. 2. 3.

PARTICULARS OF AMOUNT ENTERED IN COLUMN 6 OF THE AWARD STATEMENT |Serial No. |Name of |(a) |(b) |(c) |Amount | |in the |person to |Amount |Amount |Amount |undisbursed| |statement |whom |accepted |accepted |deposited |owing to | |award under|payment is |without |under |in Court |non-attenda| |Section 11 |made under |protest |protest |Reasons for|nce and the| |of the Act |the award | | |depositing |treasury in| | | | |which it is| | | | |deposited | | |Rs. P |Rs. P |Rs. P | | Note – In noting these particulars in the award statement, it may be sufficient to enter the letter a, b, c or d as the case may be in column 7 of the statement when the whole amount of the award is shown in one of the four sub-columns a, b, c or d in the statement.

74. Methods of making payments – There are five methods of making payments:-

(1) By direct payments, see paragraph 75(I) infra (2) By order on treasury, see paragraph 75(II) infra (3) By Money Order, see paragraph 75(III) infra (4) By cheque, see paragraph 75(IV) infra (5) By deposit in a treasury, see paragraph 75(V) infra

75. Direct payments (V) By treasury deposit – In giving notice of the award under Section 12(2) and tendering payment under Section 31(1) to such of the persons interested as were not present personally or by their representatives when the award was made, the officer shall require them to appear personally or by representatives by a certain date to receive payment of the compensation awarded to them, intimating also that no interest will be allowed to them if they fail to appear, if they do not appear and do not apply for a reference to the civil court under Section 18, the officer shall after any further endeavours to secure their attendance that may seem desirable, cause the amounts due to be paid to the treasury as revenue deposited payable to the persons to whom they are respectively due and vouched for in the Form marked E below. The officer shall also give notice to the payees of such deposits, specifying the treasury in which the deposit has been made. When then payees ultimately claim payment of sums placed in deposit, the amounts will be paid to them in the same manner as ordinary revenue deposit. The officer should, as far as possible, arrange to make the payments due in or near the village to which the payee belong in order that the number of

un-disbursed sums to be placed in deposits on account of non- attendance may be reduced to a minimum. Whenever payment is claimed through a representative whether before or after deposit of the amount awarded, such representative must have legal authority for receiving the compensation on behalf of his principal.

Form E	Form E
Name of work for which land has	Name of work for which land has
been acquired _____	been acquired _____

To the officer incharge of _____ To the officer incharge of _____ | treasury | treasury | | |
 Please receive for transfer to | Please receive for transfer to | | credit of revenue deposit the sum
 | credit of revenue deposit the sum | | of Rs. _____ on account of | of Rs. _____ on account of |
 | compensation for land taken up for | compensation for land taken up for | | the above purpose
 payable as | the above purpose payable as | | detailed below:- | detailed below:- | Serial Number in
 award statement No. | Name of persons to whom due | Area of land | Amount payable to each
 | Remarks | | Name of persons to whom due | Area of land | Amount payable to each | Remarks | | |
 | Acres | Rs. | | | Acres | Rs. | | | Total _____ Total _____ Land Acquisition Officer Land Acquisition
 Officer Dated _____ Dated _____ Received the above amount and credited to Received the
 above amount and credited Revenue deposit to Revenue deposit Treasury Officer Treasury Officer
 Note – this form should be used when the Note – this form should be used when the amounts of
 compensation due amounts of compensation due are sent to treasury in the absence of are sent to
 treasury in the absence of proprietors who have failed to present proprietors who have failed to
 present themselves for payment. themselves for payment.”

18. Far from the aforesaid Standing Order coming to the assistance of the appellants, it is clear that the said Standing Order fleshes out Section 31 of the Land Acquisition Act by insisting that compensation must be paid as soon as the award is announced, vide paragraph 71. Sufficient notice must be given to enable all payees to assemble at a place where they will receive their dues immediately. It is emphasized by the said paragraph that much trouble will be avoided if the principle that payment of compensation should be made at the time of the award is strictly observed. Also, it is important that the authorities draw in advance a sum sufficient to cover the probable amount of the award and to make payments.

19. Paragraph 73 makes it clear that payment may be accepted either without protest or under protest, and Paragraph 74 makes it clear that there are five methods of making payment. The first four methods are all methods strictly in consonance with Section 31 of the Land Acquisition Act in that they are all direct payments that have to be made to persons ready to accept compensation. This is clear from a reading of sub-paragraphs (I) to (IV) of paragraph 74. Even the second method, which is payment by order on the treasury, is a direct method of payment in cases where no officer is specially deputed for acquisition of land. In such cases instead of making a direct payment, a receipt is countersigned making it immediately payable at the treasury to the payee. Otherwise, in certain circumstances, payment is to be made by money order and/or by cheque. When we come to paragraph (V), it is clear that payment is made into the treasury only when persons who are served notice under Section 12(2) are not present personally at the time the award is delivered. Even

though they may not appear at that stage, the officer shall require them to appear personally or by representatives by a certain date to receive payment of compensation awarded. It is only if they fail to appear after such an intimation, and if the officer, after further endeavours to secure their attendance, cannot so secure their attendance, that amounts due are to be paid to the treasury as revenue deposited payable to persons to whom they are due. It is clear, therefore, that sub-para (V), when read in its proper perspective, is not a separate mode of payment by itself as is contended by learned counsel for the appellants. It is a residuary mode of payment after all necessary efforts have been made by the authorities to secure the attendance of the persons entitled to compensation, and it is only after all such methods have failed that, as a last resort, the money is then to be deposited in the treasury. In any case, such deposit in the treasury is referable only to Section 31(1) and cannot ever be a substitute for deposit before the reference court as provided under Section 31(2) of the Land Acquisition Act, which applies in the circumstances mentioned in the aforesaid sub-section. We are, therefore, of the opinion that no distinction between the facts of this case and the facts in Pune Municipal Corporation can be drawn on this ground, and the ratio of Pune Municipal Corporation will apply on all fours to the facts of the present case.

20. On facts, it is clear that neither tender, that is offer to the original claimant nor payment has been made in the manner provided by Section 31 read with Standing Order No. 28 of 1909. In the present case, as has been admitted in the affidavit filed in this Court, the DDA was not ready with compensation payable on the day the award was pronounced, but only handed over such compensation to the Land Acquisition Collector five years after the award was pronounced, that is, in 2002. The Land Acquisition Collector, in its turn, did nothing whatsoever to offer the said sum or pay it to the original owners. On the contrary, by moving an application on the eve of the coming into force of the 2013 Act, and by depositing the said amount of compensation paid to it in the year 2002 only on 30th December, 2013, it is clear that the aforesaid mandatory provision and procedure were not followed by the authorities. The present original land owners' lands were notified for acquisition on 24th October, 1961, of which possession was taken four decades later, in 2000; after which the land owners have yet to see the colour of the paltry amount of compensation offered which has neither been tendered nor paid to them. In the facts disclosed by this case, there could not be stronger facts to hold such acquisition non est in accordance with the object sought to be achieved by Section 24 (2) of the 2013 Act.

21. At this juncture, it is necessary to advert to a standing instruction of the Government of NCT of Delhi dated 12th May, 2006 in which, pursuant to the directions passed by the High Court of Delhi vide order dated 5th May 2005 in C.W.P. No. 1161 of 1988, the Government of NCT of Delhi has fixed various time frames to complete acquisition proceedings. In so doing, what is of significance is contained in paragraphs 3 and 4 which are set out hereinbelow:

“3. Taking-over possession of notified land:

As soon as the award is announced, the Land Acquisition Collector shall compulsorily issue notice to the interested persons u/s 12 of the L. A. Act and the service of notice shall be kept in records and shall also submit a demand of the compensation amount to the Land & Building Department with a copy to the DDA /intending agency within

30 days of the announcement of the award. The Land & Building Department shall forward the demand to the DDA within 7 days. DDA/other agency will release the payment to L&B Deptt. within 30 days after receipt of the communication from the L&B Department/ LAC as the case may be. As soon as the money is received by the LAC, notice u/s 12(2) shall be issued. The LAC will takeover the possession of the land and handover the same to the DDA/intending department. The Land Acquisition Collector shall not take possession of the acquired land unless & until the compensation amount is received by him from the intending department. It has been noticed that in a large number of cases, the LACs have not taken over the possession of the notified land as possession could not be taken by the DDA due to the fact that the land is heavily built up and in some cases, some unauthorized colonies have come up which are under consideration of Govt. of India for regularization. In all such cases, the LACs shall prepare a separate list village wise and shall be submitted to competent authority for taking a policy decision.

4. Payment of Compensation/ Enhanced Compensation:

On receipt of the amount of compensation from DDA/Requisitioning Agency and on taking the possession of the land, the Land Acquisition Collector shall send a reference/ letter within 15 days to the interested persons for collecting the payment of compensation. The Land Acquisition Collector will make the payment of the compensation within 60 days to the land owner. In case of any dispute, the Land Acquisition Collector will refer the matter to the ADJ Court u/s 30 immediately after expiry of the 60 days. If interested person is not coming forward for taking compensation amount and payment cannot be made within 60 days then compensation amount should be deposited in the court u/s 31 within next 15 days.”

22. A cursory reading of these paragraphs will show that it is only pursuant to judicial orders that the State wakes up from its slumber. It is important to note that a notice of award under Section 12(2) to persons interested can only be issued after money is received by the Land Acquisition Collector, and that the said Collector shall not take possession of land unless and until compensation amount is received by him. Further, actual payment to land owners must be made latest within a period of 60 days. It is high time that the State realizes that persons whose property is expropriated need to be paid immediately so as to rehabilitate themselves. Also, it cannot be forgotten that the amount usually offered by way of an award of a Land Acquisition Collector under the 1894 Act is way below the real market value, which is only awarded and paid years later when the reference proceedings culminate in judgments of the High Courts and of this Court.

23. We now come to the argument of Shri Sharan that, in any case, on the facts of this case, the pitch is queered by the presence of subsequent purchasers. As has been pointed out in Meera Sahni's case [(2008) 9 SCC 177], that the moment Section 4 of the Delhi Lands (Restrictions on Transfer) Act, 1972, applies, a sale subsequent to a Section 6 notification becomes illegal, being hit by Section 4 of the said Act. This being the case, it is of no avail to the State, to submit (which submission has been made in the Supreme Court for the first time), that there is a dispute between the original owner and

the subsequent purchaser, as a result of which compensation could neither be tendered nor paid. Apart from the said plea being an afterthought, it is also of no avail to either the DDA or the Land Acquisition Collector who, in any case, were not in any dilemma as to who should be paid. In fact, it is clear that the deposit made in Court pursuant to the order of the High Court of Delhi dated 30th December, 2013 has only been made in order to pay the original owner of the land. Accordingly, this plea has also to be turned down.

24. We now come to the other grounds on which Shri Sharan, in particular, based his arguments. According to Shri Sharan, a perusal of Section 11A of the Land Acquisition Act would show that acquisition proceedings can lapse only before vesting takes place, as once the property is vested in the State, nothing further remains to be done, and such property can never be reverted to the original owner. Section 11A of the Land Acquisition Act is set out hereinbelow:

“11A. Period within which an award shall be 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.”

25. The judgment of Satendra Prasad Jain (supra) is also pressed into service by Shri Sharan, and in particular paragraph 15 thereof, which reads as under:

“Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made under Section 11. Upon the taking of possession the land vests in the Government, that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11A are intended to benefit the landowner and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when 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 11A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms.

Clearly, Section 11A can have no application to cases of acquisitions under Section 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner.” [para 15]

26. Satendra Prasad Jain’s case has been held in a subsequent judgment, namely, *Laxmi Devi v. State of Bihar*, (2015) 10 SCC 241, to have a limited ratio. The limited ratio has been said to be that it is not open to the beneficiary of an acquisition who has failed to make the necessary monies available, and who has been in occupation of the land since its possession was taken, to subsequently urge that such possession was taken illegally. It is clear that on the facts of that case, it was the land owners who filed a writ petition asking for a mandamus to complete the acquisition proceedings, and the State and the beneficiary of acquisition tried to resile from it by contending that the acquisition proceedings had lapsed under Section 11A of the Act. It was in these peculiar circumstances that the aforesaid judgment was delivered.

27. Even going by paragraph 15 of the Satendra Prasad Jain’s case, we find that the difference in phraseology between Section 11A of the Land Acquisition Act and Section 24(2) of the 2013 Act really clinches the issue in favour of the land owners. The expression used in Section 24(2), namely, “deemed to have lapsed” is of great significance and differs from the use of the expression “lapsed” in Section 11A. As is well settled, a deeming fiction is enacted so that a putative state of affairs must be imagined, the mind not being allowed to boggle at the logical consequence of such putative state of affairs. Even if we are to agree with Shri Sharan that, post vesting, acquisition proceedings cannot be said to lapse, yet we have to give effect to the deeming fiction contained in Section 24(2). In fact, Section 24(2) uses the expression “deemed to have lapsed” because the Legislature was cognizant of the fact that, in cases where compensation has not been paid, and physical possession handed over to the State, vesting has taken place, after which land acquisition proceedings could be said to have ended. For this reason also, we are of the view that Pune Municipal Corporation does not require to be revisited.

28. It remains to deal with one submission of Shri A.K. Sanghi. According to Shri Sanghi, physical possession has not been taken of the land in dispute. We are afraid this may not be correct. The Panchnama dated 27th January, 2000 specifically records that possession of the land above stated was recovered and handed over to the representatives of the Office of Land and Buildings. The Panchnama is also signed by all the necessary officers. This piece of land admittedly being open land is governed by the ratio of *Raghubir Singh Sehrawat v. State of Haryana & Ors.*, (2012) 1 SCC 792 in which it has been held:

“In *Banda Development Authority v. Moti Lal Agarwal* [(2011) 5 SCC 394 :

(2011) 2 SCC (Civ) 747], the Court referred to the judgments in *Balwant Narayan Bhagde v. M.D. Bhagwat* [(1976) 1 SCC 700], *Balmokand Khatri Educational and Industrial Trust v. State of Punjab* [(1996) 4 SCC 212], *P.K. Kalburqi v. State of Karnataka* [(2005) 12 SCC 489], *NTPC Ltd. v. Mahesh Dutta* [(2009) 8 SCC 339 : (2009) 3 SCC (Civ) 375], *Sita Ram Bhandar Society v. Govt. (NCT of Delhi)* [(2009) 10 SCC 501 : (2009) 4 SCC (Civ) 268] and culled out the following propositions:

(Banda Development Authority case [(2011) 5 SCC 394 : (2011) 2 SCC (Civ) 747] , SCC p. 411, para 37) “(i) No hard-and-fast rule can be laid down as to what act would constitute taking of possession of the acquired land.

(ii) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.

(iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

(iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

(v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the court may reasonably presume that possession of the acquired land has been taken.” [para 27]

29. As the present case will fall within sub-paragraph (ii), physical possession of the land can be said to have been taken on the facts of the present case.

30. Having regard to the law declared in the Pune Municipal Corporation case, as followed by the other judgments of this Court, we are of the opinion that the High Court is correct and that the impugned judgment calls for no interference. The appeals are, accordingly, dismissed.

.....J. (KURIAN JOSEPH)J. (R.F. NARIMAN) New Delhi;

September 9, 2016

[1] Bimla Devi & Ors. v. State of Haryana & Ors. (2014) 6 SCC 583 at para 3; Union of India (UOI) and Ors. v. Shiv Raj and Ors. (2014) 6 SCC 564 at para 22; Sree Balaji Nagar Residential

Association v. State of Tamil Nadu (2015) 3 SCC 353 at para 14; State of Haryana v. Vinod Oil and General Mills 2014 (15) SCC 410 at para 21; Sita Ram v. State of Haryana & Anr. (2015) 3 SCC 597 at paras 19, 21; Ram Kishan & Ors v. State of Haryana & Ors. (2015) 4 SCC 347 at paras 8, 9, 12; Velaxan Kumar v. Union of India & Ors. 2015 (4) SCC 325 at paras 15, 16, 17; Karnail Kaur v. State of Punjab (2015) 3 SCC 206 at paras 17, 18, 23; Rajiv Choudhrie HUF v. Union of India and Ors. 2015 (3) SCALE 203 at para 1; Competent Automobiles Co. Ltd. v. Union of India and Ors. AIR 2015 SC 3186 at para 4; Govt. of NCT of Delhi and Ors v. Jagjit Singh and Ors. AIR 2015 SC 2683 at para 3; Karan Singh and Ors. v. State of Haryana and Ors. 2015 (7) SCALE 191 at para 5; Delhi Development Authority v. Sukhbir Singh & Ors. SLP (CC) No. 5569 of 2015 at page 5; Shashi Gupta and Ors. v. State of Haryana and Ors. 2016 (5) SCALE 636 at para 5.