

M/S DELHI AIRTECH SERVICES PVT. LTD & ANR. A

v.

STATE OF U.P. & ANR.

(Civil Appeal No. 24 of 2009)

OCTOBER 14, 2022 B

[S. ABDUL NAZEER, A. S. BOPANNA AND
V. RAMASUBRAMANIAN, JJ.]

Land Acquisition Act, 1894 – ss.11A, 17(3A) – Is the requirement to tender payment of 80% of the estimated compensation as contemplated under sub-section(3A) to s.17 of, 1894 Act, mandatory to ensure absolute vesting of the notified land; Whether the requirement to pass the award within the time frame contemplated u/s.11A applicable to the acquisition notified u/s.17 of 1894 Act – Held: Provision contained in s.11 of 1894 Act, shall be applicable to cases in which the acquiring authority has not complied with the requirement of sub-section (3A) to s.17 of 1894 Act by tendering and paying eighty per centum of the estimated compensation before taking possession since possession in such cases cannot be considered to be taken in accordance with law and the vesting is not absolute – If the requirement is complied and possession is taken after tendering and paying eighty per centum, though there is need to pass an award and pay the balance compensation within a reasonable time, the rigour of s.11A of 1894 Act will not apply so as to render the entire proceedings for acquisition to lapse in the context of absolute vesting – The right of land loser in such case is to enforce passing of the award and recover the compensation.

Land Acquisition Act, 1894 – s.17(1), (3A) – “shall”, “before taking possession”, “thereupon” – Purport of – Held: The word employed in sub-section (3A) of s.17 of 1894 Act is “shall” and it is to be tendered and paid “before taking possession” – Hence it cannot be understood as providing any discretion to the acquiring authority – In fact, the last sentence of sub-section (1) of s.17 uses the word “thereupon” with respect to vesting – This word “thereupon” is correlated to taking possession and payment in terms of sub-section (3A) is a sine qua non for taking possession – Therefore, (1) payment of 80% (2) taking over possession thereafter and (3) vesting of land in the government take place in a sequence.

- A *Interpretation of Statutes – Held: If the plain meaning of the provision does not admit of any ambiguity no other external aid will be necessary to interpret the provision except to give it the plain meaning.*
- B *Constitution of India – Articles 300A, 31A – Held: In view of Articles 300A and 31A of the Constitution, the owner of land can be divested only in accordance with law after appropriately compensating if such land is required by the State for public purpose.*

Disposing of the appeal, the Court

- C **HELD: 1.1** *If the plain meaning of the provision does not admit of any ambiguity no other external aid will be necessary to interpret the provision except to give it the plain meaning. [Para 9][767-B-C]*
- D **1.2** *In the normal circumstance, the process for acquisition would commence with the notification under Section 4, after which the procedure under Section 5A is complied. The declaration under Section 6 is thereafter made, when the requirement of the land for public purpose is confirmed. Thereafter, the process for determining the compensation and taking possession through Section 11 and Section 16 of Act, 1894 is contemplated, which is undertaken after issue of notice under Section 9 of Act, 1894. In so far as the said process, in order to protect the interest of the land loser to be compensated within a time frame, failing which, to give him benefit of his own land, Section 11A was inserted by Act 68 of 1984, w.e.f 24.09.1984. The said provision leaves no ambiguity whatsoever that if the award is not made within the period of two years from the date of publication of the declaration under Section 6 of Act, 1894, the entire proceedings will stand lapsed. The only option for the acquiring authority if the land is still required for the public purpose is to notify afresh from the stage of issuing notification under Section 4 of Act, 1894. The computation of two years would however exclude the period if the process was stayed by an order of the Court. [Para 11][769-F-H; 770-A-B]*
- E **1.3** *So far so good, the question however is as to whether the rigour of Section 11A of Act, 1894 will apply when the appropriate Government exercises its special power in cases of*
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urgency, which does not contemplate the same procedure as in the normal acquisition process noted above. In this regard also this Court in *Yusufbhai Noormohmed Nandoliya* has held Section 11A is applicable to acquisition under Section 17, though without detailed discussion. From the provision of Section 17 reproduced supra, it is seen that the acquiring authority will be entitled to take possession without taking recourse to the procedure which is otherwise provided under Section 16 of Act, 1894 wherein it contemplates the passing of an award before taking possession. But under Section 17 of Act, 1894, possession is permitted to be taken even before the award is passed. Though such power was absolute earlier, sub-section (3A) was inserted by Act 68 of 1984, w.e.f 24.09.1984 whereby the pre-condition imposed before taking possession is that 80% of the estimated compensation is to be tendered and paid to the persons interested in the land. The tendered amount should be paid unless prevented by one or more of the contingencies mentioned in Section 31(2) of Act, 1894. It would necessarily mean that Section 31 will come into play and the 80% of the estimated compensation amount, though no award is passed, will have to be tendered and paid to the persons interested. If tendered, but not able to pay due to valid reasons, it is to be deposited in Court. The word employed in sub-section (3A) of Section 17 of the Act, 1894 is "shall" and it is to be tendered and paid "before taking possession". Hence it cannot be understood as providing any discretion to the acquiring authority. In fact, the last sentence of sub-section (1) of Section 17 uses the word "thereupon" with respect to vesting. This word "thereupon" is correlated to taking possession and payment in terms of sub-section (3A) is a *sine qua non* for taking possession. Therefore (1) payment of 80% (2) taking over possession thereafter and (3) vesting of land in the government take place in a sequence. Absent anyone of these in the sequence, the emergency provision fails. It is a pre-requisite condition to acquire and take possession of the land since such acquisition is permitted by exempting the requirement of the procedure under Section 5A and possession is permitted to be taken prior to an award being passed under Section 11 of Act, 1894. [Para 12][770-C-H; 771-A-B]

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- A 1.4 That apart, sub-section (4) to Section 17 of Act, 1894 provides the discretion to the appropriate Government to waive the application of the provisions of Section 5A and make the declaration under Section 6 in respect of the land at any time after the initial publication of the notification under Section 4 of Act, 1894. This makes it clear that even in a case where the appropriate Government exercises its power to invoke the special power in case of urgency, all other procedure contemplated under the Act except the requirement under Section 5A of Act, 1894 is to be complied. Therefore, after issue of the initial notification under Section 4 read with Section 17(1) and on taking possession after issue of notice under Section 9, the declaration under Section 6 of Act, 1894 is to be made so as to complete the process of acquisition, which indicates that the objection to acquisition of land shall alone stand muted and not the right to compensation which is to be paid in strict compliance of the requirement in that regard. Hence, insofar as payment of compensation for the acquired land even if it is acquired under Section 17 of Act, 1894, it is evident that an award as contemplated under Section 11 of Act, 1894 is required to be passed so as to determine the compensation payable. Since sub-section (3A) to Section 17 mandates payment of 80% of the estimated compensation, such amount paid would get included in the amount to be determined and offered through the award. In that context it is clear that Section 17(4) contemplates, that the declaration is to be made under Section 6 even when an urgency provision is invoked and an award under Section 11 is to be passed to determine the compensation. However, on a careful composite perusal of all the provisions noted above, it is evident that the requirement to tender and pay 80% of the estimated compensation before taking possession assumes significance so as to carve out an exception for non-applicability of 'lapsing' as contemplated under Section 11A of Act, 1894. This is so, since the terms "vesting absolutely" and "lapsing" cannot co-exist and cannot go hand in hand. Post amendment w.e.f 24.09.1984, two elements have been inserted in Section 17 for the land to vest absolutely in the Government for public purpose even before the award is passed. One, is that possession should be taken. The other is, by inserting sub-section (3A) it has been made
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mandatory to tender payment of 80% of estimated compensation before taking possession. Therefore, 80% of the estimated compensation, the payment of which only if tendered and paid, the vesting would become absolute and in such event the consequence of lapsing in respect of absolutely vested land cannot occur and as such, in that circumstance alone Section 11A though applicable will not take effect. The right of the land loser would be to enforce passing of award which will include the balance 20% of compensation even if it is beyond two years and get adequately compensated in terms of Section 23 and 34 of Act, 1894 for the delay if any. [Paras 13-15][771-B-H; 772-A-C]

1.5 Section 11A though applicable to the cases of acquisition initiated under Section 17(1) of Act, 1894 the consequence of it will not affect the case where the land has absolutely vested on compliance of sub-section (3A) to Section 17 of Act, 1894 and 80% of estimated compensation is tendered and paid. Hence, when there is a challenge by the land loser, each case will have to be considered on its own merits to determine whether the pre-requisite condition to tender and pay as contemplated under sub-section (3A) is made before possession is taken. If in the case concerned the mandatory prerequisite is not complied, such acquisition will lose its character as being under Section 17 and if the award is not passed within two years from the date of the declaration, it will lapse and not otherwise. The benefit of said provision is available only to be invoked by the land loser and cannot be invoked by the acquiring authority to claim lapse by pointing to non-compliance since the 'vice' of non-compliance cannot be permitted to be converted into a 'virtue'. The acquiring authority and/or beneficiary cannot derive benefit of non-compliance of requirement of Section 17(3A) and take benefit of Section 11A of Act, 1894. The benefit of the provision is for the land loser. In Satendra Prasad Jain also this Court was of the opinion that it was not open for the acquiring authority or the beneficiary to take benefit of Section 11A and Section 17(3A) which is intended to benefit the land owner to ensure that award be made within time. Hence it is clear that Satendra Prasad Jain does not lay down the ratio that the acquisition does not lapse under any

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- A circumstance if the urgency provision under Section 17 of Act, 1894 is invoked but it only disapproved applying it against the land loser. [Paras 17, 20][772-H; 777-F-H]

Satendra Prasad Jain vs. State of U.P (1993) 4 SCC 369 : [1993] Supp 2 SCR 336 – clarified.

- B 1.6 The decision in this case based on the principle of law settled herein, if it arises for consideration in any other case under Act, 1894 or any other enactment relating to land acquisition containing *pari materia* provisions shall be applied only prospectively and cases which have attained finality shall not be reopened.
- C The provision contained in Section 11A of Act, 1894 shall be applicable to cases in which the acquiring authority has not complied with the requirement of sub-section (3A) to Section 17 of Act, 1894 by tendering and paying eighty per centum of the estimated compensation before taking possession since possession in such cases cannot be considered to be taken in accordance with law and the vesting is not absolute. If the requirement is complied and possession is taken after tendering and paying eighty per centum, though there is need to pass an award and pay the balance compensation within a reasonable time, the rigour of Section 11A of Act, 1894 will not apply so as to render the entire proceedings for acquisition to lapse in the context of absolute vesting. The right of land loser in such case is to enforce passing of the award and recover the compensation. In the instant case though Section 11A of Act, 1894 has become applicable, in the changed circumstance we deem it proper to mould the relief instead of holding the acquisition to have lapsed. Hence for the reasons stated above, it is directed as follows: The respondents shall construe 09.06.2008 as the relevant date and determine the market value prevailing as on that date applying the yardstick under Act, 1894 in respect of the acquired land. To calculate the statutory benefits on such amount including interest, the same shall be determined by taking into consideration the date of the Section 4 notification dated 17.04.2002 since the appellant was dispossessed on 04.02.2003 pursuant to the same. The date on which the fresh award is passed pursuant to this judgment and communicated shall be the date of cause of action for seeking enhancement of compensation if the appellant is dissatisfied with
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the quantum of compensation offered. The compensation determined in this case shall not give the cause of action to any other land loser whose land is acquired under the same notification to seek re-determination of compensation. [Paras 25 and 26][779-D-H; 780-A-F] A

Coffee Board, Karnataka, Bangalore vs. Commissioner of Commercial Taxes, Karnataka and Others (1988) 3 SCC 263 : [1988] 1 Suppl. SCR 348; Yusufbhai Noormohmed Nandoliya vs. State of Gujarat and Anr. (1991) 4 SCC 531 : [1991] 1 Suppl. SCR 158; Indore Development Authority vs. Manoharlal & Others (2020) 8 SCC 129 : [2020] 3 SCR 1; Laxmi Devi vs. State of Bihar (2015) 10 SCC 241 : [2015] 11 SCR 179; Allahabad Development Authority vs. Nasiruzzaman & Ors (1996) 6 SCC 424 : [1996] 5 Suppl. SCR 435; Deptt. of Telecommunications vs. Madan Mohan Pradhan (1995) 4 Suppl. SCC 268 : [1995] 5 Suppl. SCR 1; Banda Development Authority vs. Moti Lal Agarwal (2011) 5 SCC 394 : [2011] 7 SCR 435 - referred to. B

<u>Case Law Reference</u>			
[1988] 1 Suppl. SCR 348	referred to	Para 10	E
[1991] 1 Suppl. SCR 158	referred to	Para 10	
[2020] 3 SCR 1	referred to	Para 18	
[2015] 11 SCR 179	referred to	Para 19	
[1996] 5 Suppl. SCR 435	referred to	Para 19	F
[1995] 5 Suppl. SCR 1	referred to	Para 19	
[2011] 7 SCR 435	referred to	Para 19	
[1993] Supp 2 SCR 336	clarified	Para 20	G

CIVIL APPELLATE JURISDICTION : Civil Appeal No.24 of 2009.

From the Judgment and Order dated 28.08.2006 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No.22251 of 2006.

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A Sudhir Chandra, Sr. Adv., Rakesh Singh, Arun K. Sinha, Bhagabati Prasad Padhy, Achintya Dvivedi, Advs. for the Appellants.

Ravindra Raizada, ASG, Ravindra Kumar, Sr. Adv., Binay Kumar Das, Ms. Priyanka Das, Ms. Neha Das, Ajai Kumar, Ms. Saloni Sharan, Rajeev Kumar Dubey, Ashiwan Mishra, Ms. Vaidruti Mishra, Kamlendra

B Mishra, Dinesh Kumar Garg, Dhananjay Garg, Abhishek Garg, Ishaan Tiwari, Advs. for the Respondents.

The Judgment of the Court was delivered by

A. S. BOPANNA, J.

C 1. This appeal has a chequered history. The appeal was heard by a Bench consisting of two Hon'ble Judges (Justice A.K. Ganguly and Justice Swatanter Kumar) and was decided by the Judgment dated 18.08.2011 with divergent opinion. In the process, after consideration, Hon'ble Justice A.K. Ganguly arrived at the conclusion that taking over possession of the land without complying with the requirement under Section

D 17(3A) of the Land Acquisition Act, 1894 (for short 'Act, 1894') is clearly illegal and in violation of the statutory provision which automatically violates the constitutional guarantee under Article 300A of the Constitution. However, on taking note that the land had been utilised and developed by the beneficiary of the acquisition, had allowed the retention of the land by directing to pass an award by construing the date of filing

E the writ petition i.e. 01.03.2006 as the date of Section 4 notification to reckon the market value as against the actual date of notification. Hence allowed the appeal in those terms.

F 2. On the other hand, Hon'ble Justice Swatanter Kumar, however, disagreed with the said conclusion and for the separate reasons assigned

G by the learned Judge, arrived at the conclusion that Section 11A of Act, 1894 has no application to acquisition under Section 17 of Act, 1894. It was further held that the default in complying with Section 17(3A) of Act, 1894 does not invalidate or vitiate the entire acquisition proceedings. The learned Judge while deciding so had however misconstrued that

H 80% of the estimated value in terms of sub-section (3A) of Section 17 had been paid to the land loser and in that context held that the interest provided in terms of Section 34 will be payable. In that view, the learned Judge ordered dismissal of the appeal in terms of the directions issued.

I 3. In that backdrop, in view of the divergence of opinion between the learned Judges, they had ordered the matter to be placed before Hon'ble the Chief Justice of India for reference to a larger Bench to

resolve the conflict. It is in that circumstance Hon'ble the Chief Justice has ordered the matter to be placed before a Bench consisting of three Judges. However, no specific question has been formulated and referred for decision by a three-member Bench. Hence, we have heard the matter based on the factual aspects involved in this case *de-novo*, so as to determine the legal aspects which touch upon the same.

4. It would therefore be necessary for us to at the outset take note of the factual matrix involved in this case. The New Okhla Industrial Development Authority (NOIDA) – Respondent No.2 was to implement a planned Industrial layout in Gautam Budh Nagar District for which purpose the requisite land was to be acquired. The project was envisaged by the State of U.P–Respondent No.1 as a part of planned Industrial Development. Hence, Respondent No.1 being the appropriate Government, issued the Notification dated 17.04.2002 invoking the special power due to urgency. The Notification was therefore issued under Section 4(1) read with Section 17(1) and (4) of Act, 1894, whereby the requirement of procedure under Section 5A of the Act, 1894 was dispensed. Pursuant thereto, the declaration under Section 6 of the Act, 1894 was notified and published on 22.08.2002 declaring that the area was required by the Government for planned industrial development. It was also stated that after the expiry of 15 days from the date of publication of notification under sub-section (1) of Section 9 of the Act, 1894, possession of the acquired land will be taken.

5. In the large extents of land that was notified, an extent measuring 2-06-1/3-0 Bighas situated in village Haldauni, Tehsil and Pargana Dadri, District Gautam Budh Nagar, an ‘Abadi’ land was also included. The Appellant, a company incorporated under the provisions of the Companies Act, 1956 claims to be the owner of the said small extent of land. The Appellant alleges that they were not served with the notice contemplated under Section 9(1) of Act, 1894. However, it is not disputed that possession was nevertheless taken on 04.02.2003. But the grievance raised by the Appellant is that neither the initial requirement of tendering and paying 80% of the estimated compensation contemplated under sub-section (3A) to Section 17 of Act, 1894 was complied nor was the requirement of Section 11A of the Act, 1894 to pass the award within two years from the date of declaration under Section 6 of Act, 1894 complied. In that view, the Appellant filed the writ petition on 01.03.2006 since more than three and half years had elapsed and neither of the provisions had been

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A complied. The appellant therefore contended that the acquisition in so far as the land belonging to the Appellant has lapsed and the same should revert to the Appellant.

6. The High Court having considered the matter was of the opinion that Section 11A of Act, 1894 is not attracted to the proceedings for

B acquisition in exercise of the power under Section 17 of Act, 1894. In that regard, the High Court relied on the decision of this Court in **Satendra Prasad Jain Vs. State of U.P** (1993) 4 SCC 369 and dismissed the writ petition by order dated 28.08.2006, which has given rise to the above appeal which was earlier heard by a Bench consisting of two Hon'ble Judges who have differed as noted supra. While taking note of the decision

C in **Satendra Prasad Jain**, rendered by a Bench of three Hon'ble Judges, Justice A.K. Ganguly has found it to be *sub-silentio* and *per incuriam* in the face of the provision contained in the statute. Justice Swatanter Kumar, the other Hon'ble Judge however relied on the decision in **Satendra Prasad Jain** (supra) holding that compliance with Section

D 17(3A) of the Act, 1894 is not mandatory. Hence even in the circumstance of non-compliance, the benefit of interest as provided in Section 34 of the Act, 1894 was held as the entitlement. Section 11A of Act, 1894 was also held not applicable to the acquisition under Section 17 of Act, 1894. Though detailed reasons have been tendered by both the learned Judges for their respective opinion and has also been referred to by the learned

E Senior Counsel for the parties, we do not propose to go into the same since the entire matter has been placed before us and the case put forth by the parties is to be independently examined by us.

7. In the above background we have heard Shri Sudhir Chandra, learned senior counsel for the appellant, Shri Ravindra Kumar, learned senior counsel for the Respondent No.1, Shri Ravindra Raizada, learned senior counsel for Respondent No.2, exhaustively and have perused the appeal papers.

8. In the light of the contentions urged, the following questions arise for our consideration.

G a. Is the requirement to tender payment of 80% of the estimated compensation as contemplated under sub-section(3A) to Section 17 of Act, 1894, mandatory to ensure absolute vesting of the notified land.

H b. Whether the requirement to pass the award within the time frame contemplated under Section 11A applicable to the acquisition notified under Section 17 of Act, 1894.

c. Can the case in *Satendra Prasad Jain* (supra) be A
considered as a decision laying down *ratio decidendi* on
the above questions?

9. In order to decide the scope and ambit of the provisions under consideration it would be appropriate to reproduce Section 11A and Section 17 of the Act, 1894 in its entirety and keep the same in perspective. Needless to mention that if the plain meaning of the provision does not admit of any ambiguity no other external aid will be necessary to interpret the provision except to give it the plain meaning. The relevant provision read as hereunder:

“Section 11A- Period within which an award shall be made-

(1) 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, 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.”

“Section 17- Special powers in case of urgency –(1) In cases of urgency whenever the [appropriate Government], so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), [take possession of any land needed for a public purpose]. Such land shall thereupon [vest absolutely in the [Government], free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or accesses to any such station, [or the appropriate Government considers it necessary to

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- A acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity,] the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the [appropriate Government], enter upon and take possession of such land, which shall thereupon [vest absolutely in the [Government]] free from all encumbrances:
- B Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.
- C (3) In every case under either of the preceding sub-sections the Collector shall at that time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and from any other damage sustained by them caused by such sudden dispossession and not excepted in section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.
- D [(3A) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3)-
- E F (a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and
- G (b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2), and where the Collector is so prevented, the provisions of section 31, sub-section (2) (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.
- H (3B) The amount paid or deposited under section (3A), shall be taken into account for determining the amount of

compensation required to be tendered under section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under section 11, the excess may, unless refunded within three months from the date of Collector's award, be recovered as an arrear of land revenue]. A

[(4) In the case of any land to which, in the opinion of the [appropriate Government], the provisions of sub-section (1) or sub- section (2) are applicable, the [appropriate Government] may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time [after the date of the publication of the notification] under section 4, sub-section (1).]" B

10. At the outset, the learned senior counsel for Respondent No.1, in an attempt to sustain the acquisition strenuously contended with regard to eminent domain of the State in the matter of acquisition of land for public purpose and relied upon the case in *Coffee Board, Karnataka, Bangalore Vs. Commissioner of Commercial Taxes, Karnataka and Others* (1988) 3 SCC 263. To be fair to him, though we have noted, we are however clear on that aspect that the State has the power. But the position of law is also well established that in view of Articles 300A and 31A of the Constitution, the owner of land can be divested only in accordance with law after appropriately compensating if such land is required by the State for public purpose. Since such power of eminent domain is not in dispute, we need not advert to the decision referred in detail. C

11. In the normal circumstance, the process for acquisition would commence with the notification under Section 4, after which the procedure under Section 5A is complied. The declaration under Section 6 is thereafter made, when the requirement of the land for public purpose is confirmed. Thereafter, the process for determining the compensation and taking possession through Section 11 and Section 16 of Act, 1894 is contemplated, which is undertaken after issue of notice under Section 9 of Act, 1894. In so far as the said process, in order to protect the interest of the land loser to be compensated within a time frame, failing which, to give him benefit of his own land, Section 11A was inserted by Act 68 of 1984, w.e.f 24.09.1984. The said provision leaves no ambiguity whatsoever that if the award is not made within the period of two years D

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- A from the date of publication of the declaration under Section 6 of Act, 1894, the entire proceedings will stand lapsed. The only option for the acquiring authority if the land is still required for the public purpose is to notify afresh from the stage of issuing notification under Section 4 of Act, 1894. The computation of two years would however exclude the period if the process was stayed by an order of the Court. This aspect has been clarified by this Court in *Yusufbhai Noormohmed Nandoliya Vs. State of Gujarat and Anr.* (1991) 4 SCC 531, placed for our consideration by the learned senior counsel for the appellant.
12. So far so good, the question however is as to whether the rigour of Section 11A of Act, 1894 will apply when the appropriate Government exercises its special power in cases of urgency, which does not contemplate the same procedure as in the normal acquisition process noted above. In this regard also this Court in *Yusufbhai Noormohmed Nandoliya* (supra) has held Section 11A is applicable to acquisition under Section 17, though without detailed discussion. From the provision of Section 17 reproduced supra, it is seen that the acquiring authority will be entitled to take possession without taking recourse to the procedure which is otherwise provided under Section 16 of Act, 1894 wherein it contemplates the passing of an award before taking possession. But under Section 17 of Act, 1894, possession is permitted to be taken even before the award is passed. Though such power was absolute earlier, sub-section (3A) was inserted by Act 68 of 1984, w.e.f 24.09.1984 whereby the pre-condition imposed before taking possession is that 80% of the estimated compensation is to be tendered and paid to the persons interested in the land. The tendered amount should be paid unless prevented by one or more of the contingencies mentioned in Section 31(2) of Act, 1894. It would necessarily mean that Section 31 will come into play and the 80% of the estimated compensation amount, though no award is passed, will have to be tendered and paid to the persons interested. If tendered, but not able to pay due to valid reasons, it is to be deposited in Court. The word employed in sub-section (3A) of Section 17 of the Act, 1894 is "shall" and it is to be tendered and paid "before taking possession". Hence it cannot be understood as providing any discretion to the acquiring authority. In fact, the last sentence of sub-section (1) of Section 17 uses the word "thereupon" with respect to vesting. This word "thereupon" is correlated to taking possession and payment in terms of sub-section (3A) is a *sine qua non* for taking possession. Therefore (1) payment of 80% (2) taking over possession

thereafter and (3) vesting of land in the government take place in a sequence. Absent anyone of these in the sequence, the emergency provision fails. It is a pre-requisite condition to acquire and take possession of the land since such acquisition is permitted by exempting the requirement of the procedure under Section 5A and possession is permitted to be taken prior to an award being passed under Section 11 of Act, 1894.

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13. That apart, sub-section (4) to Section 17 of Act, 1894 provides the discretion to the appropriate Government to waive the application of the provisions of Section 5A and make the declaration under Section 6 in respect of the land at any time after the initial publication of the notification under Section 4 of Act, 1894. This makes it clear that even in a case where the appropriate Government exercises its power to invoke the special power in case of urgency, all other procedure contemplated under the Act except the requirement under Section 5A of Act, 1894 is to be complied. Therefore, after issue of the initial notification under Section 4 read with Section 17(1) and on taking possession after issue of notice under Section 9, the declaration under Section 6 of Act, 1894 is to be made so as to complete the process of acquisition, which indicates that the objection to acquisition of land shall alone stand muted and not the right to compensation which is to be paid in strict compliance of the requirement in that regard.

14. Hence, insofar as payment of compensation for the acquired land even if it is acquired under Section 17 of Act, 1894, it is evident that an award as contemplated under Section 11 of Act, 1894 is required to be passed so as to determine the compensation payable. Since sub-section (3A) to Section 17 mandates payment of 80% of the estimated compensation, such amount paid would get included in the amount to be determined and offered through the award. In that context it is clear that Section 17(4) contemplates, that the declaration is to be made under Section 6 even when an urgency provision is invoked and an award under Section 11 is to be passed to determine the compensation.

15. However, on a careful composite perusal of all the provisions noted above, it is evident that the requirement to tender and pay 80% of the estimated compensation before taking possession assumes significance so as to carve out an exception for non-applicability of ‘lapsing’ as contemplated under Section 11A of Act, 1894. This is so, since the terms “vesting absolutely” and “lapsing” cannot co-exist and cannot go hand

- A in hand. Post amendment w.e.f 24.09.1984, two elements have been inserted in Section 17 for the land to vest absolutely in the Government for public purpose even before the award is passed. One, is that possession should be taken. The other is, by inserting sub-section (3A) it has been made mandatory to tender payment of 80% of estimated compensation before taking possession. Therefore, 80% of the estimated compensation, the payment of which only if tendered and paid, the vesting would become absolute and in such event the consequence of lapsing in respect of absolutely vested land cannot occur and as such, in that circumstance alone Section 11A though applicable will not take effect. The right of the land loser would be to enforce passing of award which will include the
- B balance 20% of compensation even if it is beyond two years and get adequately compensated in terms of Section 23 and 34 of Act, 1894 for the delay if any.

16. But it is a different matter altogether, when Section 17(1) is invoked but the requirement thereunder which is a pre-requisite condition
- D is not complied. As noted, sub-section (3A) has been inserted w.e.f. 24.09.1984, whereunder it is made mandatory to tender and pay 80% of the estimated compensation before taking possession. Therefore, even if possession is taken, such possession cannot be considered as legal so as to vest the land absolutely if the pre-requisite condition for payment of 80% before taking possession is not complied. In such circumstance, E by legal fiction it loses its character as an acquisition under Section 17 and since the absolute vesting does not take place, it will lapse if the further process is not complied and the award is not passed within two years from the date of declaration. However, even when the pre-condition is not complied, if the land loser does not challenge the acquisition and/or F taking of possession as illegal, but concedes to the position, the possession taken does not become per-se illegal and the vesting will be absolute and in such event it cannot be considered to have lapsed until the land loser exercises the right. We consider it so, since, both Section 11A and sub-section (3A) to Section 17 of Act, 1894 were inserted in Act, 1894 to enable the land losers to exercise their right conferred on them. As such, G the said right is to be exercised by the land loser and none other, not even the acquiring authority or beneficiary nor would the said provision become automatically applicable unless it is triggered by the land loser.

17. Therefore, we are of the considered view that Section 11A though applicable to the cases of acquisition initiated under Section 17(1)
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of Act, 1894 the consequence of it will not affect the case where the land has absolutely vested on compliance of sub-section (3A) to Section 17 of Act, 1894 and 80% of estimated compensation is tendered and paid. Hence, when there is a challenge by the land loser, each case will have to be considered on its own merits to determine whether the pre-requisite condition to tender and pay as contemplated under sub-section (3A) is made before possession is taken. If in the case concerned the mandatory prerequisite is not complied, such acquisition will lose its character as being under Section 17 and if the award is not passed within two years from the date of the declaration, it will lapse and not otherwise. The benefit of said provision is available only to be invoked by the land loser and cannot be invoked by the acquiring authority to claim lapse by pointing to non-compliance since the ‘vice’ of non-compliance cannot be permitted to be converted into a ‘virtue’.

18. Though the learned counsel for the beneficiary- Respondent No.2 placed reliance on the decision in *Indore Development Authority Vs. Manoharlal & Others* (2020) 8 SCC 129 rendered by the Constitution Bench to contend that it has been held therein that “paid” as contained in Section 24(2) of RFCLARR Act, 2013 does not include deposit of compensation in Court, we are of the considered opinion that the same will not be applicable to the question under consideration before us in this case. In the instant case, the requirement to tender and pay 80% of the estimated compensation and the consequent lapsing as considered above is in the context of exercise of urgency provision which permits a deviation from the normal process of acquisition and the payment envisaged is to take benefit of the said provision. In contradistinction, the consideration in the cited case is about the effect of Section 24 (2) of Act, 2013 in the circumstance contemplated therein.

19. In considering the effect of *Satendra Prasad Jain* (supra) it would be appropriate to take note of the decision relied on by the learned senior counsel for the appellant in *Laxmi Devi Vs. State of Bihar* (2015) 10 SCC 241 wherein it is analysed as hereunder:

“**26.** This is also in line with a plain reading of Section 17(1), which states that “once possession of the land is taken by the Government under Section 17, the land vests absolutely in the Government, free from all encumbrances”. In Section 48(1) the taking over of the possession of the land is of seminal significance in that the provision succinctly states that “the Government shall

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- A be at liberty to withdraw from the acquisition of any land the possession of which has not been taken". The next sub-section covers calculation of compensation for the aborted occupation.
- 26.1.** The same position came to be reiterated in *Satendra Prasad Jain* by a three-Judge Bench of this Court. The acquisition proceedings including the exclusion of Section 5-A had obtained the imprimatur of the Allahabad High Court; the urgency and public purpose had received curial concurrence. Possession of the land was taken by the State from the landowners. Previously, the special leave petition filed by the landowners had been dismissed by this Court. Ironically, the subsequent stance of the State was that the acquisition of land under the urgency provisions was required to be set aside for the reason that the State had failed to pass an award under Section 11 within two years and had also failed to pay eighty per cent of the estimated compensation required under Section 17(3-A). Whilst the State endeavoured to withdraw from the acquisition, the erstwhile landowners opposed it. This Court directed the State "to make and publish an award in respect of the said land within twelve weeks from today". The abovementioned discussion bears out that this Court was concerned only with the issue of the land being returned by the State to the erstwhile owner. It does not go so far as to limit or restrict the rights of landowners to fair compensation for their expropriated property, as that is a constitutional right which cannot be nullified, neutralised or diluted.
- 26.2.** We think it justified to again refer to the opinion in *Satendra Prasad Jain* that : (SCC p. 374, para 16)
- F "16. ... Section 11-A cannot be so construed as to leave the Government holding title to the land without the obligation to determine compensation, make an award and pay to the owner the difference between the amount of the award and the amount of eighty per cent of the estimated compensation."
- G **26.3.** The second issue, one that we feel must be kept in mind in the interpretation in the law laid down by this Court, is the factual matrices involved in both *Satendra Prasad Jain* and *Avinash Sharma*. In both these precedents, as well as in innumerable others that have relied upon them, the Government's attempt was to misuse its own omissions to achieve its own oblique purposes. It
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was in this context that this Court declined to accede to the pleas of the Government. This Court poignantly repelled the State's attempt to nullify the acquisition on the predication of its non-compliance with Sections 16 and 17(3-A). The judicial intent was not to cause any loss to landowners, but to protect them. The pernicious practice that was becoming rampant, that is to make partial compliance with the statute and to follow the acquisition procedure in a piecemeal manner, and then to argue that its own lapses rendered its acquisition illegal, was roundly repulsed. Although this strictly constitutes obiter, we think it appropriate to clarify that where the landowners do not assail the acquisition, it may be open to them to seek a mandamus for payment to them, after a reasonable period, of the remaining compensation, which will thereupon metamorphose from a mere estimation to the actual compensation for the expropriation.

28. We do, however, recognise that *Satendra Prasad Jain* has been interpreted more broadly in the past. In *Allahabad Development Authority v. Nasiruzzaman, Deptt. of Telecommunications v. Madan Mohan Pradhan* and *Banda Development Authority v. Moti Lal Agarwal*, this Court has dismissed the landowners' challenges to the respective acquisitions on the basis of *Avinash Sharma* and *Satendra Prasad Jain*. It is pertinent to note that all three of these cases were brief in their explanations of *Avinash Sharma* and *Satendra Prasad Jain* and did not examine their rationes decidendi, their innate contradictions, their intentions or their consequences at any length. We thus feel it appropriate to rely on our own detailed exploration of these cases, as opposed to simply placing reliance on the largely contradictory case law that has developed over the years. It was for this reason that we had revisited the curial concept of ratio decidendi.

29. The scenario before us depicts the carelessness and the callousness of the State, quite different from the situation in *Satendra Prasad Jain* and *Avinash Sharma*. The appellants herein are being denied just and fair compensation for their land in proceedings which commenced in 1987, despite the directions of the High Court passed as early as in 1988 to pass an award within four months. The raison d'être behind the introduction of

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- A Section 11-A was for the landowners to have a remedy in the event of an award not being passed expeditiously. If *Satendra Prasad Jain* is interpreted to mean that Section 11-A will not apply to any acquisition under the urgency provisions, landowners such as the appellants before us will have no protection, even if they are not paid full compensation for their land for decades.
- B This cannot be in keeping with the legislative intent behind this section. Furthermore, keeping empirical evidence in sight, we make bold to opine that circumstances require this Court to reconsider its view that even if the stated public interest or cause has ceased to exist, any other cause can substitute it, especially where the urgency provisions have been invoked.
- C **30.** We feel it imperative to distinguish between the setting aside of an acquisition and the reversion of possession to the erstwhile landowners. While the LA Act and the judgments discussed above do not allow for the latter, we are of the considered opinion that this does not necessarily imply that the former is also not an option. Both the abovementioned cases dealt with a factual situation in which the Government was attempting to set the acquisition of the land at naught so that they would not have to pay compensation to acquire it. Setting aside of the acquisition in those cases was tantamount to reverting the possession to the original owners. In this scenario, however, the two do not have to go hand in hand. In allowing the acquisition of land that the Government finds necessary to be set aside, we would not necessarily be holding that the land revert to the appellants, as the alternative of permitting the Government to keep possession provided it reacquires the land with a new Section 4 notification exists. This option, particularly in the present factual matrix, does the least violence to the intent and content of the LA Act, in that it upholds Section 11-A even in cases of acquisition under Section 17 while preserving the requirement of Section 17 that the unencumbered possession of the land remain vested in the Government. It also protects the rights of the landowners, thus fulfilling the intent of Section 11-A, while allowing the Government to acquire land in cases of emergencies without its title being challenged, which is the avowed intention of Section 17. Any other interpretation of the law would serve to protect only those landowners who had approached the
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court to stop the Government from undoing an emergency acquisition, while leaving in the cold equally aggrieved landowners seeking to enforce their right to fair compensation for their land. Even equity demands that the party bearing the consequence of the delay in the award ought not to be the innocent landowner, but the errant State.”

20. We are in agreement with the opinion expressed in Laxmi Devi (*supra*) by a Bench of two Hon’ble Judges. In our opinion also the philosophy based on which the decision in *Satendra Prasad Jain* (*supra*) was rendered is as contained in para-17, which reads as hereunder:

“17. In the instant case, even that 80 per cent of the estimated compensation was not paid to the appellants although Section 17 (3-A) required that it should have been paid before possession of the said land was taken but that does not mean that the possession was taken illegally or that the said land did not thereupon vest in the first respondent. **It is, at any rate, not open to the third respondent, who, as the letter of the Special Land Acquisition Officer dated June 27, 1990 shows, failed to make the necessary monies available and who has been in occupation of the said land ever since its possession was taken, to urge that the possession was taken illegally and that, therefore, the said land has not vested in the first respondent and the first respondent is under no obligation to make an award.”**

(Emphasis supplied)

We have also in our view indicated above that the acquiring authority and/or beneficiary cannot derive benefit of non-compliance of requirement of Section 17(3A) and take benefit of Section 11A of Act, 1894. The benefit of the provision is for the land loser. In *Satendra Prasad Jain* (*supra*) also this Court was of the opinion that it was not open for the acquiring authority or the beneficiary to take benefit of Section 11A and Section 17(3A) which is intended to benefit the land owner to ensure that award be made within time. Hence it is clear that *Satendra Prasad Jain* (*supra*) does not lay down the ratio that the acquisition does not lapse under any circumstance if the urgency provision under Section 17 of Act, 1894 is invoked but it only disapproved applying it against the land loser.

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- A 21. In the above background it is noted that in the instant acquisition from which this case arises, an extent in all measuring 63.540 acres (101-15-17, 5/6 Bighas) was acquired through the declaration under Section 6 of Act, 1894 for which a sum of Rs. 7,48,67,857.73 being 80% is stated to have been deposited by Respondent No.2 – Beneficiary, with Respondent No.1 and the balance amount is also deposited on 21.12.2002 so as to enable the collector to enter into an agreement with the landowners and pay compensation. Insofar as the extent of land belonging to the appellant, it is stated by Respondent No.1 that a letter dated 01.01.2003 was issued calling upon the appellant to come forward and execute an agreement. Thereafter there is no effort to tender and pay 80% of the estimated compensation or to pass an award, which prompted the appellant to file the writ petition before the High Court.

22. From the sequence of events, it is clear that the other land losers have entered into an agreement and received compensation. The appellant on the other hand was neither tendered nor paid 80% of the estimated compensation as required under sub-section (3A) to Section 17 before taking possession nor was an award passed and compensation paid within two years from the date of declaration under Section 6 of Act, 1894.

- E 23. In the normal circumstance, the acquisition would lapse insofar as the appellant's land in view of our conclusion on the legal aspect. However, in the fact situation, the relief is required to be moulded. This is for the reason that the land belonging to the appellant is not a stand-alone extent. As noted, the acquisition was for a planned industrial layout and the total extent acquired and possession taken was 101-15-17, 5/6 bighas of which, the land belonging to the appellant is only 2-06-1/3-0 bighas. In the planned layout, the land has been utilized for various purposes and amenities. A 'Mandi' has been constructed over a larger extent of land of which the smaller extent of land belonging to the appellant also forms a part. Hence reversion of the land does not arise. Further, the course as suggested in Laxmi Devi (*supra*) to issue a fresh notification also would not be appropriate, since the very scheme of acquisition and determination of compensation under the old regime has undergone a sea change. As such it would be unjust not only to the state exchequer but also the other land losers under the same notification if the present prevailing process is applied in determining the compensation. Further, though after being nudged by the High Court, the award in any
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event was passed on 09.06.2008 under the old regime which is now to A
be substituted with adequate compensation.

24. On weighing all aspects of the matter, we deem it appropriate B
that it will serve the ends of justice to direct the respondents to determine
the market value insofar as the appellant's land is concerned by reckoning
the relevant date as 09.06.2008 (i.e. the date on which the award was C
ultimately passed), by applying the yardstick under Act, 1894. It is made
clear that only the market value be determined as on that date but for D
awarding the statutory benefits, it shall be calculated from the date of
the original notification since admittedly the appellant has been E
dispossessed on 04.02.2003 pursuant to the notification dated 17.04.2002.
Further, from the date on which the fresh award is passed pursuant to F
this judgment, the appellant would get the cause of action for seeking
reference if dissatisfied with the quantum of compensation awarded. It G
is made clear that the determination of compensation, in this case, shall
not give rise to any right in favour of any other land loser whose land H
was acquired under the same notification, to seek for re- determination
of compensation where the same has already attained finality.

25. The decision in this case based on the principle of law settled E
herein, if it arises for consideration in any other case under Act, 1894 or
any other enactment relating to land acquisition containing *pari materia*
provisions shall be applied only prospectively and cases which have E
attained finality shall not be reopened.

26. In the result, we pass the following order:

- (i) The provision contained in Section 11A of Act, 1894 shall F
be applicable to cases in which the acquiring authority has
not complied with the requirement of sub-section (3A) to
Section 17 of Act, 1894 by tendering and paying eighty per
centum of the estimated compensation before taking
possession since possession in such cases cannot be
considered to be taken in accordance with law and the
vesting is not absolute. G
- (ii) If the requirement is complied and possession is taken after H
tendering and paying eighty per centum, though there is
need to pass an award and pay the balance compensation
within a reasonable time, the rigour of Section 11A of Act,
1894 will not apply so as to render the entire proceedings

- A for acquisition to lapse in the context of absolute vesting. The right of land loser in such case is to enforce passing of the award and recover the compensation.
- (iii) In the instant case though Section 11A of Act, 1894 has become applicable, in the changed circumstance we deem it proper to mould the relief instead of holding the acquisition to have lapsed. Hence for the reasons stated above, we direct as follows:
- C (a) The respondents shall construe 09.06.2008 as the relevant date and determine the market value prevailing as on that date applying the yardstick under Act, 1894 in respect of the acquired land.
- (b) To calculate the statutory benefits on such amount including interest, the same shall be determined by taking into consideration the date of the Section 4 notification dated 17.04.2002 since the appellant was dispossessed on 04.02.2003 pursuant to the same.
- D (c) The date on which the fresh award is passed pursuant to this judgment and communicated shall be the date of cause of action for seeking enhancement of compensation if the appellant is dissatisfied with the quantum of compensation offered.
- E (d) The compensation determined in this case shall not give the cause of action to any other land loser whose land is acquired under the same notification to seek re-determination of compensation.
- F (e) The appellant shall be entitled to the cost incurred in these proceedings.

27. The appeal is disposed of accordingly.

28. Pending application, if any, stands disposed of.