Indore Development Authority vs Manoharlal And Ors. Etc. on 6 March, 2020

Equivalent citations: AIR 2020 SUPREME COURT 1496, AIRONLINE 2020 SC 346

Author: Arun Mishra

Bench: S. Ravindra Bhat, M. R. Shah, Vineet Saran, Indira Banerjee, Arun Mishra

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

S.L.P. (C) NOS.9036-9038 OF 2016)

INDORE DEVELOPMENT AUTHORITY ….PETITIONER

VERSUS

MANOHARLAL & ORS. ETC. ….RESPONDENT(S)

WITH

S.L.P.(C) NOS. 9798-9799 OF 2016)

S.L.P.(C) NOS. 17088-17089 OF 2016)

S.L.P.(C) NO. 37375 OF 2016)

S.L.P.(C) NO. 37372 OF 2016)

S.L.P.(C) NOS. 16573-16605 OF 2016)

S.L.P. (C) CC NO. 15967 OF 2016

CIVIL APPEAL NO. 19356 OF 2017

CIVIL APPEAL NO. 19362 OF 2017

CIVIL APPEAL NO. 19361 OF 2017

CIVIL APPEAL NO. 19358 OF 2017

CIVIL APPEAL NO. 19357 OF 2017

CIVIL APPEAL NO. 19360 OF 2017

CIVIL APPEAL NO. 19359 OF 2017

S.L.P.(C) NOS. 34752-34753 OF 2016)

S.L.P.(C) NO. 15890 OF 2017)
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CIVIL APPEAL NO. 19363 OF 2017

CIVIL APPEAL NO. 19364 OF 2017

CIVIL APPEAL NO. 19412 OF 2017

MA 1423 OF 2017 IN CIVIL APPEAL NO. 12247 OF 2016

S.L.P.(C) NO. 33022 OF 2017

S.L.P.(C) NO. 33127 OF 2017

S.L.P.(C) NO. 33114 OF 2017

MA 1787 OF 2017 IN CIVIL APPEAL NO. 10210 OF 2016

MA 1786 OF 2017 IN CIVIL APPEAL NO. 10207 OF 2016

MA 45 OF 2018 IN CIVIL APPEAL NO. 6239 OF 2017

S.L.P.(C) NO. 16051 OF 2019

DIARY NO. 23842 OF 2018

S.L.P.(C) NO. 30452 OF 2018

CIVIL APPEAL NO(s). 4835 OF 2015

S.L.P.(C) NOS. 30577-30580 OF 2015

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JUDGMENT

ARUN MISHRA, J.

1. The correct interpretation of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the Act of 2013'), is the subject matter of reference to this five Judge Bench of this Court.

2. A three Judge Bench of this Court in Pune Municipal Corporation & Anr v Harakchand Misrimal Solanki & Ors 1, interpreted Section 24 of the Act of 2013. The order reported as Yogesh Neema & Ors v State of Madhya Pradesh2, a two-judge Bench, however doubted the decision in Sree Balaji Nagar Residents Association v State of Tamil Nadu 3 (which had followed Pune Municipal Corporation (supra) and also held that Section 24 (2) of the Act of 2013 does not exclude any period during which the land acquisition proceeding might have remained stayed on account of stay or injunction granted by any court) and referred the issue to a larger Bench. Later, in another appeal (arising out of S.L.P. (C) No.2131 of 2016 (Indore Development Authority v Shailendra (dead) through Lrs. & Ors.4) the matter was referred to a larger Bench on 7.12.2017; the Court noticed that:

> “cases which have been concluded are being revived. In spite of not accepting the compensation deliberately and statement are made in the Court that they do not want to receive the compensation at any cost, and they are agitating the matter time (2014) 3 SCC 183 2 (2016) 6 SCC 387 3 (2015) 3 SCC 353 4 2018 SCC Online SC 100 and again after having lost the matters and when proceedings are kept pending by interim orders by filing successive petitions, the provisions of section 24 cannot be invoked by such landowners.”

> 3. The Court noticed that the reference to a larger Bench was pending, and had been made in Yogesh Neema (supra). The Court also felt that several other issues arose which it outlined, but were not considered in Pune Municipal Corporation (supra). The Court therefore, stated that the matter should be considered by a larger Bench and referred the case to Hon’ble the Chief Justice of India for appropriate orders. Indore Development Authority v Shailendra (hereafter, “IDA v Shailendra”) a Bench of three Judges was of the view that the judgment in Pune Municipal Corporation (supra) did not consider several aspects relating to the interpretation of Section 24 of

the Act of 2013. Since Pune Municipal Corporation (supra) was a judgment by a Bench of coordinate strength, two learned judges in IDA v Shailendra opined prima facie that decision appeared to be per incuriam.

4. Later, in Indore Development Authority v Shyam Verma & Ors (SLP No. 9798 of 2016) considered it appropriate to refer the matter to Hon'ble the Chief Justice of India to refer the issues to be resolved by a larger Bench at the earliest. Yet again in State of Haryana v Maharana Pratap Charitable Trust (Regd) & Anr (CA No.4835 of 2015) referred the matter to Hon'ble the Chief Justice of India to constitute an appropriate Bench for consideration of the larger issue. These batch appeals were referred to a five Judge Bench, which after hearing counsel, framed the following questions, which arise for consideration:

"1. What is the meaning of the expression paid'/tender' in Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act of 2013') and Section 31 of the Land Acquisition Act, LA (Act of 1894')? Whether non-deposit of compensation in court under section 31(2) of the Act of 1894 results into lapse of acquisition under section 24(2) of the Act of 2013. What are the consequences of non- deposit in Court especially when compensation has been tendered and refused under section 31(1) of the Act of 1894 and section 24(2) of the Act of 2013? Whether such persons after refusal can take advantage of their wrong/conduct?

2. Whether the word or' should be read as conjunctive or disjunctive in Section 24(2) of the Act of 2013?

3. What is the true effect of the proviso, does it form part of sub-

Section (2) or main Section 24 of the Act of 2013?

4. What is mode of taking possession under the Land Acquisition Act and true meaning of expression the physical possession of the land has not been taken occurring in Section 24(2) of the Act of 2013?

5. Whether the period covered by an interim order of a Court concerning land acquisition proceedings ought to be excluded for the purpose of applicability of Section 24(2) of the Act of 2013 ?

6. Whether Section 24 of the Act of 2013 revives barred and stale claims? In addition, question of per incuriam and other incidental questions also to be gone into."

5. Question nos.1 to 3 are interconnected and concern the correct interpretation of Section 24(2) of the Act of 2013. Following questions are required to be gone into to interpret the provisions of Section 24(2) of the Act of 2013:

(i) Whether the word “or” in Section 24(2) of the Act of 2013 used in between possession has not been taken or compensation has not been paid to be read as “and”?

(ii) Whether proviso to Section 24(2) of the Act of 2013 has to be construed as part thereof or proviso to Section 24(1)(b)?

(iii) What meaning is to be given to the word "paid" used in Section 24(2) and "deposited" used in the proviso to Section 24(2)?

(iv) What are the consequences of payment not made?

(v) What are the consequences of the amount not deposited?

(vi) What is the effect of a person refusing to accept the compensation?

6. The Act of 2013 repeals and replaces the Land Acquisition Act, 1894, a general law for acquisition of land of public purposes, which had been in force for almost 120 years, with a view to address certain inadequacies and/ or shortcomings in the said Act.

7. The Act of 2013 is prospective and saves proceedings already initiated under the Land Acquisition Act, 1894 before its repeal, subject to provisions of Section 24 of the Act of 2013, which begins with a non- obstante clause and overrides all other provisions of the Act of 2013.

8. On behalf of the Union, the States and various acquiring bodies and development authorities, Mr. Tushar Mehta, learned Solicitor General (who led the arguments, hereafter “SG”), Ms. Pinky Anand, learned Additional Solicitor General (hereafter “ASG”), Mr. Anoop Chaudhary and Mr. Jayant Muthuraj, learned Senior Counsel, Ms. Shashi Kiran, Ms. Rachna Srivastava, Mr. R.M. Bhangade and Mr. Rajesh Mahale, learned counsel, made their submissions.

9. The learned SG, arguing that this Court should overrule the ratio in Pune Municipal Corporation (supra) and other judgments which followed it, contended that the Court did not consider the various interpretations of Section 31 of the (repealed) Land Acquisition Act, (“LA Act” hereafter). He urged that the provisions of the Act of 2013, vis-à- vis the timelines and consequences that would ensue if the acquisition proceeding prolongs, were not examined. He highlighted that Section 24 is a transitional provision and such provisions should be given an interpretation which accords with legislative intent, rather than so as to impose hitherto absent standards, upon past proceedings, or proceedings initiated under the previous regime, but which have not worked themselves out. He urged that there is a presumption in favour of restricted retrospective applicability of any provision in an enactment unless a contrary intention appears. It is submitted that designedly, it is the stage of passing of award under Section 11 of the LA Act, that represents the determinative factor in the segregation for the applicability of the provisions of the Act of 2013 or the LA Act. It is urged that the opening part of the provision in Section 24(1) is a non-obstante clause providing for a limited overriding effect of the Land Acquisition Act, in case of the contingencies mentioned in Section 24

(1) (a) and (b) of the Act of 2013.

10. Section 24 (1) (a) contemplates that where no award under Section 11 of the LA Act has been made, but proceedings had been initiated under said Act, provisions of the Act of 2013 would apply limited to the determination of compensation. In other words, the entire exercise de novo, under the Act of 2013, will not be required to be undertaken. Therefore, Section 24 (1) (a) contemplates a limited applicability of the Act of 2013. Section 24 (1) (b) stipulates that where an award under Section 11 of the LA Act has been made, the entire proceedings would continue under that law and the provisions of the Act of 2013 would be inapplicable. Section 24 (1) (b) is the larger umbrella clause under Section 24, which protects the vested rights of the parties under the LA Act if the stage of passing of award has been crossed. It is argued that the umbrella clause Section 24 (1) (b), is followed by Section 24(2) - which provides for the exclusionary clause. Section 24 (2), the learned SG highlighted, is the only lapsing clause under the provision which brings in the rigours of the Act of 2013 in totality by mandating the land acquisition to be initiated de novo.

11. It is urged that Section 24 (2) opens with a non obstante clause carving out an exception only from Section 24 (1). It visualizes that land acquisition proceedings which had been initiated under the LA Act, an award under Section 11 of the LA Act had been made. Consequently, Section 24 (2) has no relation to Section 24 (1) (a) as it does not contemplate an award under Section 11 of the LA Act at all. It is, therefore, a limited exception to Section 24 (1) (b). Section 24 (2) consequently is umbilically related to Section 24 (1) (b) as an exception, wherein land acquisition proceedings would lapse in certain contingencies even when an award under Section 11 of the LA Act had been made.

12. It is submitted that the contingencies for lapsing in Section 24(2), are subject to an award under Section 11 of the LA Act being made five years prior to the commencement of the Act of 2013 (which is 1.1.2014). If the award is so made, two contingencies result in complete lapse -: (a) Physical possession of the land has not been taken; or (b) compensation has not been “paid”. The provision for lapse, per Section 24(2) is, by its nature, a vital provision, inviting serious consequences, in case those contingencies arise. It is the interpretation of these “contingencies” that requires further consideration. The “contingencies” ought to be interpreted in a manner which saves the past transactions to the extent they can be saved as it is clearly not the intention of the Act of 2013 to tide over all past transactions.

13. The learned SG argued that the proviso to Section 24(2) further carves out an exception to Section 24(2) viz, in case the award has been made and compensation in respect of majority of landholdings has not been deposited in the account of the beneficiaries, no lapsing will take place, but all the beneficiaries specified in the notification for acquisition shall be entitled to compensation in accordance with the provisions of the Act of 2013.

14. Therefore, if only a minority of the claimants are disbursed with the compensation, such claimants would get benefit of compensation under the Act of 2013 to a limited extent without lapsing. Thus, it is clear that even if the acquisition does not lapse, all the beneficiaries to whom the compensation is payable would be entitled to compensation under the Act of 2013.

15. It is submitted that Section 24(1)(a) and Section 24(2) are balancing provisions controlling the extent of retrospectivity and curtailing the effacement of rights. Such balance of protecting acquisitions under the LA Act in some defined circumstances whilst providing the enhanced compensation provisions under the Act of 2013 under some defined circumstances is the "middle path" that Parliament adopted. It is contended that Section 24(2) is, therefore, controlled by the proviso mandating again a further middle path consciously chosen by Parliament.

16. It is argued that while providing for a transitory provision or situations resulting into "lapsing" of all the steps already taken under the Act under repeal, the legislature always envisages several contingencies which emerge out of its day-to-day experience. The manner in which section 24[2] and the proviso attached therewith are drafted clearly discloses that Parliament intended certain inevitable contingencies which frequently arose in land acquisition proceedings. It was urged illustratively, that often, land acquired belongs to benami owners, who cannot put forward title, or claim compensation or identify themselves. In such situations, it may not be possible for an acquiring authority to "pay" [which, as plain language indicates, would mean setting apart for being taken by the entitled persons as explained hereafter] to "all" land holders/ entitled persons. However, as is clear from the proviso to Section 24[2], if it can be shown that the amount is deposited for majority of share-holding, the acquisition would be saved and cannot lapse; the only consequence would be the determination of benefits under the Act of 2013. Parliamentary intent in the proviso clearly appears to be to ascertain the stage up to which the land acquisition proceedings under LA Act have reached. If nobody is paid the compensation or compensation is not taken by everyone though tendered and/or kept ready, the legislature contemplates such a situation to be a reversible one and, therefore, provides for lapsing of all previous stages prior to "non-payment". However, if it can be demonstrated that though - (1) compensation was tendered to all; (2) some of them [for whatever reason] did not take the compensation; and (3) compensation is deposited in case of majority of the land holdings [viz. setting apart the share of such persons and making it available for them to take it], then, neither proceedings would lapse nor the compensation will be required to be determined under the Act of 2013. In substance, therefore, the legal situation would be akin to the one contemplated under Section 24[1][b] for all practical purposes.

17. It is submitted that during the drafting of the Bill, the legislative intent and the apprehensions of the stakeholders in the acquisition process is clearly depicted in 31st Report of the 'Standing Committee on Rural Development' while discussing the 'The Land Acquisition, Rehabilitation and Resettlement Bill, 2011' which was the precursor to the Act of 2013. The learned SG relied on extracts of the Standing Committee Reports, the draft Bill, various comments from government and public agencies and departments and other stakeholders, the stage(s) during which amendments were proposed to the draft provisions (of Section 24) and its culmination into the present form and structure.

18. The learned SG argued that the amendments proposed by the Minister while introducing the Bill - to incorporate an explanation, as to what constitutes "deposit" was not accepted in the legislative wisdom of the Lok Sabha and the Bill so passed consciously did not incorporate the Explanation (in the form of Proviso to Section 24(2)) providing for an extensive and artificial meaning of the word paid. Further, reference to "bank" account was also consciously not incorporated thereby leaving the

expression “to pay” and "to deposit" with its natural meaning and leaving it to the discretion of the acquiring authorities to deposit the compensation amount even in the treasury. It is possible that the legislature may have considered the reality of 2012-13 where crores of people did not have bank accounts. It was also urged that the rejection of the amendment is in consonance with the apprehensions expressed by other stakeholders and ministries at the said time. After the said Bill was passed in the Lok Sabha, amendments were proposed and accepted by the Rajya Sabha, giving the provision its final form. Further, it is clear that the effort at the time was towards the drafting of a balancing provision which protects the acquisitions from lapsing and at the same time provides enhanced compensation under the new Act depending upon the stage up to which the acquisition has progressed. This was the genesis behind Section 24(1)(a) and proviso to Section 24(2) which protect acquisitions from lapsing whilst providing for higher compensation under the Act of 2013 to the land owners under limited defined circumstances. It is submitted that it is necessary to read the proviso to Section 24(2) along with the same provision and not Section 24(1)(b) as the former would be in accord with Parliamentary intent.

19. It was submitted that Section 24(2) intended a limited retrospective operation: yet such retrospectivity operated and has to be construed narrowly considering the nature and width of Section 24(2) and the drastic consequences flowing from it. It is submitted that the field of retrospectivity to be given under Section 24 needs to be considered in the context of legislative intention manifested from Section 114 of the Act of 2013 and Section 6 of the General Clauses Act, 1897. Both Section 114 (of the Act of 2013) and Section 6 of the 1897 Act clearly point to a narrow interpretation of Section 24 with the object of saving on-going acquisition proceedings as far as possible. The learned SG referred to the provisions of UK’s Interpretation Act, 1978; he also relied on Bennion’s Statutory Interpretation Bennion’s Fifth Edition, (2012) Indian Reprint, which reads as under:

> “Where, on a weighing of the factors, it seems that some retrospective effect was intended, the general presumption against retrospectively indicates that this should be kept to as narrow a compass as will accord with the legislative intention”

20. Reliance was placed on Secretary of State for Social Security v Tunnicliffe5, to the effect that:

> “Parliament is presumed not to have intended to alter the law applicable to past events and transactions in a manner which is unfair to those concerned in them, unless a contrary intention appears”.
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> The learned SG also referred to the later judgment of the House of Lords which dealt with the said question. It is submitted that sitting in a combination of eight judges, in Yamashita-Shinnihon Steamship Co.
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> Ltd.v L'office Chefifien Des Phosphates & Anr 6, where it was held that retrospective application of a statute can be made only when it does not [1991] 2 All ER 712 [1994] 1 A.C. 486, where it was held that:

> "The rule that a person should not be held liable or punished for conduct not criminal when committed is fundamental and of long standing. It is reflected in the maxim nullum crimen nulla poena sine lege. It is protected by article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1953) (Cmd. 8969). The rule also applies, but with less force, outside the criminal sphere. It is again expressed in maxims, lex prospicit non respicit and omnis nova constitutio futuris temporibus formam imponere debet non praeteritis. The French Civil Code provides that "La loi ne dispose que pour l'avenir; elle n'a point d'effet retroactif:" .....
>
> But both these passages draw attention to an important point, that the exception only applies where application of it would not cause unfairness or injustice. This is consistent with the general rule or presumption which is itself based on considerations of fairness and justice, as shown by the passage in Maxwell quoted, ante, p. 494C–E, and recently emphasised by Staughton L.J in Secretary of State for Social Security v. Tunnicliffe [1991] 2 All E.R 712, 724.." visit anyone with unfairness. The learned SG referred to Zile Singh v.
>
> State of Haryana7 where a three-judge Bench held that retrospectivity should not be presumed to have been given to a provision, unless it says so clearly, or through necessary implication. The guidance was given to construe provisions for determining whether such intention is expressed, in a given case.

21. It was urged that this Court, after assessing the unintended and absurd results that an amendment may result in, purposefully interpreted the provisions to be prospective in operation. It was also emphasized that Section 24(2) is retrospective in nature and cannot be held to be prospective; nevertheless, the extent of retrospectivity ought to be narrowly construed while interpreting, given the harsh consequences that it results in particularly against projects of public interest. Reliance was placed on CIT v. Sarkar Builders8.

22. It is submitted that apart from the above, this Court has consistently ruled on principles guiding the retrospective operation of statutes. Though there is no bar against retrospective operation yet this Court considered the practical realities before analysing the extent of retrospective operation of the statutes. Reliance in this regard is placed 7 (2004) 8 SCC 01 2015 (7) SCC 579 on Jawaharmal v. State of Rajasthan9 and Rai Ramkrishna v. State of Bihar10.

23. The learned SG next submitted that a spate of decisions of this Court had followed the ratio in Pune Municipal Corporation (supra). Emphasizing that the overall interpretation of Section 24 of the Act of 2013 has to accord with its scheme, it was stated that the object of that provision was not only to declare that certain acquisitions lapsed. Learned counsel, in this context, highlighted that Section 24 (1) (a) in fact saves acquisition proceedings, where awards were not made before the advent of the Act of 2013, by declaring that the award would be made under that Act and compensation payable, in accordance with its provisions. Section 24 (1) (b) on the other hand contemplates making of award, under the old (LA) Act, but significantly states that all further "proceedings" after the award would be taken under the new Act. It was highlighted here, that

Parliament clearly intended that the compensation determined under the old Act had to be paid in terms of the new Act, which is under Section 77. The learned SG submitted that given these aspects, which are expressed in Section 24 (1), the non obstante clause and the following provisions of Section 24 (2) have to be interpreted contextually, and in a purposive manner. It was submitted that Parliament did not intend that settled matters should be undone, and whatever had attained finality, in acquisition matters, should not 9 1966 (1) SCR 890 10 1964 (1) SCR 897 be re-opened. He cited the decisions of this Court reported as Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill11; Tinsukhia Electric Supply Company Ltd v. State Of Assam & Ors12; Commissioner of Income Tax v. Hindustan Bulk Carriers13; D. Saibaba v. Bar Council of India & Ors14; Balram Kamanat v. Union of India15; New India Assurance Co. v. Nulli Nivelle16; Government of Andhra Pradesh & Ors v. Smt. P. Laxmi Devi17; Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd.18; N. Kannadasan v. Ajoy Khose & Ors19; H.S Vankani v. State of Gujarat,20; State of Madhya Pradesh v. Narmada Bachao Andolan & Ors.21

24. It was submitted that hitherto, in accord with Pune Municipal Corporation (supra) and Balaji Nagar Residential Assn. v. State of Tamil Nadu22 most decisions had accepted that the expression "or"- (occurring in Section 24 (2)), where an award has been made under the old Act, 5 years before the commencement of the Act of 2013 "but the physical possession of the land has not been taken or the compensation has not been paid" – is to be read disjunctively, i.e., that if either condition is (2012) 2 SCC 108 (1989) 3 SCC 709 @ para 118-121 (2003) 3 SCC 57 @ para 14-21 (2003) 6 SCC 186 para 16-18 (2003) 7 SCC 628 para 24 (2008) 3 SCC 279 @ para 51-54 (2008) 4 SCC 720 para 41 & 42 (2008) 13 SCC 30 para 132-137 (2009) 7 SCC 1 para 54-67 (2010) 4 SCC 301 para 43-48 (2011) 7 SCC 639 para 78-85 2015 (3) SCC 353 satisfied, the acquisition would lapse. However, submitted the learned SG, the true and correct interpretation of the term "or" would be that it ought to be construed as a conjunctive word.

25. Learned counsel next submitted that the expression "paid" should be construed reasonably and not in a literal manner, as was done in Pune Municipal Corporation (supra). Before the Act of 2013 was brought into force, the modes of payment recognized by the law were: tendering payment, payment into court in the event no one entitled to alienate the property received it and payment into court upon disputes about the entitlement to receive payment. These three situations were visualized in Section 31 (2) of the old Act. It was emphasized that the consequence of lapse of acquisition was never contemplated, in the event of refusal to accept payment, or absence of anyone entitled to receive it, or in the contingency of a dispute regarding entitlement to receive the amount. This clearly meant that while payment of compensation was essential and mandatory, the mode of payment was not mandatory. If, for instance, the amount was tendered and not received, but instead, the landowner refused it, the appropriate government could well deposit it in the treasury, in accordance with prevailing financial rules, to facilitate disbursement, as and when the landowner or the one entitled to receive it, came forward and established entitlement. In such event, the only consequence of non-deposit (in court, under Section 31) meant that higher interest as mandated by Section 34 was to be paid.

26. The context of Section 24, learned counsel urged, is to provide for a transitory provision viz. to take care of the pending land acquisition proceedings which are ongoing under the LA Act when the

Act of 2013 is brought into force w.e.f. 1.1.2014. The purpose and object of making this provision is to balance the competing rights of public projects vis- à-vis holders of the land. The object and purpose was to ensure that where acquisition proceedings under LA Act have reached an advanced stage and investment of public money had already been made, firstly, the lapsing of such ongoing projects should be avoided and secondly as far as possible, the land owners also can, without disturbing the process of acquisition, be given the compensation under the Act of 2013.

27. It was reiterated that the legislature knows about the ground realities faced in land acquisition proceedings. There are very few cases where one or two land parcels are acquired in isolation. Mostly, acquisitions take place of bigger tracts of land involving more than one parcel of land and more than one person "entitled to compensation". When Parliament provided for a transitory provision in relation to acquisitions under the old Act, it did not contemplate the possibility of the entire payment procedure to all being not processed given the practical situations arising in all such proceedings. Parliament is also presumed to be aware of the fact that in almost all cases of acquisition, the proceedings are stiffly opposed and in most of the cases, the tender of compensation is also opposed under a wrong and misplaced notion that the acceptance of the tender may be treated as acquiescence with the quantum being tendered.

28. The learned counsel argued that Parliament did not expect the acquiring authority to perform an impossible task of forcing payment to the land owners unwilling, for any reason to accept it. The legislature, therefore, does not use the expression of the land owners having "accepted" the payment. It merely uses the expression "paid". The legislature clearly tries to balance the rights of land owners only in one contingency viz. in a post award scenario and the award having been made five years prior to 1.1.2014, when the amount is not "deposited" in the accounts of the majority of the beneficiaries.

29. It was urged that on a true construction and taking the literal, natural and grammatical meaning of the provisions in the context referred above and keeping in mind the object it can safely be concluded that the words "paid" and "deposit" are expressions of the same act namely making the amount available (i.e. tendering) for being taken by those entitled to it. It was urged that if this interpretation is not given then the refusal by few persons or few persons being untraceable in the acquisition of a vast tract of land would result in the drastic consequence of lapsing of the acquisition proceedings.

30. It was urged by the learned ASG and Mr. Muthuraj, learned senior counsel that the legislature cannot be presumed to intend such an anomalous situation. The only way in which the object behind section 24 can be achieved is to give natural meaning to the words and expressions used keeping the object in mind and treating the words "paid" and "deposit" as connoting expression of the very same Act depending upon the fact situation in each case. Learned counsel submitted that by using the terms "paid" and "deposit", Parliament consciously left a leeway to save the drastic consequence of lapsing by dealing with a particular situation in light of fact situation emerging in each case. Not treating "paid" and "deposit" as synonymous or the "deposit" so as to keep it available being the next step after "pay", would lead to disastrous situations as the acquiring authority may have acquired vast tract of land and may have put substantial portion from it to public use by

constructing infrastructural projects. Such a disastrous situation /consequence would never have been anticipated or envisaged by the legislature. Learned counsel also referred to various Standing Orders, framed as part of the financial code of several States, which provided for procedure to deposit money in the treasury, when landowners refused to accept compensation, or were untraceable, at the time the amount was to be tendered.

31. It is submitted by the learned ASG that this Court should not assume any omission or add or amend words to the statute. It is submitted that plain and unambiguous construction has to be given without addition and substitution of the words. It is submitted that when a literal reading produces an intelligible result it is not open to read words or add words to statute. In support of this proposition, reliance was placed on some decisions23. It was therefore submitted that the word "paid" does not and cannot mean actual de-facto payment as it would amount to adding words which do not exist in the provision. Similarly, the word "deposit" cannot mean "deposit in the Court" as that was never the legislative intent nor can it be deduced from any accepted interpretive process.

32. It was submitted that this Court, whilst interpreting Section 24 of the Act of 2013, for the first time in Pune Municipal Corporation [supra] and subsequent judgments, presumed that the word "paid" occurring in Section 24(2) of the Act of 2013 would have to be interpreted as per Section 31 of the LA Act. It is submitted that the said presumption neither has any justification nor any such justification is examined in the said judgments. It is submitted that the said presumption has resulted in grave consequences without ascertaining the conscious omissions on the part of the Legislature. The learned SG illustrated how the terms "paid" and "deposit" have been used in different senses under the LA Act and in the Act of 2013.

33. Learned counsel submit that firstly, Section 31 of the LA Act is pari materia to Section 77 of the Act of 2013. There is neither any BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552; Howard de Walden (Lord) v. IRC, (1948) 2 All ER 825 (HL); V.L.S. Finance Ltd. v. Union of India, (2013) 6 SCC 278; and Ram Narain v. State of U.P., AIR 1957 SC 18.

justification nor any requirement of interpreting Section 24 of the Act of 2013 in the shadow of Section 31 of the LA Act. It is submitted that if as an alternative argument it is assumed that the expressions "paid"/ "tender" and the expression "deposited" have both been used consciously in Section 31, as is the reason of drafting Section 24(2), an anomalous situation occurs. In the proviso to Section 24(2) of the Act of 2013, expression used is compensation has not been "deposited" "in the account of the beneficiaries", which is separate from the "deposit in Court" envisaged under Section 31(2) of the LA Act. It is submitted that the expression "bank account" has not been used in Section 31 of the LA Act at all and the expression "in the Court" has not been used in Section 24(2) of the Act of 2013 at all. The said omissions carry weight and cannot be ignored.

34. It is urged that if Section 24 of the Act of 2013 intended to attract the rigours and technicalities of Section 31 of the LA Act, it would have used the requisite phrase. It is submitted that the term Section 31 of the LA Act is conspicuous by its absence in Section 24 of the Act of 2013. Parliament intentionally used the phrases "paid" and "deposit" not in terms of their meanings under Section 31 so as to avoid the rigours of the said provision and to keep the practical exigencies of land

acquisition in mind, more particularly when Section 24 of the Act of 2013 is merely a transitory provision. It was argued that it is a settled canon of interpretation that when the Legislature uses two different phrases, the meaning they carry would be different. Harbhajan Singh v. Press Council of India,24 is relied on.

35. It is submitted that Section 24(1) begins with a non-obstante clause, providing for a limited overriding effect of the LA Act in case of the contingencies mentioned in Section 24 (a) and (b). Section 24 (1) (a) contemplates that where land acquisition proceedings were initiated under the LA Act but no award was passed till the date the new Act came into force viz. 1.1.2014, acquisition proceedings could continue, however compensation will have to be determined under the Act of 2013. Section 24 (1) (b) provides that where an award under Section 11 of the LA Act has been made, the entire proceedings would continue under the Act of 1894, as if it were not repealed. Section 24(2) provides for an exclusionary clause which mandates the land acquisition proceedings to be lapsed and initiated de novo.

36. It was submitted that the requirements for lapsing (of acquisition) in Section 24(2), are subject to an award under Section 11 of the LA Act being made five years prior to the commencement of the Act of 2013 viz. 1.1.2014. If the award is made and the following two situations occurred, the proceedings will lapse; one, physical possession has not been taken or (to be read as "and") and two, compensation has not been paid.

24 (2002) 3 SCC 722

37. Elaborating on the expressions “paid”/“tender” it was urged by learned counsel that the meaning of expression “tender" is that when a person has tendered the amount and made it unconditionally available and the landowner has refused to receive it, the person who has tendered the amount cannot be saddled with the liability, which is to be visited for non-payment of the amount. Reliance is placed on the meaning of the term in Black’s Law Dictionary.

38. It is apparent from aforesaid that "tender” may save the tendering party from the penalty for non-payment or non-performance if another party is unjustifiably refusing the tender. The expression “paid" would mean in Section 31(1) of the LA Act and Section 24(2) of the Act of 2013 as soon as it is offered and made unconditionally available. Merely, if a landowner refuses to accept it, it cannot be said that it has not been paid. Once amount has been tendered that would amount to payment. Thus, the term “paid” does not mean actual payment to be made but whatever is possible for an incumbent to make the payment is only contemplated. "Paid” does not mean receipt or deposited in court. There may be refusal to receive an amount in spite of its tender. Thus, in view of the decisions of this Court in Benares State Bank Ltd.v.CIT, 25 Collector of Central Excise v. Elphinstone Spg.&Wvg.Mills Co.Ltd.26 and (1969) 2 SCC 316 26 (1971)1 SCC 337 J.Dalmia v Commissioner of Income Tax27, the provisions of Section 24(2) should be construed as tender of the amount.

39. It is submitted that the three Judge Bench in judgment in Pune Municipal Corporation (supra), while deciding the expression "compensation has not been paid", held 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 Land Acquisition 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."

40. It was argued that the conclusion in Pune Municipal Corporation (supra) that deposit of the amount of compensation in the Government treasury cannot amount to the said sum (amount of compensation) "paid" to the landowners or persons interested. This view was taken without dwelling on the legal connotation of the expression "paid" in Section 24(2). In the process, it has also not taken into account the binding law as held in Dalmia's case and Benares State Bank's case. Though Section 34 of the LA Act was mentioned in passing para 16, however it has not at all been considered. It is a very crucial provision, which deals with the consequences of compensation not having been 27 (1964) 53 ITR 83 [AIR 1964 SC 1866] deposited. Further, submit counsel, the matter relates to payment of compensation from out of Government funds. Handling of Government funds has to be strictly in accordance with the Standing Orders issued by the States. The effect of those Standing Orders has also not been considered in the judgment in Pune Municipal Corporation (supra). The said judgment, therefore, having been rendered without taking into consideration the aforesaid judgments, Section 34 of the LA Act and the Standing Orders is, in the submission of the counsel, per incuriam.

41. It is submitted that another aspect which arises is, whether prejudice or injustice would be caused in case the amount is not deposited in the court and is deposited in the treasury, particularly when the provision contained in Section 31 of the LA Act has to be read conjointly with those in Section 34. By reason of Section 34, (of the LA Act) one could claim interest - at a higher rate in case amounts were not deposited under Section 31(2) if the authorities were at fault.

42. Arguing about whether the expression "or" should be read as conjunctive or disjunctive, it was argued that after the stage of section 11 under the LA Act, there are two possibilities. The requisite authority may take possession of the land in terms of Section 16 of the LA Act or the said authority may proceed to tender payment under Section 31 of the LA Act. The said two possibilities may be conducted simultaneously or one after the other, there is no embargo in the LA Act regarding the same.

43. It is submitted that Section 24(2), while providing for lapsing, uses the two phrases concerning possession of the land and the tendering of payment with the disjunctive word "or" thereby making it mandatory for the acquiring authority to satisfy both contingencies in order to avoid lapsing. It is

submitted that the same would be against the legislative intention of limited lapsing. Further, the said interpretation would be against the purport of the possession and the title "being vested" in the acquiring authority by virtue of the interpretation of section 16 in the LA Act [as dealt with the latter part of the submissions]. It is submitted that the intention of the Legislature could not have been to divest the acquiring authority of the land after the said has been vested "free from all encumbrances". In line with the same, it is submitted that the word "or" may be read as "and" so as to limit the lapsing only in cases where both, payment has not been made (subject to proviso) and possession has not been taken.

44. Reliance is placed on the judgments reported as Ishwar Singh Bindra v State of UP28, where this Court approved and extracted passages from Maxwell on Interpretation and Stroud's Judicial Dictionary to the effect that generally, the conjunctive "and" is used in a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of "or" and that however, sometimes, even in such a connection, it is, by force of its contents, read as "or".

1969 (1) SCR 219 Similarly, Maxwell accepted that "to carry out the intention of the legislature it is occasionally found necessary to read the conjunctions 'or' and 'and' one for the other". Learned counsel also relied on Mobilox Innovations (P) Ltd v Kirusa Software (P) Ltd29 which held that:

> "38....Even otherwise ,the word "and" occurring in Section 8(2)(a)must be read as "or" keeping in mind the legislative intent and the fact that an anomalous situation would arise if it is not read as "or" if read as "and", disputes would only stave off the bankruptcy process if they are already pending in a suit or arbitration proceedings and not otherwise. This would lead to great hardship; in that a dispute may arise a few days before triggering of the insolvency process, in which case, though a dispute may exist, there is no time to approach either an Arbitral Tribunal or a court..."
>
> Learned counsel also relied on several other decisions in support of the same proposition (i.e. that the disjunctive "or" has to be read contextually, and if need arises as "and", i.e., as a conjunctive).30

45. Highlighting that the placement of the proviso (following Section 24 (2)) is significant, and not accidental, it was argued that the field of operation of the proviso is immediately preceding provision, i.e. Section 24 (2) and not Section 24 (1) (b). It is submitted that the proviso to Section 24 (2) contemplates a situation where with respect to majority of the holdings, compensation not deposited in the account of landowners (even though there being tendering of payment to all land 29(2018)1SCC 353 30Brown v Harrison 1927 All ER 195 @ pp. 203, 204 (CA); Ranchhodddas Atmaram & Anr v Union of India 1961 (3) SCR 718; State of Bombay v R.M.D. Chamarbaugwala 1957 (1) SCR 874 (hereafter "RMDC"); Patel Chunibhai Dajibha v Narayanrao, 1965 (2) SCR 328; Punjab Produce & Trading Co. v. Commissioner of Income Tax, West Bengal, 1971 SCR 977; Ishwar Singh Bindra & Ors v State of UP 1969 (1) SCR 219; Joint Director of Mines Safety v Tandur and Nayandgi Stone Quarries (Po Ltd 1987 (3) SCC 308; Samee Khan v Bindu Khan 1998 (7) SCC 59. Prof. Yashpal & Ors v State of Chhatisgarh & Ors 2005 (5) SCC 420 owners and physical possession being taken), the benefits of the Act of 2013 qua the compensation would follow. It is argued that if

the said proviso is not interpreted to be a proviso to Section 24(2), a valuable benefit extended by Parliament would evaporate. Learned counsel contended that the said proviso provides for enhanced benefit even if the twin conditions of Section 24 (2) are met. Therefore, the said proviso saves the land acquisition and furthers the purpose and the object of giving benefit of computation of compensation to all landholders. Therefore, it is evident that the proviso is appropriately treated as a proviso to Section 24 (2) and cannot be read as proviso to Section 24 (1)

(b) of the Act of 2013. It was argued that Parliamentary intent is clearly discernible, because of the colon (a punctuation mark) occurring at the end of Section 24 (2), which means that the proviso constitutes an exception to that provision. Reference was made to Aswini Kumar Ghosh & Anr v Arabinda Bose & Anr31 (where it was held that "...Punctuation is after all a minor element in the construction of a statute and very little attention is paid to it by English Courts. .....When a statute is carefully punctuated and there is doubt about its meaning, a weight should undoubtedly be given to the punctuation."). Reliance was also placed on Jamshed Guzdar v State of Maharastra.32

46. It was argued by Ms. Pinky Anand, learned ASG, that payment of compensation is not a sine qua non for vesting in terms of Section 16 of 31 1953 SCR 1 32 2005 (2) SCC 591 the old LA Act. It is urged, in this context, that the old Act did not provide any time line for depositing compensation; nor even for taking over of possession. Ordinarily, the repeal provision under the Act of 2013 (Section 114) would prevail; however, Section 24 carves out an important, albeit a limited scope from the repeal clause. Section 24 (2) freshly introduces the concept of lapsing, in relation to acquisitions that were initiated under the old Act. Necessarily, lapsing is to be considered as a narrow concept. Supporting the learned SG's argument that "or" is to be read conjunctively, she highlighted that by reason of Section 16 of the old Act, title vested in the State, upon taking of possession. Divesting under old Act was impermissible. It was urged that were the court to accept an interpretation, that either non-payment of compensation, or taking of possession – under Section 24 (2), would result in lapsing of acquisition, as held in Pune Municipal Corporation (supra) and other decisions, land vested in the State, and conveyed to third parties (either as allottees of housing schemes or public sector undertakings, for one development project or another, or for public purposes such as construction of roads, bridges and other public works) would be divested.

47. Under Section 16 of the LA Act once award is made and possession of land is taken, then the land vests absolutely with the Government. Therefore, the word deemed to lapse in Section 24(2) should not be interpreted to mean divesting of land from the Government which is already vested in the Government and moreover in the absence of any provision of divesting in the 1894 Act. In this context, the observations in Bengal Immunity Co. Ltd. v. State of Bihar 33 that the legislature is presumed to be acquainted with the construction which the courts have put upon the words, and when legislature repeats the same words. This Court had, in that judgment, quoted with approval the previous decision in Sri K.C Gajapati Narayan Deo v, State of Orissa34 that "Section of the Act empowers the State Government to declare, by notification, that the estate described in the notification has vested in the State free from all encumbrances. ..... The consequences of vesting ether by Issue of notification or as a result of surrender are described in detail in Section 5 of the Act. It would be sufficient for our present purpose to state that the primary consequence is that all lands comprised in the estate including communal lands, non-ryoti lands, waste and trees orchards

pasture lands, forests, mines and minerals, quarries, rivers and streams, tanks, water channels, fisheries, ferries, hats and bazars, and buildings or structures together with the land on which they stand shall, subject to the other provisions of the Act, vest absolutely in the State Government free from all encumbrances and the intermediary shall cease to have any interest in them." Learned counsel also relied on the judgment of this Court in Jagannath Temple Managing Committee v. Siddha Math 35, at para 53, that "it is a settled principle of law that once a property is vested by an Act of legislature, to achieve the laudable object, the same cannot be divested by the enactment of any subsequent general law and vest such property under such law."

48. It was urged that serious consequences arise when condition nos.

(ii) and (iii) are to be read as not conjunctive or disjunctive. The word 33 (1955) 2 SCR 603 34 1954 SCR 11 35 (2015) 16 SCC 542 @ para 53 used to connect these two conditions is "or"; if it is not read conjunctively, disastrous consequence leading to absurd result would emanate. Once possession is taken over vesting occurs under Section 16 of the LA Act. Section 24(2) contains no stipulation that such vesting of title of land stands nullified or divested. If the intention of Parliament was to divest the State of its title that had to be stated in plain and clear language. It was emphasized that the conjunctive use of "or" in Section 24 (2) would have not only momentous consequences to the State, but innocent third parties, who would be exposed to the risk of being divested title to the lands and properties, perfected by them, as allottees or subsequent purchasers. Merely because a person who has received compensation clungs on to the possession of the land and the same shall lead to lapsing cannot be the intention of Parliament. Similarly, one who received compensation, is not obliged to return the money to the State in the event of lapsing under Section 24(2) of the Act of 2013. It was urged, therefore, that absence of provision to return the compensation received to Government convincingly points to Parliamentary intent that "or" should be read as "and"; thus, only if neither possession is taken (of acquired lands) nor is compensation paid, (i.e., tendered to the party or parties) would the acquisition under the LA Act lapse. Learned counsel also relied on several decisions in this context.36 36Northern Indian Glass Industries v. Jaswant Singh and Ors., (2003) 1 SCC 335; Gulam Mustafa v. State of Maharashtra, (1976) 1 SCC 800; Sita Ram Bhandar Society, New Delhi v.

49. It was highlighted by M/s Bhangde, Mr. Rajesh Mahale, and Ms. Shashi Kiran, that the consequence of literally interpreting Section 24 (2) as to mean that the conditions are disjunctive (either that "or" should be read as such) are too drastic and severe. Learned counsel pointed out that as a result of allegations of non-payment of compensation, lands which had been vested in the State and were subsequently made over to the requisitioning agencies, and in respect of which title had passed multiple times to other parties, now are exposed to the threat of divesting of title. Learned counsel submitted that a deeming fiction cannot be taken to this extent; such disastrous consequences could not have been attributed by Parliament, because even if such were the intent, there has to be a mechanism to restitute those likely to be affected. Besides, the legality of such a law, divesting or taking away the title of such innocent third-party purchasers, would be suspect, because there is absolutely no provision for restitution or any form of compensation in their favour.

50. On the question relating to the mode of taking possession, it was argued that when the State is involved in taking possession of the property acquired, it can take possession by drawing a panchnama. The normal rule of State possessing the land through some persons would not be applicable in such cases. On open land, possession is deemed to Lieutenant Governor, Government of NCT, Delhi and Ors., (2009) 10 SCC 501 and Chandragauda Ramgonda Patil and Anr. v. State of Maharashtra and Ors., (1996) 6 SCC 405 be of the owner. The way the State takes possession of large chunk of property acquired is by drawing a memorandum of taking possession as State is not going to put other persons in possession or its police force or going to cultivate it or start residing or physically occupy it after displacing who were physically in possession as in the case of certain private persons, in case they re-enter in possession of open land, start cultivation or residing in the house. Lawful possession is deemed to be of the State. A number of decisions that accepted the mode of drawing panchnama by the State consistently to be a mode of taking possession were cited. In Banda Development Authority v. Moti Lal Agarwal37 this Court observed that preparing a panchnama is sufficient to constitute taking of possession. If acquisition is of a large tract of land, it may not be possible to take physical possession of each and every parcel of the land and it would be sufficient that symbolic possession is taken by preparing an appropriate document in the presence of independent witnesses and getting their signatures. Even subsequent utilisation of a portion of acquired land for public purpose was still sufficient to prove taking possession.

51. It is submitted that when the State acquires land and has drawn memorandum of taking possession that is the way the State takes possession of large tract of land acquired, it ought not necessarily to physically occupy such land after forcefully displacing those physically 37 (2011)5 SCC 394 (hereafter referred to as “Banda Development Authority”) in possession. Possession in law is deemed to be physical possession for the State. This Court in a number of decisions has accepted the mode of drawing panchnama by the State consistently to be a mode of taking possession. It is submitted that this Court in T.N. Housing Board v. A. Viswam38 held that recording of memorandum/panchnama by the Land Acquisition Officer in the presence of witnesses signed by them would constitute taking possession of land.

Also, reliance is placed on other decisions.39

52. Dealing next with the manner by which the period covered by an interim order of Court ought to be excluded for the purpose of applicability of Section 24 (2) of the Act of 2013, it is argued that a settled proposition of law is that an act of a Court should not prejudice any party. In view of the maxim actus curae neminem gravabit or even in its absence, any interim order granted by the court cannot prejudice any rights of the parties. It is argued that for a proper working of the justice delivery system, once the court passes an order staying dispossession, the State cannot take possession of the land. If an order of the Court disables a person to take any action, the doctrine nemo tentur ad impossible would be applicable that is, the law in general excuses a party which is disabled to perform a duty and impossibility of performance of a duty is a good excuse. Further, the Latin maxim lexnon 38(1996) 8 SCC 259 39Balwant Narayan Bhagde v. M.D. Bhagwat, (1976) 1 SCC 700; State of T.N. v. Mahalakshmi Ammal, (1996) 7 SCC 269; T.N. Housing Board v. A. Viswam, (1996) 8 SCC 259 and Om Prakash Verma & Ors. v. State of Andhra Pradesh and Ors, (2010) 13 SCC 158. cogitad impossibilia, that is, the law does not compel a man to do that which he cannot possibly

perform. Since, it becomes impossible for the State to take possession, for the duration a stay or interim order is in operation, the consequence of an interim order cannot be used against the State. Reliance for this legal position is placed on the judgments in A.R. Antulay vs R.S.Nayak & Ors40, Sarah Mathew v Institute of Cardio Vascular Diseases41 and in Dau Dayal v State of U.P42. In A.R.Antulay (supra) it was held that no party is prejudiced by the court's mistake. Therefore, urged counsel, in cases where conduct of acquisition proceedings were held up after the passing of an award, due to the interim order of any court, in the absence of any specific provision to that effect, a party who cannot perform its duties, and but for the order, could have performed its stipulated task, within the time assigned, should not be placed at a disadvantage, as that would amount to granting a premium for one's wrongdoing, or rank speculation. It is urged, therefore, that it is imperative that the period during which the State or the acquiring authority was prohibited/ injuncted by an interim order of the court from taking possession has to be excluded. This principle, submit learned counsel, is based on settled common law principles. These are in fact rules of equity, justice and sound logic. In the absence of their being a prohibition in the law these principles would be attracted. The efficacy and binding nature of such common law 40 1988 Suppl (1) SCR 01 41 2014 (2) SCC 62 42 1959 Supp (1) SCR 639 principles cannot be diminished or whittled down in the absence of any express prohibition in law. Coupled with the aforesaid principle is also a principle of restitution. An interim order passed by the Court merges into the final decision, goes against the party successful at the interim stage. Unless otherwise ordered by the court, the successful party at the end of the litigation would be justified in being placed in the same place in which it would have been, had the interim order not been passed. Undoing the effect of an interim order by resorting to the principle of restitution is in fact an obligation of the court. The above principles have been culled out and applied by this Court in the judgment in South Eastern Coal Field Ltd v State of M.P. & Ors.43. Learned counsel argued that general common law rules of equity, justice and sound logic would certainly apply. It is submitted that similarly, the doctrine of restitution has been discussed in several other judgments of this Court including State of Gujarat v Essar Oil Ltd44. It is, thus, submitted that the mere absence of an express provision under Section 24(2) – to exclude the period during which an interim order operates, which prevents the making of an award, or taking over of possession of acquired land, would not in law imply that such restitutionary and equitable principles would be inapplicable. Contentions on behalf of landowners 2003 SCC 648 44 2012 (3) SCC 522

53. Mr. Shyam Divan, learned senior counsel, led the arguments on behalf of landowners. He urged that the Act of 2013 is a new, transformative and radical measure. The new law is a welfare state law, not a colonial law - unlike the Act of 1894. Mr. Divan submitted that the Act of 1894 resulted in several rounds of repeated litigation on various aspect, such as payment of compensation, lack of legislatively mandated timelines for completion of acquisition proceedings, etc. This also resulted in amendments to the Act of 1894 (notably, the amendments of 1967 and 1984) which, to some extent, sought to grant relief to landowners. However, these too got mired in litigation. Learned counsel relied on the judgments, reported as Dev Sharan v State of Uttar Pradesh45 and Radhey Shyam v State of UP46. Repeated litigation was the result of an unfair legal regime. It was submitted that such judgments of this Court highlighted that the Act of 1894 was enacted more than 116 years ago to facilitate acquisition of land and immovable properties for construction of roads, canals, railways, etc. This law was frequently used in the post-independence era for different public purposes like laying of roads, construction of bridges, dams and buildings of various public

establishments/institutions, planned development of urban areas, providing of houses to different sections of the society and for developing residential colonies/sectors. In the recent years, there is acquisition of large tracts of land in rural parts of the 45 (2011) 4 SCC 769 46 (2011) 5 SCC 553 country in the name of development and their transfer to private entrepreneurs, who utilize it to construction of multi-storied complexes, commercial centres and for setting up industrial units. Similarly, large scale acquisitions were made on behalf of companies by invoking the provisions contained in Part VII of the Act. Resultantly, such acquisition led to deprivation of the source of livelihood of land owners, engaged in agricultural operations and other ancillary activities in rural areas. A large number of these people are unaware of, and unable to assert their rights, and secure fair compensation. The unrest and inequity which arose out of these deprivations, impelled the State to enact a modern law, which ensured not only fair compensation, but other rights such as rehabilitation, employment, higher solatium and a guarantee against deprivation of certain kinds of lands. Thus, the Act of 2013 ushered a new regime that starts from a fresh direction. Learned counsel also relied on Bharat Sewak Samaj v. Lieutnant Governor & Ors.,47 to say that the provisions of the Act of 1894 were outdated and were misused and were oppressive to the interest of the landowners. Hence, the Act of 2013 was enacted and that this Court ought to interpret in the spirit of the new beneficial legislation. Learned counsel urged that the benefits so conferred should not be taken away by this Court by narrowly interpreting its provisions.

47 2012 (12) SCC 675

54. Mr. Divan relied on the Statement of Objects and Reasons of the Act of 2013 to say that the new law was framed, in recognition of concerns expressed by the property owners of forcible acquisition without following due process and without paying appropriate compensation affecting livelihood of such owners, many times, who are small property owners or persons having small agricultural holdings and having been dependant on the said holdings, the new Act is made. The Act aims to provide just and fair compensation, make adequate provision for rehabilitation and resettlement for the affected persons in the family, determination of compensation package on scientific methods. It was urged that being a welfare legislation, the Act of 2013 constitutes a wholesome rejection of the colonial approach. Learned counsel urged that under the new Act, unlike the Act of 1894, a Social Impact Assessment (SIA) report has to be prepared, under Section 7, as an integral component of acquisition proceedings. If acquisition is not resorted to, in a time frame, the acquisition lapses; likewise, the new Act contemplates the preparation of a rehabilitation scheme, which would note the (a) particulars of lands and immovable properties being acquired of each affected family; (b) livelihoods lost in respect of landless who are primarily dependent on the lands being acquired; (c) a list of public utilities Government buildings, amenities and infrastructural facilities which are affected or likely to be affected, where resettlement of affected families is involved and (d) details of any common property resources being acquired.

55. Learned senior counsel argued that Section 24 constitutes an exception to the general rule, i.e., lapsing of all acquisition proceedings, by reason of repeal of the Act of 1894, and operation of Section 114. Therefore, Section 24 has to be given effect to strictly, given that Parliamentary intent was to ensure that acquisition proceedings did not result in oppression and hardship. It was argued that having regard to this salient feature, the provision (Section 24) should be literally construed.

Learned counsel submitted that the objective of new Act must be kept in mind to understand the scope of Sections 11, 11 (A), 12, 31 and 34 of the 1894 Act, on the one hand, and provisions of Section of 24 of the Act of 2013 on the other. Furthermore, it was argued that the non-obstante clause must be allowed to operate with full vigour in its own field. It was stressed that such a provision is equivalent to saying that in spite of the provision or Act mentioned in the non- obstante clause, the enactment following it, will have its full operation of that, the provision indicated in the non-obstante clause will not be an impediment for the operation of the enactment. Decisions in this regard were cited by counsel.48

56. Mr. Divan relied upon the three stages preceding the Act of 2013 to urge that there was no doubt in the mind of Parliament, that lapsing of acquisition proceedings was intended to ensue, in the event 48Madhav Rao Scindhia v. Union of India 1971 (1) SCC 85 (11 Judges); Smt. Parayankandiyal Eravath v. K. Devi (1996) 4 SCC 76 (2 Judges).

compensation were not paid; or possession were not taken, in respect of awards made five years prior to coming into force of the Act of 2013. It was argued that Section 24 should be given a plain and literal construction, except to the extent that the term “paid” occurring in Section 24(2) would also cover cases where a deposit is made before the Reference Court in situations covered by Section 31(2) of the 1894 Act. Elaborating on this, it is urged that the first decision of this Court, i.e., Pune Municipal Corporation (supra) took note of Section 24(2) in the context of a pre-existing law. The Court was alive to the fact that under the Act of 1894, where payment of compensation was tendered and the land owner refused to accept the amount, the State is nevertheless obliged to ensure that at all times, the amount should be made available, in a place or an account, not within its control. It was urged, therefore, that actual tender of the amount of compensation is a sine qua non for the act of payment to be completed. It was considered that in that event, the land owner does not accept the amount, it should be deposited with the Court, a neutral and independent authority to whom the land owner or anyone claiming under him can approach and draw the amount. It was submitted that this obligation cannot be brushed aside because aside from the question of acceptance of compensation without prejudice, even at a later stage, the land owner might wish to reconsider the compensation and avail of the amount.

57. Learned counsel submitted that the obligation to deposit the amount in the Reference Court is an independent and absolute one in that it is irrespective of whether the land owner sought a reference for higher compensation to the Court (under the Act of 1894). Learned counsel urged this Court to accept this interpretation, which according to him, would give full effect to the intention of Parliament, i.e., to save intention of Parliament. It was again highlighted that Parliamentary intention was firstly to repeal the previous law to a limited extent and save ongoing acquisition proceedings – in terms of Section 24(1) and usher a new regime, i.e. Section 24(2) whereby indolence on the part of the State agencies either with respect to payment of compensation or with respect to taking over of possession, resulting in the lapse of acquisition proceedings itself. Learned counsel relied upon the decisions of this Court which followed and applied the law declared in Pune Municipal Corporation 49.

58. It was argued that the submissions on behalf of the State and the development authorities that "payment" included deposit with the treasury or some other authority other than the Reference Court, could 49 Bharat Kumar v State of Haryana (2014) 6 SCC 586 (hereafter "Bharat Kumar"); Bimla Devi v State of Haryana (2014) 6 SCC 583 @ para 3; Union of India v Shiv Raj (2014) 6 SCC 564 at para 22; Sree Balaji Nagar Residential Association (supra) 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 (2015) 3 SCC 597 at paras 19, 21; Ram Kishan v State of Haryana (2015) 4 SCC 347 at paras 8, 9, 12; Velaxan Kumar v Union of India 2015 (4) SCC 325 at paras 15, 16, 17 (hereafter "Velaxan"); Karnail Kaur v State of Punjab (2015) 3 SCC 206 at paras 17, 18, 23; Rajive Chowdhrie HUF v State (NCT) of Delhi (2015) 3 SCC 541 at para 1; Competent Automobiles Co. Ltd v Union of India AIR 2015 SC 3186 at para 4; Govt of NCT of Delhi v Jagjit Singh AIR 2015 SC 2683 at para 3; Karan Singh v State of Haryana 2014 (5) SCC 738 at para 5; Shashi Gupta & Ors. v. State of Haryana 2016 (13) SCC 380 at para 5; Delhi Development Authority v Sukhbir Singh (2016) 16 SCC 258 at para 1 (hereafter "Sukhbir").

not have been termed as compliance with the Act of 1894. Here, it was urged that Parliament was acutely alive of the fact that the previous land acquisition regime resulted in injurious and unconscionable delays in payment of compensation. Furthermore, even after awards were made, possession was never taken. This led to a great deal of uncertainty as far as the land owners were concerned because they could not move ahead in their life without compensation nor could they take any steps to acquire new lands or properties. It was precisely to address this mischief, rather a widespread one, that the Parliament wished to enact a "bright line approach" whereby all acquisitions which did not culminate either in payment of compensation or taking over of possession in respect of awards made five or more years prior to 1.1.2014 had to lapse. It was submitted that Section 24(1) provided a limited window in that it saved some acquisitions, i.e., notably where awards had been made but further proceedings had not been taken or where awards had not been made in both cases less than 5 years prior to 1.1.2014. It was only in these two limited instances that acquisition proceedings were allowed to continue or preserved. Thus, Parliamentary intent was that in cases of all awards made five years or more prior to the coming into force of the Act, if compensation was not paid or possession of the acquired land not taken, automatically, as a matter of law there was to be a lapse (of such acquisitions). This legal consequence crystallised and was in consonance with the other provisions of the Act of 2013. Arguing that if one were to take into account this perspective, there can be no doubt that the expression "paid" cannot mean anything other than tendering of compensation and in the event of its refusal, or the three contingencies contemplated under Section 31(2) of the Act of 1894, it is deposited in Court. If these eventualities were not fulfilled and the amounts were merely kept back with the Government by it, any compliance with some norms evolved as part of the treasury or financial code there could have been no payment or deposit in the eyes of law. Learned counsel submitted that this Court should affirm the decision in Sukhbir Singh. It was also submitted that unless Section 31 of the 1894 Act which postulates the performance of a public duty in a particular manner and (through stipulated three eventualities), such duty could be said to be fulfilled only and only if that procedure were followed. Learned counsel relied upon the judgment in Bharat Kumar, which noted that Section 24(2) has a beneficial intent and begins with a non-obstante clause. Therefore, urged counsel, literal meaning is to be preferred. It was highlighted that Section 24(2) achieved a two-fold purpose, i.e., to preserve

acquisition proceedings initiated before the commencement of the Act and secondly, conferring rights upon the land owners and other parties which did not hitherto exist. Since these rights relate to the right to property which is guaranteed by Article 300A of the Constitution, full effect must be given to them rather than the construction which would destroy its very purpose. In support of this argument, learned counsel relied upon Union of India v. Shivraj 50.

59. Learned counsel submitted that the decision in Pune Municipal Corporation (supra) was itself conscious of Section 31 and the contingencies or eventualities contemplated under Section 31(2). That apart, it also relied upon Ivo Agnelo Santimano Fernandes v. State of Goa51, to say that the State cannot be – in the event of non-acceptance of the compensation by the land owner or its inability to locate the land owner or in the event of a dispute – keep the compensation amount with itself and claim it to be part of same general treasury amount and proceed to utilise it. It was submitted that precisely to deal with this practice, the appeal provided that non-payment of compensation – and in the event of any of the contingencies accruing in Section 31(2) of the 1894 Act, the failure to deposit it with the Reference Court would result in lapse of entire acquisition itself. It was submitted that this interpretation is not only literal but followed the objective and purpose sought to be achieved by the Parliament through the provision. Learned counsel urged this Court that the literal interpretation in this case would also accrue with an equitable interpretation and ensure that the real benefit of the new law would accrue to land owners deprived of their properties and livelihoods for long periods without payment of 50 (2014) 6 SCC 564.

51 (2011) 11 SCC 506 compensation. Learned counsel, therefore, urged that the beneficial interpretation adopted by this Court in Velaxan Kumar (supra) should be accepted. Rajive Chowdhurie HUF (supra)52, it was argued, while interpreting Section 24 of the Act of 2013 Act, the Court should not in the guise of an interpretative exercise don the cap of a legislature. It was submitted as to the State's argument that the disjunctive "or" in Section 24(2) should not be read as conjunctive "and". It was argued in this regard that in all the three drafts that the Bill (which ultimately culminated in the Act of 2013) went through53, the expression used consistently was "but the physical possession". In the three stages, the intent was to normally ensure that the acquisition proceedings pending for a long time were to lapse. It was emphasised that in the first version, i.e., the Bill introduced on 5.9.2011, all acquisitions were deemed to have lapsed regardless of whether the award was made or not, if possession were not taken and also in those cases where the awards were not made. Therefore, this Court should be cautious in interpreting the disjunctive "or" in any manner other than in the literal sense.

60. The three broad situations covered under Section 24 are (i) cases where the land acquisition process shall be deemed to have lapsed; (ii) cases where the landholders are entitled to compensation in accordance 52 (2015) 3 SCC 541 53 Land Acquisition Rehabilitation and Resettlement Bill 2011 – introduced in Lok Sabha on 05.07.2011; Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Bill, 2013 as passed by the Lok Sabha on 29.08.2013 and the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013 (as passed by both Houses of Parliament on 05.09.2013). with the provisions of the Act of 2013; and (iii) cases where the land acquisition proceedings continue under the 1894 Act as if it had not been repealed. It was urged that the first set of cases are

covered by Section 24(2). The two conditions to be fulfilled as on 1.1.2014 to trigger the deeming provision into operation, according to Mr. Divan, are firstly, there must be an award under section 11 of the 1894 Act which has been made five years or more prior to the commencement of the Act of 2013 (i.e., an award made on or before 1.1.2009); and secondly either physical possession of the land has not been taken from the landowner or compensation had not been paid as required under the Act of 1894.

61. It was argued that the second set of cases, where enhanced compensation has to be paid, under the Act of 2013, are covered under Section 24(1) and the proviso to Section 24. Section 24(1) provides that where proceedings have not reached the stage of an award under section 11 of the 1894 Act, the provisions to determine compensation under the Act of 2013 apply. Further, the proviso to Section 24 provides for compensation in terms of the Act of 2013 where the following conditions are fulfilled, firstly an award has been made under section 11 of the 1894 Act; and secondly, compensation in respect of the majority of the land holdings has not been paid to the landowners. It was submitted that the "majority" is required to be reckoned with reference to the award passed under the Act of 1894, and that awards contemplated by the proviso are awards made within the period of five years prior to the commencement of the Act of 2013 i.e., awards made between 1.1.2009 and 31.12.2013.

62. Learned counsel stated that the third set of cases is where the land owners do not get any benefit under the Act of 2013 and the acquisition proceeds under the provisions of the Act of 1894. It was argued that these cases are covered by section 24(1)(b) and to which neither section 24 (2) nor the proviso applies. This covers situations where though an award has been passed five years prior to the commencement of the Act, neither of the conditions for deemed lapsing are present. Mr. Divan urged that the provisions of the Act of 1894 will continue to apply without any benefit in terms of increased compensation where an award is passed within 5 years of the commencement of the Act of 2013 but the majority of landholders have been paid.

63. Mr. Divan then urged that this understanding of the provisions of Section 24 is based on established rules of interpretation i.e., first, the golden rule of interpretation requiring the Court to interpret statutory provisions literally. Second, the rule of purposive interpretation was to be used, having regard to the object of the enactment, the purpose of the law in seeking to correct historical injustices and the legislative intent to confer the benefit of the Act of 2013 on certain landholders affected by the regime under the Act of 1894. The third rule to be employed, is the rule of harmonious interpretation, such that all words of the provision are given effect and no part of the provision is rendered otiose; fourth, contemporaneous understanding of administrators responsible for implementing a new law. Also an interpretation in such a manner as to avoid inserting words, subtracting words, and avoids anomalies or absurdities was necessary. Lastly it was urged that giving a deeming provision its natural effect, which in this case results in a rule of interpretation that the provisions of a beneficent legislation ought to be interpreted in the case of ambiguity in favour of the citizens.54

64. It was submitted that the interpretation of Section 24 outlined above gives the plain and natural meaning to the key expressions used in section 24 - "physical possession", "paid", and "deemed to

have lapsed". He further argued that since Section 24 of the Act of 2013 must be read with section 31 of the Act of 1894, the expression "tender" is also relevant and the interpretation he has advanced is consistent with the natural meaning of "tender".

65. Learned counsel for the landowners urged that the words 'paid' and 'deposited in the account of the beneficiaries' are two permissible modes of making compensation available to landowners. Mr. Divan 54 Counsel cited Pratap Singh vs. State of Jharkhand (2005) 3 SCC 551 (5 Judges); Central Railway Workshop vs. Vishwanath (1969) 3 SCC 95; and M/s International Ore and Fertilisers (india) Pvt. Ltd. vs. Employee State Insurance (1987) 4 SCC 203 in support of the rule of beneficial construction of a welfare and remedial statute. contended that these are two modes of paying the money to the landowners. 'Paid', it was urged, means paid. It does not mean a deposit in treasury. He further submitted that 'deposit in the account of the beneficiaries' does not mean a deposit in the treasury. He argued that there was no reason to depart from the rule of literal interpretation, and the manner of payment, as held in Pune Municipal Corporation (supra), is to be strictly in terms of Section 31 of the Act of 1894 as it is an expropriatory legislation. It was contended as to the learned Solicitor General's submission that payment in terms of Section 24 is complied with if the amount is tendered to the landowners, overlooks the obligation of payment in terms of Section 24 is only met if the amount is actually paid to the landowners. On the occurrence of the contingencies mentioned in Section 31(2) of the Act of 1894, it ought to be deposited in the Reference Court as defined under Section 3(d) of the Act of 1894. He submitted that tendering money is not payment and Section 31(1) of the Act of 1894 uses the words 'tender' and 'paid' to convey different meanings and obligations. Mr. Divan argued that the judgments cited by the learned Solicitor General in this regard essentially deal with labour laws, and are inapplicable as these statutes did not contain a provision such as Section 31 of the Act of 1894, which strictly and precisely prescribes what is to be done in the event when the payment is not accepted.

66. It was argued that no rules under the Act of 1894 contemplate deposit in the treasury. Learned counsel submitted that standing orders, which are merely administrative instructions issued for conducting monetary transactions of the State, have in some cases been confused to be Rules framed under Section 55 of the Act of 1894. The Rules or the Standing Orders have not been produced and no evidence has been furnished of compliance with the requirements of Section 55, such as notification in the Gazette. All learned counsel submitted that in any case, delegated/subordinate legislation cannot be inconsistent with, or in any manner depart from the express and precise language of the parent enactment. Again, it was submitted that the State's argument with respect to deposit of compensation amounts in the treasury, is untenable, for two strong reasons: one, that Section 31 itself directed the compensation to be deposited in the court. In the teeth of this express position, the State cannot be heard to say that it could nevertheless "deposit" the amount in the treasury, which is nothing but keeping the money with itself. It was secondly urged, that even otherwise, the Act of 1894 visualized that in regard to matters not provided expressly, rules could be made (Section 55).

67. Learned counsel submitted that the State's argument regarding the interpretation of 'physical possession' to be possession as per the ratio in Banda Development Authority (supra), is incorrect. It was submitted that it is important to take note of the conscious inclusion of the word 'physical' in

relation to possession. An important distinction is required to be drawn in respect of de jure / constructive / deemed possession and 'physical' possession. Even if it is conceded that drawing of a Panchnama is a valid mode of initially taking possession of vast tracts of vacant land, the intention of the legislature is that over a period of five years, such possession must transform to evident and demonstrable 'physical' possession i.e., the manifestation of actual control and dominion over the subject land(s). Learned counsel relied on several decisions in support of their argument that "physical possession" should be construed as actual physical possession, and not constructive, or de jure possession, which in most cases is possession on paper.55

68. Arguing next regarding the interpretation of the proviso to Section 24, it was stated that the same is to be read as a proviso to Section 24 and not Section 24 (1) (b). Mr. Divan submitted that a proviso may in certain cases operate as an independent provision, and the proviso to Section 24 is a stand-alone provision which operates on its own terms. To the extent it is linked to any provision in Section 24, it is linked to Section 24(1)(b) since it permits enhanced compensation (in a particular contingency of non-payment to majority of the landowners) even if an 55Seksaria Cotton mills v. State of Bombay 1953 SCR 325 Para 21; Superintendent v. Anil Kumar (1979) 4 SCC 274 (Paras11-16); B. Gangadhar v. Rajalingam (1995) 5 SCC 238 (Para 5-6) Guruchand Singh v. Kamla Singh (1976) 2 SCC 152 (Paras 21-24). Mohan Lal v. State of Rajasthan (2015) 6 SCC 222 (2 Judges) Para 11 to 15 endorsing contextual interpretation of the term award may have been passed as contemplated in Section 24(1)(b). Mr. Divan placed reliance on the reasons given in the judgment of Delhi Development Authority v. Virendra Lal Bahri, [SLP [C] No.37375/2016].

69. All counsel for landowners submitted that there is no valid reason to exclude from the period of 5 years under section 24(2), the time during which a landowner had the benefit of an interim order of a court. In support of this argument, it was argued firstly, that Parliament did not expressly exclude such a period in Section 24. Second, where in the Act of 2013, the legislature did want to exclude the period of a stay or injunction, it has done so by using express words such as in the proviso to Section 19 and the explanation to Section 69 of the Act of 2013. Third, he submitted that the maxim "actus curiae neminem gravabit" which means that "the act of court shall prejudice no one" has no application here, as this is a maxim which is applied generally as a principle of equity in individual cases to ensure that there is no injustice. The maxim rarely, if ever, is applied to interpret a statute. Mr. Divan submitted that this Court has declined to rely on this maxim in at least two reported decisions - Padma Sundar Rao v. State of Tamil Nadu56 and State of Rajasthan & Ors. v. Khandaka Jain Jewellers 57. Mr. Divan further placed reliance on Snell's Equity (33rd Edition, 2015), which states that the maxim of equity is not a specific rule of principle of law. It is a statement of a broad theme which underlies equitable 56 (2002) 3 SCC 533 57 (2007) 14 SCC 339 concepts and principles and as a result, the utility of equitable maxims is limited. It further states that the maxim may provide some limited assistance to court in two broad types of situation:

> "The first is when there is some uncertainty as to the scope of a particular rule of principle, and a court has to fall back on more basic principles to resolve that uncertainty. The second is when a court is exercising an equitable discretion, and seeks to structure that exercise by referring to broader, underlying principles."

70. Learned counsel further placed reliance on a three-judge Bench decision of this Court in The Commissioner of Sales Tax v. Parson Tools and Plants58, where it was held that:

'If the Legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a casus omissus in a statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity.' It was submitted that there is no occasion for excluding time spent on litigation. Parliament could have specified a particular date such as 1.1.2009 as the cut-off point under section 24(2). Had a date been so specified, there would have been no occasion to exclude time. Instead of specifying a particular date, the Legislature in the Act of 2013 prescribed the cut-off point with reference to the commencement of the Act. This method of specifying the cut-off point would not attract the maxim "actus curiae neminem gravabit". It was argued that the occasion for excluding time would arise only where there is a starting point and

58 (1975) 4 SCC 22 a statutory period to complete the task. In such provisions, it may be reasonable to provide for the exclusion of time by appropriate language in the section. Here, where a cut-off date is prescribed and as such there is no starting point and period for completion of the task, the notion of excluding time spent in litigations is an alien concept. It was, therefore, submitted that it is not the court's business to stretch the words used by the Legislature to fill in gaps or omit words used in the provisions of an Act, i.e., to fill in an obvious and conscious exclusion of a contingency, or a casus omissus. In support of this submission, learned counsel relied on decisions of this Court.59 It was also argued that this Court should not also exclude any period or periods, spent in litigation, when interim orders were operating, because, firstly, in each such instance, the landowners were aggrieved by different kinds of arbitrary behaviour, such as not providing opportunity of mandatory hearing (under an absolutely absurd rejection of objections; failure to take note of actual developmental needs, and taking of lands, unconnected with a public purpose, or obvious instances of expropriation of utilities and amenities such as schools, community assets, etc. These led the courts, on a prima facie consideration to assess the merit in the challenge and grant interim orders. Such instances could not be called as frivolous litigation, warranting exclusion of time, to deprive the benefit of lapsing, enjoined by the new law. Secondly, it was argued that repeated attempts 59G. Narayanswami v. G. Pannerselvam (1972) 3 SCC 717 and Kuldip Nayar vs Union Of India (2006) 7 SCC 1- both decisions of Constitution Benches. were made in Parliament to amend the law, to exclude the time, in the manner sought by the State, by use of the maxim actus curiae neminem gravabit. However, such amendment could not pass muster.

71. Learned counsel contended that Parliament's intent is to confer a benefit on landholders who were impacted by the erstwhile unfair regime. Urging that under the old law, landholders, to protect their assets from expropriation of their land at paltry amounts, were compelled to use legitimate systems of securing redress by filing cases in court, counsel urged that the correct approach, is to view litigation as a necessity under an unjust former regime and not exclude the period spent under

litigation in such an unfair regime. He further urged that the deeming provision with its clear and verifiable benchmarks on the five-year cut-off period, physical possession and payment is easy to operate. Introducing notions such as exclusion of time due to pending litigation would complicate the working of the statute.

72. Learned counsel urged that Section 24(2) uses the expression "or". The Legislature intended the two conditions separated by the word "or" to be alternative conditions. Four situations arise where the conditions are disjunctive: firstly, when physical possession is with the State and compensation is with the citizen, there is no deemed lapse; secondly, when physical possession is with the citizen and compensation is with the State, there is no need for restitution as the State has retained the compensation amount; thirdly, when physical possession is with the citizen, and the compensation is also with the citizen, in such scenarios, the citizen must return the compensation. It was urged that where the State has paid the money by deposit in the Reference Court and the money was lying with the Court, the State may withdraw the money on deemed lapsing. However, if the State were to decide to acquire the land afresh, the compensation already paid may be adjusted; and further since inherent in the notion of lapsing is the requirement for restitution, the State can recover the compensation, inter alia by framing suitable rules. The citizen cannot retain compensation "had and received" since this would amount to unjust enrichment. It was submitted that where the physical possession as well as compensation are with the State, i.e., where the State has taken possession without paying compensation as required under the Act of 1894, there is no absolute vesting free from all encumbrances as contemplated under Section 16. In the absence of vesting, the State is required to restore possession to the citizen.

73. Learned counsel argued that having regard to the unfair working of the Act of 1894, giving effect to the legislative intent by reading the expression "or" as "or" is the correct interpretation with beneficent consequences for the landowner. The learned counsel submitted that reading the expression "or" as "and" not only does violence to the plain language of section 24(2) but it also reduces the deeming provision down to vanishing point. Should a conjunctive reading of the conditions be combined with exclusion of the time spent in litigation or due to a stay, then the whole of section 24(2) will be robbed of content since it will apply to very rare cases. It was further submitted that Section 24 does not lay down any specific conditionality in terms of how far back in time the awards contemplated under section 24(2) could have been made. The deeming provision under Section 24(2) operates w.e.f. 1.1.2014 and its effect would cover all cases that fulfil the conditions provided in the statute. Learned counsel cited decisions in support of the interpretation that "or" should be construed disjunctively, not conjunctively as "and".60

74. Learned counsel stressed that there are no vested rights created in the State in any case till compensation has been paid and possession has been taken. The Act of 2013 is a beneficial legislation and a radical departure from the previous unjust and oppressive regime. It intends to confer significant benefits to the landowners and makes the exercise of the power of eminent domain compatible with our constitutional values. It ought to therefore be given an interpretation which favours the landowners. Finally, he argued that the decision in Indore Development Authority (supra) erroneously upset a consistent line of decisions which began with Pune Municipal Corporation (supra). Subsequent decisions of this Court following Pune Municipal Corporation

(supra) have also considered a host of arguments/issues and there is no compelling 60Naga People's Movement of Human Rights vs. Union of India (1998) 2 SCC 109 (5 Judges); R.S. Nayak v A.R. Antulay 1984 (2) SCC 183; and Life Insurance Corporation v D. J. Bahadur 1981 (1) SCC 315.

reason to make a departure. He submitted that even a larger Bench of this Court is bound to pay due deference to the principle of Stare Decisis.

75. Supplementing the submissions, Mr. Dinesh Dwivedi, learned senior counsel for the landowners, argued that the meaning of the phrase "compensation has not been paid" should be considered, given that in Section 24(2) "paid" is not used. The phrase "has not been" is used in respect of both "possession" as well as "paid". Therefore, it must mean the same in both respects. The important factors to be borne in mind – and to distinguish the phrase "paid" from "deposit", is whether in the court under Section 31 (2) or in the treasury under Section 31(1). It is urged that an analysis of Sections 17 (3A) & (3B), 31 (1) & (2) and Section 28 read with Section 34 of the Act of 1894 shows that these provisions clearly distinguish between tender, paid or deposit whether in the court or the treasury.

76. Learned counsel argued that three different words used in the same Act, in various provisions of the Act, cannot mean the same. It follows also from the reading of Section 19(1)(c) and (cc). In both these provisions word "tender" is used in contrast to word "paid" while word paid is used in contrast to word "deposit". The word "deposit", wherever used, is in the context of "deposit in Court" only not treasury. The expression "tender payment" under Section 17 (3A) and Section 31(1) of the Act of 1894 were followed by the words "pay it to them". Therefore, tender cannot mean "paid". It is urged that these terms fall in Part V of the Act, titled as "Payment". The term "pay it to them" under Section 31 after "tender" must mean an additional action or step. When after "tender" an effort is made "to pay" the compensation and the same is accepted by the beneficiary, it becomes "paid". The "deposit" under Section 31(2) only comes in when the beneficiary declines payment. This clearly implies that "tender of payment" cannot be equated with "pay it to them" or "deposit in Court" under Section 31(1) and 31 (2). It is argued that what follows is that tender of payment by itself is not enough. The State's interpretation is contested as incorrect because if tender is equal to being paid then why does legislature provide for "deposit in court". The amount is deemed to be paid on tender and the obligation to pay is discharged then the question is why require "deposit in Court". Learned counsel argued that "Tender" can never be deemed as "paid": This is not only evident from reading of Section 19(c) where the term "paid or tendered" is depicted as alternates. Similarly, "paid or deposited" are used alternately. Likewise, Sections 17(3)(b), 19(cc) and 34 use these words alternately. As said above if "tender" would amount to "paid" and then the compensation would be deemed to be paid, resulting in discharge of obligation to pay, then why deposit in court under Section 31(2) to make it "custodia legis". Section 31(2) would become redundant in most of the cases.

77. Learned counsel conceded that there is no doubt that on a decline of payment by the beneficiary it has to be mandatorily deposited in Court under Section 31(2). The provision uses the phrase "shall deposit"

and this gives a valuable right to the payee, not only of interest in the event it is not "deposited in court" but also a right to seek investment of compensation under Section 33. These statutory rights are adversely affected if "deposit" is not in "court". Therefore, it is amply clear that "deposit in treasury is not an option available. It cannot be a substitute for "deposit in Court". Besides Section 31(1) and 31 (2) of the Act of 1894 present a complete code for payment and there is no gap or uncovered area to permit rules to supplement. Any deposit in treasury was in breach of Section 31 and therefore, impermissible. Also, most of the States had no rules under Section 55. In this context, executive instructions cannot prevail over law. Law can never be interpreted with the aid of subordinate legislation or executive instructions. It was further submitted that Sections 17(3A) and (3B), 28, 31, 33 and 34 of the Act of 1894 are a clear pointer that "tender" is not "paid" and neither is "deposit". Likewise, these provisions frequently use words "paid or deposited" which shows they are different. Deposit cannot be, therefore, equated with paid as they are more than once separated by word 'or'.

78. It was contended that the scheme of the Act of 1894 was clear and categorical that the amount of compensations when accepted by the beneficiary is deemed to be "paid" for interest to stop running. The running of interest under Section 34 denotes non-discharge of obligation to pay, otherwise why pay interest? The "deposit in Court" may stop running of interest and therefore, may for this purpose be taken to be paid, but when it comes to actual meaning in the above provisions, "paid and deposit" are invariably separated by the use of word "or" in between them. Therefore, it is submitted that when Section 24(2) of the New Act uses the phrase "compensation has not been paid" it uses the terminology of the proviso to Section 34(proviso) and must have the same meaning "has not been paid" cannot be read as "has not been deposited". If this is the right interpretation than the coverage of Section 24(2) also expands to cover those cases in which the compensation has not been actually paid but has been deposited in the Court. This would also be in keeping with the legislative policy contained in the Preamble, to give just and fair compensation to those whose lands have been acquired as per the Old Act. Coverage of the New Act is co-related to persons whose "land has been acquired". The policy of Section 24 also reflects this expansive liberal approach of "just and fair compensation". Section 24 would therefore have to be seen in the light of this liberal policy intent.

79. It was urged that these States' arguments regarding revival of claims or resulting in impossible situations causing irreparable harm are not very relevant once the legislative policy is clear. The provision has to be interpreted in a manner that it subserves the legislative policy intent of giving just and fair compensation to those whose lands were acquired (possession taken) under the Act of 1894. Once the legislative policy or intent is clear then the objections relating to harsh consequences are not really relevant. It was stated that State may be put into a difficult situation, but the solution too is provided in the last part of Section 24(2) which reflects the words "if it so chooses", it can acquire afresh under Section 24. Learned counsel relied on Padma Sunder Rao (supra); Popat Bahiru Govardhane v. Land Acquisition Officer61 and B. Premanand v. Mohan Koikal62. It was urged that the legislative policy may cause hardship or difficulties to some or the State may be put to an impossible situation; yet cannot take away from Parliamentary intent. Parliament has enough wisdom to know these difficulties, the law prevailing earlier or the ground realities. It would be

deemed to be not only aware of the difficulties, but also to have assessed them while framing the liberalised policy. The question is one of intent. The intent has to be seen primarily from the words used in the text. It is only if such intent is not clear that courts have to see them with the aid of the context. The difficulties as well as harsh consequences cannot be utilized to assess the intent embedded in the provision if they are clear, otherwise from the text, or the context. Not only has Parliament not provided any clause creating any kind of exception, or extension of five years in cases of litigating land oustees who may have an interim 61 2003 (10) SCC 765 62 (2011) 4 SCC 266 orders in their favour, stalling the acquisition or payment of compensation. All that the provision says is "or compensation has not been paid". The projected policy intent is broad and unencumbered by any exception. This is a clearest indicator of legislative intent to cover all such cases that may cause hardship to the State or may be due to the fault of Court or the litigious land oustee. The intent is clear and therefore, has to be read apart from difficulties or hardships.

80. It is submitted that the State's contention with regard to a differential approach for possession and compensation is irrational and is against the very grain of Section 24(2) and is also unreasonable and discriminatory. It is unreasonable because there are hardly any cases where compensation may have been paid, yet possession may not have been taken. Most of the cases are under Section 17(1) where possession is invariably taken while compensation remains unpaid as award is not made. By reading word 'or' as 'and', the words "or the compensation has not been paid" become otiose or redundant. Parliament could have only said that lapsing would occur only if possession has not been taken, because if possession is taken then there would never be lapsing and there would be no need to consider "or" as "and". Therefore, such an interpretation (i.e., reading "or" conjunctively) is contrary to every rule of interpretation and contrary to the Legislative policy indicated in the Preamble of giving just and fair compensation in cases of earlier acquisitions, which includes cases where possession has been taken.

81. Learned counsel urged that Section 24(2) would become discriminatory if "or" is read as "and". For this, it would be necessary to analyse Section 24(1)(a). Section 24(1)(a) applies to a situation where there is no award made till the commencement of the New Act. No award primarily means "compensation has not been paid". Importantly in a case under Section 17 of the Act of 1894, which is most frequently utilised, possession may be taken before award is made or compensation is paid. In other words, Section 24(1)(a) does visualize or cover cases where possession may have been taken but "compensation has not been paid". It, therefore, requires re-determination of compensation under Sections 26-30 of the New Act. The problems of who to pay the enhanced compensation, as referred above, would also arise in this situation. Yet Parliament has ignored these difficulties and provided for redetermination. Section 24(1)(a) may travel back to period of five years or more, or may be 10-15 years as in case of Section 24(2). It would not be reasonable to restrict the retrospectivity of Section 24(1)(a) with the aid of Section 11A of the old Act, to 2 years before commencement. It would be incorrect because then one would be ignoring Explanation to Section 11A (proviso). The said Explanation visualises indefinite extension of the period of award from 2 years. It would not be, therefore, reasonable to exclude such cases where though possession may have been taken, but compensation may not have been paid for a very long period of time upto commencement of the new Act. Section 24(1)(a) does not contain any provision like Section 25 (proviso), Section 19(7)(proviso) and Section 69(2)(explanation) and therefore, is wide in its

coverage in the absence of exceptions as above.

82. Learned counsel urged that Section 24(2) is a special provision giving higher benefit because in the cases covered by Section 24(2) "compensation has not been paid" despite award. Would it be rational to read Section 24(2) in such a manner that deprives it of its value and worth and makes it ineffective. Section 24(2) would become ineffective as a whole because there would be rarest of the rare cases, where both the conditions would be fulfilled. The experience shows in vast majority of cases of acquisition under the old Act, possession is taken while award & compensation come much later. This is because Sections 9 & 17(6) of the Act of 1894 were used in vast majority of acquisitions and the Legislature was aware of it. The law does not compel doing of an act that is impossible. It is emphasized that the principle does not apply as the new Act is not requiring any such performance. The new Act after recognising the past, is providing new solutions, rights and benefits. Section 24(2) by itself does not compel performance of an impossible act. This principle could have been relevant during earlier Act but is hardly relevant for interpreting the scope of Section 24(2) of the New Act. Section 24 clearly postulates that even though the Act may be impossible of performance, or results in undue advantage to the beneficiary despite his fault in declining, yet benefit of Section 24(2) may be given without creating any exception. There is no constitutional restriction on the Legislature that such cases or situations have to be excluded. The legislature can provide benefit in the same manner to all, difficulties apart. Reliance is placed on certain decisions in support of this proposition.63 Therefore, such interpretation which excludes the benefits under Section 24(2) by resorting to such arguments of difficulties is meaningless. The giving of benefit to all by ignoring above circumstance is neither illegal nor unjust. It is neither anomalous nor absurd. It is urged that what the court feels is not important; what is relevant is the view of the legislature, to be culled out from the reading of only the text or the context; not in any other manner. For this rule, reliance was placed on Mohd. Kavi v. Fatmabal Ibrahim64 and other decisions.

83. Other learned senior counsel, i.e M/s Dushyant Dave, Gopal Shankarnarayan, Siddharth Luthra, Nakul Dewan, Manoj Swaroop, Anukul Chandra Pradhan supplemented the submissions of Mr. Divan and Mr. Dwivedi. It was argued by them that this Court should not depart from the rule of literal interpretation, because that would be both beneficial and purposive, given the oppressive nature of the Act of 1894. In this context, it was submitted that the expressions “paid” and “or” should be construed in the manner that Parliament intended, having 63 Martin Burn Ltd v Corporation of Calcutta 1966 (1) SCR 543; Commissioner of Agricultural Income Tax v Keshab Chandra Mandal 1950 SCR 435; and State of Maharastra v Nanded Parbhani Sangh 2000 (2) SCC 69.

64 1997 (6) SCC 71 and M.V. Javali v Mahajan Borewell & Co. Ltd 1997 (8) SCC 72; and Nanded Parbhani Sangh (supra); and SMS Pharmaceuticals Ltd. v. Neeta Bhalla (2005) 8 SCC

89. regard to the overall intent of ensuring the acquisition proceedings, where either compensation was not paid, or possession was not taken, in respect of awards made before 1.1.2009, should lapse. It was submitted that there is no insurmountable difficulty or impossibility, even if possession is taken (but compensation not paid) and even if vesting occurs, Section 24(2) of the new Act expressly provides for lapsing. The remedy in that case, for the appropriate Government is the option of going

through the acquisition again using emergency provisions. In that event, the authorities would have to provide for rehabilitation and enhanced compensation. In any case, the court always has the option in such cases where third party rights have ensued to do complete justice, by duly compensating those whose land is acquired, without disturbing the possession of third party who has been given the land.

84. The learned counsel submit that this Court should base itself on the approach to interpret Section 24 of the Act of 2013 is that it is a savings clause with an exclusionary deeming provision. It is urged that the words "physical possession" under Section 24(2) should be read to reflect the actual state of affairs as on the date when the Act of 2013 came into force, i.e., there was actual physical possession of the land. This would also be the case in relation to the term "compensation not paid" under Section 24(2), where compensation would either have had to be paid or deposited in court; and that use of the term "or" signifies that the two conditions set out above are disjunctive. It is argued that Section 114 consists of two sections (1) a repeal clause set out in Section 114 (1); and (2) a savings clause set out in Section 114(2). It is contended that there is a distinction in the manner in which a repealing clause is construed as compared to the manner in which a savings clause is construed. While a repealing clause, followed by a new legislation on the same subject-matter would result in a line of enquiry about what rights are obliterated under the old Act by the new Act, a savings clause would be construed in a manner that resurrects a provision, which would otherwise be obliterated on account of the repeal. In relation to a repeal clause, the effect of obliterating the provisions of the previous enactment would be as if it never existed, except for vested rights, which would be protected under Section 6 of the General Clauses Act. Section 6 of the General Clauses Act, thus operated as a savings clause. Learned counsel rely on the judgment of this court in State of Punjab v. Mohar Singh65 that the effect of repealing a statute was said to be to obliterate it as completely from the records of Parliament as if it had never been passed, except for the purpose of those actions, which were commenced, prosecuted and concluded while it was an existing law and that:

> "A repeal therefore without any saving Clause would destroy any proceeding whether not vet begun or whether pending at the time of the enactment of the Repealing Act and not already prosecuted to a final judgment so as to create a vested right".

65 (1955) 1 SCR 893

85. Submitting that the effect of Section 6 of the General Clauses Act, is that unless the contrary intention appears, the repeal does not affect the previous operation of the repealed enactment or anything duly done or suffered under it and any investigation, legal proceeding or remedy may be instituted, continued or enforced in respect of any right, liability and penalty under the repealed Act as if the Repealing Act had not been passed. However, in case of the Act of 2013, it is urged that Parliamentary intent was not to simply let Section 6 of the General Clauses Act operate as the savings provision. Apart from Section 6, the intent, evident from Section 114(2), was to set out a specific provision which would save proceedings. It was submitted that those would be provisions that would otherwise not have been

saved by the General Clauses Act.

86. It is in this background that Section 24 of the Act of 2013 must be interpreted. While the Respondent accepts that Section 24 could have been more clearly worded to reflect the legislative intent as a savings provision, to fully appreciate the operation of Section 24 (1)(b) as a classical savings provision which saves proceedings under the Act of 1894 if an award had been made under Section 11, in a manner as if the Act of 1894 had not been repealed. Section 24(1)(a) deals with a situation where no award has been made and in providing for determination of compensation in terms of the Act of 2013 naturally would mean that proceedings under the Act of 1894 would be revived, save and except on the issue of computation of compensation. Having revived proceedings under Section 24(1), Section 24(2) provides for a deemed lapsing through a non-obstante provision for an award made five years or prior to the date of the commencement of the Act of 2013.

This creates a legal fiction which, as held by this court in J.K.Cotton Spg. & Wvg.Mils Ltd. v. Union of India,66 is:

"...an admission of the non-existence of the fact deemed...The legislature is quite competent to enact a deeming provision for the purpose of assuming the existence of a fact which does not really exist."

Learned counsel also placed reliance on the decision of the Constitution Bench in Bengal Immunity Co.Ltd. v. State of Bihar67 to the following effect:

"[l]egal fictions are created only for some definite purpose"and referred to the decision East End Dwellings Co.Ltd.v. Finsbury Borough Council,1952 AC 109 at paragraph 71,which reads as follows:

"if you are bidden to treat an imaginary state of affairs as real,you must surely, unless prohibited from doing so,also imagine as real the consequences and incidents which,if the putative state of affairs had in fact existed,must inevitably have flowed from or accompanied it.One of these in this case is emancipation from the 1939 level of rents.The statute says that you must imagine a certain state of affairs;it does not say that having done so,you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.'" (Emphasis Supplied)

87. Other decisions of this Court were also relied on, in this context.68 Learned counsel stated that given that it is a legal fiction which leads to a deemed lapsing of proceedings under the Act of 1894, Parliamentary intent under Section 24(2) ought to be construed so that "physical 66 1987 Supp SCC 350 67 (1955)2 SCR 603 68 MIG Cricket Club v.AbhinavSahakar Education Society, (2011) 9 SCC 97 possession" under Section 24(2) reflects the actual state of affairs as on the date when the Act of 2013 came into force; similarly, too the term compensation not paid under Section 24(2).

It was stated, that retaining amounts in the treasury, pursuant to executive rules would not suffice for compliance with the payment condition. Learned counsel also urged that this court should interpret "or" as signifying a disjunctive reading of the two conditions. Comparing this legal fiction created under Section 24(2) with the State's obligations under the Act of 1894 would be inconsistent with the decisions of this Court, under which legal fictions are to be read as it is i.e., the state of affairs as plainly set out in the legal fiction. Therefore, the effect of Section 24 (2) is that if either of the situations are not met, the acquisition proceedings under the Act of 1894 lapse and the State can initiate proceedings afresh in accordance with the Act of 2013. This construction, urge learned counsel is also purposive and practical. If the State has not taken physical possession of a property even if compensation has been paid for over 5 years prior to the commencement of the Act of 2013, because it no longer serves the purpose of acquisition, it can drop the proceedings as those would have lapsed. In such an event, the State would naturally be entitled to restitutory recovery. However, if the State has failed to take physical possession, it cannot be benefited by its inactions and must restart proceedings under the Act of 2013. In such a case, the compensation paid can always be re-adjusted against compensation determined under the Act of 2013. Arguendo, it is urged that even if Section 114 (2) of the Act of 2013 is construed to keep alive the State's vested rights by virtue of Section 6 of the General Clauses Act, such rights are limited by Section 24(1)(a) and Section 24(2) of the Act of 2013. Thus, while ordinarily the acquisition proceedings that were pending in respect of awards passed under the Act of 1894 would have continued, the legislature by way of a creating a legal fiction, provided for the deemed lapse of these proceedings in respect of which physical possession has not been taken or compensation not paid. Learned counsel placed reliance on some decisions of this Court.69 VKNM Vocational Higher Secondary School v. State of Kerala,70 where it was held that:

"...a vested right can also be taken away by a subsequent enactment if such subsequent enactment specifically provides by express words or by necessary intendment. In other words, in the event of the extinction of any such right by express provision in the subsequent enactment, the same would lose its value."

88. It was submitted that in order to determine the accrued rights and incurred liabilities that have been saved under the Act of 1894, the line of inquiry is not to enquire if the new enactment has by its new provisions kept alive the rights and liabilities under the repealed law, but whether it has taken away those rights and liabilities.

89. All learned counsel supported the submission that the proviso is not restricted in its operation to Section 24 (2) only and that its placement is not determinative. It was emphasized that the proviso does 69 Jayantilal Amrathlal v. Union of India,(1972) 4 SCC 174, T.S.Baliah v. Income Tax Officer, Central Circle VI,Madras,1969 (3) SCR 65 70 2016 (4) SCC 216.

not say that higher compensation would be paid, in the contingency provided by it, as an option to avoid lapsing. The absence of any reference to lapsing, or the ingredients of Section 24 (2) clearly meant that the benefit of higher compensation in the event a majority of the landowners were not paid compensation (under the old Act) was to enure to all falling in the same class, i.e., those whose lands were subjected to acquisition, whether five years prior to or less than coming into force of the Act of 2013.

Relevant provisions

90. For appreciating the controversy in the present cases, it is essential to extract certain relevant provisions of the Act of 1894 as well as the Act of 2013. The provisions of the Act of 1894 are reproduced below:

> "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 apportionment 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.
>
> *** *** "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.

[(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)-

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(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. (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).]"

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 72 [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." The relevant provisions of the Act of 2013 are as follows:

"24. Land acquisition process under Act No. 1 of 1984 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." *** ***

114. Repeal and saving.–(1) The Land Acquisition Act, LA (1 of LA), is hereby repealed.

(2) Save as otherwise provided in this Act the repeal under sub- section (1) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals." Section 6 of the General Clauses Act, 1897 reads as follows:

"Section 6 - Effect of repeal Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed." Salient features of the Act of 2013

91. There can no dispute, no two opinions about the fact that provisions of the Act of 2013, were enacted with the object of providing fair compensation and rehabilitating those displaced from their land. The Introduction and Statement of Objects and Reasons of the Act of 2013 are extracted hereunder:

"INTRODUCTION The Land Acquisition Act, LA was a general law relating to acquisition of land for public purposes and also for companies and for determining the amount of compensation to be made on account of such acquisition. The provisions of the said Act was found to be inadequate in addressing certain issues related to the exercise of the statutory powers of the State for involuntary acquisition of private land and property. The Act did not address the issues of rehabilitation and resettlement to the affected persons and their families. There had been multiple amendments to the Land Acquisition Act, LA not only by the Central Government but by the State Governments as well. However, there was growing public concern on land acquisition, especially multi-cropped irrigated land. There was no central law to adequately deal with the issues of rehabilitation and resettlement of displaced persons. As land acquisition and rehabilitation and resettlement were two sides of the same coin, a single integrated law to deal with the issues of land acquisition and rehabilitation and resettlement was necessary.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 addresses concerns of farmers and those whose livelihood are dependent on the land being acquired, while at the same time facilitating land acquisition for industrialization, infrastructure and urbanization projects in a timely and transparent manner.

This Act represents a change in the legislative approach to land acquisition. It introduces for the first time provisions for social impact analysis, recognizes non-owners as affected persons, a mode of acquisition requiring consent of the displaced and statutory entitlements for resettlement. In addition, it has restricted the grounds on which land may be acquired under the urgency clause.

STATEMENT OF OBJECTS AND REASONS The Land Acquisition Act, LA is the general law relating to acquisition of land for public purposes and also for companies and for determining the amount of compensation to be made on account of such acquisition. The provisions of the said Act have been found to be inadequate in addressing certain issues related to the exercise of the statutory powers of the State for involuntary acquisition of private land and property. The Act does not address the issues of rehabilitation and resettlement to the affected persons and their families.

2. The definition of the expression "public purpose" as given in the Act is very wide. It has, therefore, become necessary to re-define it so as to restrict its scope for acquisition of land for strategic purposes vital to the State, and for infrastructure projects where the benefits accrue to the general public. The provisions of the Act are also used for acquiring private lands for companies. This frequently raises a question mark on the desirability of such State intervention when land could be arranged by the company through private negotiations on a "willing seller-willing buyer"

basis, which could be seen to be a more fair arrangement from the point of view of the land owner. In order to streamline the provisions of the Act causing less hardships to the owners of the land and other persons dependent upon such land, it is proposed repeal the Land Acquisition Act, LA and to replace it with adequate provisions for rehabilitation and resettlement for the affected persons and their families.

3. There have been multiple amendments to the Land Acquisition Act, LA not only by the Central Government but by the State Governments as well. Further, there has been heightened public concern on land acquisition, especially multi-cropped irrigated land and there is no central law to adequately deal with the issues of rehabilitation and resettlement of displaced persons. As land acquisition and rehabilitation and resettlement need to be seen as two sides of the same coin, a single integrated law to deal with the issues of land acquisition and rehabilitation and resettlement has become necessary. Hence the proposed legislation proposes to address concerns of farmers and those whose livelihoods are dependent on the land being acquired, while at the same time facilitating land acquisition for industrialization, infrastructure and urbanization projects in a timely and transparent manner.

4. Earlier, the Land Acquisition (Amendment) Bill, 2007 and Rehabilitation and Resettlement Bill, 2007 were introduced in the Lok Sabha on 6th December 2007

and were referred to the Parliamentary Standing Committee on Rural Development for Examination and Report. The Standing Committee presented its reports (the 39th and 40th Reports) to the Lok Sabha on 21st October 2008 and laid the same in the Rajya Sabha on the same day. Based on the recommendations of the Standing Committee and as a consequence thereof, official amendments to the Bills were proposed. The Bills, along with the official amendments, were passed by the Lok Sabha on 25th February 2009, but the same lapsed with the dissolution of the 14th Lok Sabha.

5. It is now proposed to have a unified legislation dealing with acquisition of land, provide for just and fair compensation and make adequate provisions for rehabilitation and resettlement mechanism for the affected persons and their families. The Bill thus provides for repealing and replacing the Land Acquisition Act, LA with broad provisions for adequate rehabilitation and resettlement mechanism for the project affected persons and their families.

6. Provision of public facilities or infrastructure often requires the exercise of powers by the State for acquisition of private property leading to displacement of people, depriving them of their land, livelihood, and shelter, restricting their access to traditional resource base and uprooting them from their socio-cultural environment. These have traumatic, psychological, and socio- cultural consequences on the affected population, which call for protecting their rights, particularly in case of the weaker sections of the society, including members of the Scheduled Castes (SCs), the Scheduled Tribes (STs), marginal farmers and their families.

7. There is an imperative need to recognise rehabilitation and resettlement issues as intrinsic to the development process formulated with the active participation of affected persons and families. Additional benefits beyond monetary compensation have to be provided to families affected adversely by involuntary displacement. The plight of those who do not have rights over the land on which they are critically dependent for their subsistence is even worse. This calls for a broader concerted effort on the part of the planners to include in the displacement, rehabilitation, and resettlement process framework, not only for those who directly lose their land and other assets but also for all those who are affected by such acquisition. The displacement process often poses problems that make it difficult for the affected persons to continue their traditional livelihood activities after resettlement. This requires a careful assessment of the economic disadvantages and the social impact arising out of displacement. There must also be holistic effort aimed at improving the all-round living standards of the affected persons and families.

8. A National Policy on Resettlement and Rehabilitation for Project Affected Families was formulated in 2003, which came into force with effect from February 2004. Experience gained in implementation of this policy indicates that there are many issues addressed by the policy which need to be reviewed. There should be a clear

perception, through a careful quantification of the costs and benefits that will accrue to society at large, of the desirability and justifiability of each project. The adverse impact on affected families-economic, environmental, social and cultural-must be assessed in participatory and transparent manner. A national rehabilitation and resettlement framework thus needs to apply to all projects where involuntary displacement takes place.

9. The National Rehabilitation and Resettlement Policy, 2007, has been formulated on these lines to replace the National Policy on Resettlement and Rehabilitation for Project Affected Families, 2003. The new policy has been notified in the Official Gazette and has become operative with effect from the 31st October, 2007. Many State Governments have their own Rehabilitation and Resettlement Policies. Many Public Sector Undertakings or agencies also have their own policies in this regard.

10. The law would apply when Government acquires land for its own use, hold and control, or with the ultimate purpose to transfer it for the use of private companies for stated public purpose or for immediate and declared use by private companies for public purpose. Only rehabilitation and resettlement provisions will apply when private companies buy land for a project, more than 100 acres in rural areas, or more than 50 acres in urban areas. The land acquisition provisions would apply to the area to be acquired but the rehabilitation and resettlement provisions will apply to the entire project area even when private company approaches Government for partial acquisition for public purpose.

11. “Public purpose” has been comprehensively defined, so that Government intervention in acquisition is limited to defence, certain development projects only. It has also been ensured that consent of at least 80 per cent of the project affected families is to be obtained through a prior informed process. Acquisition under urgency clause has also been limited for the purposes of national defence, security purposes, and Rehabilitation and Resettlement needs in the event of emergencies or natural calamities only.

12. To ensure food security, multi-crop irrigated land shall be acquired only as a last resort measure. An equivalent area of culturable wasteland shall be developed if multi-crop land is acquired. In districts where net sown area is less than 50 per cent of total geographical area, no more than 10 per cent of the net sown area of the district will be acquired.

13. To ensure comprehensive compensation package for the land owners, a scientific method for calculation of the market value of the land has been proposed. Market value calculated will be multiplied by a factor of two in the rural areas. Solatium will also be increased upto 100 per cent of the total compensation. Where land is acquired for urbanization, 20 per cent of the developed land will be offered to the affected land owners.

14. Comprehensive rehabilitation and resettlement package for land owners including subsistence allowance, jobs, house, one acre of land in cases of irrigation projects, transportation allowance, and resettlement allowance is proposed.

15. Comprehensive rehabilitation and resettlement package for livelihood losers, including subsistence allowance, jobs, house, transportation allowance, and resettlement allowance is proposed.

16. Special provisions for Scheduled Castes and the Scheduled Tribes have been envisaged by providing additional benefits of 2.5 acres of land or extent of land lost to each affected family; one-time financial assistance of Rs. 50,000/-; twenty-five per cent additional rehabilitation and resettlement benefits for the families settled outside the district; free land for community and social gathering and continuation of reservation in the resettlement area, etc.

17. Twenty-five infrastructural amenities are proposed to be provided in the resettlement area including schools and play grounds, health centres, roads, and electric connections, assured sources of safe drinking water, Panchayat Ghars, Anganwadis, places of worship, burial and cremation grounds, village level post offices, fair price shops, and seed-cum-fertilizers storage facilities.

18. The benefits under the new law would be available in all the cases of land acquisition under the Land Acquisition Act, LA, where award has not been made, or possession of land has not been taken.

19. Land that is not used within ten years in accordance with the purposes, for which it was acquired, shall be transferred to the State Government's Land Bank. Upon every transfer of land without development, twenty per cent of the appreciated land value shall be shared with the original land owners.

20. The provisions of the Bill have been made fully compliant with other laws such as the Panchayats (Extension to the Scheduled Areas) Act, 1996; the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Land Transfer Regulations in Fifth Scheduled Areas.

21. Stringent and comprehensive penalties both for the companies and Government in cases of false information, mala fide action, and contravention of the provisions of the propose legislation have been provided.

22. Certain Central Acts dealing with the land acquisition have been enlisted in the Bill. The provisions of the Bill are in addition to and not in derogation of these Acts. The provisions of this Act can be applied to these existing enactments by a notification of the Central Government.

23. The Bill also provides for the basic minimum requirements that all projects leading to displacement must address. It contains a saving clause to enable the State Governments, to continue to provide or put in place greater benefit levels than those prescribed under the Bill.

24. The Bill would provide for the basic minimum that all projects leading to displacement must address. A Social Impact Assessment (SIA) of proposals leading to displacement of people through a participatory, informed and transparent process involving all stake-holders, including the affected persons will be necessary before these are acted upon. The rehabilitation process would augment income levels and enrich quality of life of the displaced persons, covering rebuilding socio-cultural relationships, capacity building, and provision of public health and community services. Adequate safeguards have been proposed for protecting rights of vulnerable sections of the displaced persons.

25. The Bill seeks to achieve the above objects. The notes on clauses explain the various provisions contained in the Bill."

92. Section 2(2) of the Act of 2013, provides that in the event of acquisition for private companies, consent of 80% of the affected families has to be obtained and for the public-private partnerships, consent of 70% of the affected families is required to be taken. In Section 3(c), the term 'affected family' has been widened, which inter alia includes members of the Schedule Tribes, forest dwellers, and families whose livelihood is dependent on forests or water bodies. A "Social Impact Assessment" ("SIA") has to be prepared, as provided in Sections 4 to 9. Special provisions to safeguard food security have been made by prohibiting the acquisition of multi-cropped land except in exceptional circumstances as enumerated in Section 10. Section 11 is akin to Section 4 of the Act of 1894 regarding issuance of preliminary notification. The SIA report lapses in case preliminary notification under Section 11 is not issued within a period of 12 months from the date of the report. A Rehabilitation and Resettlement Scheme ("RR Scheme") is provided in Sections 16 to 18. The Collector has to pass the award under Section 23. Section 26 deals with the determination of the market value by the Collector. Section 30 provides for Solatium at 100%. The RR award has to be passed by the Collector under Section 31, and notice has to be given immediately under Section 37, which is equivalent to Section 12 of the Act of 1894. Section 38 provides that Collector has to take possession after full payment of compensation has been made as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons. Thus, there is a departure from Section 16 Act of 1894 in the provisions contained in Section 38 of the Act of 2013. The Collector has to ensure under Section 38 of Act of 2013 that the rehabilitation and resettlement process is complete before displacing people. Section 40 deals with urgent cases. The Government may acquire land without making award in the case of urgency for the defence of India or national security. In other emergencies arising out of natural calamities or any other emergencies special provisions under Section 40 may be exercised with the approval of the Parliament. In such event, the provisions of the Social Impact Assessment and Rehabilitation and Resettlement Scheme may be exempted. Additional compensation of 75% is payable in such cases. Section 41 contains special provisions for Scheduled Castes and Scheduled Tribes by prohibiting acquisition in scheduled areas

as far as possible. Sections 43 to 50 deal with appointment and constitution of the Rehabilitation and Resettlement Authorities and Monitoring Committees at Project as well as National Levels. Sections 51 to 74 deal with the establishment of Land Acquisition, Rehabilitation, and Resettlement Authority. Sections 77 to 80 are pari materia to the provisions contained in Sections 31 to 34 of the Act of 1894, relating to payment, deposit, and interest, etc. Section 93 is equivalent to Section 48 of the Land Acquisition Act. The Government shall be at liberty to withdraw from acquisition if possession of land has not been taken. Section 101 provides that land be returned to the original owner or the Land Bank of the appropriate Government if acquired land remains unutilized for a period of five years. Thus, various departures have been made from the old Land Acquisition Act, in the Act of 2013 relating to Social Impact Assessment, Rehabilitation and Resettlement Scheme, etc. It ensures higher compensation than the old Act; the public purpose has been defined; consent provisions have also been made. The interest of Scheduled Castes and Scheduled Tribes have been adequately protected. Various Committees and Authorities have been constituted. The definition of 'affected families' has been widened.

93. Undoubtedly the Act of 2013 has provided safeguards, in the form of higher compensation and provisions for rehabilitation, which are necessary. In that light, the court has to interpret its provisions, to give full and meaningful effect to the legislative intent keeping in mind the language and tenor of the provisions, it is not for the court to legislate. The Court can only iron out creases to clear ambiguity. The intended benefit should not be taken away. At the same time, since the Act of 2013, envisages lapse of acquisitions notified (and in many cases, completed by the issuance of the award) due to indolence and inaction on the part of the authorities and therefore, intends acquisition at a fast track, the full effect has to be given to the provisions contained in Section 24.

Scope of Section 24

94. Section 24 begins with a non-obstante clause, overriding all other provisions of the Act of 2013 including Section 114 of the Act of 2013, dealing with repeal and saving. In terms of Section 114 of the Act of 2013, the general application of Section 6 of the General Clauses Act, 1897, except otherwise provided in the Act, has been saved. Section 6(a) of the General Clauses Act, 1897 provides that unless a different intention appears, the repeal shall not revive anything not in force or existing at the time when the repeal has been made. The effect of the previous operation of any enactment so repealed or anything duly done or suffered thereunder is also saved by the provisions contained in Section 6(b). As per Section 6(c), the repeal shall not affect any right, privilege, obligation or liability acquired, accrued, or incurred.

95. Section 24(1)(a) of the Act of 2013 read with the non-obstante clause provides that in case of proceedings initiated under the Act of 1894 the award had not been made under Section 11, then the provisions of the Act of 2013, relating to the determination of compensation would apply. However; the proceedings held earlier do not lapse. In terms of Section 24(1)(b), where award under Section 11 is made, then such proceedings shall continue under the provisions of the Act of 1894. It contemplates that such pending proceedings, as on the date on which the Act of 2013 came into force shall continue, and taken to their logical end. However, the exception to Section 24 (1)(b) is provided in Section 24(2) in case of pending proceedings; in case where the award has been passed

five years or more prior to the commencement of the Act of 2013, the physical possession of the land has not been taken, or the compensation has not been paid, the proceedings shall be deemed to have lapsed, and such proceedings cannot continue as per the provisions of Section 24(1)(b) of the Act of 2013.

96. Section 24(2) carves out an exception to Section 24(1)(b), where the award has been passed, and the proceedings are pending, but in such proceedings, physical possession of the land has not been taken, or compensation has not been paid, proceedings shall lapse. There are twin requirements for the lapse; firstly, physical possession has not been taken and, secondly, compensation has not been paid. In case, possession has been taken but compensation has been paid, there is no lapse of the proceedings. The question which is to be decided is whether the conditions are cumulative, i.e both are to be fulfilled, for lapsing of acquisition proceedings, or the conditions are in the alternative ("either/or"). According to the State and acquiring agencies, in a situation where possession has been taken, and compensation is not paid, there is no lapse: also in case where compensation has been paid, but possession not taken in a proceeding pending as on 1.1.2014, there is no lapse. Sine qua non is that proceeding must be pending. They argue that the word "or" used in phrase 'the physical possession of the land has been not taken, or the compensation has not been paid', has to be interpreted as "and" as two negative requirements qualify it. Furthermore, argues the State when two negative conditions are connected by "or," they are construed as cumulative, the word "or" is to be read as "nor" or "and." Naturally, the landowners argue to the contrary, i.e., that lapse of acquisition occurred if compensation were not paid, or possession were not taken, 5 years before the coming into force of the Act of 2013.

97. It would be useful to notice rules of Statutory Interpretation in this regard. Principles of Statutory Interpretation (14th Edition) by Justice G.P. Singh, speaks of the following general rule of Statutory Interpretation of positive and negative conditions whenever prescribed by a statute:

> "...Speaking generally, a distinction may be made between positive and negative conditions prescribed by a statute for acquiring a right or benefit. Positive conditions separated by 'or' are read in the alternative71 but negative conditions connected by 'or' are construed as cumulative and 'or' is read as 'nor' or 'and'72.
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> The above rule of Statutory Interpretation is based upon the decision of this Court in Patel Chunibhai Dajibha, etc. vs. Narayanrao Khanderao Jambekar and Anr.73, in which this court held:
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> "(19) It may be recalled that amendments to S. 32 were made from time to time, and the Bombay Act XXXVIII of 1957 added to sub-s. (1)(b), cl. (iii) and the preceding "or". It is to be noticed that the conditions mentioned in sub-ss. (1)(a) and (1)(b) are mutually exclusive. In spite of the absence of the word "or" between sub- ss. (1)(a) and (1)(b), the two sub-sections lay down alternative conditions. The tenant must be deemed to have purchased the 71 Star Co. Ltd. v. Commr. of Income-tax, AIR 1970 SC 1559: (1970) 3 SCC 864 72Patel Chunibhai Dajibha v. Narayanrao, 1965 (2) SCR 328; Punjab Produce & Trading Co. v.

Commissioner of Income Tax, West Bengal, (1971) 2 SCC 540; Brown & Co. v. Harrison, (1927) All ER Rep 195, pp. 203, 204 (CA).

For convenience, the numbers in the extracted portion above have been renumbered. 73 AIR 1965 SC 1457 land if he satisfies either of the two conditions. The appellant is not a permanent tenant, and does not satisfy the condition mentioned in sub-s.(1)(a). Though not a permanent tenant, he cultivated the lands leased personally, and, therefore, satisfies the first part of the condition specified in sub-s. (1)(b). The appellant's contention is that sub-ss. (1)(b)(i), (1)(b)(ii) and (1)(b)(iii) lay down alternative conditions, and as he satisfies the condition mentioned in sub-s. (1)(b)(iii), he must be deemed to have purchased the land on April 1, 1957. Colour is lent to this argument by the word "or" appearing between sub-s.(1)(b)(ii) and sub-s.(1)(b)(iii). But, we think that the word "or" between sub-ss. (1)(b)(ii) and (1)(b)(iii) in conjunction with the succeeding negatives is equivalent to and should be read as "nor." In other words, a tenant (other than a permanent tenant) cultivating the lands personally would become the purchaser of the lands on April 1, 1957, if on that date neither an application under S.29 read with S.31 nor an application under S.29 read with S.14 was pending. If an application either under S.29 read with S.31 or under S.29 read with S.14 was pending April 1, 1957, the tenant would become the purchaser on "the postponed date", that is to say, when the application would be finally rejected. But if the application be finally allowed, the tenant would not become the purchaser. The expression "an application" in the proviso means not only an application under S.31 but also an application under S.29 read with S.14. If an application of either type was pending on April 1, 1957, the tenant could not become the purchaser on that elate. Now, on April 1, 1957, the application filed by respondent No.1 under S.29 read with S.31 was pending. Consequently, the appellant could not be deemed to have purchased the lands on April 1, 1957." The decision of this Court in The Punjab Produce and Trading Co. Ltd. vs. The C.I.T., West Bengal, Calcutta 74, was relied upon in the discussion mentioned above, where provisions of Section 23A of the Income Tax Act, 1922 and the Explanation (b)(ii) and (iii) came up for consideration. This Court ruled with respect to "or" and held that it had to be read as "and" construing negative conditions thus:

> "7. On behalf of the assessee a good deal of reliance has been placed on decision of this Court in Star Company Ltd. v. The Commissioner of Income-tax (Central) Calcutta, (1970) 3 SCC
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> 864. In that case, sub-clause (b)(ii) came up for consideration, and it was held that the two parts of the Explanation contained in that sub-clause were alternative. In other words, if one part was satisfied it was unnecessary to consider whether the second part was also satisfied. Thus the word "or" was treated as having

74 1971 (2) SCC 540 been used disjunctively and not conjunctively. The same reasoning is sought to be invoked with reference to sub-clause

(b)(iii).

8. It is significant that the language of sub-clauses (ii) and (iii) of clause (b) is different. The former relates to a positive state of affairs whereas the latter lays down negative conditions. The word "or" is often used to express an alternative of terms defined or explanation of the same thing in different words. Therefore, if either of the two negative conditions which are to be found in sub- clause (b)(iii) remains unfulfilled, the conditions laid down in the entire clause cannot be said to have been satisfied. The clear import of the opening part of clause (b) with the word "and" appearing there read with the negative or disqualifying conditions in sub-clause (b)(iii) is that the assessee was bound to satisfy apart from the conditions contained in the other sub- clauses that its affairs were at no time during the previous year controlled by less than six persons and shares carrying more than 50 per cent of the total voting power were during the same period not held by less than six persons. We are unable to find any infirmity in the reasoning or the conclusion of the Tribunal and the High Court so far as question 1 is concerned." It was observed that if either of the two negative conditions, which are to be found in Sub-clause (b)(iii), remains unfulfilled, the conditions laid down in the entire clause cannot be said to have been satisfied.

98. It would also be useful to note that in Brown & Co. v. Harrison75, the provisions contained in Carriage of Goods by Sea Act, 1924 came up for consideration before the Court of Appeal. The Court held that the word "or" in Article IV, R 2 (q), must be read conjunctively and not disjunctively. It has been observed that quite commonly collation of the words "or" can be meant in conjunctive sense and certainly where the disjunctive use of the word, leads to repugnance or absurdity. 75 (1927) All ER Rep 195 pp. 203, 204 (CA)

99. In this Court's considered view, as regards the collation of the words used in Section 24(2), two negative conditions have been prescribed. Thus, even if one condition is satisfied, there is no lapse, and this logically flows from the Act of 1894 read with the provisions of Section 24 of the Act of 2013. Any other interpretation would entail illogical results. That apart, if the rule of interpretation with respect to two negative conditions qualified by "or" is used, then "or" should be read as "nor" or "and". Brown & Co. v. Harrison (supra), ruled thus, about the interpretation of two negative conditions connected by the word "or":

> ".....I think it quite commonly and grammatically can have a conjunctive sense. It is generally disjunctive, but it may be plain from the collation of words that it is meant in a conjunctive sense, and certainly where the use of the word as a disjunctive leads to repugnance or absurdity, it is quite within the ordinary principles of construction adopted by the court to give the word a conjunctive use. Here, it is quite plain that the word leads to an absurdity, because the contention put forward by the shipowners in this matter amounts to this, as my Lord said, that, if a shipowner himself breaks open a case and steals the contents of it, he is exempted from liability under r 2(q) if none of his servants stole the part of the case or broke it open. That seems to me to be a plain absurdity. In addition to that, there is a repugnancy because it is plainly repugnant to the second part of r 2(q). Therefore I say no more about that."

100. In Federal Steam Navigation Co. Ltd. v. Department of Trade and Industry76, the then House of Lords ruled as follows:

> "If all these meanings are rejected, there remains the course of treating "or" as expressing a non-exclusionary alternative – in modern logic symbolised by "v." In lawyer's terms, this may be described as the course of substituting "and" for "or," rather the course of redrafting the phrase so as to read: "the owner and the master shall each be guilty," or, if the phrase of convenience were permitted "the owner and/or the master." To substitute "and" for "or" is a strong and exceptional interference with a legislative text, and in a penal statute, one must be even more convinced of its 76 1974 (1) WLR 505 necessity. It is surgery rather than therapeutics. But there are sound precedents for so doing: my noble and learned friend, Lord Morris of Borth-y-Gest, has mentioned some of the best known:
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> they are sufficient illustrations and I need not re-state them. I would add, however, one United States case, a civil case, on an Act concerning seamen of 1915. This contained the words: "Any failure of the master shall render the master or vessel or the owner of the vessel liable in damages." A District Court in Washington D.C. read "or" as "and" saying that there could not have been any purpose or intention on the part of Congress to compel the seamen to elect as to which to pursue and thereby exempt the others from liability – The Blakeley, 234 Fed. 959. Although this was a civil, not a criminal case, I find the conclusion and the reasoning reassuring."

101. In M/s. Ranchhoddas Atmaram and Anr. v. The Union of India and Ors.77, a Constitution Bench of this Court observed that if there are two negative conditions, the expression "or" has to be read as conjunctive and conditions of both the clauses must be fulfilled. It was observed:

> "(13) It is clear that if the words form an affirmative sentence, then the condition of one of the clauses only need be fulfilled. In such a case, "or" really means "either" "or." In the Shorter Oxford Dictionary one of the meanings of the word "or" is given as "A particle co-ordinating two (or more) words, phrases or clauses between which there is an alternative." It is also there stated, "The alternative expressed by "or" is emphasised by prefixing the first member or adding after the last, the associated adv. EITHER." So, even without "either," "or" alone creates an alternative. If, therefore, the sentence before us is an affirmative one, then we get two alternatives, any one of which may be chosen without the other being considered at all. In such a case it must be held that a penalty exceeding Rs. 1,000 can be imposed.
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> (14) If, however, the sentence is a negative one, then the position becomes different. The word "or" between the two clauses would then spread the negative influence over the clause following it.

This rule of grammar is not in dispute. In such a case the conditions of both the clauses must be fulfilled and the result would be that the penalty that can be imposed can never exceed Rs. 1,000.

(15) The question then really comes to this: Is the sentence before us a negative or an affirmative one? It seems to us that the sentence is an affirmative sentence. The substance of the sentence is

that a certain person shall be liable to a penalty. That 77 AIR 1961 SC 935 is a positive concept. The sentence is therefore not negative in its import." (emphasis supplied) Thus, for lapse of acquisition proceedings initiated under the old law, under Section 24(2) if both steps have not been taken, i.e., neither physical possession is taken, nor compensation is paid, the land acquisition proceedings lapse. Several decisions were cited at Bar to say that "or" has been treated as "and" and vice versa. Much depends upon the context. In Prof. Yashpal & Ors. v. State of Chhattisgarh & Ors.78, the expression "established or incorporated" was read as "established and incorporated." In R.M.D.C (supra), to give effect to the clear intention of the Legislature, the word "or" was read as "and."

102. In Ishwar Singh Bindra (supra) it was observed that:

> "11. Now if the expression "substances" is to be taken to mean something other than "medicine" as has been held in our previous decision it becomes difficult to understand how the word "and" as used in the definition of drug in S. 3(b)(i) between "medicines" and "substances" could have been intended to have been used conjunctively. It would be much more appropriate in the context to read it disconjunctively. In Stroud's Judicial Dictionary, 3rd Edn. it is stated at page 135 that "and" has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of or. Sometimes, however, even in such a connection, it is, by force of a contexts, read as "or." Similarly, in Maxwell on Interpretation of Statutes, 11th Edn., it has been accepted that "to carry out the intention of the legislature it is occasionally found necessary to read the conjunctions "or" and "and' one for the other."

103. In Joint Director of Mines Safety v. Tandur and Nayandgi Stone Quarries (P) Ltd79, "and" was read disjunctively considering the legislative intent. In Samee Khan (supra), the term "and" was construed 78 (2005) 5 SCC 420 79 (1987) 3 SCC 308 as "or" to carry out the legislative intention. In Mobilox Innovations Private Limited (supra), similar observations were made. In Green v. Premier Glynrhonwy State Co. L.R80, it has been laid down that sometimes word "or" read as "and" and vice versa, but does not do so unless it becomes necessary because "or" does not generally mean "and" and "and" does not generally mean "or".

104. In R.M.D.C. (supra) the definition under Section 2(1)(d) came up for consideration. The qualifying clause consisted of two parts separated from each other by the disjunctive word "or". Both parts of the qualifying clause indicated that each of the five kinds of prize competitions that they qualified were of a gambling nature. The court held considering the apparent intention of the legislature, it has perforce to read the word "or" as "and". In Tilkayat Shri Govindlalji Maharaj etc. v State of Rajasthan & Ors81, this Court considered the composition of the Board prescribed under Section 5. The expressions used were not belonging to professing the Hindu religion or not belonging to the Pushti-Margiya Vallabhi Sampradaya. Two negative conditions were used. This Court has observed that "or" in clause (g) dealing with disqualification must mean "and". The relevant portion of the same is extracted hereunder:

> "(39) ...The composition of the Board has been prescribed by Section 5; it shall consist of a President, the Collector of Udaipur District, and nine other members. The proviso to the section is important: it says that the Goswami shall be one of such 80 (1928) 1 KB 561 81 AIR 1963 SC 1638 members if he is not otherwise disqualified to be a member and is willing to serve as such. Section 5(2) prescribes the disqualifications specified in clauses (a) to (g) – unsoundness of mind adjudicated upon by competent court, conviction involving moral turpitude; adjudication as an insolvent or the status of an undischarged insolvent; minority, the defect of being deaf-mute or leprosy; holding an office or being a servant of the temple or being in receipt or any emoluments or perquisites from the temple;

being interested in a subsisting contract entered into with the temple; and lastly, not professing the Hindu religion or not belonging to the Pushti-MargiyaVallabhi Sampradaya. There can be no doubt that "or" in clause (g) must mean "and," for the context clearly indicates that way. There is a proviso to Section 5(2) which lays down that the disqualification as to the holding of an office or an employment under the temple shall not apply to the Goswami and the disqualification about the religion will not apply to the Collector; that is to say, a Collector will be a member of the Board even though he may not be a Hindu and a follower of the denomination. Section 5(3) provides that the President of the Board shall be appointed by the State Government and shall for all purposes be deemed to be a member. Under Section 5(4) the Collector shall be an ex-officio member of the Board. Section 5(5) provides that all the other members specified in sub-clause (1) shall be appointed by the State Government so as to secure representation of the Pushti-Margiya Vaishnavas from all over India. This clearly contemplates that the other members of the Board shall not only be Hindus, but should also belong to the denomination, for it is in that manner alone that their representation can be adequately secured." (emphasis supplied)

105. In Prof. Yashpal (supra), the word "or" occurring in the expression "established or incorporated" was read as "and" so that the State enactment did not come in conflict with the Central legislation and create any hindrance or obstacle in the working of the latter. This court has observed:

> "59. Shri Rakesh Dwivedi has also submitted that insofar as private universities are concerned, the word "or" occurring in the expression "established or incorporated" in Sections 2(f), 22 and 23 of the UGC Act should be read as "and." He has submitted that the normal meaning of the word "established" is to bring into existence. In order to avoid the situation which has been created by the impugned enactment where over 112 universities have come into existence within a short period of one year of which many do not have any kind of infrastructure or teaching facility, it will be in consonance with the constitutional scheme that only after establishment of the basic requisites of a university (classrooms, library, laboratory, offices, and hostel facility, etc.) that it should be incorporated and conferred a juristic personality.

The word "or" is normally disjunctive and "and" is normally conjunctive, but at times, they are read vice versa to give effect to the manifest intentions of the legislature, as disclosed from the context. If

literal reading of the word produces an unintelligible or absurd result, "and" maybe read for "or" and "or" maybe read for "and." (See Principles of Statutory Interpretation by G.P. Singh, 7th Edn., p. 339 and also State of Bombay v. R.M.D. Chamarbaugwala, AIR 1957 SC 699, AIR at p. 709 and Mazagaon Dock Ltd. v. CIT, AIR 1958 SC 861) We are of the opinion that having regard to the constitutional scheme and in order to ensure that the enactment made by Parliament, namely, the University Grants Commission Act is able to achieve the objective for which it has been made and UGC is able to perform its duties and responsibilities, and further that the State enactment does not come in conflict with the Central legislation and create any hindrance or obstacle in the working of the latter, it is necessary to read the expression “established or incorporated” as “established and incorporated” insofar as the private universities are concerned.” (emphasis supplied)

106. Reference has also been made to Pooran Singh v. State of M.P82, in which the Court considered the scheme of the M.V. Act. The magistrate was bound to issue summons of the nature prescribed by sub-section (1) of Section 130. The Court held that there was nothing in the sub- section which indicated that he must endorse the summons in terms of both the clauses (a) and (b), that he is so commanded would be to convert the conjunction 'or' into 'and'. There is nothing in the language of the legislature which justifies such a conversion and there are adequate reasons which make such an interpretation wholly inconsistent with the scheme of the Act.

107. Reliance has been placed on Sri Nasiruddin v. State Transport Appellate Tribunal83. The word 'or' was given grammatical meaning. The 82 1965 (2) SCR 853 83 1975 (2) SCC 671 order states that the High Court shall sit as the new High Court and the Judges and Division Bench thereof shall sit at Allahabad or at such other places in the United Provinces as the Chief Justice may appoint. It was held that the word 'or' cannot be read as 'and'. They should be considered in an ordinary sense. If two different interpretations are possible, the court will adopt that which is just, reasonable and sensible. The Court observed thus:

> "27. The conclusion as well as the reasoning of the High Court that the permanent seat of the High Court is at Allahabad is not quite sound. The order states that the High Court shall sit as the new High Court and the judges and Division Bench thereof shall sit at Allahabad or at such other places in the United Provinces as the Chief Justice may, with the approval of the Governor of the United Provinces, appoint. The word "or" cannot be read as "and”. If the precise words used are plain and unambiguous, they are bound to be construed in their ordinary sense. The mere fact that the results of a statute may be unjust does not entitle a court to refuse to give it effect. If there are two different interpretations of the words in an Act, the Court will adopt that which is just, reasonable and sensible rather than that which is none of those things. If the inconvenience is an absurd inconvenience, by reading an enactment in its ordinary sense, whereas if it is read in a manner in which it is capable, though not in an ordinary sense, there would not be any inconvenience at all; there would be reason why one should not read it according to its ordinary grammatical meaning. Where the words are plain, the Court would not make any alteration."

108. In Municipal Corporation of Delhi v. Tek Chand Bhatia 84, for interpretation of 'and' and 'or' in the context of the term ‘adulterated’ as defined in section 2(i)(f), the Court observed:

> “7. We are of the opinion that the High Court was clearly wrong in its interpretation of Section 2(i)(f). On the plain language of the definition section, it is quite apparent that the words "or is otherwise unfit for human consumption" are disjunctive of the rest of the words preceding them. It relates to a distinct and separate class altogether. It seems to us that the last clause "or is otherwise unfit for human consumption" is residuary provision, which would apply to a case not covered by or falling squarely 84 (1980) 1 SCC 158 within the clauses preceding it. If the phrase is to be read disjunctively the mere proof of the article of food being "filthy, putrid, rotten, decomposed . . . or insect-infested" would be per se sufficient to bring the case within the purview of the word "adulterated" as defined in sub-clause (f), and it would not be necessary in such a case to prove further that the article of food was unfit for human consumption.
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> ***
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> 11. In the definition clause, the collection of words "filthy, putrid, rotten, decomposed and insect-infested," which are adjectives qualifying the term "an article of food," show that it is not of the nature, substance, and quality fit for human consumption. It will be noticed that there is a comma after each of the first three words. It should also be noted that these qualifying adjectives cannot be read into the last portion of the definition i.e., the word' "or is otherwise unfit for human consumption," which is quite separate and distinct from others. The word "otherwise" signifies unfitness for human consumption due to other causes. If the last portion is meant to mean something different, it becomes difficult to understand how the word "or" as used in the definition of "adulterated" in Section 2(i)(f) between "filthy, putrid, rotten, etc."

and "otherwise unfit for human consumption" could have been intended to be used conjunctively. It would be more appropriate in the context to read it disjunctively. In Stroud’s Judicial Dictionary, 3rd Edn., Vol. 1, it is stated at p. 135:

> “And” has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of “or”. Sometimes, however, even in such a connection, it is, by force of a context, read as “or”. While dealing with the topic 'OR is read as AND, and vice versa’, Stroud says in Vol. 3, at p. 2009:
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> "You will find it said in some cases that 'or' means 'and'; but 'or' never does mean 'and’.
>
> Similarly, in Maxwell on Interpretation of Statutes, 11th Edn., pp. 229-30, it has been accepted that "to carry out the intention of the legislature, it is occasionally found necessary to read the conjunctions 'or' and 'and' one for the other." The word "or" is

> normally disjunctive and "and" is normally conjunctive, but at times they are read as vice versa. As Scrutton, L.J. said in Green v. Premier Glynrhonwy State Co., LR (1928) 1 KB 561, 568: "You do sometimes read "or" as "and" in a statute . . . . But you do not do it unless you are obliged, because "or" does not generally mean "and" and "and" does not generally mean "or." As Lord Halsbury L.C. observed in Mersey Docks & Harbour Board v. Henderson, LR (1888) 13 AC 603, the reading of "or" as "and" is not to be resorted to "unless some other part of the same statute or the clear intention of it requires that to be done." The substitution of conjunctions, however, has been sometimes made without sufficient reasons, and it has been doubted whether some of the cases of turning "or" into "and" and vice versa have not gone to the extreme limit of interpretation."

109. In State of Punjab v. Ex-Constable Ram Singh85, 'or' was read as 'nor' and not as 'and' in the context of Section 2 of the Armed Forces Special Powers Act, 1948. In Naga People's Movement of Human Rights (supra), the Court held that the language of section 4(a) does not support the said construction.

110. In Marsey Docks and Harbour Board v. Coggins and Griffith (Liverpool) Ltd.86, the Court observed as follows: (at page 603) "...unless the context makes the necessary meaning of "or" "and,"

> as in some instances it does; but I believe it is wholly unexampled so to read it when doing so will upon one construction entirely alter the meaning of the sentence unless some other part of the same statute or the clear intention of it requires that to be done,.....It may indeed be doubted whether some of the cases of turning "or" into "and" and vice versa have not gone to the extreme limit of interpretation, but I think none of them would cover this case."

111. In Re Hayden Pask v. Perry87, the expression "or their issue" had been considered, and it was observed that the words "or their issue"

> must be read as words of limitation and not of substitution. The word "or" was construed to mean "and." The learned SG placed reliance on the Queen's Bench decision in Metropolitan Board of Works v. Street Bros88 to submit that the issue was whether, in terms of its grammatical meaning, if two things were prohibited, both were permitted and not merely permitted in the alternative. It would have been more strictly 85 (1992) 4 SCC 54 86 LR (AC) Vol.XIII 1888 595 87 (1931) 2 Ch.333 88 (1881) VIII QBD 445 grammatical to have written "nor" instead of "or." The following discussion was made in the decision:
>
> "Dec.13. GROVE, J. The main question before us turns on the meaning of the word "or," used in 25 & 26 Vict. c. 102, s.98. Read shortly, s. 98 enacts that no existing road, passage or way, shall be hereafter formed or laid out for carriage traffic unless such road shall be forty feet wide, or for the purposes of foot traffic, unless such road be of the width of twenty feet, or unless such streets respectively shall be open at both

> ends. The question is whether that word "or" should be read in the disjunctive or conjunctive, or perhaps read as either "and" or "nor:" I think it means "nor;" that is to say, that the two things comprised in the prohibition are both prohibited, and not merely prohibited in the alternative. If the sense which I attribute to the word is right, it would have been more strictly grammatical to have written "nor"

instead of "or." But I think that the meaning of the enactment is that the road must be of the width specified, and that no road shall be allowed unless it is of the width specified, nor unless it is open at both ends. That seems to me to be the object of the statute, which was passed for sanitary purposes, and also for the purpose of comfort and traffic.

It was contended that the object of the provision is sanitary only, and that if a street is forty feet wide, or if however narrow, it is open at both ends, good ventilation is secured. But a very long narrow street would hardly be more salubrious with both ends open than if one end were closed and the street were a cul de sac.

Our construction of the Act is according to the ordinary use of language, although it may not be strictly grammatical. We might have referred to authorities by good writers, shewing that where the word "or" is preceded by a negative or prohibitory provision, it frequently has a different sense from that which it has when it is preceded by an affirmative provision. For instance, suppose an order that "you must have your house either drained or ventilated." The word "or" would be clearly used in the alternative. Suppose again, the order was that "you must have your house drained or ventilated," that conveys the idea to my mind that you must have your house either drained or ventilated. But supposing the order were that "you must not have your house undrained or unventilated." The second negative words are coupled by the word "or," and the negative in the preceding sentence governs both. In s. 98 there is a negative preceding a sentence; "no existing road" shall be formed as a street for carriage traffic unless such road be widened to forty feet, or for the purposes of foot traffic only unless such road or way be widened to the width of twenty feet, "or" unless such streets shall be open at both ends. Probably, if the word "or" in the sentence, "or for purposes of foot traffic only," had been written "nor," the language there too would have been more clear and more decidedly prohibitory; but with regard to the sentence "or unless such streets shall be open at both ends" I think that by reading the word "or" as "nor" we carry out the intention of the Act, which was to have streets of a proper width and properly opened at both ends, and that there should not be incommodious and unhealthy cross streets which are culs de sac, shut up at one end.

There have been frequently cases on the construction of statutes where the Courts have held “or” to mean “and,” taking the rest of the sentence in which the word “or” occurred, the object and intention being prohibition, and the two things prohibited being coupled by the word “or.” I think the prohibition in s.98 relates to both the width and open ending of streets. The street must be both of the width prescribed and also open at both ends.”

112. Section 24(2) of the Act of 2013 is, in our opinion, a penal provision - to punish the acquiring authority for its lethargy in not taking physical possession nor paying the compensation after making the award five years or more before the commencement of the Act of 2013 in pending

proceedings, providing that they would lapse. The expression where an award has been made, then the proceedings shall continue used in Section 24(1)(b) under the provisions of the Act of 1894 means that proceedings were pending in praesenti as on the date of enforcement of the Act of 2013 are not concluded proceedings, and in that context, an exception has been carved out in section 24(2).

113. Even if possession has been taken, despite which payment has not been made nor deposited, (for the majority of the land-holdings), then all beneficiaries holding land on the date of notification under Section 4 of the Act of 1894, are to be paid compensation under the provisions of the Act of 2013. Section 24 of the Act of 2013 frowns upon indolence and stupor of the authorities. The expression "possession of the land has not been taken" or "compensation has not been paid" indicates a failure on the part of the authorities to take the necessary steps for five years or more in a pending proceeding under Section 24(1)(b). Section 24(2) starts with a non-obstante clause overriding what is contained in Section 24(1). Thus, Section 24(2) has to be read as an exception to Section 24(1)(b). Similarly, the proviso has to be read as a proviso to Section 24(2) for the several reasons to be discussed hereafter. Parliament enacted a beneficial provision in case authorities delayed in taking of the possession for more than five years nor paid compensation, meaning thereby acquisition has not been completed. Section 24(2) clearly contemplates inaction on the part of the authorities not as a result of the dilatory tactics and conduct of the landowners or other interested persons.

114. There are other reasons to read the word 'or' in Section 24 as 'and.' When we consider the scheme of the Act of 1894, once the award was made under Section 11, the Collector may, undertake possession of the land which shall thereupon vest absolutely in the Government free from all encumbrances. Section 16 of the Act of 1894 enables the Collector to take possession of acquired land, when an award is made under Section 11. Section 17(1) of the Act of 1894 confers special powers in cases of urgency. The Collector could, on the expiration of 15 days from the publication of notice under Section 9(1), take possession of any land needed for a public purpose and such land was to thereupon vest absolutely in the Government, free from all encumbrances. Under Section 17(3A) before taking possession, the Collector had to tender payment of 80% of the compensation, as estimated by him and also had to pay the landowners or to persons interested, unless prevented by exigencies mentioned in Section 31(2). It is also provided in sub-section (3B) of Section 17 of the Act of 1894 that the amount paid or deposited under Section 17(3A) shall be taken into account for determining the compensation required to be tendered under Section 31.

115. It is apparent from a plain reading of Section 16 (of the Act of 1894) that the land vests in the Government absolutely when possession is taken after the award is passed. Clearly, there can be lapse of proceedings under the Act of 1894 only when possession is not taken. The provisions in Section 11A of the Act of 1894 states that the Collector shall make an award within a period of two years from the date of the publication of the declaration under Section 6 and if no award is made within two years, the entire proceedings for acquisition of the land shall lapse. The period of two year excludes any period during which interim order granted by the Court was in operation. Once an award is made and possession is taken, by virtue of Section 16, land vests absolutely in the State, free from all encumbrances. Vesting of land is automatic on the happening of the two exigencies of

passing award and taking possession, as provided in Section 16. Once possession is taken under Section 16 of the Act of 1894, the owner of the land loses title to it, and the Government becomes the absolute owner of the land.

116. Payment of compensation under the Act of 1894 is provided for by Section 31 of the Act, which is to be after passing of the award under Section 11. The exception, is in case of urgency under Section 17, is where it has to be tendered before taking possession. Once an award has been passed, the Collector is bound to tender the payment of compensation to the persons interested entitled to it, as found in the award and shall pay it to them unless "prevented" by the contingencies mentioned in sub-section (2) of Section 31. Section 31(3) contains a non- obstante clause which authorises the Collector with the sanction of the appropriate Government, in the interest of the majority, by the grant of other lands in exchange, the remission of land revenue on other lands or in such other way as may be equitable.

117. Section 31(1) enacts that the Collector has to tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay such amount to a person interested in the land, unless he (the Collector) is prevented from doing so, for any of the three contingencies provided by sub-section (2). Section 31 (2) provides for deposit of compensation in Court in case State is prevented from making payment in the event of (i) refusal to receive it; (ii) if there be no person competent to alienate the land; (iii) if there is any dispute as to the title to receive the compensation; or (iv) if there is dispute as to the apportionment. In such exigencies, the Collector shall deposit the amount of the compensation in the court to which a reference under Section 18 would be submitted.

118. Section 34 deals with a situation where any of the obligations under Section 31 is not fulfilled, i.e., when the amount of 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 9% per annum from the time of so taking possession until it shall have been so paid or deposited; and after one year from the date on which possession is taken, interest payable shall be at the rate of 15% per annum. The scheme of the Act of 1894 clearly makes it out that when the award is passed under Section 11, thereafter possession is taken as provided under Section 16, land vests in the State Government. Under Section 12(2), a notice of the award has to be issued by the Collector. Taking possession is not dependent upon payment. Payment has to be tendered under Section 31 unless the Collector is "prevented from making payment," as provided under section 31(2). In case of failure under Section 31(1) or 31(3), also Collector is not precluded from making payment, but it carries interest under Section 34 @ 9% for the first year from the date it ought to have been paid or deposited and thereafter @ 15%. Thus, once land has been vested in the State under Section 16, in case of failure to pay the compensation under Section 31(1) to deposit under Section 31(2), compensation has to be paid along with interest, and due to non- compliance of Section 31, there is no lapse of acquisition. The same spirit has been carried forward in the Act of 2013 by providing in Section 24(2). Once possession has been taken though the payment has not been made, the compensation has to be paid along with interest as envisaged under section 34, and in a case, payment has been made, possession has not been taken, there is no lapse under Section 24(2). In a case where possession has been taken under the Act of 1894 as provided by Section 16 or 17(1) the land vests absolutely in the State, free

from all encumbrances, if compensation is not paid, there is no divesting there will be no lapse as compensation carries interest @ 9% or @ 15% as envisaged under Section 34 of the Act of 1894. Proviso to Section 24(2) makes some wholesome provision in case the amount has not been deposited with respect to majority of landholdings, in such an event, not only those persons but all the beneficiaries, though for minority of holding compensation has been paid, shall be entitled to higher compensation in accordance with the provisions of the Act of 2013. The expression used is "all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act", i.e., Act of 1894, means that the persons who are to be paid higher compensation are those who have been recorded as beneficiaries as on the date of notification under Section 4. The proviso gives effect to, and furthers the principle that under the Act of 1894, the purchases made after issuance of notification under Section 4 are void. As such, the benefit of higher compensation under the proviso to Section 24(2) is intended to be given to the beneficiaries mentioned in the notification under Section 4 of the Act of 1894.

119. It is apparent from the Act of 1894 that the payment of compensation is dealt with in Part V, whereas acquisition is dealt with in Part II. Payment of compensation is not made pre-condition for taking possession under Section 16 or under Section 31 read with Section 34. Possession can be taken before tendering the amount except in the case of urgency, and deposit (of the amount) has to follow in case the Collector is prevented from making payment in exigencies as provided in Section 31(3). What follows is that in the event of not fulfilling the obligation to pay or to deposit under Section 31(1) and 31(2), the Act of 1894 did not provide for lapse of land acquisition proceedings, and only increased interest follows with payment of compensation.

120. The terms of object clause No. 18 (of the Statement of Objects and Reasons) to the Act of 2013 reveals that the option of taking possession (of acquired land) upon making of an award the new law would be available in the cases of land acquisition under the Act of 1894 where award has not been made, or possession of land has not been taken. It is apparent that the benefits under the Act of 2013 envisage that where the award had not been made, or award has been made, but possession has not been taken (because once possession is taken, land is vests in the State) there can be lapse of acquisition. No doubt about that payment is also to be made: that issue is taken care of by the provision of payment of interest under Section 34: also, in case of non-deposit- in respect of majority of holdings in a given award, higher compensation under the Act of 2013 has to be paid to all beneficiaries as on the date of notification under Section 4 issued under the Act of 1894. There is nothing in the Statement of Objects and Reasons making specific reference to non-payment of compensation where an award has been made, and possession has been taken. While interpreting the provisions of an Act, the court to consider the objects and reasons of the legislature, which the legislature had in mind also emphasised that once vesting is complete, there is no divesting as held in Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate 89, thus:

> "(9) A little careful consideration will show, however, that the expression "any person" occurring in the third part of the definition clause cannot mean anybody and everybody in this wide world. First of all, the subject matter of dispute must relate to (i) employment or non-employment or (ii) terms of employment or conditions of labour of any person; these necessarily import a limitation in the sense that a person

> in respect of whom the employer-employee relation never existed or can never possibly exist cannot be the subject matter of a dispute between employers and workmen. Secondly, the definition clause must be read in the context of the subject matter and scheme of the Act, and consistently with the objects and other provisions of the Act. It is well settled that "the words of a statute, when there is a doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained." (Maxwell, Interpretation of Statutes, 9th Edition, p. 55).” 89 1958 SCR 1156

121. In Mukesh K. Tripathi v. Senior Divisional Manager, LIC & Ors.90, the decision in Workmen of Dimakuchi Estate (supra) was reiterated, on the issue of discerning the object of an enactment.

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

123. The provision for lapsing under Section 24 is available only when the award has been made, but possession has not been taken within five years, nor compensation has been paid. In case word 'or' is read disjunctively, proceedings shall lapse even after possession has been taken in order to prevent lapse of land acquisition proceedings, once the 90 (2004) 8 SCC 387 land has vested in the Government and in most cases, development has already been made. The expressions used in Section 24(2) “possession of the land has not been taken” and “the compensation has not been paid” are unrelated and carry different consequences under the Act of 1894. As already discussed above, these conditions are merely exclusive conditions and cannot be used as alternative conditions. There is a catena of cases where compensation has been paid, but possession has not been taken due to one reason or the other for no fault of authorities or otherwise, and there are cases where possession is taken, but compensation has not been paid.

124. Section 24 of the Act of 2013 is to be given full effect. Section 24(2) has been carved out as an exception to the otherwise general applicability of the provisions contained in Section 6 of the General Clauses Act and Section 24(1)(a) and (b) apply to the proceedings which are pending. Sub-section (2) is an exception to sub-section (1) which reads: "Notwithstanding anything contained in sub-section (1)” where an award has been made, but possession has not been taken nor compensation has been paid, an exception has been carved in Section 24 where an award has been

passed, but no steps have been taken to take the possession nor payment of compensation has been made in pending proceedings under Section 24(1). The provision has to be construed in the spirit behind what is saved under Section 6 (of the General Clauses Act) as provided in Section 114 of the Act of 2013 and the non-obstante clause in Section 24(2).

125. It was also submitted on behalf of the States that neither a transitory provision nor a repealing law could be interpreted so as to take away, disturb or adversely affect rights created by operation of law. It cannot divest the State Government of the land absolutely vested in it. Reliance has been placed on K.S. Paripoornan v. State of Kerala & Ors91 thus:

> "12. It is further necessary to bear in mind that the amending Act has added, among others, the provisions of Section 23(1-A) and Section 28-A and has amended the provisions of Section 23(2). It has also made independent transitional provision in its Section
>
> 30. The relevant provisions of Section 30 read as follows:
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> 30. Transitional provisions.— (1) The provisions of sub-section (1-

A) of Section 23 of the principal Act, as inserted by clause (a) of Section 15 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to,—

(a) every proceeding for the acquisition of any land under the principal Act pending on 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982 in the House of the People], in which no award has been made by the Collector before that date;

(b) every proceeding for the acquisition of any land under the principal Act commenced after that date, whether or not an award has been made by the Collector before the date of commencement of this Act.

(2) The provisions of sub-section (2) of Section 23 and Section 28 of the principal Act, as amended by clause (b) of Section 15 and Section 18 of this Act respectively, shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of the principal Act after the 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People] and before the commencement of this Act.

The date of the introduction of the Bill of the amending Act is 30- 4-1982 and the date of its commencement is 24-9-1984. 91 1994 (5) SCC 593 ***

38. The transitional provision is by its very nature an enabling one and has to be interpreted as such. In the present case, it is made to take care of the period between 30-4-1982 and 24-9- 1984, i.e., between the date of the introduction of the Bill of the amending Act and the date of the

commencement of the Act. Since some awards might have been made by the Collector and the reference Court during the said interregnum, the legislature did not want to deprive the awardees concerned either of the newly conferred benefit of Section 23(1-A) or of the increased benefit under Sections 23(2) and 28. The second object was to enable the Collector and the Court to give the said benefits in the proceedings pending before them where they had not made awards. The only limitation that was placed on the power of the Collector in this behalf was that he should not reopen the awards already made by him in proceedings which were pending before him on 30-4- 1982 to give the benefit of Section 23(1-A) to such awardees. This was as stated earlier, for two reasons. If the said awards are pending before the reference Court on the date of the commencement of the amending Act, viz., 24-9-1984, the reference Court would be able to give the said benefit to the awardees. On the other hand, if the awardees in question had accepted the awards, the same having become final, should not be reopened. As regards the increased benefit under Sections 23(2) and 28, the intention of the legislature was to extend it not only to the proceedings pending before the reference Court on 24- 9-1984 but also to those where awards were made by the Collector and the reference Courts between 30-4-1982 and 24-9- 1984. Hence these awards could not only be reopened but if they were the subject-matter of the appeal before High Courts or the Supreme Court, the appellate orders could also be reopened to extend the said benefits.

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71. Section 30 of the amending Act bears the heading "Transitional provisions." Explaining the role of transitional provisions in a statute, Bennion has stated:

> “Where an Act contains substantive, amending or repealing enactments, it commonly also includes transitional provisions which regulate the coming into operation of those enactments and modify their effect during the period of transition. Where an Act fails to include such provisions expressly, the court is required to draw inferences as to the intended transitional arrangements as, in the light of the interpretative criteria, it considers Parliament to have intended.” (Francis Bennion: Statutory Interpretation, 2nd Edn., p. 213) The learned author has further pointed out:
>
> “Transitional provisions in an Act or other instrument are provisions which spell out precisely when and how the operative parts of the instrument are to take effect. It is important for the interpreter to realise, and bear constantly in mind, that what appears to be the plain meaning of a substantive enactment is often modified by transitional provisions located elsewhere in the Act.” (p. 213) Similarly Thornton in his treatise on Legislative Drafting [3rd Edn., 1987, p. 319 quoted in Britnell v. Secretary of State for Social Security, (1991) 2 All ER 726, 730 Per Lord Keith], has stated: “The function of a transitional provision is to make special provision for the application of legislation to the circumstances which exist at the time when that legislation comes into force.” For the purpose of ascertaining whether and, if so, to what extent the provisions of sub-section (1-A) introduced in Section 23 by the amending Act are applicable to proceedings that were pending on the date of the commencement of the amending Act it is necessary to read Section 23(1-A) along

with the transitional provisions contained in sub-section (1) of Section 30 of the amending Act." (emphasis supplied)

126. For interpretation of repeal and saving clauses, reliance has been placed on Milkfood Ltd. v. GMC Ice Cream (P) Ltd92 thus:

"70. Section 85 of the 1996 Act repeals the 1940 Act. Sub-section (2) of Section 85 provides for a non-obstante clause. Clause (a) of the said sub-section provides for saving clause stating that the provisions of the said enactments shall apply in relation to arbitral proceedings which commenced before the said Act came into force. Thus, those arbitral proceedings which were commenced before coming into force of the 1996 Act are saved and the provisions of the 1996 Act would apply in relation to arbitral proceedings which commenced on or after the said Act came into force. Even for the said limited purpose, it is necessary to find out as to what is meant by commencement of arbitral proceedings for the purpose of the 1996 Act wherefor also necessity of reference to Section 21 would arise. The court is to interpret the repeal and savings clauses in such a manner so as to give a pragmatic and purposive meaning thereto. It is one thing to say that commencement of arbitration proceedings is dependent upon the facts of each case as that would be subject to the agreement between the parties. It is also another thing to say that the expression "commencement of arbitration proceedings" must be understood having regard to the context in which the same is used; but it would be a totally different thing to say that the arbitration proceedings commence only for the purpose of limitation upon issuance of a notice and for no other purpose. The statute does not say so. Even the case-laws do not suggest the same. On the contrary, the decisions of this Court operating in the field beginning from Shetty's Constructions Co. (P) Ltd. v. Konkan Rly. Construction, (1998) 5 SCC 599 are ad idem to the effect that Section 21 must be taken recourse to for the purpose of interpretation of Section 85(2)(a) of the Act. There is no reason, even if two views are possible, to make a departure from the decisions of this Court as referred to hereinbefore.

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105. In the present matter, one is concerned with transitional provision i.e. Section 85(2)(a) which enacts as to how the statute 92 2004 (7) SCC 288 will operate on the facts and circumstances existing on the date it comes into force and, therefore, the construction of such a provision must depend upon its own terms and not on the basis of Section 21 (see Singh, G.P.: Principles of Statutory Interpretation, 8th Edn., p. 188). In Thyssen Stahlunion GMBH v. Steel Authority of India Ltd., (1999) 9 SCC 334 Section 48 of the old Act and Section 85(2)(a) of the 1996 Act came for consideration. It has been held by this Court that there is a material difference between Section 48 of the 1940 Act, which emphasised the concept of "reference" vis-à-vis Section 85(2)(a) of the 1996 Act which emphasises the concept of "commencement"; that there is a material difference in the scheme of the two Acts; that the expression "in relation to" appearing in Section 85(2)(a) refers to different stages of arbitration proceedings under the old Act; and lastly, that Section 85(2)(a)

provides for limited repeal of the 1940 Act, therefore, I am of the view that one cannot confine the concept of "commencement" under Section 85(2)(a) only to Section 21 of the 1996 Act which inter alia provides for commencement of arbitral proceedings from the date on which a request to refer a particular dispute is received by the respondent. ....

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109. To sum up, in this case, the question concerns interpretation of transitional provisions; that Section 85(2)(a) emphasises the concept of "commencement" whereas Section 48 of the 1940 Act emphasised the concept of "reference"; that Section 85(2)(a) provides for implied repeal; that the scheme of the 1940 Act is different from the 1996 Act; that the word "reference" in Section 48 of the old Act had different meanings in different contexts; and for the said reasons, I am of the view that while interpreting Section 85(2)(a) in the context of the question raised in this appeal, one cannot rely only on Section 21 of the 1996 Act." (emphasis supplied)

127. Under Section 48 of the Act of 1894, withdrawal of the land acquisition proceedings was permissible only if the possession has not been taken under Section 16 or 17(1). Section 48(1) is extracted hereunder:

> "48. Completion of acquisition not compulsory, but compensation to be awarded when not completed. – (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.
>
> (2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land. (3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section." In case possession has been taken, there cannot be any withdrawal from the land acquisition proceedings under the Act of 1894.

128. Various decisions were referred on behalf of the State of Haryana that once possession has been taken and land has not been utilised, there cannot be withdrawal from the acquisition of any land. Land cannot be restituted to the owner after the stage of possession is over. Following decisions have been pressed into service:

> (a). In Gulam Mustafa & Ors (supra), it was observed:
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> "5. At this stage Shri Deshpande complained that actually the municipal committee had sold away the excess land marking them out into separate plots for a housing colony. Apart from the fact that a housing colony is a public necessity, once the

original acquisition is valid and title has vested in the municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the Section 6(3) declaration." Chandragauda Ramgonda Patil & Anr. (supra) when restitution of land was sought, on the basis of some Government resolutions, after possession had been taken, this observed thus:

"2... Since he had sought enforcement of the said government resolution, the writ petition could not be dismissed on the ground of constructive res judicata. He also seeks to rely upon certain orders said to have been passed by the High Court in conformity with enforcement of the government resolution. We do not think that this Court would be justified in making direction for restitution of the land to the erstwhile owners when the land was taken way back and vested in the Municipality free from all encumbrances. We are not concerned with the validity of the notification in either of the writ petitions. It is axiomatic that the land acquired for a public purpose would be utilised for any other public purpose, though use of it was intended for the original public purpose. It is not intended that any land which remained unutilised, should be restituted to the erstwhile owner to whom adequate compensation was paid according to the market value as on the date of the notification. Under these circumstances, the High Court was well justified in refusing to grant relief in both the writ petitions." (emphasis supplied) Again, in C. Padma & Ors. v. Dy. Secretary & Ors93, this court stated that:

"4. The admitted position is that pursuant to the notification published under Section 4(1) of the Land Acquisition Act, LA (for short "the Act") in GOR No. 1392 Industries dated 17-10-1962, total extent of 6 acres 41 cents of land in Madhavaram Village, Saidapet Taluk, Chengalpattu District in Tamil Nadu was acquired under Chapter VII of the Act for the manufacture of Synthetic Rasina by Tvl. Reichold Chemicals India Ltd., Madras. The acquisition proceedings had become final and possession of the land was taken on 30-4-1964. Pursuant to the agreement executed by the company, it was handed over to Tvl. Simpson and General Finance Co. which is a subsidiary of Reichold Chemicals India Ltd. It would appear that at a request made by the said company, 66 cents of land out of one acre 37 cents in respect of which the appellants originally had ownership, was transferred in GOMs No. 816 Industries dated 24-3-1971 in favour of another subsidiary company. Shri Rama Vilas Service Ltd., the 5th respondent which is also another subsidiary of the Company had requested for two acres 75 cents of land; the same came to be assigned on leasehold basis by the Government after resumption in terms of the agreement in GOMs No. 439 Industries dated 10-5-1985. In GOMs No. 546 Industries dated 30-3-1986, the same came to be approved of. Then the appellants challenged the original GOMs No. 1392 Industries dated 17-10-1962 contending that since the original purpose for which the land was acquired had ceased to be in operation, the appellants are entitled to restitution of

the possession taken from them. The learned Single Judge and the Division Bench have held that the acquired land having already vested in the State, after receipt of the compensation by the predecessor-in-title of the appellants, they have no right to challenge the notification. Thus the writ petition and the writ appeal came to be dismissed.

93 (1997) 2 SCC 627

5. Shri G. Ramaswamy, learned Senior Counsel appearing for the appellants, contends that when by operation of Section 44-B read with Section 40 of the Act, the public purpose ceased to be existing, the acquisition became bad and therefore, the GO was bad in law. We find no force in the contention. It is seen that after the notification in GOR 1392 dated 17-10-1962 was published, the acquisition proceeding had become final, the compensation was paid to the appellants' father and thereafter the lands stood vested in the State. In terms of the agreement as contemplated in Chapter VII of the Act, the Company had delivered possession subject to the terms and conditions thereunder. It is seen that one of the conditions was that on cessation of the public purpose, the lands acquired would be surrendered to the Government. In furtherance thereof, the lands came to be surrendered to the Government for resumption. The lands then were allotted to SRVS Ltd., 5th respondent which is also a subsidiary amalgamated company of the original company. Therefore, the public purpose for which acquisition was made was substituted for another public purpose. Moreover, the question stood finally settled 32 years ago and hence the writ petition cannot be entertained after three decades on the ground that either original purpose was not public purpose or the land cannot be used for any other purpose.

6. Under these circumstances, we think that the High Court was right in refusing to entertain the writ petition." (emphasis supplied) The decision in Northern Indian Glass Industries v. Jaswant Singh & Ors94 thus:

"9...There is no explanation whatsoever for the inordinate delay in filing the writ petitions. Merely because full enhanced compensation amount was not paid to the respondents, that itself was not a ground to condone the delay and laches in filing the writ petition. In our view, the High Court was also not right in ordering restoration of land to the respondents on the ground that the land acquired was not used for which it had been acquired. It is a well-settled position in law that after passing the award and taking possession under Section 16 of the Act, the acquired land vests with the Government free from all encumbrances. Even if the land is not used for the purpose for which it is acquired, the landowner does not get any right to ask for revesting the land in him and to ask for restitution of the possession. This Court as early as in 1976 in Gulam Mustafa v. State of Maharashtra, (1976) 1 SCC 800 in para 5 has stated thus: (SCC p. 802, para 5) "5. At this stage Shri Deshpande complained that actually the municipal committee had sold away the excess land marking them out into separate plots for a housing colony. Apart from the fact that a housing colony is a

public necessity, once the original acquisition is valid and title has vested in the municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no 94 (2003) 1 SCC 335 principle of law by which a valid compulsory acquisition stands voided because long after the requiring authority diverts it to a public purpose other than the one stated in the Section 6(3) declaration."" (emphasis supplied) Sita Ram Bhandar Society, New Delhi (supra)95 the Court observed that:

"28. A cumulative reading of the aforesaid judgments would reveal that while taking possession, symbolic and notional possession is perhaps not envisaged under the Act but the manner in which possession is taken must of necessity depend upon the facts of each case. Keeping this broad principle in mind, this Court in T.N. Housing Board v. A. Viswam, (1996) 8 SCC 259 after considering the judgment in Balwant Narayan Bhagde v. M.D. Bhagwat, (1976) 1 SCC 700, observed that while taking possession of a large area of land (in this case 339 acres) a pragmatic and realistic approach had to be taken. This Court then examined the context under which the judgment in Narayan Bhagde case had been rendered and held as under: (Viswam case, SCC p. 262, para 9) "9. It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or panchnama by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not be cooperative in taking possession of the land." *** ********** **********

40. In Narayan Bhagde case one of the arguments raised by the landowner was that as per the communication of the Commissioner the land was still with the landowner and possession thereof had not been taken. The Bench observed that the letter was based on a misconception as the landowner had re-entered the acquired land immediately after its possession had been taken by the Government ignoring the scenario that he stood divested of the possession, under Section 16 of the Act. This Court observed as under: (Narayan Bhagde case, SCC p. 712, para 29) "29. ... This was plainly erroneous view, for the legal position is clear that even if the appellant entered upon the land and resumed possession of it the very next moment after the land was actually taken possession of and became vested in the Government, such act on the part of the appellant did not have the effect of obliterating the consequences of vesting." To our mind, therefore, even assuming that the appellant had re-

entered the land on account of the various interim orders granted by the courts, or even otherwise, it would have no effect for two reasons, (1) that the suits/petitions were ultimately dismissed and 95 (2009) 10 SCC 501 (2) that the land once having vested in the Government by virtue of Section 16 of the Act, re-entry by the landowner would not obliterate the consequences of vesting." This court stated, in Leelawanti & Ors. v. State of Haryana & Ors96 thus:

"19. If Para 493 is read in the manner suggested by the learned counsel for the appellants then in all the cases the acquired land will have to be returned to the owners irrespective of the time gap between the date of acquisition and the date on which the purpose of acquisition specified in Section 4 is achieved and the Government will not be free to use the acquired land for any other public purpose. Such an interpretation would also be contrary to the language of Section 16 of the Act, in terms of which the acquired land vests in the State Government free from all encumbrances and the law laid down by this Court that the lands acquired for a particular public purpose can be utilised for any other public purpose.

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22. The approach adopted by the High Court is consistent with the law laid down by this Court in State of Kerala v. M. Bhaskaran Pillai, (1997) 5 SCC 432 and Govt. of A.P. v. Syed Akbar, (2005) 1 SCC 558. In the first of these cases, the Court considered the validity of an executive order passed by the Government for assignment of land to the erstwhile owners and observed: (M. Bhaskaran Pillai case, SCC p. 433, para 4) "4. In view of the admitted position that the land in question was acquired under the Land Acquisition Act, LA by operation of Section 16 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting a higher value." ***

24. For the reasons stated above, we hold that the appellants have failed to make out a case for issue of a mandamus to the respondents to release the acquired land in their favour. In the result, the appeal is dismissed without any order as to costs." (emphasis supplied)

96 (2012) 1 SCC 66

129. Section 31 of the Act of 1894 is in pari materia with the provisions Section 77 of the Act of 2013; Section 34 (of the Act of1894) is pari materia with Section 80 of the Act of 2013. Section 77 of the Act of 2013 deals with payment of compensation or deposit of the same in the Authority. Section 77 is reproduced hereunder:

> "77. Payment of compensation or deposit of same in Authority.– (1) On making an award under section 30, 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 by depositing the amount in their bank accounts unless prevented by some one or more of the contingencies mentioned in sub-section (2).
>
> (2) If the person entitled to compensation 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 Authority to which a reference under section 64 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 further that no person who has received the amount otherwise than under protest shall be entitled to make any application under sub-section (1) of section 64:
>
> 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."

130. The Collector has to tender payment under Section 77(1) and to pay the persons interested by depositing the amount in their bank accounts unless prevented under Section 77(2) which are the same contingencies as provided in Section 31(2) mentioned above. Section 80 of the Act of 2013 is pari materia to Section 34 of the Act of 1894, is reproduced hereunder:

> "80. 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 cent, 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 cent, per annum shall be payable from the date or 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."

131. The provisions are identical concerning the rate of interest in case there is a failure to make payment of compensation before taking possession of the land. The award amount has to be paid @ 9% per annum for the first year and after that @ 15% per annum.

132. Since the Act of 1894 never provide for the lapse in case the compensation amount was not deposited, non-deposit carried higher interest. The provisions under the new Act are identical: there

is no lapse of any acquisition proceeding by non-compliance with Section 77. Interpreting "or" under Section 24(2) of the Act of 2013 disjunctively, would result in an anomalous situation - because, once compensation has been paid to the landowner, there is no provision for its refund. It was fairly conceded on behalf of the landowners that they must return the compensation in the case of lapse if possession has not been taken. In case possession is with the landowner and compensation has been paid, according to landowners' submission, there is deemed lapse under Section 24(2) by reading the word "or" disjunctively. It would then be open to the State Government to withdraw the money deposited in the Reference Court. It was also submitted that it is inherent in the notion of lapse that the State may recover the compensation on the ground of restitution. In our opinion, the submissions cannot be accepted as an anomalous result would occur. In case physical possession is with the landowner; and compensation has been paid, there is no provision in the Act for disgorging out the benefit of compensation. In the absence of any provision for refund in the Act of 2013, the State cannot recover compensation paid. The landowner would be unjustly enriched. This could never have been the legislative intent of enacting Section 24(2) of the Act of 2013. The principle of restitution, unless provided in the Act, cannot be resorted to by the authorities on their own. The absence of provision for refund in the Act of 2013 reinforces our conclusion that the word "or" has to be read as conjunctively and has to be read as "and." The landowners' argument about the State's ability to recover such amounts, in the absence of any provision, by relying on the principle of restitution, is without merit, because firstly such principle is without any legal sanction. The State would have to resort to the remedy of a suit, which can potentially result in litigation of enormous proportions; besides, the landowners can well argue that the property (i.e. the amounts) legally belonged to them and that the limitation for claiming it back would have expired. Several other potential defences would be available, each of which would result in multifarious litigation. Therefore, the contention is ex-facie untenable and insubstantial.

133. It was submitted that in the case State had taken possession without paying compensation as required under the Act of 1894, there cannot be absolute vesting free from all encumbrances under Section

16. It is clear that vesting under Section 16 of the Act of 1894 does not depend upon payment of compensation. Vesting takes place as soon as possession is taken after the passing of the award. Undoubtedly, compensation has also to be paid. For that, provisions have been made in Sections 31 and 34 of the Act of 1894. Section 31(1) requires tender and payment, which is making the money available to the landowner and in case State is prevented: i.e., in case the landowner does not consent to receive it for three other exigencies provided in Section 31(2), the amount has to be deposited in the court. Deposit in the court absolves the Government of liability to make payment of interest. However, if payment is not tendered under Section 31(1) nor deposited in court as envisaged under Section 31(2) from the date of taking possession, the interest for the first year is 9% and thereafter 15% per annum follows. The effect of vesting, under no circumstance, is taken away due to non-compliance of Section 31(1) or 31(2) as the case may be as the payment is secured along with interest under the provisions of Section 34 read with Section 31. The State cannot be asked to restore possession once taken but in case it fails to make deposit under Section 31(3) or otherwise with respect to majority of the landholdings, in that exigency, all the beneficiaries as on the date of notification under Section 4 shall be entitled to higher compensation under the Act of 2013 and

there would be no lapse in that case.

134. The landowners had complained that in some cases, under various schemes, close to 80% of the compensation amount was not handed over to the concerned Collector. It was also submitted that in some of the schemes, 50% beneficiaries, for whose benefit the land had been acquired, had not paid even a single rupee. Since this Court is not deciding individual cases here, what is the effect of the interpretation of the law, in the light of this decision, has to be considered in each and every case. We refrain from commenting on the merits of the said submissions as we are not deciding the cases on merits in the reference made to us. Various aspects may arise on the merits of the case as the schemes were framed at different points of time and the dates of notifications under Section 4 issued thereunder, whether there is one or different notifications and various other attendant circumstances have to be looked into like whether possession has been taken or not, to what extent compensation has been paid and whether proviso to Section 24(2) is attracted for the benefits of those entitled to it. In case there is failure to deposit the compensation with respect to the majority of the holdings, the facts have to be gauged in individual cases and then decided.

In re: Vesting and divesting

135. In Satendra Prasad Jain & Ors. v. State of U.P & Ors97, the concept of vesting under the Act of 1894 had been taken into consideration. The Government cannot withdraw from acquisition under Section 48, once it has taken the possession. This Court has observed that once possession has been taken under Section 17(1), prior to the making of the award, the owner is divested of the title to the land, which is vested in the Government and there is no provision by which land can be reverted to the owner. This Court has observed thus:

> "14. There are two judgments of this Court, which we must note. In Rajasthan Housing Board v. Shri Kishan, (1993) 2 SCC 84 it was held that the Government could not withdraw from acquisition under Section 48 once it had taken possession of the land. In Lt. Governor of H.P. v. Avinash Sharma, (1970) 2 SCC 149 it was held that: (SCC p. 152, para 8) "... after possession has been taken pursuant to a notification under Section 17(1) the land is vested in the Government, and the notification cannot be cancelled under Section 21 of the General Clauses Act, nor can the notification be withdrawn in exercise of the powers under Section 48 of the Land Acquisition Act. Any other view would enable the State Government to circumvent the specific provision by relying upon a general power. When possession of the land is taken under Section 17(1), the land vests in the Government. There is no provision by which land statutorily vested in the Government reverts to the original owner by mere cancellation of the notification."
>
> 15. 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 11-A are intended to benefit the

> landowner and ensure that the award is made within a period of two years from the date of the 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 11-A, lapse.

When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award 97 (1993) 4 SCC 369 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 11-A 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." (emphasis supplied) This Court further observed in Satendra Prasad Jain (supra) that even if compensation was not paid to the appellant under Section 17(3- A), it could not be said that possession was taken illegally. Vesting is absolute. This Court has observed thus:

> "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)
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> 136. In Tika Ram and Ors. v. State of Uttar Pradesh & Ors. 98, the question considered was in case possession is taken, and compensation is not paid, what is the effect? This Court has held that there is no lapse of acquisition and observed thus:
>
> "91. However, the question is as to what happens when such payment is not made and the possession is taken. Can the whole acquisition be set at naught?
>
> 92. In our opinion, this contention on the part of the appellants is also incorrect. If we find fault with the whole acquisition process on account of the non-payment of 80% of the compensation, then the further question would be as to whether the estimation of 80% of compensation is correct or not. A further controversy can then be raised by the landlords that what was paid was not 80% and

98 (2009) 10 SCC 689 was short of 80% and therefore, the acquisition should be set at naught. Such extreme interpretation cannot be afforded because indeed under Section 17 itself, the basic idea of avoiding the enquiry under Section 5-A is in view of the urgent need on the part of the State

Government for the land to be acquired for any eventuality discovered by either sub-section (1) or sub-section (2) of Section 17 of the Act.

93. The only question that would remain is that of the estimation of the compensation. In our considered view, even if the compensation is not paid or is short of 80%, the acquisition would not suffer. One could imagine the unreasonableness of the situation. Now suppose, there is state of emergency as contemplated in Section 17(2) of the Act and the compensation is not given, could the whole acquisition come to a naught? It would entail serious consequences.

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95. Further, in a judgment of this Court in Pratap v. State of Rajasthan, (1996) 3 SCC 1 a similar view was reported. That was a case under the Rajasthan Urban Improvement Act, 1987, under which the acquisition was made using Section 17 of the Act. The Court took the view that once the possession was taken under Section 17 of the Act, the Government could not withdraw from that position under Section 18 and even the provisions of Section 11-A were not attracted. That was of course a case where the award was not passed under Section 11-A after taking of the possession. A clear-cut observation came to be made in that behalf in para 12, to the effect that the non-compliance with Section 17 of the Act, insofar as, payment of compensation is concerned, did not result in lapsing of the land acquisition proceedings. The law laid down by this Court in Satendra Prasad Jain v. State of U.P., (1993) 4 SCC 369 was approved. The Court also relied on the decision in P. Chinnanna v. State of A.P., (1994) 5 SCC 486 and Awadh Bihari Yadav v. State of Bihar, (1995) 6 SCC 31 where similar view was taken regarding the land acquisition proceedings not getting lapsed. The only result that may follow by the non-payment would be the payment of interest, as contemplated in Section 34 and the proviso added thereto by the 1984 Act. In that view, we do not wish to further refer the matter, as suggested by Shri Trivedi, learned Senior Counsel and Shri Qamar Ahmad, learned counsel for the appellants. Therefore, even on the sixth question, there is no necessity of any reference." (emphasis supplied) It has further been observed that the only result that may follow by the non-payment would be the payment of interest as contemplated in Section 34 of the Act of 1894.

137. In Pratap & Anr. v. State of Rajasthan & Ors99, this Court held that when the possession of land is taken under Section 17(1), the land vests absolutely in the Government free from all encumbrances and the Government cannot withdraw from acquisition under Section 48 and provisions of Section 11-A of passing the award within two years were not attracted. The proceedings would not lapse on failure to make an award within the period prescribed under Section 11-A, once possession had been taken. The part payment of compensation would also not render the possession illegal. This Court observed thus:

> "12. The provisions of sub-section (4) of Section 52 are somewhat similar to Section 17 of the Land Acquisition Act, LA. Just as the publication of a notification under Section 52(1) vests the land in the State, free from all encumbrances, as provided by Section 52(4), similarly when possession of land is taken under Section 17(1) the land vests absolutely in the Government free from all encumbrances. A question arose before this Court that if there is a non-compliance with the provisions of Section 5-A

> and an award is not made in respect to the land so acquired, would the acquisition proceedings lapse. In Satendra Prasad Jain v. State of U.P., (1993) 4 SCC 369 this Court held that once possession had been taken under Section 17(1) and the land vested in the Government then the Government could not withdraw from acquisition under Section 48 and the provisions of Section 11-A were not attracted and, therefore, the acquisition proceedings would not lapse on failure to make an award within the period prescribed therein. It was further held that non-compliance of Section 17(3-A), regarding part payment of compensation before taking possession, would also not render the possession illegal and entitle the Government to withdraw from acquisition. The aforesaid principle has been reiterated by this Court in P. Chinnanna v. State of A.P., (1994) 5 SCC 486 and Awadh Bihari Yadav v. State of Bihar, (1995) 6 SCC 31. In view of the aforesaid ratio it follows that the provisions of Section 11-A are not attracted in the present case and even if it be assumed that the award has not been passed within the stipulated period, the acquisition of land does not come to an end.
>
> (emphasis supplied)" 99 (1996) 3 SCC 1

138. In Awadh Bihari Yadav & Ors. v. State of Bihar & Ors100, question was raised with respect to the lapse of acquisition proceedings in view of the provisions contained in Section 11-A as award had not been made within 2 years from the date of commencement of the Land Acquisition Amendment Act, 1984. Possession had been taken by the Government under Section 17(1). It was held that it was not open to the Government to withdraw from the acquisition. Provisions of Section 11-A was not attracted. Following is the relevant portion of the observations made by this Court:

> "8. ..It was contended that in view of Section 11-A of the Act the entire land acquisition proceedings lapsed as no award under Section 11 had been made within 2 years from the date of commencement of the Land Acquisition Amendment Act, 1984. We are of the view that the above plea has no force. In this case, the Government had taken possession of the land in question under Section 17(1) of the Act. It is not open to the Government to withdraw from the acquisition (Section 48 of the Act). In such a case, Section 11-A of the Act is not attracted and the acquisition proceedings would not lapse, even if it is assumed that no award was made within the period prescribed by Section 11-A of the Act. …."

139. In P. Chinnanna & Ors. v. State of A.P. & Ors. 101 question again arose with respect to possession taken under Section 17(1) invoking urgency clause, this Court has held that once possession is taken, there is absolute vesting and subsequent proceedings were void. This Court stated as follows:

> "10. The said provision enables the appropriate Government to take possession of the land concerned on the expiration of 15 days from the publication of the notice mentioned in Section 9 sub-section (1) notwithstanding the fact that no award has been made in respect of it. When the possession of the land concerned is once taken

> as provided for thereunder such land is made to 100 (1995) 6 SCC 31 101 (1994) 5 SCC 486 vest absolutely in the Government free from all encumbrances. It must be noted here that taking possession of the land concerned and its vesting absolutely in the Government free from all encumbrances does not depend upon an award to be made under Section 11, making of which award alone in the case of ordinary acquisition of land could have empowered the Collector to take possession of the land under Section 16 and the taking of which possession would have made the land vest absolutely in the Government free from all encumbrances. As seen from the judgment dated 23-8-1982 of the High Court in WP No. 3416 of 1978, taking possession of the appellants' land along with land of others by the Collector on 10-7-1978 under Section 17(1) is, in fact, made the basis for its holding that invoking of urgency clause to dispense with Section 5-A enquiry was made by the Government mechanically. No doubt, when the High Court took the view that acquisition of the land concerned under Section 17 of the Act was made pursuant to an order of the Government without application of its mind in the matter of making Section 5-

A not to apply, it was open to it to set aside or quash the subsequent acquisition proceedings except Section 4(1) notification which had followed and restore the ownership of the land to the appellants' land if it had to order fresh enquiry on the basis of Section 4(1) notification. Such a setting aside or quashing was inevitable because the acquisition proceedings had been completed under Section 17 and the land had vested in the State Government, inasmuch as, without setting aside that vesting of the land in the State Government and restoring the land to the appellant-owners, that land was unavailable for subsequent acquisition by following the procedure under Section 5-A, Section 6, Section 11 and Section 16. Thus in the circumstances of the case in respect of the land of the appellants, when publication of Section 4(1) notification was made on 21-7-1977, when declaration under Section 6 was published on 21-7-1977 and taking possession of that land under Section 17(1) by the Collector was made on 10-7-1978 and the vesting in the State Government of that land had occurred on that day, setting aside by the judgment of the High Court in WP No. 3416 of 1978 of merely the direction given by the Government relating to non- applicability of Section 5-A to the land, given on 7-7-1977, in our view, did not enable to Court to order the starting of fresh proceedings for acquisition of the land concerned under Section 5-A, inasmuch as, that land concerned on Section 4(1) notification had already become the land of the Government. In this state of facts, when the previous acquisition of the land of the appellants made under Section 17 of the Act did never stood affected. Section 5-A enquiry held and subsequent declaration made were superfluous proceedings which were inconsequential. Hence, we feel that there is no need to set aside the impugned declaration inasmuch as the earlier acquisition was complete and had resulted in vesting of the land in the State Government and there was no land available for acquisition in the subsequent proceedings which have been carried pursuant to the judgment of the High Court made in WP No. 3416 of 1978. Therefore, in the stated facts, although we find that no need arises to declare the impugned declaration as void we clarify that the earlier proceedings which had taken place in respect of the appellants' land, resulting in its vesting in the State Government free from encumbrances, has stood unaffected and any award made by the Collector or be made by him under the L.A. Act shall be regarded as that based on earlier acquisition proceedings."

140. In May George v. Special Tahsildar & Ors.102, this Court considered the question to declare a provision mandatory, test is to be applied as to whether non-compliance of the provision could render entire proceedings invalid or not. This Court referred to various decisions (which are referred to in the footnote103) and summarized the position thus:

> "24. In Gullipilli Sowria Raj v. Bandaru Pavani, (2009) 1 SCC 714, this Court while dealing with a similar issue held as under
>
> (SCC p. 719, para 17) "17. ... The expression 'may' used in the opening words of Section 5 is not directory, as has been sought to be argued, but mandatory and non-fulfilment thereof would not permit a marriage under the Act between two Hindus. Section 7 of the 1955 Act is to be read along with Section 5 in that a Hindu marriage, as understood under Section 5, could be solemnised according to the ceremonies indicated therein."
>
> 25. The law on this issue can be summarised to the effect that in order to declare a provision mandatory, the test to be applied is as to whether non-compliance with the provision could render the entire proceedings invalid or not. Whether the provision is mandatory or directory, depends upon the intent of the legislature and not upon the language for which the intent is clothed. The issue is to be examined having regard to the context, subject-

matter and object of the statutory provisions in question. The Court may find out as to what would be the consequence which would flow from construing it in one way or the other and as to whether the statute provides for a contingency of the non- compliance with the provisions and as to whether the non- compliance is visited by small penalty or serious consequence 102(2010) 13 SCC 98 103Dattatraya Moreshwar v. The State of Bombay and Ors., AIR 1952 SC 181; State of U.P. and Ors. v. Babu Ram Upadhya, AIR 1961 SC 751; Raza Buland Sugar Co. Ltd., Rampur v. Municipal Board, Rampur, AIR 1965 SC 895;State of Mysore v. V.K. Kangan, AIR 1975 SC 2190; Sharif-Ud-Din v. Abdul Gani Lone, AIR 1980 SC 303; Balwant Singh and Ors. v. Anand Kumar Sharma and Ors., (2003) 3 SCC 433; Bhavnagar University v. Palitana Sugar Mill Pvt. Ltd. and Ors., AIR 2003 SC 511; Chandrika Prasad Yadav v. State of Bihar and Ors., AIR 2004 SC 2036; M/s. Rubber House v. Excellsior Needle Industries Pvt. Ltd., AIR 1989 SC 1160; B.S. Khurana and Ors. v. Municipal Corporation of Delhi and Ors., (2000) 7 SCC 679; State of Haryana and Anr. v. RaghubirDayal, (1995) 1 SCC 133; and GullipilliSowria Raj v. Bandaru Pavani @ Gullipili Pavani, (2009) 1 SCC 714 would flow therefrom and as to whether a particular interpretation would defeat or frustrate the legislation and if the provision is mandatory, the act done in breach thereof will be invalid.

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27. In G.H. Grant (Dr.) v. State of Bihar, AIR 1966 SC 237, this Court has held that if a "person interested" is aggrieved by the fact that some other person has withdrawn the compensation of his land, he may resort to the procedure prescribed under the Act or agitate the dispute in suit for making the recovery of the award amount from such person." (emphasis supplied)

141. This Court opined, therefore, that once the land vests in the State, it cannot be divested, even if there is some irregularity in the acquisition proceedings. There is nothing in the Act of 1894 to show that non- compliance thereof will be fatal or will lead to any penalty.

142. Now, coming back to the main issue, the legal fiction of lapsing (under Section 24(2) of the Act of 2013) cannot be extended to denude title which has already vested in the beneficiaries of the acquisition Corporation/Local Bodies, etc., and who, in turn, have also conveyed title and transferred the land to some other persons after development. In Commissioner of Sales Tax, U.P. v. Modi Sugar Mills 104 the Court has held that "A legal fiction must be limited to the purpose for which it has been created and cannot be extended beyond its legitimate field." Similarly, in Braithwaite & Co. v. E.S.I.C105 , this Court held that a legal fiction is adopted in law for a limited and definite purpose only and there is no justification for extending it beyond the purpose for which the legislature has adopted. Lapsing is provided only where possession has 104 1961 (2) SCR 189 105 1968 (1) SCR 771 not been taken nor compensation has been paid, divesting of vested land is not intended nor specifically provided.

143. Black's Law Dictionary defines "vested" as follows:

> "vested, adj. (18c) Having become a completed, consummated right for present or future enjoyment; not contingent; unconditional; absolute a vested interest in the estate.
>
> "Unfortunately, the word 'vested' is used in two senses. Firstly, an interest may be vested in possession, when there is a right to present enjoyment, e.g. when I own and occupy Blackacre. But an interest may be vested, even where it does not carry a right to immediate possession if it does confer a fixed right of taking possession in the future." George Whitecross Paton, A Textbook of Jurisprudence 305 (CW. Paton & David P. Derham eds., 4th ed. 1972).
>
> "A future interest is vested if it meets two requirements: first, that there be no condition precedent to the interest's becoming a present estate other than the natural expiration of those estates that are prior to it in possession; and second, that it be theoretically possible to identify who would get the right to possession if the interest should become a present estate at any time." Thomas F. Bergin 8. Paul C. Haskell, Preface to Estates in Land and Future Interests 66-67 (2d ed. 1984)."

144. In Webster's Dictionary, 'vested' is defined as:

> "vested adj. [pp. of vest] 1. Clothed; robed, especially in church vestments. 2. in law, fixed; settled; absolute; not contingent upon anything: as, a vested interest."

145. In State of Punjab v. Sadhu Ram106, it has been observed that once possession is taken and the award has been passed, no title remains with the landowner and the land cannot be de-notified under Section 48(1) and observed thus:

> "3. The learned Judge having noticed the procedure prescribed in disposal of the land acquired by the Government for public purposes, has held that the said procedure was not followed for surrendering the land to the erstwhile owners. The respondent 106 1996 (7) JT 118 having purchased the land had improved upon the land and is, therefore, entitled to be an equitable owner of the land. We wholly fail to appreciate the view taken by the High Court. The learned Judge had net referred to the relevant provisions of the Act and law. It is an undisputed fact that consequent upon the passing of the award under Section 11 and possession taken of the land, by operation of Section 16 of the Act, the right, title and interest of the erstwhile owner stood extinguished and the Government became absolute owner of the property free from all encumbrances. Thereby, no one has nor claimed any right, title and interest in respect of the acquired land. Before the possession could be taken, the Government have power under Section 48(1) of the Act to denotify the land. In that event, land is required to be surrendered to the erstwhile owners. That is not the case on the facts of this case. Under these circumstances, the Government having become the absolute owner of the property free from all encumbrances, unless the title is conferred on any person in accordance with a procedure known to law, no one can claim any title much less equitable title by remaining in possession. The trial Court as well as the appellate Court negative the plea of the respondent that he was inducted into possession as a lessee for a period of 20 years. On the other hand, the finding was that he was in possession as a lessee on yearly basis. Having lawfully come into possession as a lessee of the Government, Session 116 of Evidence Act estops him from denying title of the Government and set it up in third party. By disclaiming Government title, he forfeited even the annual lease. Under these circumstances, having come into possession as a lessee, after expiry and forfeiture of the lease, he has no right. Illegal and unlawful possession of the land entails payment of damages to the Government."

146. In Star Wire (India) Ltd. v. State of Haryana & Ors 107, it was observed that once the award has been passed and possession has been taken, the land vests in the State free from all encumbrances. This Court held thus:

> "2. This special leave petition arises from the judgment of the Punjab and Haryana High Court made on 25-4-1996 in LPA No. 437 of 1996. Notification under Section 4(1) of the Land Acquisition Act, LA (for short, 'the Act') was published on 1-6-

1976. Declaration under Section 6 of the Act was published on 16-2-1977. The award was passed on 3-7-1981. Thereafter, the reference also become final. The petitioner has challenged the notification, the declaration, and the award as illegal. It contends that the award does not come in the way of the petitioner in filing the writ petition on 21-1-1994. The High Court has dismissed the writ petition on the grounds of laches." 107 (1996) 11 SCC 698

147. A similar view has been taken in Market Committee v. Krishan Murari108 and Puttu Lal (dead) by L.Rs. v. State of U.P. & Anr 109. The concept of 'vesting' was also considered in The Fruit & Vegetable Merchants Union v. The Delhi Improvement Trust110. Once vesting takes place, and is

with possession, after which a person who remains in possession is only a trespasser, not in rightful possession and vesting contemplates absolute title, possession in the State. This court observed thus:

> "(19) That the word "vest" is a word of variable import is shown by provisions of Indian statutes also. For example, S. 56 of the Provincial Insolvency Act (5 of 1920) empowers the Court at the time of the making of the order of adjudication or thereafter to appoint a receiver for the property of the insolvent and further provides that "such property shall thereupon vest in such receiver". The property vests in the receiver for the purpose of administering the estate of the insolvent for the payment of his debts after realising his assets. The property of the insolvent vests in the receiver not for all purposes but only for the purpose of the Insolvency Act and the receiver has no interest of his own in the property. On the other hand, Ss. 16 and 17 of the Land Acquisition Act (Act 1 of LA), provide that the property so acquired, upon the happening of certain events, shall "vest absolutely in the Government free from all encumbrances". In the cases contemplated by Ss. 16 and 17 the property acquired becomes the property of Government without any conditions or limitations either as to title or possession. The legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration. It would thus appear that the word "vest" has not got a fixed connotation meaning in all cases that the property is owned by the person or the authority in whom it vests. It may vest in title, or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation. The provisions of the Improvement Act, particularly Ss. 45 to 49 and 54 and 54-A when they speak of a certain building or street or square or other land vesting in a municipality or other local body or in a trust, do not necessarily mean that ownership has passed to any of them." 108 (1996) 1 SCC 311 109 (1996) 3 SCC 99 110 1957 SCR 01 In re: Vested rights under Section 24 of the Act of 2013

148. This Court is of opinion that Section 24 of the Act of 2013 does not intend to take away vested rights. This is because there is no specific provision taking away or divesting title to the land, which had originally vested with the State, or divesting the title or interest of beneficiaries or third-party transferees of such land which they had lawfully acquired, through sales or transfers. There is a specific provision made for divesting, nor does the Act of 2013 by necessary intendment, imply such a drastic consequence. Divesting cannot be said to have been intended. Here, the decision in VKNM Vocational Higher Secondary School v. State of Kerala111 is relevant; it was observed as follows by this Court:

> "21. In our considered view, the above principles laid down by the Constitution Bench of this Court in Garikapati case will have full application while considering the argument of the learned Senior Counsel for the fifth respondent claiming a vested right by relying upon unamended Rule 7-A(3). Principles (i), (iii), (iv) and

(v) of the said judgment are apposite to the case on hand. When we make a comprehensive reference to the above principles, it can be said that for the legal pursuit of a remedy it must be shown that the various stages of such remedy are formed into a chain or rather as series of it, which are connected by an intrinsic unity which can be called as one proceeding, that such vested right, if any, should have its origin in a proceeding which was instituted on such right having been crystallised at the time of its origin itself, in which event all future claims on that basis to be pursued would get preserved till the said right is to be ultimately examined. In the event of such preservation of the future remedy having come into existence and got crystallised, that would date back to the date of origin when the so-called vested right commenced, that then and then only it can be held that the said right became a vested right and it is not defeated by the law that prevails at the date of its decision or at the date of subsequent filing of the claim. One other fundamental principle laid down which is to be borne in mind, is that even such a vested right can also be taken away by a subsequent enactment if such subsequent enactment specifically provides by express words or by necessary intendment. In other words, in the event of the 111 (2016) 4 SCC 216 extinction of any such right by express provision in the subsequent enactment, the same would lose its value."

149. The decision in State of Haryana v. Hindustan Construction Co. Ltd112, is relied upon to contend that the line of enquiry is not to enquire if the new enactment has by its new provisions kept alive the rights and liabilities under the repealed law or whether it has taken away those rights and liabilities. When repeal is followed by a fresh enactment on the same subject, the provisions of the General Clauses Act would undoubtedly require an examination of the language of the new enactment if it expresses an intent different from the earlier repealed Act. The enquiry would necessitate the examination if the old rights and liabilities are kept alive or whether the new Act manifests an intention to do away with or destroy them. If the new Act manifests different intentions, the application of the General Clauses Act will stand excluded.

150. We have examined the provisions of Section 24 of the Act of 2013 in the light of the said pleas and thereafter arrived at our conclusions as to when and to what extent proceedings lapsed or/and were saved and what liabilities have been taken away and to what extent there is obliteration of the rights acquired and liabilities incurred earlier under the Act of 1894 and what is done away or destroyed by the new Act. 112 (2017) 9 SCC 463

151. The Section 24(2) of the Act of 2013 is to be interpreted consistent with the legislative intent, particularly when it has provided for the lapse of the proceedings. It has to be interpreted in the light of provisions made in Sections 24 and 114 of the Act of 2013 and Section 6 of the General Clauses Act, what it protects and to what extent it takes away the rights of the parties. Undoubtedly, Section 24(2) has retroactive operation with respect to the acquisitions initiated under the Act of 1894 and which are not completed by taking possession nor compensation has been paid in spite of lapse of 5 years and proceedings are kept pending due to lethargy of the officials. The drastic consequences follow by the provisions contained in Section 24(2) in such cases.

152. For considering the legislative intent, Bennion, Statutory Interpretation, 5th Edition (2012) has been referred to, in which it has been observed:

> "Where, on a weighing of the factors, it seems that some retrospective effect was intended, the general presumption against retrospectively indicates that this should be kept to as narrow a compass as will accord with the legislative intention.
>
> Principle against doubtful penalisation. It is a general principle of legal policy that no one should suffer detriment by the application of a doubtful law. The general presumption against retrospectivity means that where one of the possible opposing constructions of an enactment would impose an ex post facto law, that construction is likely to be doubtful.
>
> ....
>
> If the construction also inflicts a detriment, that is a second factor against it. A retrospective enactment inflicts a detriment for this purpose 'if it takes away or impairs a vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability, in regard to events already past. The growing propensity of the courts to relate legal principle to the concept of fairness was shown by Staughton LJ when he said:
>
> "In my judgment the true principle is that Parliament is presumed not to have intended to alter the law applicable to past events and transactions in a manner which is unfair to those concerned in them, unless a contrary intention appears."" (emphasis supplied) It has been observed in Bennion, Statutory Interpretation, 5th Edition (2012) that when Parliament is presumed not to have intended to alter the law applicable to past events and transactions, which is unfair to those concerned in them unless the contrary intention appears.

153. Another decision in Lauri v. Renad113, has been referred to in which it was observed that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary. Following observations have been relied upon:

> "It certainly requires very clear and unmistakable language in a subsequent Act of Parliament to revive or recreate an expired right. It is a fundamental rule of English law that no statute shall be construed so as to have a retrospective operation unless its language is such as plainly to require such a construction; and the same rule involves another and subordinate rule to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary." (emphasis supplied)

154. In Yamashita-Shinnihon Steamship Co. Ltd. (supra) the House of Lords has observed that question of the extent of retrospectivity would also be dependent upon the degree of unfairness it

causes to the parties. It has been observed:

> 113 (1892) 3 Ch. 402 "The rule that a person should not be held liable or punished for conduct not criminal when committed is fundamental and of long standing. It is reflected in the maxim nullum crimen nulla poena sine lege. It is protected by article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1953) (Cmd. 8969).

The rule also applies, but with less force, outside the criminal sphere. It is again expressed in maxims, lex prospicit non respicit and omnis nova constitutio futuris temporibus formam imponere debet non praeteritis. The French Civil Code provides that "La loi ne dipose que pour l'avenir; elle n'a point d'effet retroactif:" .....

But both these passages draw attention to an important point, that the exception only applies where application of it would not cause unfairness or injustice. This is consistent with the general rule or presumption which is itself based on considerations of fairness and justice, as shown by the passage in Maxwell quoted, ante, p. 494C-E, and recently emphasised by Staughton LJ in Secretary of State for Social Security v. Tunnicliffe [1991] 2 All E.R. 712, 724:

> "In my judgment the true principle is that Parliament is presumed not to have intended to alter the law applicable to past events and transactions in a manner which is unfair to those concerned in them, unless a contrary intention appears. It is not simply a question of classifying an enactment as retrospective or not retrospective. Rather it may well be a matter of degree – the greater the unfairness, the more it is to be expected that Parliament will make it clear if that is intended." The distinction between rights and procedure, and unfairness and fairness, may well overlap. Thus, if a limitation period is shortened but a plaintiff has time to sue before expiry of the shortened period, he is likely to be statute-barred if he does not sue within the shortened period (see The Ydun [1899] P. 236.); but if a limitation period is extended after a previous shorter limitation period has already expired, the plaintiff will be unable to take advantage of the new period because an absolute defence has by then accrued to the defendant and it would not be fair to deprive him of it: See Yew Bon Tew v. Kenderaan Bas Mara [1983] 1 A.C. 553 and Maxwell v. Murphy (1957) 96 C.L.R. 261.
>
> Further, Lord Griffiths, Lord Goff of Chieveley and Lord Slynn of Hadley, held as under:
>
> "The principle governing the proper approach to a statutory provision alleged to have retrospective effect has been stated in a number of different ways, but no difference of substance is revealed by the authorities. Thus:
>
> (1) the principle has been described as "a prima facie rule of construction" (Yew Bon Tew [1983] 1 A.C 553, 558F), "an established principle in the construction of

statutory provisions"

(Pearce v. Secretary of State for Defence [1988] A.C 755, 802C) or "a fundamental rule of English law" (Lauri v. Renad [1892] 3 Ch. 402, 421, Maxwell on the Interpretation of Statutes, 12th ed., p. 215, cited with approval in Carson v. Carson and Stoyek [1964] 1 W.L.R 511, 516-517).

(2) The principle is that a statute or statutes will not be interpreted so as to have a retrospective operation unless (i) “that result is unavoidable on the language used” (Yew Bon Tew, at pp. 558F, 563D-E) or “that effect cannot be avoided without doing violence to the language of the enactment: (In re Athlumney, Ex parte Wilson [1898] 2 Q.B 547, 552) or “its language is such as plainly to require such a construction” (Lauri v. Renad, at p. 421); or (ii) “they expressly or by necessary implication to provide: see Yew Bon Tew, at p. 558F” (Pearce v. Secretary of State for Defence [1988] A.C 755, 802C-D) or “such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication” (Maxwell on the Interpretation of Statutes, 12th ed., p.215] (3) “if the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only” (In re Athlumney, at p. 552).

(4) If the statute does have some retrospective operation on the basis of the above principles, it is not to be construed as having greater retrospective operation “than its language renders necessary” (Lauri v. Renad, at p. 421) or “than is necessary to give effect either to its clear language or to its manifest purpose” (Arnold v. Central Electricity Generating Board [1988] A.C 228,

275. The absence of express limiting words cannot be used as a basis for implying retrospective operation. That would reverse the true presumption. A necessary and distinct implication typically arises in the context of a statute that, by repealing a previous statute, would leave a “lacuna” in the law if the new statute were not to be construed as having retrospective effect: see, e.g., Food Corporation of India v. Marastro Compania Naviera S.A. [1987] 1 W.L.R. 134, 152. The particular problem in the present case is a transitional problem only, applicable only to those arbitrators that are stale as at 1 January 1992, in respect of which applications to strike out are made shortly thereafter. In the future, such claimants will either continue to be dilatory or not, in which case the references will proceed to a conclusion. The concern of the legislature, and the mischief at which the section was aimed, was not a limited number of existing stale arbitrations but future arbitrations. Moreover, although the mischief at which the section was aimed is not to be ignored, one should start by looking at the words themselves: see Chebaro v. Chebaro [1987] Fam. 127, 130, 134-135.

It would be unfair to a claimant to give a retrospective operation to section 13A. So far as claimants in existing arbitrations are concerned, they may well have been (correctly) advised prior to 1 January 1992 that they could proceed slowly with the claim without risk of having their claims dismissed by reason of such delay. A retrospective application of the statute would expose him to a penalty on the strength of conduct not susceptible to penalty when committed. It would not, however, be unfair to a respondent to limit section 13A to delay occurring after 1 January 1992. Even if such delay were causative of prejudice or the risk of an unfair resolution of the dispute, under the existing law laid down in Bremer Vulkan a respondent should have been aware that it was a respondent’s obligation (as well as a claimant’s) to seek directions from the arbitrator to ensure a

speedy resolution of disputes: see the Hannah Blumenthal case [1983] 1 A.C. 854, 923H. A retrospective alteration to the legitimate expectations of the parties as to the consequences of their conduct at the time it occurred would be contrary to the principles of legal and commercial certainty that formed part of the grounds on which the House of Lords declined in Hannah Blumenthal to depart from Bermer Vulkan: see pp. 913C, 917D, 922H." (emphasis supplied)

155. Reliance was placed on Gloucester Union v. Woolwich Union114, with respect to effect on existing rights wherein following observations have been made:

> "Before considering the legal effect of art. xxxi. of this Order it is necessary, we think, to bear in mind that by the common law, upon such a division of the parish of Upton St. Leonard's, any settlement already acquired in that parish would have been lost:
>
> see Reg v. Tipton Inhabitants 3; Dorking Union v. St. Saviour's Union. The purpose and effect of par. 1 of art. xxxi is to get rid of this difficulty and preserve the settlements that have been already acquired before the commencement of the Order. The purpose and effect of par. 2 is in like manner to preserve a status of irremovability that has been acquired at that date; and the question raised in this case is whether par. 3 of the article is to be construed in all its generality as applicable to acts or circumstances which have been done or occurred completely in the past and before the commencement of the Order, so as to create or confer a settlement where none existed before, or whether, as the appellants contend, it is to be construed as supplemental to pars. 1 and 2 and limited to the cases where persons are in process of acquiring a settlement or status of irremovability so as to preserve their inchoate rights. If the words in par. 3 are construed without limitation, then, the residence of the pauper at Chequer's Row in Upton St. Leonard's between 1893 and 1897 being deemed to be residence in Gloucester, a settlement in Gloucester is conferred upon him and the respondents succeed. We think this paragraph should be so construed subject to the general principle that a statute is prima facie prospective and does not interfere with existing rights unless it contains clear words to that effect, or unless, having regard to its object, it necessarily does so, and that a statute is not to be construed to have a greater to retrospective operation than its language renders necessary – see per Lindley LJ in Lauri v. Renad – whatever view may be entertained of the probably intention of the Legislature, unless some manifest absurdity or 114 (1917) 2 K.B. 374 inconsistency results from such construction; but we have come to the conclusion that the construction of the paragraph contended for by the respondents produces such a practical inconsistency with par. 1 of the same article that it is necessary to put some limitation upon it. If a person had resided before the commencement of the Order for two years in that portion of the parish of Upton St. Leonards' which has been added to Gloucester and for one year following in the portion which remains the parish of Upton St. Leonard's, he would by the latter part of par.1 be deemed to have acquired a settlement in the parish of Upton St. Leonard's, but if par.3 is to be applied to such a case his residence in the added portion of Upton St. Leonard's is to be deemed to have been residence in the parish of

> Gloucester; and if so deemed, then he has not had three years' consecutive residence in any one parish and has no settlement – in other words, the effect of par.3 in such a case is to destroy the settlement which is preserved by par.1 and to restore the common law rule which is intended to be abolished. The same result would follow in the converse case where the later period of residence completing the three years in the old parish of Upton St. Leonard's is in the area which has been added to the parish of Gloucester." (emphasis supplied)

156. In The King v. The General Commissioners of Income Tax for Southampton115 it was observed:

> "The language of the section shows clearly that Parliament intended it to have a retrospective effect. The object was to prevent loss to the revenue when Commissioners had acted who were not, under the statutes, the right Commissioners to make the charge, provided that it was made by the Commissioners for the parish or place in which the person charged ordinarily resided. That the section was retrospective in effect was not disputed by Sir Robert Finlay, but he argued that the retrospective operation is limited by the language of the section and does not extend to a charge made in respect of profits derived from foreign possessions or securities under s.108 of the Income Tax Act, 1842. In support of this argument he relied upon the express reference in the first sub-section of s.32 to s.106, and s.146 of the Income Tax Act, 1842, upon the omission of any reference in this sub-section to s.108, and upon the repeal in sub- s.2 of s.32 of s.108. He contended that if the Legislature had meant to include s.108 in the first sub-section it would have referred to it in express berms and would not merely have repealed it by the second sub-section. In the first sub-section mention is made of other sections of the Income Tax Acts, but not of s.108. It must be taken, he argued, that Parliament had in mind the difficulties created by s. 108, which were pointed out in Aramayo's Case by the House of Lords, and that Parliament intended to remove these difficulties by the repeal of s.108 so as to prevent its operation in future, but did not mean to change the 115 (1916) 2 K.B. 249, (1917) 2 K.B. 374 law as regards acts done before passing of the statute. The question must depend upon the construction of the language of s.32. The rules to be applied are well settled. It is a fundamental rule of English law that enactments in a statute are generally to be construed as prospective and intended to regulate future conduct, but this rule is one of construction only and must yield to the intention of the Legislature: Moon v. Durden, per Parke B. It is also the law that a statute is not to be construed to have greater retrospective operation than its language renders necessary: Lauri v. Renad, per Lindley LJ to ascertain the intention regard should be had to the general scope and purview of the enactment, to the remedy sought to be applied, to the former state of the law, and to what was in the contemplation of the Legislature: Pardo v. Bingham per Lord Hatherly L.C" (emphasis supplied)

157. In K.S. Paripoornan (supra), it was observed that in the case of retrospective operation the Court has to consider the effect on existing rights and obligations and for that purpose, the intention of the legislature has to be ascertained as indicated in the statute itself. This court observed that:

> "66. The dictum of Lord Denman, C.J. in R. v. St. Mary, Whitechapel, (1848) 12 QB 120, 127 that a statute which is in its direct operation prospective cannot properly be called a retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing, which has received the approval of this Court, does not mean that a statute which is otherwise retrospective in the sense that it takes away or impairs any vested right acquired under existing laws or creates a new obligation or imposes a new duty or attaches a new disability in respect to transactions or considerations already past, will not be treated as retrospective. In Alexander v. Mercouris, (1979) 3 All ER 305 Goff, L.J., after referring to the said observations of Lord Denman, C.J., has observed that a statute would not be operating prospectively if it creates new rights and duties arising out of past transactions. The question whether a particular statute operates prospectively only or has retrospective operation also will have to be determined on the basis of the effect it has on existing rights and obligations, whether it creates new obligations or imposes new duties or levies new liabilities in relation to past transactions. For that purpose it is necessary to ascertain the intention of the legislature as indicated in the statute itself."

158. In Zile Singh v. State of Haryana & Ors., (supra), this Court has observed that the rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to the accrued right. This court, while dealing with retrospectivity of a statute, observed that retrospectivity must be reasonable and not excessive or harsh; otherwise, it runs the risk of being struck down for being unconstitutional. Following observations have been made:

> "15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated. (p. 388) The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right. (p. 392) ***
>
> 18. In a recent decision of this Court in National Agricultural Coop. Marketing Federation of India Ltd. v. Union of India, (2003) 5 SCC 23 it has been held that there is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. Every legislation whether prospective or retrospective has to be subjected to the question of legislative competence. The retrospectivity is liable to be

> decided on a few touchstones such as: (i) the words used must expressly provide or clearly imply retrospective operation; (ii) the retrospectivity must be reasonable and not excessive or harsh, otherwise, it runs the risk of being struck down as unconstitutional; (iii) where the legislation is introduced to overcome a judicial decision, the power cannot be used to subvert the decision without removing the statutory basis of the decision.

There is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. A validating clause coupled with a substantive statutory change is only one of the methods to leave actions unsustainable under the unamended statute, undisturbed. Consequently, the absence of a validating clause would not by itself affect the retrospective operation of the statutory provision, if such retrospectivity is otherwise apparent."

159. This Court has considered the harsh consequences of retrospective operation of the statute in Commissioner of Income Tax-19, Mumbai v. Sarkar Builders116 and observed thus:

> "25. Can it be said that in order to avail the benefit in the assessment years after 1-4-2005, balconies should be removed though these were permitted earlier? Holding so would lead to absurd results as one cannot expect an assessee to comply with a condition that was not a part of the statute when the housing project was approved. We, thus, find that the only way to resolve the issue would be to hold that clause (d) is to be treated as inextricably linked with the approval and construction of the housing project and an assessee cannot be called upon to comply with the said condition when it was not in contemplation either of the assessee or even the legislature, when the housing project was accorded approval by the local authorities.
>
> 26. Having regard to the above, let us take note of the special features which appear in these cases:
>
> 26.1. In the present case, the approval of the housing project, its scope, definition and conditions, are all decided by and are dependent on the provisions of the relevant DC Rules. In contrast, the judgment in Reliance Jute and Industries Ltd. v. CIT, (1980) 1 SCC 139 was concerned with income tax only.
>
> 26.2. The position of law and the rights accrued prior to enactment of the Finance Act, 2004 have to be taken into account, particularly when the position becomes irreversible.
>
> 26.3. The provisions of Section 80-IB(10) mention not only a particular date before which such a housing project is to be approved by the local authority, even a date by which the housing project is to be completed, is fixed. These dates have a specific purpose which gives time to the developers to arrange their affairs in such a manner that the housing project is started and finished within those stipulated dates. This planning, in the context of facts in these appeals, had to be much before 1-4-2005.

> 26.4. The basic objective behind Section 80-IB(10) is to encourage developers to undertake housing projects for weaker sections of society, inasmuch as to qualify for deduction under this provision, it is an essential condition that the residential unit be constructed on a maximum built-up area of 1000 sq ft where such residential unit is situated within the cities of Delhi and Mumbai or within 25 (2015) 7 SCC 579 km from the municipal limits of these cities and 1500 sq ft at any other place.

26.5. It is the cardinal principle of interpretation that a construction resulting in unreasonably harsh and absurd results must be avoided.

26.6. Clause (d) makes it clear that a housing project includes shops and commercial establishments also. But from the day the said provision was inserted, they wanted to limit the built-up area of shops and establishments to 5% of the aggregate built-up area or 2000 sq ft, whichever is less. However, the legislature itself felt that this much commercial space would not meet the requirements of the residents. Therefore, in the year 2010, Parliament has further amended this provision by providing that it should not exceed 3% of the aggregate built-up area of the housing project or 5000 sq ft, whichever is higher. This is a significant modification making complete departure from the earlier yardstick. On the one hand, the permissible built-up area of the shops and other commercial shops is increased from 2000 sq ft to 5000 sq ft. On the other hand, though the aggregate built- up area for such shops and establishment is reduced from 5% to 3%, what is significant is that it permits the builders to have 5000 sq ft or 3% of the aggregate built-up area, "whichever is higher". In contrast, the provision earlier was 5% or 2000 sq ft, "whichever is less"." (emphasis supplied)

160. This Court in Jawarharmal (supra) and Rai Ramkrishna (supra), has considered the practical realities before analysing the extent of retrospective operation of the statute. Several decisions were cited in regard to conflict of interest (which are referred to in the footnote hereafter117) and it was urged that the rule of construction that is to be adopted is one of purposive interpretation.

Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill, (2012) 2 SCC 108 @ 19-21; Tinsukhia Electric Supply Company Ltd. v. State of Assam & Ors., (1989) 3 SCC 709 @ para 118-121; C.I.T. v. Hindustan Bulk Carriers, (2003) 3 SCC 57 @ para 14-21; D. Saibaba v. Bar Council of India & Ors., (2003) 6 SCC 186 @ para 16-18; Balram Kamanat v. Union of India, (2003) 7 SCC 628 para 24; New India Assurance Co. v. Nulli Nivelle, (2008) 3 SCC 279 @ Para 51-54; Government of Andhra Pradesh &Ors. v. Smt. P. Laxmi Devi, (2008) 4 SCC 720 Para 41 & 42.; Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd., (2008) 13 SCC 30 para 132-137; N. Kannadasan v. Ajoy Khose and Ors., (2009) 7 SCC 1 para 54-67; H.S. Vankani v. State of Gujarat, (2010) 4 SCC 301 para 43-48; State of Madhya Pradesh v. Narmada Bachao Andolan & Ors., (2011) 7 SCC 639 para 78-85; State of Gujarat & Anr. v. Hon'ble Mr. Justice R.A. Mehta (Retd.) and Ors., (2013) 3 SCC 1: para 96-98). In re: Legislative History of Act of 2013

161. The Land Acquisition, Rehabilitation and Resettlement Bill, 2011 (Bill No.77 of 2011) was introduced in the Parliament. The provisions of Section 24, as introduced in the said Bill, read as under:

> "24. (1) Notwithstanding anything contained in this Act, in any case where a notification under section 4 of the Land Acquisition Act, LA was issued before the commencement of this Act but the award under section 11 thereof has not been made before such commencement, the process shall be deemed to have lapsed and the appropriate Government shall initiate the process for acquisition of land afresh in accordance with the provisions of this Act.
>
> (2) Where possession of land has not been taken, regardless of whether the award under section 11 of the Land Acquisition Act, LA Act has been made or not, the process for acquisition of land shall also be deemed to have lapsed and the appropriate Government shall initiate the process of acquisition afresh in accordance with the provisions of this Act."

162. It is apparent from Section 24(1), as introduced originally, contained a provision with respect to award, which has not been made, but it was later on amended, and now as provided in Section 24(1)(a), there is no lapse and only higher compensation is available in case award has not been passed. The earlier Section 24(2) contained only the provision with respect to possession of the land that has not been taken. Earlier, there was no time limit prescribed, and it was proposed that the process for acquisition of land shall lapse.

Clause 24 of Notes on clauses of Bill read thus:

> "Clause 24 seeks to provide that land acquisition process under the Land Acquisition Act, LA shall be deemed to have lapsed in certain cases where the award has not been made and possession of land has not been taken before the commencement of proposed legislation."

163. After considering the various suggestions of the State Government, the Committee made some recommendations, which are extracted hereunder:

> "16.5 The Committee note that Clause 24 of the Bill provides that land acquisition cases/process shall be invalid on enactment of the new Act in cases where Collector has not given award or possession of the land has not been taken before the commencement of the proposed legislation. Some of the representatives of the industry and also the Ministries like Railways and Urban Development submitted before the Committee that land acquisition proceedings already initiated under the existing Land Acquisition, LA should not lapse as it would lead to time and cost over-run in many infrastructural projects. However, in such cases land compensation and R&R benefits could be allowed as per the provisions of LARR Bill. The Committee would like the Government to re-examine the issue and incorporate necessary provisions in the Rules to be framed under the new Act with a view to ensuring that the land owners/farmers/affected families get enhanced compensation and R & R package under the provisions of the LARR Bill, 2011 and at the same time, the pace of implementation of infrastructural projects is not adversely impacted."

164. Debates in the Lok Sabha on 29.8.2013, were referred to during the hearings, to cite various reasons given in respect of the question why effect should be given retrospectively in cases where acquisition has not been completed. Shri Jairam Ramesh, Minister concerned at the relevant time, replied to debate about the retrospective part with respect to Section 24 thus:

> "... The hon'ble member has also raised question about retrospective clause. This is about section 24 under which it has been provided that if the award has not been passed under the previous law than the new law will be applicable. Secondly, if the award has been passed and no compensation has been given and no physical possession has been taken the new law will be applicable. The third situation where this clause will be applicable is when award has been passed but farmer has not been given more than 50 per cent compensation which will entail enforcement of this law. The hon'ble member and several others have raised this apprehension that this Act will ultimately give vast powers to the bureaucracy. In regard to this apprehension I would like to say that we have fixed time limit at every level of the procedure and I hope that the states will adhere to these timelines." (emphasis supplied)

165. It is clear that while replying to the debate, the Minister concerned has stated that there would be lapse only if in case possession has not been taken and compensation has not been paid. The emphasis right from the beginning was on possession. Thus, from the perusal of debate too, it is apparent that the word "or" had been understood as "and". In Re: Objectives of the Act

166. It was submitted on behalf of the landowners that the consideration of difficulties, harsh consequences, the importance of performance, time lost during litigation, revival of stale claims would not permit deviation from the mandate of the law of Section 24. If obligations are mandatory, then also intendment of the Act cannot be defeated. As such, it is the duty of the court to disregard such factors and to give contextual interpretation to the intendment. The language of the statute, wherever the context requires, its objects and reasons, the Preamble, its legislative history as well as the accompanying provisions (including the relevant provisions of the old Act) are to be considered by the court. In Arnit Das v. State of Bihar118, the court observed that the ambiguity in the definition of "juvenile" is to be resolved by taking into consideration the Preamble and the statement 2000 (5) SCC 488 of objects and reasons. Burrakur Coal Co. Ltd. v. Union of India119 and A. Thangal Kunju Musaliar v. M. Venkatachalam Potti120. During the hearing, the State had also relied on other decisions to say that where the issue had attained finality, relief ought not to be granted.121 The Act of 2013 has been enacted considering the difficulties caused by the operation of the earlier laws and to subserve the public interest. Thus, the Court should interpret it in the context of the attendant circumstances. At the same time, the court should not, while ostensibly adopting a purposive or liberal interpretation, affect matters which have become final, or stale. In Popat Bahiru Govardhane & Ors. (supra) this aspect, in the context of limitation provisions, was highlighted in the following terms:

> "16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable

> grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." 1962 (1) SCR 44 1955 SCR 1196 121 Delhi Development Authority v. Sukhbir Singh, (2016) 16 SCC 258, Padma Sundara Rao (Dead) & Ors. v. State of T.N. & Ors., 2002 (3) SCC 533; Popat Bahiru Govardhane & Ors.

v. Special Land Acquisition Officer & Anr., 2013 (10) SCC 765; B. Premanand & Ors. v. Mohan Koikal & Ors., (2011) 4 SCC 266 and Bhavnagar University v. Palitana Sugar Mill (P) Ltd. & Ors., (2003) 2 SCC 111 In Re: proviso to Section 24(2)

167. In reference to the question whether the proviso is part of section 24(2) or Section 24(1), it was submitted on behalf of the acquiring authorities and the States that the proviso needs to be read along with the main provision of section 24(2) and cannot be read with section 24(1)(b). It was pointed out that this Court has taken the view in Delhi Metro Rail Corporation Ltd. v. Tarun Pal Singh & Ors., (2018) 14 SCC 161 that the proviso should be read as part of section 24(2) of the Act of 2013, cannot be construed as proviso to section 24(1)(b) whereas in Delhi Development Authority v. Virender Lal Bahri & Ors. (supra), a different view has been taken while referring the matter, and it has been observed that it should be treated as a proviso to section 24(1)(b) and not to section 24(2). As the interpretation of section 24(2) is involved in the matter, it is absolutely necessary to socio-justice and whether the proviso is part of section 24(2) or has to be read as an independent provision or it has to be treated as part of the proviso to section 24(1)(b), the question is required to be decided as it arises for the purpose of the very provisions of section 24(2).

168. It was submitted that the statutory provisions are to be read as they exist. Relocation of a proviso by the interpretive process, resulting in its placement at a different place is a drastic judicial measure which can be adopted in rarest of rare cases, and such an exercise may amount to encroaching upon the legislative field or causing violence to the plain language used by the legislature. By the proviso, Parliament has tried to balance the competitive new rights, and the proviso cannot be lifted and bodily placed at a different place. It was also submitted on behalf of the acquiring authorities that as the Section 24(1(b) ends with a 'full stop' (.) Section 24 (2) ends with a colon (:). These punctuation marks leave no room for any doubt that Parliament consciously used the proviso as an exception to section 24(2). The placement of the proviso needs no further comparative rules of interpretation. There is a very clear indication of legislative intent in section 24(2) itself. Punctuation plays a vital role in interpretation if some ambiguity is there in its interpretation. It is argued that punctuations play a very important role in interpreting statutes if some ambiguity is raised in its interpretation. Considering the use of a particular punctuation mark is an accepted method of statutory interpretation.

169. Considering the use of punctuation marks, as a statutory mode of interpretation, full stop means the particular sentence ends and stands detached from the next part. It was also submitted that the proviso is to be read together with the main provision to which it is attached.

170. On the other hand, it was submitted on behalf of the landowners that the proviso does not refer to the main factors of lapse under section 24(2). The proviso is not an exemption from lapsing if it is read as part of Section 24(2), then the absurd consequences would follow. The proviso is in accord with section 24(1)(b) and has to be read as part of it. Reliance has been placed on D.D.A. v. Virendra Lal Bahri & Ors. (supra). It was submitted that the proviso could not have been intended to be part of section 24(2) dealing with lapsing of acquisition where the subject-matter of the proviso is wholly unrelated to physical possession of the land, but only relating to compensation not being deposited. It was also submitted that if the proviso is read with section 24(2), arbitrary results will follow. The proviso would be arbitrary and liable to be struck down under Article 14 of the Constitution. In case notification under section 4 applies only to a single plot of land or single owner, the conditions of section 24(2) are not fulfilled acquisition would lapse, and in a case where several pieces of land have been acquired, if compensation in respect of majority landholdings has not been deposited, such acquisition will not lapse, but only higher compensation under the Act of 2013 would be paid. The words “award being made five years or more prior to the commencement of the Act” are absent in the proviso. Reading these words to proviso would do violence to the literal language, and its plain meaning proviso and being a beneficial provision must be construed in the way which furthers its performance. It was also submitted that in respect of large chunks of land carved out by the same notification, the compensation in respect of the majority of landholdings has been deposited. In such a case no lapse will take place because the proviso in such a case will not apply and whether in respect of the majority of landholdings, compensation has or has not been deposited, would have no bearing on the issue whether lapsing does or does not take place under section 24(2). With respect to the proviso, various questions arise for consideration.

(a) Interpretation:

171. The main question is whether under the scheme of section 24 the proviso is treated as part of Section 24(1)(b) or it is part of the exception carved out in section 24(2) particularly in view of the fact that the word 'or' has been interpreted by us as 'and.' In that context, when Delhi Metro Rail Corporation Ltd. v. Tarun Pal Singh & Ors122 as well as when the question was considered in Delhi Development Authority v. Virender Lal Bahri & Ors., [SLP [C] No.37375/2016], the question did not come up for consideration in any of the matters whether ‘or’ in two negative conditions in Section 24(2) has to be read conjunctively or disjunctively. When we read the word “or” as 'and' in the main part of section 24(2), it is clear that the proviso has to stay as part of section 24(2) where it has been placed by the legislature, and only then it makes sense. If 'or' used in-between two negative conditions of 'possession has not been taken' or 'compensation has not been paid,' disjunctively, in that case, the proviso cannot be operative and would become otiose and would make no sense as part of Section 24(2). In case of amount not having been paid the acquisition has to lapse, though possession (of the land) has been taken would not be the proper interpretation of the main part as mentioned (2018) 14 SCC 161 above, when “or” is read conjunctively, section 24(2) provided for lapse in a case where possession has not been taken, nor compensation has been paid, in such a case

proviso becomes operative in given exigency of not depositing amount with respect to majority of landholdings.

172. A reading of section 24(2) shows that in case possession has been taken even if the compensation has not been paid, the proceedings shall not lapse. In case payment has not been made nor deposited with respect to the majority of the holdings in the accounts of the beneficiaries, then all the beneficiaries specified in the notification under Section 4 of the Act of 1894 shall get the enhanced compensation under the provisions of the Act of 2013. Section 24(2) not only deals with failure to take physical possession but also failure to make payment of compensation. If both things have not been done, there is lapse of the acquisition proceeding. But where payment has been made though possession has been taken or payment has been made to some of the persons but not to all, and it has also not been deposited as envisaged in the proviso, in that event all beneficiaries (under the same award) shall get higher compensation. This is because once possession is been taken, there can be no lapse of the proceedings, and higher compensation is intended on failure to deposit the compensation. Once an award has been passed and possession has been taken, there is absolute vesting of the land, as such higher compensation follows under the proviso, which is beneficial to holders. In a case where both the negative conditions have not been fulfilled, as mentioned in section 24(2), there is a lapse. Thus, the proviso, in our opinion is a wholesome provision and is, in fact, a part of section 24(2); it fits in the context of section 24(2) as deposit is related with the payment of compensation and lapse is provided due to non-payment along with not taking possession for five years or more whereas for non-deposit higher compensation is provided. Thus, when one of the conditions has been satisfied in case payment has been made, or possession has not been taken, there is no lapse of the proceedings as both the negative conditions must co-exist.

173. When we consider the provisions of section 24(1)(b) where an award has been passed under section 11 of the Act of 1894, then such proceedings shall continue under the provisions of the said Act as if it has not been repealed. The only exception carved out is the period of 5 years or more and that too by providing a non-obstante clause in Section 24(2) to anything contained in section 24(1). The non-obstante clause qualifies the proviso also to Section 24(2). It has to be read as part of Section 24(2) as it is an exception to Section 24(1)(b). In our opinion, Section 24(1)(b) is a self-contained provision, and is also a part of the non-obstante clause to the other provisions of the Act as provided in sub-section (1). Parliament worked out an exception, by providing a non-obstante clause in section 24(2), to Section 24(1). Compensation is to be paid under Section 24(1)(b) under the Act of 1894 and not under the Act of 2013. As such Section 24 (2) is an exception to section 24(1)(b) and the proviso is also an exception which fits in with non-obstante clause of Section 24 (2) only. Any other interpretation will be derogatory to the provisions contained in Section 24(1)(b) which provides that the pending proceedings shall continue under the Act of 1894 as if it had not been repealed, that would include the part relating to compensation too. Even if there is no lapse of proceedings under section 24(1)(a), only higher compensation follows under Section 24(1)(a). Section 24(2) deals with the award having been made five years or before the commencement of the new Act. The legislative history also indicates/it was intended that five years' period should be adequate to make payment of compensation and to take possession. In that spirit, the proviso has been carved out as part of section 24(2). Thus when Parliament has placed it at a particular place, by a process of reasoning, there can be no lifting and relocation of the provision. To bodily lift it would

be an impermissible exercise. Unless it produces absurd results and does not fit in the scheme of the Act and the provisions to which it is attached such an interpretation, doing violence to the express provision, is not a legitimate interpretative exercise. There is no need to add it as the proviso to Section 24(1)(b) as it has not been done by the legislature, and it makes sense where it has been placed. It need not be lifted.

(b) Punctuation used in Section 24(2):

174. Parliament has used the full stop (.) after section 24(1) and colon (:) after section 24(2). It cannot be gainsaid that punctuation plays a vital role, particularly when an attempt is made to relocate any part of the provision. The use of the colon is to introduce a sub-clause that follows logically from the text before it. We are examining this aspect of the colon, additionally. Though as the interpretation of the provision of Section 24(2) and its proviso needs no further deliberation regarding its placement, the same is to be read as a proviso to Section 24(2) and not Section 24(1)(b). Use of punctuation colon reinforces our conclusion and punctuation mark has been an accepted method of statutory interpretation when such a problem arises. Though sometimes punctuation can be ignored also but not generally. The full stop after section 24(1)(b) expresses deliberate intent to end a particular sentence and detach it from the next part. With regard to the meaning of the punctuation colon, the University of Oxford Style Guide states as under:

> "Use a colon to introduce a subclause which follows logically from the text before it, is not a new concept and depends logically on the preceding main clause. Do not use a colon if the two parts of the sentence are not logically connected."

175. The note of the University of England "Writing Correctly" has also been relied upon on behalf of the State of Haryana. Following discussion has been made:

> "Colons have a number of functions in a sentence. If you use colons in your writing, use them sparingly, and never use a colon more than once in any sentence.
>
> Rule 1: Colons can be used to introduce a list, but they must follow a complete sentence (independent clause).
>
> Rule 2: Colons can be used to explain, summarise or extend the meaning in a sentence by introducing a word, phrase or clause that enlarges on the previous statement.
>
> Rule 3: Colons are used to separate the title from the subtitle.
>
> Rule 4: Colons can be used to introduce a quotation in formal academic writing." (emphasis supplied)

176. It is clear that the colon (:) has a reference to the previous statement and enlarges the same and extends the meaning of the sentence. The colon indicates that the text is intrinsically linked to the

previous provision preceding it, i.e., Section 24(2) in this case and not section 24(1). The colon indicates that what follows. The colon proves, explains, defines describes or lists elements of what precedes it. In case the proviso is bodily lifted and placed after section 24(1(b), section 24(2) will end with a "colon," which is never done to end a provision. Certain decisions have been referred to saying that importance and weightage are to be given to punctuation marks. The earlier view was that punctuations were added by the proof readers, and the Acts passed by Parliament did not contain any punctuation. However, it was submitted that in the past century, the English courts realised that the drafts placed before the Parliament also carry punctuations and, thus, it is important to give meaning to the same. Bennion on Statutory Interpretation has this to say regarding punctuation marks:

> "16.8 Punctuation is a part of an Act and may be considered in construing a provision. It is usually of little weight, however, since the sense of an Act should be the same with or without its punctuation.
>
> ... Although punctuation may be considered, it will generally be of little use since the sense of an Act should be the same with or without it. Punctuation is a device not for making meaning, but for making meaning plain. Its purpose is to denote the steps that ought to be made in oral reading and to point out the sense. The meaning of a well-crafted legislative proposition should not turn on the presence or absence of a punctuation mark."

177. In Marshall v. Cottingham123 [1982] Ch 82 at 88, at 12 while referring to the change of position and establishing that punctuation may be used in interpretation, it was held that:

> "the day is long past when the courts would pay no heed to punctuation in an Act of Parliament." In Hanlon v Law Society124 it was held as under :
>
> "... not to take account of punctuation disregards the reality that literate people, such as parliamentary draftsmen, punctuate what they write, if not identically, at least in accordance with grammatical principles. Why should not other literate people, such as judges, look at the punctuation in order to interpret the meaning of the legislation as accepted by parliament?" Yet again in Houston v Burns125, it was held that:
>
> "Punctuation is a rational part of English composition and is sometimes quite significantly employed. I see no reason for depriving legal documents of such significance as attaches to punctuation in other writings."

178. Other decisions were also cited.126 On similar lines, the American approach to the interpretation of punctuations is different. In Taylor v. Caribou127 , it was held as under:

> "We are aware that it has been repeatedly asserted by courts and jurists that punctuation is no part of a statute, and that it ought not to be regarded in construction. This rule in its origin was founded upon common sense, for in England

until 1849 statutes were entrolled upon parchment and enacted without punctuation .... Such a rule is not applicable to conditions where, as in this State, a bill is printed and is on the desk of every member of the Legislature, punctuation and all, before its final [1981] 3 All ER 8 [1981] AC 124 at 197 [1910] AC 337 at 348 Dingmar v. Dingmar 2007 (2) All ER 382; Kennedy v Information Commissioner and another (Secretary of State for Justice intervening) [2012] 1 WLR 3524 102 Me. 401, 67 A.2 (1907) passage. There is no reason why punctuation, which is intended to and does assist in making clear and plain the meaning of all things else in the English language, should be rejected in the case of the interpretation of statutes. "Cessante ratione legis cessat ipso lex." Accordingly we find that it has been said that in interpreting a statute punctuation may be resorted to when other means fail ...; that it may aid its construction ...; that by it the meaning may often be determined; that it is one of the means of discovering the legislative intent ...; that it may be of material assistance in determining the legislative intention...." (emphasis supplied) In Aswini Kumar Ghose (supra) stated that:

"Punctuation is after all a minor element in the construction of a statute, and very little attention is paid to it by English courts. Cockburn, C.J. said in Stephenson v. Taylor: "On the Parliament Roll there is no punctuation and we therefore are not bound by that in the printed copies." It seems, however, that in the Vellum copies printed since 1850 there are some cases of punctuation, and when they occur they can be looked upon as a sort of contemporanea expositio. When a statute is carefully punctuated and there is doubt about its meaning, a weight should undoubtedly be given to the punctuation. I need not deny that punctuation may have its uses in some cases, but it cannot certainly be regarded as a controlling element and cannot be allowed to control the plain meaning of a text.

********* ******* "77. The High Court has rejected the contention of the petitioner Aswini Kumar Ghosh on two grounds. In the first place it has been said that the comma was no part of the Act. That the orthodox view of earlier English Judges was that punctuation formed no part of the statute appears quite clearly from the observations of Willes, J. in Claydon v. Green. Vigorous expression was given to this view also by Lord Esher, M.R. in Duke of Devonshire v. Connor where he said:

"In an Act of Parliament there are no such things as brackets any more than there are such things as stops." This view was also adopted by the Privy Council in the matter of interpretation of Indian statutes as will appear from the observations of Lord Hobhouse in Maharani of Burdwan v. Murtunjoy Singh, namely, that "it is an error to rely on punctuation in construing Acts of the legislature". Same opinion was expressed by the Privy Council in Pugh v. Ashutosh Sen. If, however, the Rule regarding the rejection of punctuation for the purposes of interpretation is to be regarded as of imperfect obligation and punctuation is to be taken at least as contemporanea expositio, it will nevertheless have to be disregarded if it is contrary to the plain meaning of the statute. If punctuation is without sense or conflicts with

the plain meaning of the words, the court will not allow it to cause a meaning to be placed upon the words which they otherwise would not have. This leads me to the second ground on which mainly the High Court rejected the plea of the petitioner Aswini Kumar Ghosh, namely, that the word "other" in the phrase "any other law" quite clearly connects the Indian Bar Councils Act with other laws as alternatives and subjects both to the qualification contained in the adjectival clause. I find myself in complete agreement with the High Court on this point. If the intention was that the adjectival clause should not qualify the Indian Bar Councils Act, then the use of the word "other" was wholly in apposite and unnecessary. The use of that word unmistakably leads to the conclusion that the adjectival clause also qualifies something other than "other law". If the intention were that the Indian Bar Councils Act should remain unaffected by the qualifying phrase and should be superseded in toto for the purposes of this Act the legislature would have said "or in any law regulating the conditions etc." It would have been yet simpler not to refer to the Indian Bar Councils Act at all and to drop the adjectival clause and to simply say "Notwithstanding anything contained in any law". In the light of the true meaning of the title of the Act as I have explained above and having regard to the use of the word "other" I have no hesitation in holding, in agreement with the High Court, that what the non obstante clause intended to exclude or supersede was not the whole of the Indian Bar Councils Act but to exclude or supersede that Act and any other law only insofar as they or either of them purported to regulate the conditions subject to which a person not entered in the roll of advocates of a High Court might be permitted to practise in that High Court and that the comma, if it may at all be looked at, must be disregarded as being contrary to this plain meaning of the statute."

179. In Jamshed N. Guzdar (supra) this court held that:

"42. The general jurisdiction of the High Courts is dealt with in Entry 11-A under the caption "administration of justice", which has a wide meaning and includes administration of civil as well as criminal justice. The expression "administration of justice" has been used without any qualification or limitation wide enough to include the "powers" and "jurisdiction" of all the courts except the Supreme Court. The semicolon (;) after the words "administration of justice" in Entry 11-A has significance and meaning. The other words in the same entry after "administration of justice" only speak in relation to "constitution" and "organisation" of all the courts except the Supreme Court and High Courts. It follows that under Entry 11-A the State Legislature has no power to constitute and organise the Supreme Court and High Courts. It is an accepted principle of construction of a Constitution that everything necessary for the exercise of powers is included in the grant of power. The State Legislature being an appropriate body to legislate in respect of "administration of justice" and to invest all courts within the State including the High Court with general jurisdiction and powers in all matters, civil and criminal, it must follow that it can invest the High Court with such general jurisdiction and powers including the territorial and pecuniary jurisdiction and also to take away such jurisdiction and

> powers from the High Court except those, which are specifically conferred under the Constitution on the High Courts. It is not possible to say that investing the City Civil Court with unlimited jurisdiction, taking away the same from the High Court, amounts to dealing with "constitution" and "organisation" of the High Court. Under Entry 11-A of List III the State Legislature is empowered to constitute and organise City Civil Court and while constituting such court the State Legislature is also empowered to confer jurisdiction and powers upon such courts inasmuch as "administration of justice" of all the courts including the High Court is covered by Entry 11-A of List III, so long as Parliament does not enact law in that regard under Entry 11-A. Entry 46 of the Concurrent List speaks of the special jurisdiction in respect of the matters in List III. Entry 13 in List III is "... Code of Civil Procedure at the commencement of this Constitution ...". From Entry 13 it follows that in respect of the matters included in the Code of Civil Procedure and generally in the matter of civil procedure Parliament or the State Legislature, as provided by Article 246(2) of the Constitution, acquire the concurrent legislative competence. The 1987 Act deals with pecuniary jurisdiction of the courts as envisaged in the Code of Civil Procedure and as such the State Legislature was competent to legislate under Entry 13 of List III for enacting the 1987 Act.
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> 68. A Full Bench of the Punjab and Haryana High Court in Rajinder Singh v. Kultar Singh AIR 1980 P&H 1, touching the same topic stated thus: (AIR p. 1) "So far as the High Courts are concerned, the topic of jurisdiction and powers in general is not separately mentioned in any of the entries of List I, but 'administration of justice' as a distinct topic finds a place in Entry 3 of List II (now Entry 11-A of List III).

The expression 'administration of justice' occurring in Entry 3 of List II of the VIIth Schedule has to be construed in its widest sense so as to give power to the State Legislature to legislate on all matters relating to administration of justice.

After the words 'administration of justice' in Entry 3 there is a semicolon, and this punctuation cannot be discarded as being inappropriate. The punctuation has been put with a definite object of making this topic as distinct and not having relation only to the topic that follows thereafter. Under Entry 78 of List I, the topic of jurisdiction and powers of the High Courts is not dealt with. Under Entry 3 of List II the State Legislature can confer jurisdiction and powers or restrict or withdraw the jurisdiction and powers already conferred on any of the courts except the Supreme Court, in respect of any statute. Therefore, the State Legislature has the power to make a law with respect to the jurisdiction and powers of the High Court."

180. There are several other decisions, which support the proposition that punctuation marks, especially colons have a significant role in the interpretation of words in a statute. These judgments include Falcon Tyres Ltd. v. State of Karnataka128. It was submitted that the semicolon after the word "cotton" did not mean that the first part of the section was disjunctive from "such produce" as has been subjected to any physical, chemical or other process. It was further submitted that punctuation is not a safe tool in construction of statute and if the first part of the section is read as

disjunctive from the other part it conflicts with Sl. No. 2 in the Second Schedule. Further it was submitted that definition section which is the interpretation clause to the statute begins with the expression "unless the context otherwise requires". This court held that:

> "11. We do not find any substance in the submission of the learned counsel for the appellant that the semicolon after the word "cotton" does not mean that the first part of the section is disjunctive from "such produce" as has been subjected to any physical, chemical or other process. Section 2(A)(1) is in two parts, it excludes two types of food from agricultural produce. According to us, the definition of the agricultural and horticultural produce does not say as to what would be included in the agricultural or horticultural produce, in substance it includes all agricultural or horticultural produce but excludes, (1) tea, coffee, rubber, cashew, cardamom, pepper and cotton from the definition of the agricultural or horticultural produce though all these products as per dictionary meaning or in common parlance would be understood as agricultural produce; and (2) "such produce as has been subjected to any physical, chemical or other process for being made fit for consumption", meaning thereby that the agricultural produce other than what has been excluded, which has been subjected to any physical, chemical or other process for making it fit for consumption would also be excluded from the definition of the agricultural or horticultural produce except where such agricultural produce is merely cleaned, graded, sorted or dried. For example, if the potatoes are cleaned, graded, sorted or dried, they will remain agricultural produce but in case raw potato is subjected to a process and converted into chips for human consumption it would cease to be agricultural produce for the purposes of the Entry Tax Act. The words "such produce" in the second part do not refer to the produce which has already been excluded from the agricultural or horticultural produce but refer to such other agricultural produce which has been subjected (2006) 6 SCC 530 to any physical, chemical or other process for being made fit for human consumption." The other judgment cited was State of Gujarat v. Reliance Industries Ltd.129 With respect to 'Full Stop' and 'Colon', Vepa P. Sarathi in the Interpretation of Statutes, Fifth Edition discussed the issue thus:
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> "The Stop. – The most important punctuation mark is the period or full stop. It has to be placed at the end of a complete sentence which is neither exclamatory nor interrogatory. Of course, in legislative drafting exclamatory or interrogative sentences will not occur. An incomplete sentence should however end with a dash. It should be noticed carefully whether the final stop should be inside or outside the quotes. One can tell easily by the sense. Colon. – It implies that what follows explains and amplifies the sentence that comes before it. It is generally used before a quotation, or to take the place of some word such as "namely"."

181. Aswini Kumar Ghose & Anr (supra) also dealt with full stops and held that as long as punctuation does not detract from the meaning of the words in the text, it can be a controlling factor in interpretation. In State of West Bengal v. Swapan Kumar Guha and Ors 130, this court observed

that grammar and punctuation are hapless victims of the pace of life and sometimes are used both as a matter of convenience and of meaningfulness. Besides, how far a clause which follows upon a comma governs every clause that precedes the comma is a matter not free from doubt. This Court observed that:

> "5. Since the sole question for consideration arising out of the FIR, as laid, is whether the accused are conducting a money circulation scheme, it is necessary to understand what is comprehended within the statutory meaning of that expression. Section 2(c) of the Act provides:
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> "2. (c) 'money circulation scheme' means any scheme, by whatever name called, for the making of quick or easy money, or for the receipt of any money or valuable thing as the consideration (2017) 16 SCC 28 (1982) 1 SCC 561 for a promise to pay money, on any event or contingency relative or applicable to the enrolment of members into the scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscriptions;" Grammar and punctuation are hapless victims of the pace of life, and I prefer in this case not to go merely by the commas used in clause (c) because, though they seem to me to have been placed both as a matter of convenience and of meaningfulness, yet, a more thoughtful use of commas and other gadgets of punctuation would have helped make the meaning of the clause clear beyond controversy. Besides, how far a clause which follows upon a comma governs every clause that precedes the comma is a matter not free from doubt. I, therefore, consider it more safe and satisfactory to discover the true meaning of clause (c) by having regard to the substance of the matter as it emerges from the object and purpose of the Act, the context in which the expression is used and the consequences necessarily following upon the acceptance of any particular interpretation of the provision, the contravention of which is visited by penal consequences."

182. The present case involves placement of colon preceding to the Proviso to Section 24 (2) and not Section 24 (1), which ends with a full stop, and it makes sense and the true meaning where Parliament has placed it. The proviso is part of section 24(2). It is not permissible to alter the provision and to read it as a proviso to section 24(1)(b), mainly when it makes sense where Parliament so placed it. To read the proviso as part of section 24(1)(b), will create repugnancy which the provisions contained in section 24(1)(b). The window period of 5 years is provided to complete the acquisition proceedings where the award has been passed, and the provisions of the Act of 1894 shall be applied as if it has not been repealed. Section 24(2) starts with a non-obstante clause; it plainly is notwithstanding Section 24 (1), and the proviso to section 24(2) enlarges the scope of section 24(2). When the window period has been provided under section 24(1)(b), i.e., section 24(2) and its proviso, higher compensation cannot follow in case of an award which has been passed within 5 years of the enactment of the Act of 2013 otherwise anomalous results shall accrue. In case proviso is read as a part of section 24(1)(b), it would be repugnant to the consideration of the provision which has been carved out saving acquisition and providing window period of 5 years to complete the acquisition proceedings. There were cases under the Act of 1894, in which award may

have been made in December 2013, a few days before the Act was enforced on 1.1.2014. As the provisions of the Act of 1894 are applicable to such awards, obviously notice of the award has to be given under Section 12 of the said Act. There is no question of outright deposit. In such event as the deposit is to be made when the Collector is prevented by the exigencies specified in Section 31(2) from making payment. The deposit is not contemplated directly either in the court or the treasury, as the case may be as provided in section 31(2), corresponding to section 77(2) of the Act of 2013.

183. The proviso relates to the non-payment. Compensation is deposited when the Collector is prevented from making payment. It is the obligation made under section 31(1) to tender the amount and pay unless prevented by the contingencies specified in section 31(2). Thus, the deposit has a co-relation with the expression "payment has not been made," and the proviso makes sense with Section 24 (2) only. In case of non-payment or prevention from payment, compensation is required to be deposited as the case may be in the Reference Court or otherwise in Treasury, if permissible.

184. The proviso uses the expression that the amount is to be deposited in the account of beneficiaries. Earlier under the Act of 1894, there was no such provision for depositing the amount in the bank account of beneficiaries but the method which was used as per the forms which were prescribed to deposit the amount, it was credited to the Reference Court or in the Treasury in the names of the beneficiaries and as against the award. It was not a separate account but an account of the Reference Court or set apart in the treasury. The proviso has to be interpreted and given the meaning with Section 24(2) as an amount was required to be paid and on being prevented had to be deposited as envisaged under the Act of 1894.

185. If we hold that even if the award has been passed within 5 years and the compensation amount has not been deposited with respect to such an award passed in the window period, higher compensation to follow if it is not deposited with respect to the majority of the holdings would amount to re-writing the statute. The provision of section 24(1)(a) is clear if an award has not been passed, higher compensation to follow. No lapse is provided. In case award has been passed within the window period of section 24(1)(b), inter alia, the provisions for compensation would be that of the Act of 1894. The only exception to section 24(1) is created by the non-obstante clause in section 24(2) by providing that in case the requisite steps have not been taken for 5 years or more, then there is lapse as a negative condition. The proviso contemplates higher compensation, in case compensation has not been paid, and the amount has not been deposited with respect to the majority of the holdings, to all the beneficiaries under the Act of 2013, who were holding land on the date of notification under Section 4. If the proviso is added, section 24(1)(b) will destroy the very provision of section 24(1)(b) providing proceedings to continue under the Act of 1894, which is not the function of the proviso to substitute the main Section but to explain it. It is not to cause repugnancy with the main provision. The function of the proviso is to explain or widen the scope. It is a settled proposition of law that the proviso cannot travel beyond the provision to which it is attached. The proviso would travel beyond the Act of 1894 as it is the intention of section 24(1)(b) the proceedings to govern by the Act of 1894. Thus, the proviso has no space to exist with section 24(1)(b), and it has rightly not been attached by Parliament, with Section 24(2) and has been placed at the right place where it should have been.

186. It is in the cases where there is no lapse under section 24(2) if either step has been taken proviso operates to provide higher compensation. In the cases where possession has been taken, but the amount has not been deposited as required under the proviso, higher compensation to all the beneficiaries has to follow as once possession has been taken, the land is vested in the State and payment is necessary for any acquisition. As such, Parliament has provided in such cases higher compensation to follow as envisaged in the proviso to section 24(2). Lapse of acquisition is provided only in the exigencies where possession has not been taken, nor compensation has been paid in the proceedings for acquisition pending as on the date on which the Act of 2013 came into force, then the State Government has to initiate fresh proceedings if it so desires. The proviso is part of the scheme of section 24(2), and the entire provision of section 24(2), including the proviso, operates when inaction is there for a period of 5 years or more, as contemplated therein.

187. The fundamental consideration is that the proviso cannot supersede the main provision of section 24(1)(b) and destroy it. The function of the proviso is to except out the pressing provisions to which it is attached. In case possession has been taken, but only a few beneficiaries have been paid, there is no lapse. Even if nobody has been paid, there is no lapse once possession has been taken. In case compensation has not been deposited with respect to the majority of the holdings, there is no lapse, but higher compensation to all the beneficiaries has to follow. The provision provides equal treatment to all, not only to a few- and, in effect, is similar to Section 28A of the Act of 1894- in case the obligation to pay or deposit has not been discharged and there is no arrangement of money to discharge the obligation either by paying or depositing in the Reference Court and, if permissible, in the treasury. Section 24(2) saves land which has been vested in the State, once award has been passed and possession of land. However, in case compensation has not been deposited with respect to majority of landowners, in any given award, all beneficiaries have to be paid higher compensation under the new Act.

188. It was urged that section 24(1) and 24(2) deal with different subjects. It was submitted that Section 24(1) deals with compensation, whereas section 24(2) deals with the lapsing of the acquisition. We are unable to accept the submission. Section 24(2) also deals with payment of compensation and taking of possession. Section 24(1)(a) is concerning a situation where no award has been made, higher compensation under the new Act to follow. In section 24(1)(b) where the award is made (at the time of coming into force of the new Act) further proceedings would be under the new law; subject to Section 24(2), the provisions of the Act of 1894 would apply to such an award. Thus, the main part of section 24(2) deals with payment of compensation; also the proviso which provides for higher compensation to be paid to all is in the context of section 24(2) and cannot be lifted and added to Section 24(1)(b) in the aforesaid circumstances. What would be the majority of the landholdings has to be seen in the context, what has been acquired in the case of a single plot being acquired, and in case compensation has not been deposited with respect to that, it will constitute the majority. The majority does not depend upon the number of holdings acquired, but what constitutes the majority as per the acquired area under the notification.

189. Section 24(1)(a) operates where no award is made in a pending acquisition proceeding; in such event all provisions of the new Act relating to determination of compensation would apply. Section 24 (1)

(b) logically continues with the second situation, i.e. where the award has been passed, and states that in such event, proceedings would continue under the Act of 1894. Section 24 (2) – by way of an exception, states that where an award is made but requisite steps have not been taken for five years or more to take possession nor compensation has been paid then there is lapse of acquisition. If one of the steps has been taken, then the proviso can operate. Time is the essence. It is on the basis of time-lag that the lapse is provided and in default of payment for five years as provided on failure to deposit higher compensation is to be paid. It is based on that time-lag higher compensation has to follow. It is not the mere use of colon under section 24(2) but the placement of the proviso next to Section 24 (2) and not below Section 24(1)(b). Thus, it is not permissible to alter a placement of proviso more so when it is fully in consonance with the provisions of section 24(2). Section 24(2) completely obliterates the old regime to the effect of its field of operation. Under section 24(1)(a), there is a partial lapse of the old regime because all proceedings, till the stage of award are preserved. The award, in such proceedings, made after coming into force of the Act of 2013 has to take into account its provisions, for determination of compensation. Thus, proceedings upto the stage of the award are deemed final under the old Act. In the case under section 24(1)(b), the old regime prevails. The proviso is an exception to section 24(2) and in part the new regime for payment of higher compensation in case of default for 5 years or more after award.

In re: Proviso to be read as part of provision it is appended

190. A proviso has to be construed as a part of the clause to which it is appended. A proviso is added to a principal provision to which it is attached. It does not enlarge the enactment. In case the provision is repugnant to the enacting part, the proviso cannot prevail. Though in absolute terms of a later Act. Its placement has been considered, and purpose has been considered in the following decisions. It was observed in State of Rajasthan v. Leela Jain & Ors that131:

> "14. . . . So far as a general principle of construction of a proviso is concerned, it has been broadly stated that the function of a proviso is to limit the main part of the section and carve out something which but for the proviso would have been within the operative part. …." (emphasis supplied) Similarly, this court in Sales-tax Officer, Circle 1, Jabalpur v.
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> Hanuman Prasad132 stated that:
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> "5. …. It is well-recognised that a proviso is added to a principal clause primarily with the object of taking out of the scope of that 1965 (1) SCR 276 1967 (1) SCR 831 principal clause what is included in it and what the Legislature desires should be excluded. …." (emphasis supplied) In Commissioner of Commercial Taxes, Board of Revenue, Madras and Anr. v. Ramkishan Shrikishan Jhaver etc 133 it was observed:
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> "8. … Generally speaking, it is true that the proviso is an exception to the main part of the section; but it is recognised that in exceptional cases a proviso may be a substantive provision itself. …." (emphasis supplied)

191. In S. Sundaram Pillai & Ors. v. V.R. Pattabiraman & Ors 134 , the scope of a proviso was clarified. The relevant discussion is quoted as under:

> "27. The next question that arises for consideration is as to what is the scope of a proviso and what is the ambit of an Explanation either to a proviso or to any other statutory provision. We shall first take up the question of the nature, scope and extent of a proviso. The well established rule of interpretation of a proviso is that a proviso may have three separate functions. Normally, a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In other words, a proviso cannot be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment." *** "29. Odgers in Construction of Deeds and Statutes (5th Edn.) while referring to the scope of a proviso mentioned the following ingredients:
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> "P. 317. Provisos —These are clauses of exception or qualification in an Act, excepting something out of, or qualifying something in, the enactment which, but for the proviso, would be within it.
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> P. 318. Though framed as a proviso, such a clause may exceptionally have the effect of a substantive enactment."
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> 30. Sarathi in Interpretation of Statutes at pages 294-295 has collected the following principles in regard to a proviso:
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> AIR (1968) SC 59 134 (1985) 1 SCC 591
>
> (a) When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso.

(b) A proviso must be construed with reference to the preceding parts of the clause to which it is appended.

(c) Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the latter intention of the makers.

(d) Where the section is doubtful, a proviso may be used as a guide to its interpretation: but when it is clear, a proviso cannot imply the existence of words of which there is no trace in the section.

(e) The proviso is subordinate to the main section.

(f) A proviso does not enlarge an enactment except for compelling reasons.

(g) Sometimes an unnecessary proviso is inserted by way of abundant caution.

(h) A construction placed upon a proviso which brings it into general harmony with the terms of section should prevail.

(i) When a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of a later Act directed to be read as supplemental to the earlier one.

(j) A proviso may sometimes contain a substantive provision.

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35. A very apt description and extent of a proviso was given by Lord Loreburn in Rhondda Urban District Council v. Taff Vale Railway Co., 1909 AC 253, where it was pointed out that insertion of a proviso by the draftsman is not always strictly adhered to its legitimate use and at times a section worded as a proviso may wholly or partly be in substance a fresh enactment adding to and not merely excepting something out of or qualifying what goes before. To the same effect is a later decision of the same Court in Jennings v. Kelly, 1940 AC 206, where it was observed thus:

> "We must now come to the proviso, for there is, I think, no doubt that, in the construction of the section, the whole of it must be read, and a consistent meaning, if possible, given to every part of it. The words are:... 'provided that such licence shall be granted only for premises situate in the ward or district electoral division in which such increase in population has taken place...' There seems to be no doubt that the words "such increase in population" refer to the increase of not less than 25 per cent of the population mentioned in the opening words of the section."

36. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately.

37. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself.

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43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:

(1) qualifying or excepting certain provisions from the main enactment:

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable: (3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and (4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision." (emphasis supplied)

192. Craies on Statute Law, 7th Edn., has observed, with respect to the construction of provisos thus:

"The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it; and such a proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect." (emphasis supplied) R. v. Dibdin, 1910 P 57 (CA), held as under:

"The fallacy of the proposed method of interpretation is not far to seek. It sins against the fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso. It treats it as if it were an independent enacting clause instead of being dependent on the main enactment. The courts ... have refused to be led astray by arguments such as those which have been addressed to us, which depend solely on taking words absolutely in their strict literal sense, disregarding the fundamental consideration that they are appearing in the proviso." (emphasis supplied)

193. Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai 135, considered the effect of a proviso and said that its function is "to except or qualify something enacted in the substantive clause, which but for the proviso would be within that clause. It may ordinarily be presumed in construing a proviso that it was intended that the enacting part of the section would have included the subject-matter of the proviso." Similar observations and considerations weighed in Haryana State Cooperative Land Development Bank Ltd. v. Haryana State Cooperative Land Development Banks Employees Union & Anr.136 and other decisions noted below.137 In Subhaschandra Yograj Sinha (supra) it was observed that :

"(9) The law with regard to provisos is well settled and well understood. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule. But, provisos are often added not as exceptions or qualifications to the main enactment but as savings clauses, in which cases they will not be construed as controlled by the section. The proviso which has been added to Section 50 of the Act deals with the effect of repeal. The substantive part of the section repealed two Acts

> which were in force in the State of Bombay. If nothing more had been said, Section 7 of the Bombay General clauses Act would have applied, and all pending suits and proceedings would have continued under the old law, as if the repealing Act had not been passed. The effect of the proviso was to take the matter out of Section 7 of the Bombay General Clauses Act and to provide for a special saving. It cannot be used to decide whether Section 12 of the Act is retrospective. It was observed by Wood, V.C., in Fitzgerald v. Champneys, (1861) 70 ER 958 that saving clauses are seldom used to construe Acts. These clauses are introduced into Acts which repeal others, to safeguard rights which, but for the savings, would be lost. The proviso here saves pending suits and proceedings, and further enacts that suits and proceedings then pending are to be transferred to the courts 135 1966 (1) SCR 367 136 (2004) 1 SCC 574 137 Shimbhu & Anr. v. State of Haryana, (2014) 13 SCC 318; Kedarnath Jute Manufacturing Co. Ltd. v. The Commercial Tax Officer and Ors., 1965 (3) SCR 626. Shah Bhojraj Kuverji Oil Mills & Ginning Factory v. Subhash Chandra Yograj Sinha, AIR 1961 SC 1596; Dwarka Prasad v. Dwarka Das Saraf, 1976 (1) SCC 128; The Commissioner of Income-tax, Mysore, Travancore-Cochin and Coorg, Bangalore v. The Indo Mercantile Bank Ltd., 1959 (Supp 2) SCR 256 In Romesh Kumar Sharma v. Union of India and Ors., (2006) 6 SCC 510.

designated in the Act and are to continue under the Act and any or all the provisions of the Act are to apply to them. The learned Solicitor-General contends that the savings clause enacted by the proviso, even if treated as substantive law, must be taken to apply only to suits and proceedings pending at the time of the repeal which, but for the proviso, would be governed by the Act repealed. According to the learned Attorney-General, the effect of the savings is much wider, and it applies to such cases as come within the words of the proviso, whenever the Act is extended to new areas." (emphasis supplied)

194. In Motiram Ghelabhai v. Jagan Nagar & Ors138 , the view taken in Bhojraj (supra) was affirmed and applied. It was observed that provisos are often added not as exceptions or qualifications to the main enactment but as savings clauses, in which case they will not be construed as controlled by the section. In Madhu Gopal v. VI Additional District Judge & Ors.139 this Court has laid down that in any event, it is a well-settled principle of construction that unless clearly indicated, a proviso would not take away substantive rights given by the section or the sub-section. In The King v. Dominion Engineering Co. Ltd.140, it was held that where a section of an enactment contains two provisions and the second proviso is repugnant in any way to the first, the second proviso must prevail for it stands last in the enactment and speaks the last intention of the makers. The following observations were made:

> "(7) Proviso 2 qualifies the main enactment in the matter of delivery no less than does proviso 1 and it also qualifies proviso 1 itself. For it provides "further" that "in any case where there is no physical delivery of the goods," the tax is to be payable when the property in the goods passes to the purchaser. Thus where there is no physical delivery the notional delivery which proviso 1 introduces is rendered inapplicable. Anger J. found in proviso 2 an alternative ground for his decision against the Crown

> and it (1985) 2 SCC 279 139 1988 (4) SCC 644 AIR (34) 1947 PC 94 is the main ground of Hudson J.'s judgment in the Supreme Court.

In their Lordships' view this proviso presents an insuperable obstacle to the Crown's claim. There has been no physical delivery of the goods by the Dominion Company to the Pulp Company. The proviso enacts that "in any case" where there has been no physical delivery the tax is to be payable when the property passes. The property in the goods in question has never passed to the Pulp Company. Consequently the tax has nevern become payable. If proviso 2 is repugnant in any way to proviso 1 it must prevail for it stands last in the enactment and so to quote Lord Tenterden C.J., "speaks the last intention of the maker" ((1831), 2 B. & Ad. 818 at p.821). The word is with the respondent, the Dominion Company, and must prevail."

195. The proviso thus, is not foreign to compensation to be paid under section 24(2). It provides what is dealt with in Section 24(2) and takes to its logical conclusion, and provides for higher compensation, where there is and can be no lapsing of acquisition proceedings. The rule of construction- as is clear from the preceding case law discussed, is that the proviso should be limited in its operation to the subject-matter in a clause. A proviso is ordinarily a proviso and has to be harmoniously construed with the provisions. In our opinion, the proviso is capable of being harmoniously construed with Section 24(2) and not with section 24(1)(b), once we interpret the word 'or' as 'nor' in section 24(2).

196. In keeping with the ratio in the aforesaid decisions, this court is of the considered view that the proviso cannot nullify the provision of Section 24(1)(b) nor can it set at naught the real object of the enactment, but it can further by providing higher compensation, thus dealing with matters in Section 24 (2). Therefore, in effect, where award is not made [Section 24 (1)(a)] as well as where award is made but compensation is not deposited in respect of majority of the landowners in a notification (for acquisition) [i.e. proviso to Section 24 (2)] compensation is payable in terms of the new Act, i.e., Act of 2013.

197. For the aforesaid reasons, considering the placement of the proviso, semi-colon having been used at the end of section 24(2), considering the interpretation of section 24(1)(b) and the repugnancy which would be caused in case the proviso is lifted which is not permissible and particularly when we read the word 'or' as 'nor' in section 24(2), it has to be placed where the legislature has legislated it, it has not been wrongly placed as part of section 24(2) but is intended for beneficial results of higher compensation for one and all where there is no lapse, but amount not deposited as required. Higher compensation is contemplated by the Act of 2013, which intention is fully carried forward by the placement and interpretation.

In re: What is the meaning to be given to the word "paid" used in section 24(2) and "deposited" used in the proviso to section 24(2)

198. Connected with this issue are questions like what is the consequence of payment not being made under section 31(1) and what are the consequences of amount not deposited under section 31(2). The provision of section 24(2) when it provides that compensation has not been paid where

award has been made 5 years or more prior to the commencement of the Act of 2013. In contradistinction to that, the proviso uses the expression "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". We have to find out when an amount is required to be deposited under the Act of 1894 and how the payment is made under the Act of 1894. The provisions of Section 31 of the Act of 1894 are attracted to the interpretation of provisions of section 24(2) to find out the meaning of the words 'paid' and 'deposited'. Section 31(1) makes it clear that on passing of award compensation has to be tendered to the beneficiaries and Collector shall pay it to them. The payment is provided only in section 31(1). The expression ‘tender’ and pay to them in section 31(1) cannot include the term 'deposited.'

199. Section 31 (2) of the Act of 1894 deals with deposit in case Collector is ‘prevented’ from making payment by one or more contingencies mentioned in section 31(2). The deposit follows if the Collector is prevented from making payment. In case Collector is prevented from making payment due to contingencies such refusal to receive the amount, or if there be no person competent to alienate the land, or if there is a dispute as to the title to receive the compensation or as to the apportionment of it, he (i.e. the Collector) may withhold it or in case there is dispute as to apportionment, he may ask the parties to get a decision from the Reference Court i.e., civil court and to clear the title. In such exigencies, the amount of compensation is required to be deposited in the court to which reference would be submitted under section 18. Section 31(2) requires deposit in case of reference under section 18 and not the reference, which may be sought under section 30 or section 28A of the Act of 1894.

200. Section 24(2) deals with the expression where compensation has not been paid. It would mean that it has not been tendered for payment under section 31(1). Though the word 'paid' amounts to a completed event however once payment of compensation has been offered/tendered under section 31(1), the acquiring authority cannot be penalized for non-payment as the amount has remained unpaid due to refusal to accept, by the landowner and Collector is prevented from making the payment. Thus, the word 'paid' used in section 24(2) cannot be said to include within its ken 'deposit' under section 31(2). For that special provision has been carved out in the proviso to section 24(2), which deals with the amount to be deposited in the account of beneficiaries. Two different expressions have been used in section 24. In the main part of section 24, the word 'paid' and in its proviso 'deposited' have been used.

201. The consequence of non-deposit of the amount has been dealt with in section 34 of the Act of 1894. As per section 24(2), if the amount has not been paid nor possession has been taken, it provides for lapse. Whereas the proviso indicates amount has not been deposited with respect to a majority of land holdings in a case initiated under the Act of 1894 for 5 years or more. The period of five years need not have been specified in the proviso as it is part of section 24(2) and has to be read with it, particularly in view of the colon and placement by the legislature as held above. Two different consequences of non-deposit of compensation are: (i) higher compensation in a case where possession has been taken, payment has been made to some and amount has not been deposited with respect to majority of the holdings, (ii) in case there is no lapse, the beneficiaries would be entitled to interest as envisaged under section 34 from the date of taking possession at the rate of

9% per annum for the first year and after that @ 15% per annum.

202. The word “paid” has been defined in the Oxford Dictionary to mean thus:

> “paid past and past participle of pay”; Give a sum of money thus owned.” Cambridge English Dictionary, defines “paid” as follows:
>
> “being given money for something.” P. Ramanatha Aiyar’s Advance Law Lexicon, 3rd Edition, 2005, uses the following definition of “paid”:
>
> “applied; settled: satisfied.”

203. The word “paid” in Section 31(1) to the landowner cannot include in its ambit the expression "deposited" in court. Deposit cannot be said to be payment made to landowners. Deposit is on being prevented from payment. However, in case there is a tender of the amount that is to mean amount is made available to the landowner that would be a discharge of the obligation to make the payment and in that event such a person cannot be penalised for the default in making the payment. In default to deposit in court, the liability is to make the payment of interest under Section 34 of Act of 1894. Sections 32 and 33 (which had been relied upon by the landowners’ counsel to say that valuable rights inhere, in the event of deposit with court, thus making deposit under Section 31 mandatory) provide for investing amounts in the Government securities, or seeking alternative lands, in lieu of compensation, etc. Such deposits, cannot fetch higher interest than the15 per cent contemplated under Section 34, which is pari materia to Section 80 of Act of 2013. Section 34 is pari materia to section 80 of Act of 2013 in which also the similar rate of interest has been specified. Even if the amount is not deposited in Reference Court nor with the treasury as against the name of the person interested who is entitled to receive it, if Collector has been prevented to make the payment due to exigencies provided in Section 31(2), interest to be paid. However, in case the deposit is made without tendering it to the person interested, the liability to pay the interest under section 34, shall continue. Even assuming deposit in the Reference Court is taken to be mandatory, in that case too interest has to follow as specified in section 34. However, acquisition proceeding cannot lapse due to non-deposit.

204. The concept of "deposit" is different and quite apart from the word “paid”, due to which, lapse is provided in Section 24 of Act of 2013. In the case of non-deposit for the majority of landholdings, higher compensation would follow as such word “paid” cannot include in its ambit word “deposited”. To hold otherwise would be contrary to provisions contained in Section 24(2) and its proviso carrying different consequences. It is provided in Section 34 of Act of 1894, in case payment has not been tendered or paid, nor deposited the interest has to be paid as specified therein. In Section 24(2) also lapse is provided in case amount has not been paid and possession has not been taken.

205. In our considered opinion, there is a breach of obligation to deposit even if it is taken that amount to be deposited in the reference court in exigencies being prevented from payment as provided in Section 31(2). The default will not have the effect of reopening the concluded

proceedings. The legal position and consequence which prevailed from 1893 till 2013 on failure to deposit was only the liability for interest and all those transactions were never sought to be invalidated by the provisions contained in Section 24. It is only in the case where in a pending proceeding for a period of five years or more, the steps have not been taken for taking possession and for payment of compensation, then there is a lapse under section 24(2). In case amount has not been deposited with respect to majority of land holdings, higher compensation has to follow. Both lapse and higher compensation are qualified with the condition of period of 5 years or more.

206. It was submitted that mere tender of amount is not payment. The amount has to be actually paid. In our opinion, when amount has been tendered, the obligation has been fulfilled by the Collector. Landowners cannot be forced to receive it. In case a person has not accepted the amount wants to take the advantage of non-payment, though the amount has remained due to his own act. It is not open to him to contend that amount has not been paid to him, as such, there should be lapse of the proceedings. Even in a case when offer for payment has been made but not deposited, liability to pay amount along with interest subsist and if not deposited for majority of holding, for that adequate provisions have been given in the proviso also to Section 24(2). The scheme of the Act of 2013 in Sections 77 and 80 is also the same as that provided in Sections 31 and 34 of the Act of 1894.

207. It was urged that landowners can seek investment in an interest bearing account, there is no doubt about that investment can be sought from the court under Sections 32 and 33 of Act of 1894, but interest in Government securities is not more than what is provided in section 34 at the rate of 9 percent from the date of taking possession for one year and thereafter, at the rate of 15 percent. We take judicial notice of the fact in no other Government security rate of interest is higher on the amount being invested under sections 32 and 33 of the Act of 1894. Higher rate of interest is available under section 34 to the advantage of landowners. It was submitted that in case the amount is deposited in the court, it is on behalf of the beneficiary. The submission overlooks the form in which it used to be deposited in the treasury too, that amount is also credited in the treasury payable to the beneficiary specified in his name with land details, date of award, etc.

208. There is another reason why this court holds that such an interpretation is reasonable and in tune with Parliamentary intent. Under the old regime, it was open to the Collector to fix a convenient date or dates for announcement of award, and tender payment. In the event of refusal by the landowner to receive, or in other cases, such as absence of the true owner, or in case of dispute as to who was to receive it, no doubt, the statute provided that the amount was to be deposited with the court: as it does today, under Section 77. Yet, neither during the time when the Act of 1894 was in operation, nor under the Act of 2013, the entire acquisition does not lapse for non-deposit of the compensation amount in court. This is a significant aspect which none of the previous decisions have noticed. Thus, it would be incorrect to imply that failure to deposit compensation [in court, under Section 31 (2)] would entail lapse, if the amounts have not been paid for five years or more prior to the coming into force of the Act of 2013. Such an interpretation would lead to retrospective operation, of a provision, and the nullification of acquisition proceedings, long completed, by imposition of a norm or standard, and its application for a time when it did not exist.

209. If the expression “deposited” is held to be included in the expression “paid” used in Section 24(2) of the Act of 2013, inconsistency and repugnancy would be caused as between the proviso and the main sub-section, which has to be avoided and the non-compliance of the provisions of Section 31(2) is not fatal. Even if the amount has not been deposited, higher compensation has to follow in the exigency proviso to Section 24(2).

210. In Black’s Law Dictionary, the word "tender" has been defined to mean thus:

> “tender, n. (16c) 1. A valid and sufficient offer of performance; specific, an unconditional offer of money or performance to satisfy a debt or obligation a tender of delivery. The tender may save the tendering party from a penalty for non-payment or non-performance or may, if the other party unjustifiably refuses the tender, place the other party in default. Cf. OFFER OR PERFORMANCE; CONSIGNATION.”

211. It is apparent that “tender” of the amount saves the party tendering it from the consequence to be visited on non-payment of the amount. The obligation to make the payment has been considered in various other laws and decisions. When obligation to payment is fulfilled as to the scheme in the context of a particular act, for that purpose, decisions under various other laws are relevant and cannot be said to be irrelevant.

212. In The Straw Board Manufacturing Co. Ltd., Saharanpur v. Gobind141 , this Court considered the provisions requiring payment of one month’s wage under Section 33 of Industrial Disputes Act for 1962 (Supp 3) SCR 318 making a valid discharge or dismissal. This Court has held that the employer has tendered the wages and that would amount for payment, otherwise a workman can make the provision unworkable by refusing to take the wages. This Court has observed thus:

> “(8) Let us now turn to the words of the proviso in the background of what we have said above. The proviso lays down that no workman shall be discharged or dismissed unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer. It will be clear that two kinds of punishment are subject to the conditions of the proviso, namely, discharge or dismissal. Any other kind of punishment is not within the proviso. Further the proviso lays down two conditions, namely, (i) payment of wages for one month and (ii) making of an application by the employer to the authority before which the proceeding is pending for approval of the action taken. It is not disputed before us that when the proviso lays down the conditions as to payment of one month's wages, all that the employer is required to do in order to carry out that condition is to tender the wages to the employee. But if the employee chooses not to accept the wages he cannot come forward and say that there has been no payment of wages to him by the employer. Therefore, though S. 33 speaks of payment of one month's wages it can only mean that the employer has tendered the wages and that would amount to payment, for otherwise a workman could always make the section unworkable by refusing to take the wages. So far as the second condition about the making of the application is

> concerned, the proviso requires that the application should be made for approval of the action taken by the employer." (emphasis supplied)

213. In The Management of Delhi Transport Undertaking v. The Industrial Tribunal, Delhi & Anr 142, a three-Judge Bench of this Court has laid down the law to the similar effect. It is not actual payment, but tender of amount which is necessary to fulfil obligation to pay. This Court observed thus:

> "4. ...The proviso does not mean that the wages for one month should have been actually paid, because in many cases the 1965 (1) SCR 998 employer can only tender the amount before the dismissal but cannot force the employee to receive the payment before dismissal becomes effective. In this case the tender was definitely made before the order of dismissal became effective and the wages would certainly have been paid if Hari Chand had asked for them. There was no failure to comply with the provision in this respect." (emphasis supplied

214. In Indian Oxygen Ltd. v. Narayan Bhoumik143, it was held that the "the condition as to payment in the proviso does not mean that wages have to be actually paid but if wages are tendered or offered, such a tender or offer would be sufficient compliance" with the statute. The Benares State Bank Ltd. v. The Commissioner of Income Tax, Lucknow144, was decided in the context of Section 14(2)(c) of the Income Tax Act, 1922. It was observed that "paid" under Section 16 does not contemplate actual receipt of the dividend by the Member of the community. It is to be made unconditionally available to the members entitled to it. It observed thus:

> "5. ...This Court observed in J. Dalmia v. Commissioner of Income-tax, Delhi, 53 ITR 83 that the expression "paid" in Section 16(2) does not contemplate actual receipt of the dividend by the member: in general, dividend may be said to be paid within the meaning of Section 16(2) when the company discharges its liability and makes the amount of dividend unconditionally available to the member entitled thereto. ..."

215. Two different expressions have been used in Section 24(2). The expression "paid" has been used in Section 24(2) and whereas in the proviso "deposited" has been used. "Paid" cannot include "deposit", or else Parliament would have used different expressions in the main sub- 143 (1968) 1 PLJR 94 (1969) 2 SCC 316 section and its proviso, if the meaning were to be the same. The Court cannot add or subtract any word in the statute and has to give plain and literal meaning and when compensation has not been paid under Section 24(2), it cannot mean compensation has not been deposited as used in the proviso. While interpreting the statutory provisions, addition or subtraction in the legislation is not permissible. It is not open to the court to either add or subtract a word. There cannot be any departure from the words of law, as observed in legal maxim "A Verbis Legis Non Est Recedendum". In Principles of Statutory Interpretation (14th Edition) by Justice G.P. Singh, plethora of decisions have been referred. There is a conscious omission of the word "deposit" in Section 24(2), which has been used in the proviso. Parliament cannot be said to have used the different words carrying the same meaning in the same provision, whereas words "paid" and "deposited" carry a totally different meaning. Payment is actually made to the landowner and

deposit is made in the court, that is not the payment made to the landowner. It may be discharge of liability of payment of interest and not more than that. Applying the rule of literal construction also natural, ordinary and popular meaning of the words “paid” and “deposited” do not carry the same meaning; the natural and grammatical meaning has to be given to them, as observed in Principles of Statutory Interpretation by Justice G.P. Singh (at page 91) thus:

> “... Natural and grammatical meaning. The words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary." "The true way", according to LORD BROUGHAM is, "to take the words as the Legislature have given them, and to take the meaning which the words given naturally imply, unless where the construction of those Words is, either by the preamble or by the context of the words in question, controlled or alter "; and in the words of VISCOUNT HALDANE, L.C., if the language used "has a natural meaning we cannot depart from that meaning unless reading the statute as a whole, the context directs us to do so. In an oft-quoted passage, LORD WENSLEYDALE stated the Rule thus: "In construing wills and indeed statutes and all written instruments, the grammatical and ordinary sense of the word is adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity, and inconsistency, but no further". And stated LORD ATKINSON: "In the construction of statutes, their words must be interpreted in their ordinary grammatical sense unless there be something in the context, or in the object of the statute in which they occur or in the circumstances in which they are used, to show that they were used in a special sense different from their ordinary grammatical sense". 28 VISCOUNT SIMON, L.C., said:
>
> "The golden Rule is that the words of a statute must prima facie be given their ordinary meaning". Natural and ordinary meaning of words should not be departed from "unless it can be shown that the legal context in which the words are used requires a different meaning". Such a meaning cannot be departed from by the judges "in the light of their own views as to policy" although they can "adopt a purposive interpretation if they can find in the statute read as a whole or in material to which they are permitted by law to refer as aids to interpretation an expression of Parliament's purpose or policy". For a modern statement of the rule, one may refer to the speech of LORD SIMON OF GLAISDALE in a case where he said: "Parliament is prima facie to be credited with meaning what is said in an Act of Parliament. The drafting of statutes, so important to a people who hope to live under the Rule of law, will never be satisfactory unless courts seek whenever possible to apply 'the golden rule' of construction, that is to read the statutory language, grammatically and terminologically, in the ordinary and primary sense which it bears in its context, without omission or addition. Of course, Parliament is to be credited with good sense; so that when such an approach produces injustice, absurdity, contradiction or

> stultification of statutory objective the language may be modified sufficiently to avoid such disadvantage, though no further". The Rules stated above have been quoted with approval by the Supreme Court.....” (emphasis supplied)
>
> 216. The same work also notes that when two different expressions are used in the same provision of a statute, there is a presumption that they are not used in the same sense. The following passage is relevant (Principles of Statutory Interpretation by Justice G.P. Singh at page 395):
>
> “.....When in relation to the same subject matter, different words are used in the same statute, there is a presumption that they are not used in the same sense.
>
> In construing the words 'distinct matters' occurring in Section 5 of the Stamp Act, 1899, and in concluding that these words have not the same meaning as the words 'two or more of the descriptions in Schedule I' occurring in Section 6, VENKATARAMA AIYAR, J., observed: "When two words of different import are used in a statute in two consecutive provisions, it would be difficult to maintain that they are used in the same sense."

Similarly, while construing the word 'gain' Under Section 3(ff) of the Bombay Municipal Corporation Act, 1888, which used the words 'profit or gain', the Supreme Court relied on the dictionary meanings of the words to hold that the word 'gain' is not synonymous with the word 'profit' as it is not restricted to pecuniary or commercial profits, and that any advantage or benefit acquired or value addition made by some activities would amount to 'gain'....."

***14. Brighton Parish Guardians v. Strand Union Guardians, (1891) 2 QB 156, p. 167 (CA); Member, Board of Revenue v. Arthur Paul Benthall AIR 1956 SC 35, p. 38 : 1955 (2) SCR 842; CIT v. East West Import & Export (P.) Ltd., Jaipur AIR 1989 SC 836, p. 838 : (1989) 1 SCC 760; B.R. Enterprises v. State of U.P. AIR 1999 SC 1867, p. 1902: (1999) 9 SCC 700 ('trade and business' in Article 298 have different meaning from 'trade and commerce' in Article 301); ShriIshal Alloy Steels Ltd. v. JayaswalasNeco Ltd., JT 2001 (3) SC 114, p. 119: (2001) 3 SCC 609 : AIR 2001 SC 1161 (The words 'a bank' and 'the bank' in Section 138 N.I. Act, 1881 do not have the same meaning); The Oriental Insurance Co. Ltd. V. Hansrajbhai v. Kodala AIR 2001 SC 1832, p. 1842 : (2001) 5 SCC 175; Kailash Nath Agarwal v. Pradeshiya Indust and Inv. Corporation of U.P., 2003 AIR SCW 1358, p. 1365: (2003) 4 SCC 305, p. 313. (The words 'proceeding' and 'suit' used in the same Section construed differently); But in Paramjeet Singh Pathak v. ICDS Ltd., (2006) 13 SCC 322: AIR 2007 SC 168 different view was taken therefore in Zenith Steel Tubes v. Sicom Ltd., (2008) 1 SCC 533: AIR 2008 SC 451 case referred to a larger Bench; D.L.F. Qutab Enclave Complex Educational Charitable Trust v. State of Haryana, 2003 AIR SCW 1046, p. 1057: AIR 2003 SC 1648 :

> (2003) 5 SCC 622 (The expressions 'at his own cost' and 'at its cost,' used in one Section given different meanings)”

217. In Privy Council decisions in Crawford v. Spooner145 and Lord Howard de Walden v. IRC & Anr146 following observations have been made:

"... we cannot aid the legislature's defective phrasing of an Act, we cannot add or mend and, by construction, makeup deficiencies which are left there.

... It is contrary to all rules of construction to read words into an Act unless it is necessary to do so. Similarly, it is wrong and dangerous to proceed by substituting some other words for words of the statute. Speaking briefly the court cannot reframe the legislation for the very good reason that it has no power to legislate."

218. In V.L.S. Finance Ltd. (supra) this Court observed that:

"17. Ordinarily, the offence is compounded under the provisions of the Code of Criminal Procedure and the power to accord permission is conferred on the court excepting those offences for which the permission is not required. However, in view of the non- obstante clause, the power of composition can be exercised by the court or the Company Law Board. The legislature has conferred the same power on the Company Law Board which can exercise its power either before or after the institution of any prosecution whereas the criminal court has no power to accord permission for composition of an offence before the institution of the proceeding. The legislature in its wisdom has not put the rider of prior permission of the court before compounding the offence by the Company Law Board and in case the contention of the appellant is accepted, same would amount to addition of the words "with the prior permission of the court" in the Act, which is not permissible.

18. As is well settled, while interpreting the provisions of a statute, the court avoids rejection or addition of words and resorts to that only in exceptional circumstances to achieve the purpose of the Act or give purposeful meaning. It is also a cardinal rule of interpretation that words, phrases, and sentences are to be given their natural, plain, and clear meaning. When the language is clear and unambiguous, it must be interpreted in an ordinary sense, and no addition or alteration of the words or expressions used is permissible. As observed earlier, the aforesaid enactment was brought in view of the need of leniency in the administration of the Act because a large number of defaults are of technical (1846) 6 Moore PC 1 (1948) 2 AER 825 nature, and many defaults occurred because of the complex nature of the provision.

(emphasis supplied)

219. In Bharat Aluminium Company v. Kaiser Aluminium Technical Services Inc.147 , this Court observed thus:

"65. Mr. Sorabjee has also rightly pointed out the observations made by Lord Diplock in Duport Steels Ltd. v. Sirs, (1980) 1 WLR

> 142. In the aforesaid judgment, the House of Lords disapproved the approach adopted by the Court of Appeal in discerning the intention of the legislature; it is observed that: (WLR p. 157 C-D) "... the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and to giving effect to it. Where the meaning of the statutory words is plain and unambiguous, it is not for the Judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral. In controversial matters such as are involved in industrial relations, there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable. Under our Constitution it is Parliament's opinion on these matters that is paramount."

(emphasis supplied) In the same judgment, it is further observed: (WLR p. 157 F) "... But if this be the case it is for Parliament, not for the judiciary, to decide whether any changes should be made to the law as stated in the Acts...." (emphasis supplied) ***

67. We are unable to accept the submission of the learned counsel for the appellants that the omission of the word "only" from Section 2(2) indicates that applicability of Part I of the Arbitration Act, 1996 is not limited to the arbitrations that take place in India. We are also unable to accept that Section 2(2) would make Part I applicable even to arbitrations which take place outside India. In our opinion, a plain reading of Section 2(2) makes it clear that Part I is limited in its application to arbitrations which take place in India. We are in agreement with the submissions made by the learned counsel for the respondents, and the interveners in support of the respondents, that Parliament by limiting the applicability of Part I to arbitrations which take place in India has expressed a legislative declaration. It has clearly given recognition to the territorial principle. Necessarily therefore, it has enacted that Part I of the Arbitration Act, 1996 applies to arbitrations having their place/seat in India.

*** (2012) 9 SCC 552

82. Another strong reason for rejecting the submission made by the learned counsel for the appellants is that if Part I were to be applicable to arbitrations seated in foreign countries, certain words would have to be added to Section 2(2). The section would have to provide that "this part shall apply where the place of arbitration is in India and to arbitrations having its place out of India." Apart from being contrary to the contextual intent and object of Section 2(2), such an interpretation would amount to a drastic and unwarranted rewriting/alteration of the language of Section 2(2). As very strongly advocated by Mr Sorabjee, the provisions in the Arbitration Act, 1996 must be construed by their plain language/terms. It is not permissible for the court while construing a provision to reconstruct the provision. In other words, the court cannot produce a new jacket, whilst ironing out the creases of the old one. In view of the aforesaid, we are unable to support the conclusions recorded by this Court as noticed earlier." (emphasis supplied)

220. In Harbhajan Singh (supra) the following observations were made:

> "7. .... Ordinary, grammatical and full meaning is to be assigned to the words used while interpreting a provision to honour the rule — the legislature chooses appropriate words to express what it intends, and therefore, must be attributed with such intention as is conveyed by the words employed so long as this does not result in absurdity or anomaly or unless material — intrinsic or external — is available to permit a departure from the rule." (emphasis supplied)

221. In The Member, Board of Revenue v. Arthur Paul Benthall 148 this Court held as under:

> "4. We are unable to accept the contention that the word "matter" in S. 5 was intended to convey the same meaning as the word "description" in S. 6. In its popular sense, the expression "distinct matters" would connote something different from distinct "categories". Two transactions might be of the same description, but all the same, they might be distinct.
>
> If A sells Black-acre to X and mortgages White-acre to Y, the transactions fall under different categories, and they are also distinct matters. But if A mortgages Black-acre to X and mortgages White-acre to Y, the two transactions fall under the same category, but they would certainly be distinct matters. If the intention of the legislature was that the expression 'distinct matters' in S. 5 should be understood not in its popular sense but narrowly as meaning different categories in the Schedule, nothing would have been easier than to say so. When two words of different import are used in a statute in two consecutive provisions, it would be difficult to maintain that they 1955 (2) SCR 842, are used in the same sense, and the conclusion must follow that the expression "distinct matters" in S. 5 and "descriptions" in section 6 have different connotations." (emphasis supplied)

222. In Commissioner of Income Tax, New Delhi v. M/s. East West Import and Export (P) Ltd149, it was observed as under:

> "7. The Explanation has reference to the point of time at two places: the first one has been stated as "at the end of the previous year" and the second, which is in issue, is "in the course of such previous year". Counsel for the revenue has emphasised upon the feature that in the same Explanation reference to time has been expressed differently and if the legislative intention was not to distinguish and while stating "in the course of such previous year" it was intended to convey the idea of the last day of the previous year, there would have been no necessity of expressing the position differently. There is abundant authority to support the stand of the counsel for the revenue that when the situation has been differently expressed the legislature must be taken to have intended to express a different intention." (emphasis supplied) Several other decisions have reiterated the same proposition, i.e that when the legislature uses two different expressions in the same statute, they must be given different meanings, to carry out legislative intent.150

223. The land owners had argued that the obligation to pay gets discharged only when compensation is actually paid and/or deposited. Even if it is received under protest under Section 31(1), it is finally accepted by the landowners post-settlement by the Reference Court. We (1989) 1 SCC 760 150B.R. Enterprises v. State of U.P. and Ors., (1999) 9 SCC 700; Kailash Nath Agarwal and Ors. v. Pradeshiya Industrial & Investment Corporation of U.P. Ltd. and Anr., (2003) 4 SCC 305 (which interpreted "proceeding" and "suit" differently; In DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana and Ors., (2003) 5 SCC 622 (where "at his cost" and "at its cost" were interpreted to mean different situations. are not able to accept the submission as Section 34 of the Act of 1894, is clear even if the amount is not paid or deposited, it carries interest. The logic behind this is that if the State is retaining the amount with peace and its liability to pay does not cease, but it would be liable to make the payment with interest as envisaged therein. Once tender is made, obligation to pay is fulfilled so that the amount cannot be said to have been paid, but obligation to pay has been discharged and if a person who has not accepted it, cannot penalise the other party for default to pay and non-deposit carries only interest as money had been retained with the Government.

224. Thus, in our opinion, the word "paid" used in Section 24(2) does not include within its meaning the word "deposited", which has been used in the proviso to Section 24(2). Section 31 of the Act of 1894, deals with the deposit as envisaged in Section 31(2) on being 'prevented' from making the payment even if the amount has been deposited in the treasury under the Rules framed under Section 55 or under the Standing Orders, that would carry the interest as envisaged under Section 34, but acquisition would not lapse on such deposit being made in the treasury. In case amount has been tendered and the landowner has refused to receive it, it cannot be said that the liability arising from non-payment of the amount is that of lapse of acquisition. Interest would follow in such a case also due to non-deposit of the amount. Equally, when the landowner does not accept the amount, but seeks a reference for higher compensation, there can be no question of such individual stating that he was not paid the amount (he was determined to be entitled to by the collector). In such case, the landowner would be entitled to the compensation determined by the Reference court. In re: Rules framed under Section 55 and the Standing Orders issued by State Governments

225. It was urged on behalf of acquiring Authorities that various State Governments have framed rules under Section 55 of the Act of 1894 and/or have issued the Standing Orders/instructions with respect to the Government money under Article 283 of the Constitution of India. These Standing Orders and Rules have remained in force from time immemorial; their provisions require the amount to be tendered, notice to be issued to the landowners to collect the amount of compensation awarded to them. If they do not appear and apply to the reference under Section 18, the officer shall cause the amounts due to be paid into the treasury as revenue deposits payable to the persons to whom they are respectively due and vouched for in the accompanying form (marked E). When the payee ultimately claims the payment, they shall be paid in the same manner as ordinary revenue deposits. The Land Acquisition (Bihar and Orissa) Rules were framed under Section 55 of the Act of 1894. Rule 10 thereof is extracted hereunder:

> "10. 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 reference to the Civil Court Under Section 18, the officer shall after any further endeavour to secure their attendance that may seem desirable, cause the amounts due to be paid into the Treasury as Revenue deposits payable to the persons to whom they are respectively due and vouched for in the accompanying form (marked E). The officer shall also give notice to the payees of such deposits, the Treasury in which the deposits specifying have been made. When the payees ultimately claim payment of sums placed in deposit, the amounts will be paid to them in the same manner as ordinary revenue deposits. The officer should, as far as possible, arrange to make the payments due in or near the village to which the payees belong, in order that the number of undisbursed sums to be placed in deposit 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 show legal authority for receiving the compensation on behalf of his principal." (emphasis supplied)

226. In the State of Assam, rules have also been framed under Section 55 of the Act of 1894, dealing with the deposit. Rule 9 provides that in case reference is not sought under Section 18, the amount has to be deposited in treasury. Rule 9 is extracted hereunder:

> "9. 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 Collector 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, he shall, after any further endeavour to secure their attendance or make payment that may seem desirable, cause the amounts due to be paid into the WW as revenue deposits payable to the persons to whom they are respectively due, and vouched for in the form prescribed or approved by Government from time to time. He shall also give notice to the payees of such deposits, specifying the Treasury in which the deposits have been made. When the payees ultimately claim payment of sums placed in deposit, the amount will be paid to them in the same manner as ordinary revenue deposits. The Collector should, as far as possible, arrange to make the payment due in or near the village to which the land pertains in order that the number of undisbursed sum to be placed in deposit on account of nonattendance may be reduced to a minimum. Whenever payment is claimed through a representative, such representative, must show legal authority for receiving the compensation on behalf of the principal." (emphasis supplied)

> 227. In the State of Karnataka too similar rules were framed in 1965 under Section 55 of the Act of 1894. Similarly, in the State of Kerala also Rule 14(2) of the Land Acquisition (Kerala) Rules, 1990 were framed under Section 55 of the Act of 1894, provided that payment relating to award shall be made or the amount shall be credited to the court or revenue deposit (treasury) within one month from the date of the award.

Similar rules were framed in the State of Bihar and Orissa.

228. Standing Order No.28 was issued in 1909 by the State of Punjab and was applicable to Delhi also, which provided five modes of payment in para 74 and 75 thus:

> "74. Methods of making payments.—There are five methods of making payments:
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> (1) By direct payments, see Para 75(I) infra (2) By order on treasury, see Para 75(II) infra (3) By money order, see Para 75(III) infra (4) By cheque, see Para 75(IV) infra (5) By deposit in a treasury, see Para 75(V) infra
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> 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 deposits 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 the 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 undisbursed 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." Sub-para (V) of the above made it clear that payment is credited to the treasury when a person who is served with a notice under Section 12(2) of the Act of 1894, is not present and the award is passed. When a notice is given to receive the payment of compensation and in case they fail to appear, the amount has to be paid to the treasury as revenue deposit payable to the landowner.

229. Rules and the Standing Orders are binding on the concerned Authorities and they have to follow them. They deposit the amounts in court only when a reference (for higher compensation) is sought, not otherwise. Even if a person refuses to accept it and the amount is deposited in court or even it is not tendered, only higher interest follows under Section 34. Once Rules have prevailed since long and even if it is assumed that deposit in court is mandatory on being prevented from payment as envisaged under Section 31(1), the only liability to make the payment of higher interest is fastened upon the State. The liability to pay the amount with interest would subsist. When amounts are deposited in court, there would occur a procedural irregularity and the adverse consequence envisaged is under Section 34 of the Act of 1894. The consequence of non-deposit in the court is that the amount of the landowner cannot be invested in the Government securities as envisaged under Sections 32 and 33 of the Act of 1894, in which interest is not more 15 per cent. Thus, no prejudice is caused to the landowners rather they stand to gain and still payment is safe as it is kept in the court. We have already held that there is a distinction between the expression "paid" and "deposited", thus the amount being deposited as per Rules in the treasury or as per the Standing Orders considering the scheme of Section 31 read with Section 34 of the Act of 1894, which are pari materia to Sections 77 and 80 of the Act of 2013. We are of the considered opinion that acquisition cannot be invalidated, only higher compensation would follow in case amount has not been deposited with respect to majority of land holdings, all the beneficiaries would be entitled for higher compensation as envisaged in the proviso to Section 24(2).

230. Deposit in treasury in place of deposit in court causes no prejudice to the landowner or any other stakeholder as their interest is adequately safeguarded by the provisions contained in Section 34 of the Act of 1894, as it ensures higher rate of interest than any other Government securities. Their money is safe and credited in the earmarked quantified amount and can be made available for disbursement to him/them. There is no prejudice caused and every infraction of law would not vitiate the act.

231. In Jankinath Sarangi v. State of Orissa151, this Court observed that every infraction of law would not vitiate the act. It has further been observed that test is actual prejudice has been caused to a person by the supposed denial to him of a particular right. Following observations have been made:

> "5. From this material it is argued that the principles of natural justice were violated because the right of the appellant to have his own evidence recorded was denied to him and further that the material which was gathered behind his back was used in determining his guilt. In support of these contentions a number of rulings are cited chief among which are State of Bombay v. Narul Latif Khan, (1965) 3 SCR 135; State of Uttar Pradesh v. Sri C.S. Sharma, (1967) 3 SCR 848 and Union of India v. T.R. Varma, (1958) SCR 499. There is no doubt that if the principles of natural justice are violated, and there is a gross case, this Court would interfere by striking down the order of dismissal, but there are cases and cases. We have to look to what actual prejudice has been caused to a person by the supposed denial to him of a particular right. Here the question was a simple one, viz. whether the measurement book prepared for the contract work had been properly scrutinised and checked by the

> appellant or not. He did the checking in March 1954 and immediately thereafter in May 1954 the Executive Engineer re-checked the measurements and found that the previous checking had not been done properly.

151 (1969) 3 SCC 392 Between March and May there could not be much rainfall, if at all, and the marks of digging according to the witnesses could not be obliterated during that time. It is however said that at the 6th and 7th mile the checking was done in July and by that time rains might have set in. Even so the witnesses at the sites of the pits could not be so considerably altered as to present a totally wrong picture. If anything had happened the earth would have swollen rather than contracted by reason of rain and the pits would have become bigger and not smaller. Anyway the questions which were put to the witnesses were recorded and sent to the Chief Engineer and his replies were received. No doubt the replies were not put in the hands of the appellant but he saw them at the time when he was making the representations and curiously enough he used those replies in his defence. In other words, they were not collected behind his back and could be used to his advantage and he had an opportunity of so using them in his defence. We do not think that any prejudice was caused to the appellant in this case by not examining the two retired Superintending Engineers whom he had cited or any one of them. The case was a simple one whether the measurement book had been properly checked. The pleas about rain and floods were utterly useless and the Chief Engineer's elucidated replies were not against the appellant. In these circumstances a fetish of the principles of natural justice is not necessary to be made. We do not think that a case is made out that the principles of natural justice are violated. The appeal must fail and is accordingly dismissed, but we will make no order as to costs." (emphasis supplied)

232. In Sunil Kumar Banerjee v. State of West Bengal and Ors.,152 the Court observed:

> "3. There is no substance in the contention of the appellant that the 1955 Rules and not the 1969 Rules were followed. As pointed out by the High Court, in the charges framed against the appellant and in the first show cause notice the reference was clearly to the 1969 Rules. The appellant himself mentioned in one of his letters that the charges have been framed under the 1969 Rules. The enquiry report mentions that Shri Mukherjee was appointed as an Enquiry Officer under the 1969 Rules. It is, however true that the appellant was not questioned by the Enquiry Officer under Rule 8(19) which provided as follows:
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> "The enquiring authority may, after the member of the services closes his case and shall if the member of the service has not examined himself generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the member of the service to explain any circumstances appearing in the evidence against him." It may be noticed straight away that this provision is akin to Section 342 of the Criminal Procedure Code of 1898 and Section 313 of the Criminal Procedure Code of 1973. It is now well established that mere non-examination or defective examination (1980) 3 SCC 304 under Section 342 of the 1898 Code is not a ground for interference unless prejudice is established, vide, K.C. Mathew v.

State of Travancore-Cochin, AIR 1956 SC 24; Bibhuti Bhusan Das Gupta v. State of W.B., AIR 1969 SC 381 We are similarly of the view that failure to comply with the requirements of Rule 8(19) of the 1969 Rules does not vitiate the enquiry unless the delinquent officer is able to establish prejudice. In this case the learned Single Judge the High Court as well as the learned Judges of the Division Bench found that the appellant was in no way prejudiced by the failure to observe the requirement of Rule 8(19). The appellant cross-examined the witnesses himself, submitted his defence in writing in great detail and argued the case himself at all stages. The appellant was fully alive to the allegations against him and dealt with all aspects of the allegations in his written defence. We do not think that he was in the least prejudiced by the failure of the Enquiry Officer to question him in accordance with Rule 8(19).

(emphasis supplied)" A similar view has been taken in the State of Andhra Pradesh v. Thakkidiram Reddy153 and other decisions.

233. There is a dual obligation, namely, part mandatory and part directory. In Howard v. Secretary of State for the Environment, (1975) Q.B. 235, Lord Denning has cited a portion from the speech of Lord Penzance, which is extracted hereunder:

> "Now the distinction between matters that are directory and matters that are imperative is well known to us all in the common language of the courts at Westminster ... A thing has been ordered by the legislature to be done. What is the consequence if it is not done? In the case of statutes that are said to be imperative, the courts have decided that if it is not done the whole thing fails, and the proceedings that follow upon it are all void. On the other hand, when the courts hold a provision to be mandatory or directory, they say that, although such provision may not have been complied with, the subsequent proceedings do not fail." Later Lord Denning M.R. said, at pp. 242-243:
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> "The section is no doubt imperative in that the notice of appeal must be in writing and must be made within the specified time. But I think it is only directory as to the contents. Take first the requirement as to the 'grounds' of appeal. The section is either (1998) 6 SCC 554 imperative in requiring 'the grounds' to be indicated, or it is not.

That must mean all or none. I cannot see any justification for the view that it is imperative as to one ground and not imperative as to the rest. If one was all that was necessary, an appellant would only have to put in one frivolous or hopeless ground and then amend later to add his real grounds. That would be a futile exercise. Then as to 'stating the facts.' It cannot be supposed that the appellant must at all cost state all the facts on which he bases his appeal. He has to state the facts, not the evidence: and the facts may depend on evidence yet to be obtained, and may not be fully or sufficiently known at the time when the notice of appeal is given. All things, considered, it seems to me that the section, in so far as the 'grounds' and 'facts' are concerned, must be construed as directory only: that is, as desiring information to be given about them. It is not to be supposed that an appeal should fail altogether simply because the grounds are not indicated, or the facts stated.

Even if it is wanting in not giving them, it is not fatal. The defects can be remedied later, either before or at the hearing of the appeal, so long as an opportunity is afforded of dealing with them." (emphasis supplied)

234. In Belvedere Court Management Ltd. v. Frogmore Developments Ltd.154, a distinction was made between essential and supportive provisions. The following observations are pertinent:

> "By way of final comment I would add that I am strongly attracted to the view that legislation of the present kind should be evaluated and construed on an analytical basis. It should be considered which of the provisions are substantive and which are secondary, that is, simply part of the machinery of the legislation. Further, the provisions which fall into the latter category should be examined to assess whether they are essential parts of the mechanics or are merely supportive of the other provisions so that they need not be insisted on regardless of the circumstances. In other words, as in the construction of contractual and similar documents, the status and effect of a provision has to be assessed having regard to the scheme of the legislation as a whole and the role of that provision in that scheme – for example, whether some provision confers an option properly so called, whether some provision is equivalent to a condition precedent, whether some requirement can be fulfilled in some other way or waived. Such an approach when applied to legislation such as the present would assist to enable the substantive rights to be given effect to and would help to avoid absurdities or unjustified lacunae." (emphasis supplied) (1996) 3 W.L.R. 1008 at p. 1032

235. In Sharif-ud-Din (supra) the difference between mandatory and directory rules was pointed out thus:

> "9. The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Certain broad propositions which can be deduced from several decisions of courts regarding the rules of construction that should be followed in determining whether a provision of law is directory or mandatory may be summarised thus: The fact that the statute uses the word "shall" while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation, the court has to ascertain the object which the provision of law in question has to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. Where, however, a provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is

> coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one. A procedural rule ordinarily should not be construed as mandatory if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such permission to rectify the error later on, another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow." (emphasis supplied)

236. Similarly, in Ram Deen Maurya (Dr.) v. State of Uttar Pradesh and Ors155 this Court observed that non-compliance with the directory provision does not affect the validity of the act done in breach thereof.

(2009) 6 SCC 735 In Rai Vimal Krishna and Ors. v. State of Bihar & Ors. 156, this Court considered the mode of publication and held that publication in a newspaper was the only effective mode and that the provision was mandatory.

237. This Court also considered the effect of non-deposit of the amount in Hissar Improvement v. Smt. Rukmani Devi and Anr157 and held that in case compensation has not been paid or deposited, the State is liable to pay interest as provided in Section 34. The Court held thus:

> "5. It cannot be gainsaid that interest is due and payable to the landowner in the event of the compensation not being paid or deposited in time in court. Before taking possession of the land, the Collector has to pay or deposit the amount awarded, as stated in Section 31, failing which he is liable to pay interest as provided in Section 34.
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> 6. In the circumstances, the High Court was right in stating that interest was due and payable to the landowner. The High Court was justified in directing the necessary parties to appear in the executing court for determination of the amount."

238. In Kishan Das v. State of U.P158 , this Court observed that where land owners themselves delayed the acquisition proceedings, it is discretionary for the court to award the interest and they cannot get the premium on their dilatory tactics. This Court stated that:

> "4. In the light of the operation of the respective provisions of Sections 34 and 28 of the Act, it would be difficult to direct payment of interest. In fact, Section 23(1-A) is a set-off for loss in cases of delayed awards to compensate the person entitled to receive compensation; otherwise a person who is responsible for the delay in disposal of the acquisition proceedings will be paid premium for dilatory tactics. It is stated by the learned counsel for the respondents that the amount of interest was also calculated and total amount was deposited in the account of the 156 (2003) 6 SCC

401 1990 Supp SCC 806 (1995) 6 SCC 240 appellants by the Land Acquisition Officer after passing the award, i.e., on 15-11-1976 in a sum of Rs 20,48,615. Under these circumstances, the liability to pay interest would arise when possession of the acquired land was taken and the amount was not deposited. In view of the fact that compensation was deposited as soon as the award was passed, we do not think that it is a case for us to interfere at this stage." (emphasis supplied)

239. In D-Block Ashok Nagar (Sahibabad) Plot Holders' Assn. v. State of U.P.159, it was observed that liability to pay interest under Section 34 arises from the date of taking possession.

240. It was argued that in fact in many cases, reference was sought as such the amounts being deposited in the treasury were not valid. Reference was sought for higher compensation and landowners had declined to accept the compensation for no good reason they could have received it under protest reserving their right to seek the reference and in case compensation was not paid or deposited, they could have claimed it along with interest as envisaged under Section 34.

241. It is clear that once land is acquired, award passed and possession has been taken, it has vested in the State. It had been allotted to beneficiaries. A considerable infrastructure could have been developed and a third-party interest had also intervened. The land would have been given by the acquiring authorities to the beneficiaries from whose schemes the land had been acquired and they have developed immense (1997) 10 SCC 77 infrastructure. We are unable to accept the submission that merely by deposit of amount in treasury instead of court, we should invalidate all the acquisitions, which have taken place. That is not what is contemplated under Section 24(2). We are also not able to accept the submission that when law operates these harsh consequences need not be seen by the court. In our opinion, that submission is without merit in as such consequences are not even envisaged on proper interpretation of Section 24(2), as mentioned above.

242. The proviso to Section 24(2) of the Act of 2013, intends that the Collector would have sufficient funds to deposit it with respect to the majority of landholdings. In case compensation has not been paid or deposited with respect to majority of land holdings, all the beneficiaries are entitled for higher compensation. In case money has not been deposited with the Land Acquisition Collector or in the treasury or in court with respect to majority of landholdings, the consequence has to follow of higher compensation as per proviso to Section 24(2) of the Act of 2013. Even otherwise, if deposit in treasury is irregular, then the interest would follow as envisaged under Section 34 of Act of 1894. Section 24(2) is attracted if acquisition proceeding is not completed within 5 years after the pronouncement of award. Parliament considered the period of 5 years as reasonable time to complete the acquisition proceedings i.e., taking physical possession of the land and payment of compensation. It is the clear intent of the Act of 2013, that provision of Section 24(2) shall apply to the proceeding which is pending as on the date on which the Act of 2013, has been brought into force and it does not apply to the concluded proceedings. It was urged before us by one of the Counsel that lands in the Raisina Hills and Lutyens' Zones of Delhi were acquired in 1913 and compensation has not been paid. The Act of 2013 applies only to the pending proceedings in which possession has not been taken or compensation has not paid and not to a case where proceedings have been concluded long back, Section 24(2) is not a tool to revive those proceedings and to

question the validity of taking acquisition proceedings due to which possession in 1960s, 1970s, 1980s were taken, or to question the manner of deposit of amount in the treasury. The Act of 2013 never intended revival such claims. In case such landowners were interested in questioning the proceedings of taking possession or mode of deposit with the treasury, such a challenge was permissible within the time available with them to do so. They cannot wake from deep slumber and raise such claims in order to defeat the acquisition validly made. In our opinion, the law never contemplates -nor permits- misuse much less gross abuse of its provisions to reopen all the acquisitions made after 1984, and it is the duty of the court to examine the details of such claims. There are several litigations before us where landowners, having lost the challenge to the validity of acquisition proceedings and after having sought enhancement of the amount in the reference succeeding in it nevertheless are seeking relief arguing about lapse of acquisition after several rounds of litigation.

243. The expression used in Section 24(1)(b) is 'where an award under Section 11 has been made", then 'such proceedings shall continue' under the provisions of the said Act of 1894 as if the said Act has not been repealed'. The expression "proceedings shall continue" indicates that proceedings are pending at the time; it is a present perfect tense and envisages that proceedings must be pending as on the date on which the Act of 2013 came into force. It does not apply to concluded proceedings before the Collector after which it becomes functus officio. Section 24 of the Act of 2013, does not confer benefit in the concluded proceedings, of which legality if question has to be seen in the appropriate proceedings. It is only in the pending proceedings where award has been passed and possession has not been taken nor compensation has been paid, it is applicable. There is no lapse in case possession has been taken, but amount has not been deposited with respect to majority of land holdings in a pending proceeding, higher compensation under the Act of 2013 would follow under the proviso to Section 24(2). Thus, the provision is not applicable to any other case in which higher compensation has been sought by way of seeking a reference under the Act of 1894 or where the validity of the acquisition proceedings have been questioned, though they have been concluded. Such case has to be decided on their own merits and the provisions of Section 24(2) are not applicable to such cases.

In re: Issue no.4: mode of taking possession under the Act of 1894

244. Section 16 of the Act of 1894 provided that possession of land may be taken by the State Government after passing of an award and thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of urgency in Section 17(1). The word "possession" has been used in the Act of 1894, whereas in Section 24(2) of Act of 2013, the expression "physical possession" is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2) requires actual physical possession to be taken, not the possession in any other form. When the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances.

245. The question which arises whether there is any difference between taking possession under the Act of 1894 and the expression "physical possession" used in Section 24(2). As a matter of fact, what was contemplated under the Act of 1894, by taking the possession meant only physical possession of the land. Taking over the possession under the Act of 2013 always amounted to taking over physical possession of the land. When the State Government acquires land and drawns up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any re-entry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc., is deemed to be the trespasser on land which in possession of the State. The possession of trespasser always inures for the benefit of the real owner that is the State Government in the case.

246. It was urged on behalf of acquiring authorities and the states that there is no conflict of opinion with respect to the mode of taking possession in IDA v Shailendra and Pune Municipal Corporation & Anr (supra), and that the latter is not a decision as to the aspect of possession. A two-Judge Bench decision in Shree Balaji Nagar Residential Association (supra) has been overruled in the Indore Development Authority case (supra). The view taken in Indore Development Authority (supra) has to prevail as the decision in Velaxan Kumar (supra), was rendered by a two judge Bench of this court. This court, however, proceeds to examine the matter afresh as issues have been framed.

247. The concept of possession is complex one. It comprises the right to possess and to exclude others, essential is animus possidendi. Possession depends upon the character of the thing which is possessed. If the land is not capable of any use, mere non-user of it does not lead to the inference that the owner is not in possession. The established principle is that the possession follows title. Possession comprises of the control over the property. The element of possession is the physical control or the power over the object and intention or will to exercise the power. Corpus and animus are both necessary and have to co-exist. Possession of the acquired land is taken under the Act of 1894 under Section 16 or 17 as the case may be. The government has a right to acquire the property for public purpose. The stage under Section 16 comes for taking possession after issuance of notification under Section 4(1) and stage of Section 9(1). Under section 16, vesting is after passing of the award on taking possession and under section 17 before passing of the award.

248. Mitra's "Law of Possession and Ownership of Property", 2nd Edn., expressions 'trespass' and 'trespasser' have been dealt with by the learned Author with the help of Words and Phrases, Permanent Edition, West Publishing Co. which has also been quoted with respect to who is a trespasser:

> "A "trespasser" is a person who enters or remains upon land in the possession of another without a privilege to do so created by the possessor's consent or otherwise. In re Wimmer's Estate, 182 P.2d 119, 121, 111 Utah 444." "A "trespasser" is one entering or remaining on land in another's possession without a privilege to do so

> created by possessor's consent, express or implied, or by law. Keesecker v. G.M. Mckelvey Co., 42 N.E. 2d 223, 226, 227, 68 Ohio App. 505."

249. One who enters or remains in possession on land of another without a privilege to do so, is also treated as a trespasser. On the strength of Full Bench decision of Patna High Court in S.M. Yaqub v. T.N. Basu160, Mitra, has referred to the observation that the possession should not be confused with occupation. A person may be in actual possession of the property without occupying it for a considerable time. The person who has a right to utilise the whole in any way he likes. Possession in part is good enough to infer that the person is in possession of the rest. Learned Author has referred to Jowitt's Dictionary of English Law, Ed. 1969, so as to explain what constitutes possession.

"There are three requisites of possession. First, there must be actual or potential physical control. Secondly, the physical control is not possession unless accompanied by intention hence if a thing is put into the hand of a sleeping person he has no possession of it. Thirdly, the possibility and intention must be visible or evidence by external signs for if the thing shows no signs of being under the control of anyone, it is not possession." AIR 1949 Pat 146

250. In order to constitute possession, a person should be in physical control. The same is not possession unless and until the intention is there and thirdly, possibility and intention must be visible; otherwise, it is not possession. Mitra has further dealt with how to determine possession. The relevant extract is quoted hereunder:

> "36. Who is in possession – Determination of.—In Jones v. Chopman, (1849) 2 Ex. 803: 18 LJ Ex. 456: 76 PR 794; Maule, J, expounded the doctrine thus:
>
> "If there are two persons in a field, each asserting that the field is his, and each doing some act in the assertion of the right of possession, and if the question is, which of these two is in actual possession, I answer, the person who has the title is in actual possession and the other person is a trespasser.
>
> In such a case who is in possession is to be determined by the fact of the title and having the same apparent actual possession;
>
> The question as to which of the two really is in possession is determined by the fact of the possession; following the title, that is by the law, which makes it follow the title." In Kynoch Limited v. Rowlands, (1912) 1Ch 527; LJ Ch 340; 106 LT 316; per Joyce, J, where his Lordship says:
>
> "It is a well settled principle with reference to land at all events ..... that where possession in fact is underterminate or the evidence is undecisive, possession, in law follows the right to possess. As far back as the time of Littleton it was said, "Where two be in one house or other tenements together to claim the said lands and tenements, and the one claimeth by one title, and the other by another title, the law shall adjudge him in possession that has right to have the possession of the same

tenements." (emphasis supplied)

251. A person with title is considered to be in actual possession. The other person is a trespasser. The possession in law follows the right to possess as held in Kynoch Limited v. Rowlands161. Ordinarily, the owner (1912) 1Ch 527 of the property is presumed to be in possession and presumption as to possession is in his favour. In Superintendent and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja & Ors., 162, this Court observed that possession implies a right and a fact; the right to enjoy annexed to the right of property and the fact of the real intention. It involves the power of control and intent to control. Possession is annexed to right of property.

"13. "Possession" is a polymorphous term which may have different meanings in different contexts. It is impossible to work out a completely logical and precise definition of "possession" uniformally applicable to all situations in the contexts of all statutes. Dias and Hughes in their book on Jurisprudence say that if a topic ever suffered from too much theorising it is that of "possession." Much of this difficulty and confusion is (as pointed out in Salmond's Jurisprudence, 12th Edn., 1966) caused by the fact that possession is not purely a legal concept. "Possession,"

> implies a right and a fact; the right to enjoy annexed to the right of property and the fact of the real intention. It involves power of control and intent to control. (See Dias and Hughes, ibid.)
>
> 14. According to Pollock and Wright, "when a person is in such a relation to a thing that, so far as regards the thing, he can assume, exercise or resume manual control of it at pleasure, and so far as regards other persons, the thing is under the protection of his personal presence, or in or on a house or land occupied by him or in any receptacle belonging to him and under his control, he is in physical possession of the thing."
>
> 15. While recognising that "possession" is not a purely legal concept but also a matter of fact, Salmond (12th Edn., p. 52) describes "possession, in fact", as a relationship between a person and a thing. According to the learned Author the test for determining "whether a person is in possession of anything is whether he is in general control of it".

252. In Ram Dass v. Davinder163, this Court stated that possession and occupation in common parlance may be used interchangeably, but in (1979) 4 SCC 274 163 (2004) 3 SCC 684 law possession amounts to holding property as an owner, while to occupy is to keep possession by being present in it. In Bhinka & Ors. v. Charan Singh, Bhinka & Ors. v. Charan Singh 164, this court considered the dichotomy between taking and retaining possession. They are mutually exclusive expressions and apply to two different situations. The word 'taking' applies to a person taking possession of a land otherwise than in accordance with the provisions of the law, while the word 'retaining' applies to a person taking possession in accordance with the provisions of the law, but subsequently retaining the same illegally. In Bhinka & Ors. (supra), as to retaining possession, it was

observed:

> "14. If the appellants did not take possession of the disputed lands, did they retain possession of the same in accordance with the provisions of the law for the time being in force? The dichotomy between taking and retaining indicates that they are mutually exclusive and apply to two different situations. The word "taking" applies to a person taking possession of a land otherwise than in accordance with the provisions of the law, while the word "retaining" to a person taking possession in accordance with the provisions of the law but subsequently retaining the same illegally. So construed, the appellants' possession of the lands being illegal from the inception, they could not be described as persons retaining possession of the said lands in accordance with the provisions of any law for the time being in force, so as to be outside the scope of Section 180 of the Act."
>
> 253. Under section 16 of the Act of 1894, vesting of title in the Government, in the land took place immediately upon taking possession. Under Sections 16 and 17 of the Act of 1894, the acquired land became the property of the State without any condition or 1959 (Suppl 2) SCR 798 limitation either as to title or possession. Absolute title thus vested in the State.
>
> 254. This Court in V. Chandrasekaran & Anr. v. Administrative Officer & Ors165 dealt with the concept of vesting under the Act of 1894. The facts of the said case indicated that the appellants and the officials of the State and Development Board connived with each other to enable the appellant to grab/encroach upon the public land, which was acquired and falsified the documents so as to construct flats thereon.

Considering the gravamen of the fraud, the Chief Secretary of the State was directed to trace out such officials and to take suitable action against each of them. It was also held by this Court that alienation of land subsequent to notification under Section 4(1) is void and no title passes on the basis of such sale deed. This Court held that once land vested in the State free from all encumbrances, it cannot be divested. Once land has been acquired, it cannot be restored to tenure-holders/persons interested, even if it is not used for the purpose for which it is so acquired. Once possession of land has been taken, it vests in the State free from all encumbrances. Under sections 16 and 17, the acquired property becomes the property of the Government without any limitation or condition either as to title or possession. Reliance has been placed on Fruit and Vegetable Merchants Union (supra):

> "19. That the word "vest" is a word of variable import is shown by provisions of Indian statutes also. For example, Section 56 of 165 (2012) 12 SCC 133 the Provincial Insolvency Act (5 of 1920) empowers the court at the time of the making of the order of adjudication or thereafter to appoint a receiver for the property of the insolvent and further provides that "such property shall thereupon vest in such receiver". The property vests in the receiver for the purpose of administering the estate of the insolvent for the payment of his debts after realising his assets. The property of the

> insolvent vests in the receiver not for all purposes but only for the purpose of the Insolvency Act and the receiver has no interest of his own in the property. On the other hand, Sections 16 and 17 of the Land Acquisition Act (Act 1 of LA), provide that the property so acquired, upon the happening of certain events, shall "vest absolutely in the Government free from all encumbrances". In the cases contemplated by Sections 16 and 17 the property acquired becomes the property of Government without any conditions or limitations either as to title or possession. The legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration. It would thus appear that the word "vest" has not got a fixed connotation, meaning in all cases that the property is owned by the person or the authority in whom it vests. It may vest in title, or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation. The provisions of the Improvement Act, particularly Sections 45 to 49 and 54 and 54-A when they speak of a certain building or street or square or other land vesting in a municipality or other local body or in a trust, do not necessarily mean that ownership has passed to any of them." (emphasis supplied)
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> 255. In National Textile Corporation Ltd. v. Nareshkumar Badrikumar Jagad & Ors166, the concept of vesting was considered. This court observed that vesting means an absolute and indefeasible right.

Vesting, in general sense, means vesting in possession. Vesting may include vesting of interest too. This Court observed thus:

> "38. "Vesting" means having obtained an absolute and indefeasible right. It refers to and is used for transfer or conveyance. "Vesting" in the general sense, means vesting in possession. However, "vesting" does not necessarily and always means possession but includes vesting of interest as well. "Vesting" may mean vesting in title, vesting in possession or vesting in a limited sense, as indicated in the context in which it is used in a particular provision of the Act. The word "vest" has different shades, taking colour from the context in which it is used. It does not necessarily mean absolute vesting in every situation and is capable of bearing the meaning of a limited vesting, being limited, in title as well as duration. Thus, the word 2011 (12) SCC 695 "vest" clothes varied colours from the context and situation in which the word came to be used in the statute. The expression "vest" is a word of ambiguous import since it has no fixed connotation and the same has to be understood in a different context under different sets of circumstances. [Vide Fruit & Vegetable Merchants Union v. Delhi Improvement Trust, AIR 1957 SC 344, Maharaj Singh v. State of U.P. AIR 1976 SC 2602, Municipal Corpn. of Hyderabad v. P.N. Murthy AIR 1987 SC 802, Vatticherukuru Village Panchayat v. Nori Venkatarama Deekshithulu 1991 Supp (2) SCC 228, M. Ismail Faruqui v. Union of India AIR 1995 SC 605, SCC p. 404, para 41, Govt. of A.P. v. Nizam, Hyderabad (1996) 3 SCC 282, K.V. Shivakumar v. Appropriate Authority (2000) 3 SCC 485, Municipal Corpn. of Greater Bombay v. Hindustan Petroleum Corpn. AIR 2001 SC 3630 and Sulochana Chandrakant Galande v. Pune

> Municipal Transport (2010) 8 SCC 467.]" (emphasis supplied)
>
> 256. Thus, it is apparent that vesting is with possession and the statute has provided under Sections 16 and 17 of the Act of 1894 that once possession is taken, absolute vesting occurred. It is an indefeasible right and vesting is with possession thereafter. The vesting specified under section 16, takes place after various steps, such as, notification under section 4, declaration under section 6, notice under section 9, award under section 11 and then possession. The statutory provision of vesting of property absolutely free from all encumbrances has to be accorded full effect. Not only the possession vests in the State but all other encumbrances are also removed forthwith. The title of the landholder ceases and the state becomes the absolute owner and in possession of the property. Thereafter there is no control of the land-

owner over the property. He cannot have any animus to take the property and to control it. Even if he has retained the possession or otherwise trespassed upon it after possession has been taken by the State, he is a trespasser and such possession of trespasser enures for his benefit and on behalf of the owner.

257. After the land has vested in the State, the total control is of the State. Only the State has a right to deal with the same. In Municipal Corporation of Greater Bombay & Ors. v. Hindustan Petroleum Corporation & Anr167, this Court discussed the concept of vesting in the context of Section 220 of the Bombay Municipal Corporation Act. It has referred to various decisions including that of Richardson v. Robertson, (1862) 6 LT 75 thus:

> "8. It is no doubt true that Section 220 provides that any drain which vests in the Corporation is a municipal drain and shall be under the control of the Corporation. In this context, the question arises as to what meaning is required to assign to the word "vest" occurring in Section 220 of the Act? In Richardson v. Robertson 6 LT at p. 78, it was observed by Lord Cranworth as under: (LT p.
>
> 78) "The word 'vest' is a word, at least, of ambiguous import.

Prima facie 'vesting' in possession is the more natural meaning. The expressions 'investiture' — 'clothing' — and whatever else be the explanation as to the origin of the word, point prima facie rather to the enjoyment than to the obtaining of a right. But I am willing to accede to the argument that was pressed at the Bar, that by long usage 'vesting' originally means the having obtained an absolute and indefeasible right, as contradistinguished from the not having so obtained it. But it cannot be disputed that the word 'vesting' may mean, and often does mean, that which is its primary etymological signification, namely, vesting in possession."

15. We are, therefore, of the view that the word "vest" means vesting in title, vesting in possession or vesting in a limited sense, as indicated in the context in which it is used in a particular provision of the Act." (emphasis supplied) 2001 (8) SCC 143

258. The word 'vest' has to be construed in the context in which it is used in a particular provision of the Act. Vesting is absolute and free from all encumbrances that includes possession. Once there is vesting of land, once possession has been taken, section 24(2) does not contemplate divesting of the property from the State as mentioned above.

259. Now, the court would examine the mode of taking possession under the Act of 1894 as laid down by this Court. In Balwant Narayan Bhagde (supra) it was observed that the act of Tehsildar in going on the spot and inspecting the land was sufficient to constitute taking of possession. Thereafter, it would not be open to the Government or the Commission to withdraw from the acquisition under Section 48(1) of the Act. It was held thus:

> "28. We agree with the conclusion reached by our brother Untwalia, J., as also with the reasoning on which the conclusion is based. But we are writing a separate judgment as we feel that the discussion in the judgment of our learned Brother Untwalia, J., in regard to delivery of "symbolical" and "actual" possession under Rules 35, 36, 95 and 96 of Order 21of the Code of Civil Procedure, is not necessary for the disposal of the present appeals and we do not wish to subscribe to what has been said by our learned Brother Untwalia, J., in that connection, nor do we wish to express our assent with the discussion of the various authorities made by him in his judgment. We think it is enough to state that when the Government proceeds to take possession of the land acquired by it under the Land Acquisition Act, LA, it must take actual possession of the land since all interests in the land are sought to be acquired by it. There can be no question of taking "symbolical" possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land. How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of. There can be no hard and fast rule laying down what act would be sufficient to constitute taking of possession of land. We should not, therefore, be taken as laying down an absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise would be sufficient to constitute taking of possession of land in every case. But here, in our opinion, since the land was lying fallow and there was no crop on it at the material time, the act of the Tehsildar in going on the spot and inspecting the land for the purpose of determining what part was waste and arable and should, therefore, be taken possession of and determining its extent, was sufficient to constitute taking of possession. It appears that the appellant was not present when this was done by the Tehsildar, but the presence of the owner or the occupant of the land is not necessary to effectuate the taking of possession. It is also not strictly necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken at a particular time, though it may be desirable where possible, to give such notice before possession is taken by the authorities, as that would eliminate the possibility of any fraudulent or collusive transaction of taking of mere paper

possession, without the occupant or the owner ever coming to know of it."

260. In Tamil Nadu Housing Board v. A. Viswam (supra) it was held that drawing of Panchnama in the presence of witnesses would constitute a mode of taking possession. This court observed:

> "9. It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or Panchnama by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not cooperate in taking possession of the land." (emphasis supplied)

261. In Banda Development Authority (supra) this Court held that preparing a Panchnama is sufficient to take possession. This Court has laid down thus:

> "37. The principles which can be culled out from the above noted judgments are:
>
> (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."

262. In State of Tamil Nadu and Anr. v. Mahalakshmi Ammal and Ors., (supra), this court dealt with the effect of vesting on possession and mode of taking it and opined thus:

> "9. It is well-settled law that publication of the declaration under Section 6 gives conclusiveness to public purpose. Award was made on 26-9-1986 and for Survey No. 2/11 award was made on 31-8-1990. Possession having already been undertaken on 24-11-1981, it stands vested in the State under Section 16 of the Act free from all encumbrances and thereby the Government acquired absolute title to the land. The initial award having been made within two years under Section 11 of the Act, the fact that subsequent award was made on 31-8-1990 does not render the initial award invalid. It is also to be seen that there is stay of dispossession. Once there is stay of dispossession, all further proceedings necessarily could not be proceeded with as laid down by this Court. Therefore, the limitation also does not stand as an impediment as provided in the proviso to Section 11-A of the Act. Equally, even if there is an irregularity in service of notice under Sections 9 and 10, it would be a curable irregularity and on account thereof, award made under Section 11 does not become invalid. Award is only an offer on behalf of the State. If compensation was accepted without protest, it binds such party but subject to Section 28-A. Possession of the acquired land would be taken only by way of a memorandum, Panchnama, which is a legally accepted norm. It would not be possible to take any physical possession. Therefore, subsequent continuation, if any, had by the erstwhile owner is only illegal or unlawful possession which does not bind the Government nor vested under Section 16 divested in the illegal occupant. Considered from this perspective, we hold that the High Court was not justified in interfering with the award."

263. In Balmokand Khatri Educational and Industrial Trust, Amritsar v. State of Punjab & Ors168, this Court ruled that under compulsory acquisition it is difficult to take physical possession of land. The normal mode of taking possession is by way of drafting the Panchnama in the presence of Panchas. This Court observed thus:

> "4. It is seen that the entire gamut of the acquisition proceedings stood completed by 17-4-1976 by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession.
>
> 5. Under these circumstances, merely because the appellant retained possession of the acquired land, the acquisition cannot be said to be bad in law. It is then

> contended by Shri Parekh that the appellant-Institution is running an educational institution and intends to establish a public school and that since other land was available, the Government would have acquired some other land leaving the acquired land for the appellant. In the counter-

affidavit filed in the High Court, it was stated that apart from the acquired land, the appellant also owned 482 canals 19 marlas of land. Thereby, it is seen that the appellant is not disabled to proceed with the continuation of the educational institution which it seeks to establish. It is then contended that an opportunity may be given to the appellant to make a representation to the State Government. We find that it is not necessary for us to give any such liberty since acquisition process has already been completed." (1996) 4 SCC 212

264. In P.K. Kalburqi v. State of Karnataka and Ors., 169, with respect of mode of possession, this Court laid down as under:

> "6. Moreover, the Hon'ble Minister who passed the order of denotification of the lands in question sought to make a distinction between symbolic possession and actual possession and proceed to pass the order on the basis of his understanding of the law that symbolic possession did not amount to actual possession, and that the power to withdraw from the acquisition could be exercised at any time before "actual possession" was taken. This view appears to be contrary to the majority decision of this Court in Balwant Narayan Bhagde v. M.D. Bhagwat, wherein this Court observed that how such possession would be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of. There can be no hard-and-fast rule laying down what act would be sufficient to constitute taking of possession of land. In the instant case the lands of which possession was sought to be taken were unoccupied, in the sense that there was no crop or structure standing thereon. In such a case only symbolic possession could be taken, and as was pointed out by this Court in the aforesaid decision, such possession would amount to vesting the land in the Government. Moreover, four acres and odd belonging to the appellant was a part of the larger area of 118 acres notified for acquisition. We are, therefore, satisfied that the High Court has not committed any error in holding that possession of the land was taken on 6-11-1985. Even the order of the Minister on which considerable reliance has been placed by the appellant indicates that possession of the lands was taken, though symbolic."

265. In Sita Ram Bhandar Society, New Delhi (supra) this Court held that when possession of large area of land is to be taken, then it is permissible to take possession by drawing Panchnama. A similar view was expressed in Om Prakash Verma & Ors (supra) which stated that:

> "85. As pointed out earlier, the expression "civil appeals are allowed" carry only one meaning i.e. the judgment of the High Court is set aside and the writ petitions are dismissed. Moreover, the determination of surplus land based on the declaration of owners has become final long back. The notifications issued under Section 10 of the

> Act and the panchnama taking possession are also final. On behalf of the State, it was asserted that the possession of surplus land was taken on 20-7-1993 and the panchnama was executed showing that the possession has been taken. It is signed by the witnesses. We have perused the details which are available in the paper book. It is settled law that where possession is to be taken of a large tract of land (2005) 12 SCC 489 then it is permissible to take possession by a properly executed panchnama. [Vide Sita Ram Bhandar Society v. Govt. (NCT of Delhi) (2009) 10 SCC 501.]
>
> 86. It is not in dispute that the panchnama has not been questioned in any proceedings by any of the appellants. Though it is stated that Chanakyapuri Cooperative Society was in possession at one stage and Shri Venkateshawar Enterprises was given possession by the owners and possession was also given to Golden Hill Construction Corporation and thereafter it was given to the purchasers, the fact remains that the owners are not in possession. In view of the same, the finding of the High Court that the possession was taken by the State legally and validly through a panchnama is absolutely correct and deserves to be upheld."

266. In M. Venkatesh and Ors. v. Commissioner, Bangalore Development Authority, etc.170, a three-Judge Bench of this Court has opined that one of the modes of taking possession is by drawing panchnama. The Court observed:

> "17. To the same effect are the decisions of this Court in Ajay Krishan Shinghal v. Union of India (1996) 10 SCC 721, Mahavir v. Rural Institute (1995) 5 SCC 335, Gian Chand v. Gopala (1995) 2 SCC 528, Meera Sahni v. Lt. Governor of Delhi (2008) 9 SCC 177 and Tika Ram v. State of U.P. (2009) 10 SCC 689 More importantly, as on the date of the suit, the respondents had not completed 12 years in possession of the suit property so as to entitle them to claim adverse possession against BDA, the true owner. The argument that possession of the land was never taken also needs notice only to be rejected for it is settled that one of the modes of taking possession is by drawing a panchnama which part has been done to perfection according to the evidence led by the defendant BDA. Decisions of this Court in T.N. Housing Board v. A. Viswam (1996) 8 SCC 259 and Larsen & Toubro Ltd. v. State of Gujarat (1998) 4 SCC 387, sufficiently support BDA that the mode of taking possession adopted by it was a permissible mode."

267. In Ram Singh v. Jammu Development Authority 171, this Court stated that the mode of taking possession is by drawing a Panchnama. Concerning the mode of taking possession in any other land, law to a 170 (2015) 17 SCC 1 2017 (13) SCC 474 similar effect has been laid down in NAL Layout Residents Association v. Bangalore Development Authority172. Certain decisions were cited with respect to other statutes regarding coalfields etc. and how the possession is taken and vesting is to what extent. Those have to be seen in the context of the particular Act. Possession comprises of various rights, thus it has to be couched in a particular statute for which we have a plethora of decisions of this Court. Hence, we need not fall back on the decisions in other cases. The decision in Burrakur Coal Co. Ltd. (supra) held that a person can be said to be in possession of minerals

contained in a well-defined mining area even though his actual physical possession is confined to a small portion. Possession in part extends to the whole of the area. The decision does not help the cause of the petitioner. Once possession has been taken by drawing a Panchnama, the State is deemed to be in possession of the entire area and not for a part. There is absolute vesting in Government with possession and control free from all encumbrances as specifically provided in Section 16 of the Act of 1894.

268. Maguni Charan Dwivedi v. State of Orissa173 , dealt with the provision of land laws requiring actual cultivating possession with which we are not concerned here. Sri Tarkeshwar Sio Thakur Jiu v. Dar Dass Dey & Co.174, it was again a case relating to mining. The decision 172 (2018) 12 SCC 400 1976 (2) SCC 134 174 1979 (3) SCC 106 is of no avail. The decision in Ramesh Bejoy Sharma v. Pashupati Rai175 related to khas possession and physical possession of the tenant with which we are not concerned in the instant case, and the decision has no relevance so as to determine the expression. In the instant case, we are not dealing with the question, what are the rights to be conferred on the actual cultivators under revenue laws?

269. Karanpura Development Co. v. Union of India176, was again a case of mines. In Larsen & Toubro Ltd. v. State of Gujarat177, this Court relied upon Tamil Nadu Housing Board v. A. Viswam, (supra), Balmokand Khatri Educational & Industrial Trust (supra) and held that drawing of Panchnama is sufficient to take possession and acquisition was held to be valid.

270. The decision in Velaxan Kumar (supra) cannot be said to be laying down the law correctly. The Court considered the photographs also to hold that the possession was not taken. Photographs cannot evidence as to whether possession was taken or not. Drawing of a Panchnama is an accepted mode of taking possession. Even after re-entry, a photograph can be taken; equally, it taken be taken after committing trespass. Such documents cannot prevail over the established mode of proving whether possession is taken, of lands. Photographs can be of little use, much less can they be a proof of possession. A person may 175 (1979) 4 SCC 27 176 (1988) Supp. SCC 488 (1998) 4 SCC 387 re-enter for a short period or only to have photograph. That would not impinge adversely on the proceedings of taking possession by drawing Panchnama, which has been a rarely recognised and settled mode of taking possession.

271. In the decision in Raghbir Singh Sehrawat v. State of Haryana178, the observation made was that it is not possible to take the possession of entire land in a day on which the award was declared, cannot be accepted as laying down the law correctly and same is contrary to a large number of precedents. The decision in Narmada Bachao Andolan v. State of M.P179, is confined to particular facts of the case. The Commissioner was appointed to find out possession on the spot. DVDs. and CDs were seen to hold that the landowners were in possession. The District Judge, Indore, recorded the statements of the tenure-holder. We do not approve the method of determining the possession by appointment of Commissioner or by DVDs and CDs as an acceptable mode of proving taking of possession. The drawing of Panchnama contemporaneously is sufficient and it is not open to a court Commissioner to determine the factum of possession within the purview of Order XXVII, Rule 9 CPC. Whether possession has been taken, or not, is not a matter that a court appointed Commissioner cannot opine. However, drawing of Panchnama by itself is enough and is a proof of

the fact that possession has been taken.

(2012) 1 SCC 792 (2011) 7 SCC 639

272. It was submitted on behalf of landowners that under Section 24 the expression used is not possession but physical possession. In our opinion, under the Act of 1894 when possession is taken after award is passed under section 16 or under section 17 before the passing of the award, land absolutely vests in the State on drawing of Panchnama of taking possession, which is the mode of taking possession. Thereafter, any re-entry in possession or retaining the possession is wholly illegal and trespasser's possession inures for the benefit of the owner and even in the case of open land, possession is deemed to be that of the owner. When the land is vacant and is lying open, it is presumed to be that of the owner by this Court as held in Kashi Bai v. Sudha Rani Ghose180. Mere re-entry on Government land once it is acquired and vests absolutely in the State (under the Act of 1894) does not confer, any right to it and Section 24(2) does not have the effect of divesting the land once it vests in the State.

273. In Maria Margadia Sequeria v Erasmo Jack De Sequeria 181, approving a decision of this Court, this court clarified what amounts to "possession" in law and held:

> "Possession is flexible term and is not necessarily restricted to mere actual possession of the property. The legal conception of possession may be in various forms. The two elements of possession are the corpus and the animus. A person though in physical possession may not be in possession in the eye of law, if the animus be lacking. On the contrary, to be in possession, it is not necessary that one must be in actual physical contact. To gain the complete idea of possession, one must consider 180 AIR 1958 SC 434 2012 (5) SCC 370
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> (i) the person possessing, (ii) the things possessed and, (iii) the persons excluded from possession. A man may hold an object without claiming any interest therein for himself. A servant though holding an object, holds it for his master. He has, therefore, merely custody of the thing and not the possession which would always be with the master though the master may not be in actual contact of the thing. It is in this light in which the concept of possession has to be understood in the context of a servant and master."
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> ********** ***** ********** Principles of law which emerge in Maria Margadia Sequeria (supra) are crystallized as under:-
>
> "1. No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property."

274. In the decision reported as National Thermal Power Ltd v Mahesh Dutta182 this court held that:

> "28. When possession is to be taken over in respect of the fallow or Patit land, a mere intention to do so may not be enough. It is, however, the positive stand by the appellant that the lands in question are agricultural land and crops used to be grown therein. If the lands in question are agricultural lands, not only actual physical possession had to be taken but also they were required to be properly demarcated. If the land had standing crops, as has been contended by Mr. Raju Ramachandran, steps in relation thereto were required to be taken by the Collector. Even in the said certificate of possession, it had not been stated that there were standing crops on the land on the date on which possession was taken. We may notice that delivery of possession in respect of immoveable property should be taken in the manner laid down in Order XXI Rule 35 of the Code of Civil Procedure.
>
> 29. It is beyond any comprehension that when possession is purported to have been taken of the entire acquired lands, actual possession would be taken only of a portion thereof. The certificate of possession was either correct or incorrect. It cannot be partially correct or partially incorrect. Either the possession had actually been delivered or had not been delivered. It cannot be accepted that possession had been delivered in respect of about 10 acres of land and the possession could not be taken in respect of the rest 55 acres of land. When the provisions of Section 17 are taken recourse to, vesting of the land takes effect immediately.
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> 30. Another striking feature of the case is that all the actions had been taken in a comprehensive manner. The Collector in his 2009 (8) SCC 339 certificate of possession dated 16th November, 1984 stated that the possession had been taken over in respect of the entire land;

the details of the land and the area thereof had also been mentioned in the certificate of possession; even NTPC in its letter dated 24th February, 1986 stated that possession had not been delivered only in respect of land situated in four villages mentioned therein. Indisputably NTPC got possession over 10.215 acres of land. It raised constructions thereover. It is difficult to comprehend that if the NTPC had paid 80% of the total compensation as provided for under sub-section (3A) of Section 17 of the Act, out of 65.713 acres of land it had obtained possession only in respect of about 10.215 acres of land and still for such a long time it kept mum. Ex-facie, therefore, it is difficult to accept that merely symbolic possession had been taken."

275. In V. Chandrasekaran & Anr. v. Administrative Officer & Ors.183, the land was acquired and possession was handed over to the authorities. Later on the land was sold, documents were manipulated, and flats were constructed in an illegal manner. It was held that the land once acquired, cannot be restored. The State has no right to reconvey the land and no person can claim such a right nor derive an advantage. Sale of land after a notification under section 4 of the LA Act was held to be void. It was held in the facts of the case that the judicial process cannot be used to subvert its way. Such persons must not be permitted to profit from the frivolous litigation, and they must be prevented from taking false pleas by relying on forged documents or illegal action.

276. We have seen the blatant misuse of the provisions of section 24(2). Acquisitions that were completed several decades before even to say 50- 183 (2012) 12 SCC 133 60 years ago, or even as far back as 90 years ago were questioned; cases filed were dismissed. References were sought claiming higher compensation and higher compensation had been ordered. Now, there is a fresh bout of litigation started by erstwhile owners even after having received the compensation in many cases by submitting that possession has not been taken and taking of possession by drawing a Panchnama was illegal and they are in physical possession. As such, there is lapse of proceedings.

277. The court is alive to the fact that are a large number of cases where, after acquisition land has been handed over to various corporations, local authorities, acquiring bodies, etc. After depositing compensation (for the acquisition) those bodies and authorities have been handed possession of lands. They, in turn, after development of such acquired lands have handed over properties; third party interests have intervened and now declaration is sought under the cover of section 24(2) to invalidate all such actions. As held by us, section 24 does not intend to cover such cases at all and such gross misuse of the provisions of law must stop. Title once vested, cannot be obliterated, without an express legal provision; in any case, even if the landowners' argument that after possession too, in case of non-payment of compensation, the acquisition would lapse, were for arguments' sake, be accepted, these third party owners would be deprived of their lands, lawfully acquired by them, without compensation of any sort. Thus, we have no hesitation to overrule the decisions in Velaxan Kumar (supra) and Narmada Bachao Andolan (supra), with regard to mode of taking possession. We hold that drawing of Panchnama of taking possession is the mode of taking possession in land acquisition cases, thereupon land vests in the State and any re-entry or retaining the possession thereafter is unlawful and does not inure for conferring benefits under section 24(2) of the Act of 2013.

In Re Question No.5: the effect of interim order of Court

278. On behalf of acquiring authorities, it was submitted that period spent during the interim stay or injunction by which Authorities have not been able to take possession or to make payment, has to be excluded from computing the period of 5 years or more as provided in Section 24(2). It was submitted that in case authorities are restrained by interim order passed by the court in a pending litigation, the land acquisition cannot lapse by including the period for which interim stay order preventing the Authorities from taking action has operated. Reliance has been placed on the principles contained in maxim "actus curiae neminem gravabit". It was also submitted even in the absence of the provisions specifically excluding the period of interim stay/injunction having been made in Section 24(2) of the Act, 2013, the aforesaid principles are attracted and the period has to be excluded.

279. The landowners, on the other hand argued that there is no valid reason to exclude the period spent during the interim order by the court from the prescribed period of 5 years under Section 24(2) of the Act of 2013. For the main reason that the legislature has not specially provided for exclusion of such period in Section 24 and secondly, where Parliament has desired to exclude the period of interim order has made provision for exclusion of such period in proviso to Section 19 and explanation to Section 69 of the Act of 2013. In the Act of 1894, there was a similar provision made

in Section 6 and explanation to Section 11A. During the process of consultation of the stakeholders while enacting the Act of 2013, the Government of NCT of Delhi had suggested that an explanation be added in the provisions of Section 24 to exclude the period of interim order passed by the court. The suggestion was not accepted by the Department of Land Reforms on the ground that same would be in conflict with the retrospective effect of the clause. Ultimately, in the final recommendation, the period of interim order of the court was not made. Thus, it is "casus omissus" which cannot be applied by the court. The maxim "actus curiæ neminem gravabit" is not applied and is rare if ever applied to interpret the statute.

280. In Padma Sundar Rao (supra), a Constitution Bench of this Court has declined to rely on the maxim and similarly in Khandaka Jain Jewellers, (supra), the maxim was not applied. It was urged that in Snell's Equity (33rd Edition), 2015 with respect to the maxim, it has been observed that maxim of equity is not a specific rule of principle of law. It is a statement of a broad theme which underlies equitable concepts and principles. As a result, the utility of equitable maxim is limited. It can provide some support to the court when there is some uncertainty as to the scope of a particular rule of principle and a court in exercising an equitable discretion may apply the same.

281. Reference was also made to decision of Parson Tools and Plants (supra) to contend that court cannot supply the omission by engrafting on it or introducing in it under the guise of interpretation. To do so, it would be entrenching upon the preserves of the legislature. Where under Section 24 cut-off date is prescribed and there is no starting point and period for completion of task, the notion of excluding time spent in litigations is an alien concept to the provisions. The court must assume that the old law was oppressive and unjust and such introduction of exclusion of time may create complication in the working of the statute. It was also submitted that common law principles can be excluded by the legislature by express or implied implication in the statute itself. In this regard, reliance has been placed upon Union of India v. SICOM Ltd184. It was submitted on behalf of landowners that no provision had been enacted by issuing any ordinance and later amending the law, for providing for exclusion of the time spent on interim order under Section 24(2), but Ordinance lapsed. The legislature could have amended the provisions as such the court cannot exclude the period.

(2009) 2 SCC 121

282. Before we go to various rival submissions, the pivotal question for consideration is the interpretation of Section 24 and aims and objectives of the Act of 2013. Section 24 contemplates that the proceedings initiated under the Act of 1894, are pending as on the date on which Act of 2013 has been enacted and if no award has been passed in the proceedings, then there is no lapse and only determination of compensation has to be made under the Act of 2013. Where an award has been passed, it is provided under Section 24(1)(b), the pending proceedings shall continue under the provisions of the Act of 1894 as if the old Act has not been repealed. The provisions totally exclude the applicability of any provision of Act of 2013. There are two requirements under Section 24(2), which are to be met by the Authorities, where award has been made 5 years or more prior to the commencement of the Act of 2013, if the physical possession of the land has not been taken nor compensation has been paid. If possession has been taken, compensation has to be paid by the

acquiring authorities. The time of five years is provided for authorities to take action, not to sleep over the matter. In case of lethargy or machinery and default on the part of the Authorities and for no other reason the lapse is provided. Lapse is provided only in case of default by Authorities acquiring the land, not caused by any other reason or order of the court. When the interpretation of the provision is clear, there was no necessity for Parliament to make such a provision under Section 24(2) for exclusion of the period of the interim order. Though it has excluded the period of interim order for making declaration under the proviso to Sections 19(7) and exclusion has also been made for computation of the period under Section 69 of the Act of 2013. It is due to the necessity to provide so in view of the language of the provision. Under section 69 of the Act of 2013, additional compensation at the rate of 12 per cent has to be given on market value for the period commencing from the date of the publication of the preliminary notification under Section 11. The additional compensation at the rate of 12 per cent has been excluded for the period acquisition proceedings have been held up on account of the interim injunction order of any court. The provisions of Section 24 cast an obligation upon the Authorities to take steps meaning thereby that it is open to them to take such steps, and inaction or lethargy on their part has not been countenanced by Parliament. Resultantly, lapse of proceedings takes place. It is by the very nature of the provisions if it was not possible for authorities for any reason not attributable to them or the Government to take requisite steps, the period has to be excluded. The Minister concerned Shri Jairam Ramesh in answer to the debate quoted above has made it clear that time limit of five years has been fixed for the Authorities to take action. If we do not exclude the period of interim order, the very spirit of the provision will be violated.

283. With respect to fixation of period is five years for the executive Authorities to take the requisite steps, Delhi Development Authority v. Sukhbir Singh and Ors. (supra) observed that 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 the pronouncement of award. Not having done so even after a leeway of five years, would cross the limits of legislative tolerance, after which the whole proceeding would be deemed to have lapsed. Thus, it is apparent from the decision of Delhi Development Authority v. Sukhbir Singh and Ors. (supra), which is relied upon by the landowners, that time limit is fixed for the executive authorities to take steps. In case they are prevented by the court's order, obviously, as per the interpretation of the provisions is that such period has to be excluded. In case such a provision would have been made, it would have been “ex abundanti cautela”. There was no necessity of making such a provision even if this proposition has been discussed during the formulation of legislation. However, the provision providing exclusion has been enacted. It casts an obligation upon the Authorities to take requisite steps within five years, that by itself excludes such period of interim order.

284. It was pointed out that in certain States, amendments have been incorporated in Section 24(2), excluding the period of interim order passed by the Court. In our opinion, there is no such necessity for providing exclusion of time and it has been done by the States “ex abundanti cautela” and there is no doubt about it that Central Government has also tried to introduce the provision of the exclusion of time by issuance of ordinances, however, they lapsed. It was due to the interpretation and the decision rendered by this Court in Shree Balaji Nagar Residential Association (supra), which cannot be said to be laying down the law correctly.

285. The intent of the Act of 2013, is not to benefit litigants only. It has introduced a new regime which is beneficial to the landowners. The provisions of Section 24 by itself do not intend to confer the benefits on litigating parties, while as per Section 114 of the Act of 2013 and section 6 of the General Clauses Act, has to be litigated as per the provisions of the Act of 1894.

286. Section 24 treats land acquisition proceedings as one and prescribes the transition mechanism for the said proceedings. Possession of the land holdings in normal course is to be taken at one go, not in piecemeal by the Authorities. Once award is made, possession can be taken and on that the land vests in State under section 16, and under Section 17(1) of the Act of 1894, the possession of any land can be taken for public purposes in cases of urgency without passing of the award. The expression "acquisition proceedings" is referred to in sub-sections (1) and (2) of Section 24 and its proviso makes it clear that in case in majority of the landholdings compensation has not been deposited, all the beneficiaries as on the date of notification under Section 4 (of the Act of 1894) shall be entitled to compensation in accordance with the provisions of the Act of 2013. That also intends to give benefits to all the concerned. Payment of compensation too has to be made. Possession of land holdings is to be taken in terms of the notification under Section 4 and declaration under section 6 and payment has to be made to the beneficiaries. In case payment has not been made to the landowners nor is possession taken, there is a lapse. In case compensation has not been deposited within 5 years with respect to majority of land holdings, then all the beneficiaries are entitled for higher compensation under the Act of 2013.

287. In the opinion of this court it is not the intendment of the Act of 2013 that those who have litigated should get benefits of higher compensation as contemplated under Section 24 benefit is conferred on all beneficiaries. It is not intended by the provisions that in piecemeal the persons who have litigated and have obtained the interim order should get the benefits of the provisions of the Act of 2013. Those who have accepted the compensation within 5 years and handed over the possession too, are to be benefited, in case amount has not been deposited with respect to majority of holdings. There are cases in which projects have come up in part and as per plan rest of the area is required for planned development with respect to which interim stays have been obtained. It is not the intendment of the law to deliver advantage to relentless litigants. It cannot be said hence, that it was due to the inaction of the authorities that possession could not be taken within 5 years. Public policy is not to foment or foster litigation but put an end to it. In several instances, in various High Courts writ petitions were dismissed by single judge Benches and the writ appeals were pending for a long time and in which, with respect to part of land of the projects, efforts were made to obtain the benefit of Section 24(2). Parliament in our view did not intend to confer benefits to such litigants for the aforementioned reasons. Litigation may be frivolous or may be worthy. Such litigants have to stand on the strength of their own case and in such a case provisions of Section 114 of the Act of 2013 and Section 6 of the General Clauses Act, 1897, are clearly attracted and such proceedings have to be continued under the provisions of the old Act that would be in the spirit of Section 24(1)(b) itself of the Act of 2013. Section 6(b) of the General Clauses Act, 1897, provides that repeal will not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder. Section 6(c) states that repeal would not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. When there is a provision itself in Section 24(1)(b) of continuance of the proceedings where award has been passed under the Act of

1894, for the purposes of Section 24 as provided in Section 24(b), the provisions of Section 114 is clearly attracted so as the provisions of Section 6 of the General Clauses Act, 1897, to the extent of non obstante clause of Section 24, where possession has not been taken nor payment has been made, there is a lapse, that too by the inaction of the Authorities. Any court's interim order cannot be said to be inaction of the authorities or agencies; thus, time period is not to be included for counting the 5 years period as envisaged in Section 24(2). As per proviso to Section 24(2), where possession has been taken, but compensation has not been paid or deposited with respect to majority of land holdings, all the beneficiaries would be entitled for higher compensation only to that extent, the provisions of Section 114 of the Act of 2013, would be superseded but it would not obliterate the general application of Section 6 of the General Clauses Act, 1897, which deals with effect of repeal except as provided in section 24(2) and its proviso.

288. It was submitted on behalf of acquiring authorities that principle of casus omissus is not necessarily applicable in all the cases. Reliance has been placed on Seaford Court Estates Ltd. v. Asher185, in which following observations have been made:

> "The question for decision in this case is whether we are at liberty to extend the ordinary meaning of "burden" so as to include a contingent burden of the kind I have described. Now this court has already held that this sub-section is to be liberally construed so as to give effect to the governing principles embodied in the legislation (Winchester Court Ld. v. Miller); and I think we should do the same. Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect 185 (1949) 2 K.B. 481 clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word sc as to give "force and life" to the intention of the legislature. That was clearly laid down by the resolution of the judges in Heydon's case, and it is the safest guide to-day. Good practical advice on the subject was given about the same time by Plowden in his second volume Evston v. Studd. Put into homely metaphor it is this: A judge should ask himself the question: If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases.

Approaching this case in that way, I cannot help feeling that the legislature had not specifically in mind a contingent burden such as we have here. If it had, would it not have put it on the same footing as an actual burden? I think it would. It would have permitted an increase of rent when the terms were so changed as to put a positive legal burden on the landlord. If the parties expressly agreed between themselves the amount of the increase on that account the court would give effect to their agreement. But if, as here, they did not direct their minds to the point, the court has itself to assess the amount of the increase. It has to say how much the tenant should pay "in respect of" the transfer of this burden to the landlord. It should do this by asking what a willing tenant would agree to pay and a willing landlord would agree to accept in respect of it. Just as in the earlier cases the courts were able to assess the value of the "fair wear and tear"

> clause, and of a "cooker." So they can assess the value of the hot water clause and translate it fairly in terms of rent; and what applies to hot water applies also to the removal of refuse and so forth. I agree that the appeal should be allowed, and with the order proposed by Asquith LJ." (emphasis supplied)

289. Reliance was also placed on M. Pentiah v. Muddala Veeramallappa186, in which this Court observed that where the language of a statute in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment or to some inconvenience or absurdity, hardship or (1961) 2 SCR 295 injustice, which is not intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. In Hameedia Hardware Stores v. B. Mohan Lal Sowcar187 , it was held that absurdity has to be avoided. In that decision reliance was placed on the decision in Seaford Court Estates Ltd. (supra), wherein it was observed that when a defect or omission appears, a judge cannot simply fold his hands and blame the draftsman. It is the duty to give force and life to the intention of the legislature. The court has to construe the words of the statute in a reasonable way having regard to the context.

290. Again, in Madan Singh Shekhawat v. Union of India188 , the decision in Seaford Court Estates Ltd. (supra) has been followed. Following observations have been made:

> "18. Applying the above rule, we are of the opinion that the rule- makers did not intend to deprive the army personnel of the benefit of the disability pension solely on the ground that the cost of the journey was not borne by the public exchequer. If the journey was authorised, it can make no difference whether the fare for the same came from the public exchequer or the army personnel himself."

291. There cannot be any dispute with the above propositions. However, in the present case, when we construe the provisions of Section 24, it clearly ousts the period spent during the interim stay of the court. Five years' period is fixed for the purpose to take action, if they have not taken the action for 5 years or more, then there is lapse, 187 (1988) 2 SCC 513 188 (1999) 6 SCC 459 not otherwise. Even if there had been a provision made with respect to the exclusion of time spent in the court proceedings with respect to interim stay due to court's order, it could have been ex abundanti cautela, which has been considered by this Court in Union of India and Ors. v. Modi Rubber Ltd189.

It would have been superfluous to make such a provision. Following observations were made in Modi Rubber Ltd. (supra):

> "7. Both these notifications, as the opening part shows, are issued under Rule 8(1) of the Central Excise Rules, 1944 and since the definition of 'duty' in Rule 2, clause (v) must necessarily be projected in Rule 8(1) and the expression "duty of excise" in Rule 8(1) must be read in the light of that definition, the same expression used in these two notifications issued under Rule 8(1) must also be interpreted in the same sense, namely, duty of excise payable under the Central Excises and Salt Act, 1944 and the exemption granted under both these notifications must be regarded as limited only to such duty of excise. But the respondents contended that the expression "duty of excise" was one of large amplitude and in the absence of any restrictive or limitative words indicating that it was intended to refer only to duty of excise leviable under the Central Excises and Salt Act, 1944, it must be held to cover all duties of excise whether leviable under the Central Excises and Salt Act, 1944 or under any other enactment. The respondents sought to support this contention by pointing out that whenever the Central Government wanted to confine the exemption granted under a notification to the duty of excise leviable under the Central Excises and Salt Act, 1944, the Central Government made its intention abundantly clear by using appropriate words of limitation such as "duty of excise leviable ... under Section 3 of the Central Excises and Salt Act, 1944" or "duty of excise leviable ... under the Central Excises and Salt Act, 1944" or "duty of excise leviable ... under the said Act" as in the Notification No. CER-8(3)/55-C.E. dated September 17, 1955, Notification No. 255/77-C.E. dated July 20, 1977, Notification No. CER-8(1)/55-C.E. dated September 2, 1955, Notification No. CER- 8(9)/55-C.E. dated December 31, 1955, Notification No. 95/61- C.E. dated April 1, 1961, Notification No. 23/55-C.E. dated April 29, 1955 and similar other notifications. But, here said the respondents, no such words of limitation are used in the two notifications in question and the expression "duty of excise" must, therefore, be read according to its plain natural meaning as including all duties of excise, including special duty of excise and auxiliary duty of excise. Now, it is no doubt true that in these various notifications referred to above, the Central Government (1986) 4 SCC 66 has, while granting exemption under Rule 8(1), used specified language indicating that the exemption, total or partial, granted under each such notification is in respect of excise duty leviable under the Central Excises and Salt Act, 1944. But, merely because, as a matter of drafting, the Central Government has in some notifications specifically referred to the excise duty in respect of which exemption is granted as "duty of excise" leviable under the Central Excises and Salt Act, 1944, it does not follow that in the absence of such words of specificity, the expression "duty of excise" standing by itself must be read as referring to all duties of excise. It is not uncommon to find that the legislature sometimes, with a view to making its intention clear beyond doubt, uses language ex abundanti cautela though it may not be strictly necessary and even without it the same intention can be spelt out as a matter of judicial construction and this would be more so in case of subordinate legislation by the executive. The officer drafting a particular piece of

> subordinate legislation in the Executive Department may employ words with a view to leaving no scope for possible doubt as to its intention or sometimes even for greater completeness, though these words may not add anything to the meaning and scope of the subordinate legislation.

Here, in the present notifications, the words duty of excise leviable under the Central Excises and Salt Act, 1944' do not find a place as in the other notifications relied upon by the respondents. But, that does not necessarily lead to the inference that the expression "duty of excise" in these notifications was intended to refer to all duties of excise including special and auxiliary duties of excise. The absence of these words does not absolve us from the obligation to interpret the expression "duty of excise" in these notifications. We have still to construe this expression — what is its meaning and import — and that has to be done bearing in mind the context in which it occurs. We have already pointed out that these notifications having been issued under Rule 8(1), the expression "duty of excise" in these notifications must bear the same meaning which it has in Rule 8(1) and that meaning clearly is — excise duty payable under the Central Excises and Salt Act, 1944 as envisaged in Rule 2 clause

(v). It cannot in the circumstances bear an extended meaning so as to include special excise duty and auxiliary excise duty." (emphasis supplied)

292. Relying on State of U.P. and Ors. v. Hindustan Aluminium Corpn. and Ors.,190 it was submitted that whether a piece of legislation has spent itself or exhausted in operation are matters of law and no such rights exist in a citizen to ask for a declaration that the law has been impliedly repealed on any such ground. In extreme and clear cases, no 190 (1979) 3 SCC 229 doubt, an antiquated law may be said to have become obsolete and, more so, if it is a penal law and has become incapable of user by a drastic change in the circumstances. Craies on Statute Law, Seventh Edition, has discussed about different classes of enactments such as expired, spent, repealed in general terms, virtually repealed, superseded and obsolete.

293. The Act of 2013 operates prospectively. Section 114 of the Act of 2013, effects a repeal, but with certain savings, in accordance with Section 24. Thus, acquisition proceedings are preserved under the Act of 1894, till the stage of making of award; where award is not made, the provisions of compensation under the Act of 2013 apply; where award is made, further proceedings would be under the new Act (of 2013). In case possession has been taken by the authorities concerning awards which were made 5 years or before, under the Act of 1894 and such proceedings are pending, that would be due to inaction of the authorities on the date on which the Act of 2013 came into force. The lapse (of acquisition) and higher compensation to follow only under Section 24(2), where compensation is not paid, nor possession of lands is taken. A period of 5 years or more has been provided under Section

24. In the case, however, where possession is taken, but compensation is not deposited in respect of majority landholdings, compensation under the Act of 2013 is payable to all- including those who received compensation earlier.

294. Reliance has been placed on the decision in Syndicate Bank v. Prabha D. Naik and Anr191, in which it was observed that the legislature is supposed to be conscious of the needs of the society at large and the prevalent laws. It was held that there is no reason for assuming that the legislature was not aware of the difficulties and the prevailing situation. There is no dispute with the aforesaid proposition; however, it does not espouse the cause of the landowners.

295. The correctness of the decision of Shree Balaji Nagar Residential Association (supra) was doubted in Yogesh Neema and Ors. (supra), and the matter was referred to a larger Bench. In Shree Balaji Nagar Residential Association (supra) following observations were made:

> "11. From a plain reading of Section 24 of the 2013 Act, it is clear that Section 24(2) of the 2013 Act does not exclude any period during which the land acquisition proceeding might have remained stayed on account of stay or injunction granted by any court. In the same Act, the proviso to Section 19(7) in the context of limitation for publication of declaration under Section 19(1) and the Explanation to Section 69(2) for working out the market value of the land in the context of delay between preliminary notification under Section 11 and the date of the award, specifically provide that the period or periods during which the acquisition proceedings were held up on account of any stay or injunction by the order of any court be excluded in computing the relevant period. In that view of the matter, it can be safely concluded that the legislature has consciously omitted to extend the period of five years indicated in Section 24(2) even if the proceedings had been delayed on account of an order of stay or injunction granted by a court of law or for any reason. Such casus omissus cannot be supplied by the court in view of law on the subject elaborately discussed by this Court in Padma Sundara Rao v. State of T.N (2002) 3 SCC 533.
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> 12. Even in the Land Acquisition Act of 1894, the legislature had brought about amendment in Section 6 through an Amendment Act of 1984 to add Explanation 1 for the purpose of excluding the (2001) 4 SCC 713 period when the proceeding suffered stay by an order of the court, in the context of limitation provided for publishing the declaration under Section 6(1) of the Act. To a similar effect was the Explanation to Section 11-A, which was added by Amendment Act 68 of 1984. Clearly, the legislature has, in its wisdom, made the period of five years under Section 24(2) of the 2013 Act absolute and unaffected by any delay in the proceedings on account of any order of stay by a court. The plain wordings used by the legislature are clear and do not create any ambiguity or conflict. In such a situation, the court is not required to depart from the literal rule of interpretation."

296. This Court held that the conscious omission by Parliament in Section 24(2) to exclude the period, an interim order operates is to be given effect and that the court should not fill in the gap. In Indore Development Authority (supra), the decision rendered in Shree Balaji Nagar Residential Association (supra) was overruled with consensus and it was not the subject matter in Pune Municipal Corporation (supra). However, the learned counsel for the parties had urged that this question arises as such it should be framed and considered by the present larger Bench. Hence, we

have examined the matter afresh.

297. In cases where some landowners have chosen to take recourse to litigation (which they have a right to) and have obtained interim orders on taking possession or orders of status quo, as a matter of practical reality it is not possible for the authorities or State officials to take the possession or to make payment of the compensation. In several instances, such interim orders also impeded the making of an award. Now, so far as awards (and compensation payments, pursuant to such proceedings were concerned) the period provided for making of awards under the Act of 2013 could be excluded by virtue of Explanation to Section 11A.192 Thus, no fault of inaction can be attributed to the authorities and those who had obtained such interim orders, cannot benefit by their own action in filing litigation, which may or may not be meritorious. Apart from the question of merits, when there is an interim order with respect to the possession or order of status quo or stay of further proceedings, the authorities cannot proceed; nor can they pay compensation. Their obligations are intertwined with the scheme of land acquisition. It is observed that authorities may wait in the proceedings till the interim order is vacated.

298. In our considered opinion, litigation which initiated by the landowners has to be decided on its own merits and the benefits of Section 24(2) should not be available to the litigants. In case there is no interim order, they can get the benefits they are entitled to, not otherwise as a result of fruit of litigation, delays and dilatory tactics and some time it may be wholly frivolous pleas and forged documents as observed in V. Chandrasekaran (supra) mentioned above. “11-A. Period within which an award shall be made The Collcctor shall make an award under section 11 within a period of two years from the date of the publication of the declaration and ifno award is made within that period. the entire proceedings for the acquisition ofthc land shall lapse:

> Provided that in a case where thc said declaration has been published before the commencement of the Land Acquisition (Amendment) Act. 1984 the award shall be made within a period oftwo years from such commencements. 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 s..'lid declaration is stayed by an order ofa court shall be excluded.

299. In Abhey Ram (Dead) by L.Rs. and Ors. v. Union of India and Ors193., this Court considered the extended meaning of words "stay of the action or proceedings". It was observed that any type of orders passed by this Court would be an inhibitive action on the part of the Authorities to proceed further. This Court observed thus:

> “9. Therefore, the reasons given in B.R. Gupta v. Union of India, 37 (1989) DLT 150 (Del) DB, are obvious with reference to the quashing of the publication of the declaration under Section 6 vis-

à-vis the writ petitioners therein. The question that arises for consideration is whether the stay obtained by some of the persons who prohibited the respondents from publication of the declaration under Section 6 would equally be extendible to the cases relating to the appellants. We proceed on

the premise that the appellants had not obtained any stay of the publication of the declaration but since the High Court in some of the cases has, in fact, prohibited them as extracted hereinbefore, from publication of the declaration, necessarily, when the Court has not restricted the declaration in the impugned orders in support of the petitioners therein, the officers had to hold back their hands till the matters were disposed of. In fact, this Court has given extended meaning to the orders of stay or proceeding in various cases, namely, Yusufbhai Noormohmed Nendoliya v. State of Gujarat, (1991) 4 SCC 531, Hansraj H. Jain v. State of Maharashtra, (1993) 3 SCC 634, Sangappa Gurulingappa Sajjan v. State of Karnataka, (1994) 4 SCC 145, Gandhi Grah Nirman Sahkari Samiti Ltd. v. State of Rajasthan, (1993) 2 SCC 662, G. Narayanaswamy Reddy v. Govt. of Karnataka, (1991) 3 SCC 261 and Roshnara Begum v. Union of India, (1986) 1 Apex Dec 6. The words "stay of the action or proceeding" have been widely interpreted by this Court and mean that any type of the orders passed by this Court would be an inhibitive action on the part of the authorities to proceed further. When the action of conducting an enquiry under Section 5-A was put in issue and the declaration under Section 6 was questioned, necessarily unless the Court holds that enquiry under Section 5-A was properly conducted and the declaration published under Section 6 was valid, it would not be open to the officers to proceed further into the matter. As a consequence, the stay granted in respect of some would be applicable to others also who had not obtained stay in that behalf. We are not concerned with the correctness of the earlier direction with regard to Section 5-A enquiry and consideration of objections as it was not challenged by the respondent Union. We express no opinion on its correctness, though it is open to doubt." (1997) 5 SCC 421

300. In Om Parkash v. Union of India and Ors.194, it was observed that interim order of stay granted in one of the matters of the landowners would put complete restraint on the respondents to proceed further to issue declaration under Section 6 of the Act. It was observed as under:

> "72. Thus, in other words, the interim order of stay granted in one of the matters of the landowners would put complete restraint on the respondents to have proceeded further to issue notification under Section 6 of the Act. Had they issued the said notification during the period when the stay was operative, then obviously they may have been hauled up for committing contempt of court. The language employed in the interim orders of stay is also such that it had completely restrained the respondents from proceeding further in the matter by issuing declaration/notification under Section 6 of the Act."

301. In Suresh Chand v. Gulam Chisti195, this Court considered the provision where tenant would not be entitled to the protection of Section

39. If the suit had prolonged beyond ten years, then the tenant would be entitled to such protection. The interpretation suggested was not accepted by this Court as that would encourage the tenant to protract the litigation. This Court frowned upon obtaining of fruits by protracting the litigation on the ground of public policy. This Court observed thus:

> "17. It was argued that the words 'commencement of this Act' should be construed to mean the date on which the moratorium period expired and the Act became

applicable to the demised building. Such a view would require this Court to give different meanings to the same expression appearing at two places in the same section. The words 'on the date of commencement of this Act' in relation to the pendency of the suit would mean July 15, 1972 as held in Om Prakash Gupta v. Dig Vijendrapal Gupta, (1982) 2 SCC 61, but the words 'from such date of commencement' appearing immediately thereafter in relation to the deposit to be made would have to be construed as the date of actual application of the Act at a date subsequent to July 15, 1972. Ordinarily, the rule of construction is that the same (2010) 4 SCC 17 (1990) 1 SCC 593 expression where it appears more than once in the same statute, more so in the same provision, must receive the same meaning unless the context suggests otherwise. Besides, such an interpretation would render the use of prefix 'such' before the word 'commencement' redundant. Thirdly such an interpretation would run counter to the view taken by this Court in Atma Ram Mittal case, (1988) 4 SCC 284, wherein it was held that no man could be made to suffer because of the court's fault or court's delay in the disposal of the suit. To put it differently, if the suit could be disposed of within the period of 10 years, the tenant would not be entitled to the protection of Section 39, but if the suit is prolonged beyond ten years, the tenant would be entitled to such protection. Such an interpretation would encourage the tenant to protract the litigation, and if he succeeds in delaying the disposal of the suit till the expiry of 10 years, he will secure the benefit of Section 39, otherwise not. We are, therefore, of the opinion that it is not possible to uphold the argument."

302. In Shyam Sunder and Ors. v. Ram Kumar and Anr.196, a Constitution Bench of this Court observed that substantive rights of the parties are to be examined on the date of the suit unless the legislature makes such rights retrospective. The Court made following observations:

"28. From the aforesaid decisions the legal position that emerges is that when a repeal of an enactment is followed by a fresh legislation, such legislation does not affect the substantive rights of the parties on the date of the suit or adjudication of the suit unless such a legislation is retrospective and a court of appeal cannot take into consideration a new law brought into existence after the judgment appealed from has been rendered because the rights of the parties in an appeal are determined under the law in force on the date of the suit. However, the position in law would be different in the matters which relate to procedural law, but so far as substantive rights of parties are concerned, they remain unaffected by the amendment in the enactment. We are, therefore, of the view that where a repeal of provisions of an enactment is followed by fresh legislation by an amending Act, such legislation is prospective in operation and does not affect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment. We are further of the view that there is a presumption against the retrospective operation of a statute and further a statute is not to be construed to have a greater retrospective operation than its language renders necessary, but an amending Act which affects the

> procedure is presumed to be retrospective unless the amending Act provides otherwise. We have carefully looked into the new substituted Section 15 brought in the parent Act by the (2001) 8 SCC 24 Amendment Act, 1995 but do not find it either expressly or by necessary implication retrospective in operation which may affect the rights of the parties on the date of adjudication of the suit and the same is required to be taken into consideration by the appellate court. In Shanti Devi v. Hukum Chand, (1996) 5 SCC 768, this Court had occasion to interpret the substituted Section 15 with which we are concerned and held that on a plain reading of Section 15, it is clear that it has been introduced prospectively and there is no question of such section affecting in any manner the judgment and decree passed in the suit for pre-emption affirmed by the High Court in the second appeal. We are respectfully in agreement with the view expressed in the said decision and hold that the substituted Section 15 in the absence of anything in it to show that it is retrospective, does not affect the right of the parties which accrued to them on the date of the suit or on the date of passing of the decree by the court of the first instance. We are also of the view that the present appeals are unaffected by the change in law insofar it related to the determination of the substantive rights of the parties and the same are required to be decided in the light of the law of pre-

emption as it existed on the date of passing of the decree." (emphasis supplied)

303. In Sarah Mathew (supra), it was observed that delay caused by the court in taking cognizance cannot deny justice to the litigant. A court of law would interpret and make the reasonable construction rather than applying a doctrine which would make the provision unsustainable and ultra vires the Constitution. This Court observed thus:

> "37. We are inclined to take this view also because there has to be some amount of certainty or definiteness in matters of limitation relating to criminal offenses. If, as stated by this Court, taking cognizance is the application of mind by the Magistrate to the suspected offense, the subjective element comes in. Whether a Magistrate has taken cognizance or not will depend on facts and circumstances of each case. A diligent complainant or the prosecuting agency which promptly files the complaint or initiates prosecution would be severely prejudiced if it is held that the relevant point for computing limitation would be the date on which the Magistrate takes cognizance. The complainant or the prosecuting agency would be entirely left at the mercy of the Magistrate, who may take cognizance after the limitation period because of several reasons; systemic or otherwise. It cannot be the intention of the legislature to throw a diligent complainant out of the court in this manner. Besides, it must be noted that the complainant approaches the court for redressal of his grievance.
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> He wants action to be taken against the perpetrators of crime. The courts functioning under the criminal justice system are created for this purpose. It would be unreasonable to take the view that delay caused by the court in taking cognizance of a case would deny justice to a diligent complainant. Such an interpretation of Section

> 468 CrPC would be unsustainable and would render it unconstitutional. It is well settled that a court of law would interpret a provision which would help to sustain the validity of the law by applying the doctrine of reasonable construction rather than applying a doctrine which would make the provision unsustainable and ultra vires the Constitution. (U.P. Power Corpn. Ltd. v. Ayodhya Prasad Mishra. (2008) 10 SCC
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> 139)"

304. When the authorities are disabled from performing duties due to impossibility, would be a good excuse for them to save them from rigour of provisions of Section 24(2). A litigant may be right or wrong. He cannot be permitted to take advantage of a situation created by him of interim order. The doctrine "commodum ex-injuria sua Nemo habere debet" that is convenience cannot accrue to a party from his own wrong. Provisions of Section 24 do not discriminate litigants or non-litigants and treat them differently with respect to the same acquisition, otherwise, anomalous results may occur and provisions may become discriminatory in itself.

305. In Union of India v. Shiv Raj197, this Court did not consider the question of exclusion of the time. In Karnail Kaur and Ors. v. State of Punjab and Ors., (supra) and in Shree Balaji Nagar Residential Association (supra), various aspects including the interpretation of provisions of Section 24 were not taken into consideration. Thus, the said rulings cannot be said to be laying down good law.

2014 (6) SCC 564

306. In Union of India and Ors. v. North Telumer Colliery & Ors198, this Court observed that delaying tactics should not be permitted to fructify. By causing delay, the owner would get huge amount of interest, but he may not get a penny out of the principal amount. It would amount to conferring unjust benefit on the owners which can never be the intention of the Parliament. This Court observed:

> "8. The High Court's conclusions are primarily based on the interpretation of Section 18(5) of the Coal Act. The High Court has quoted the meaning of words "enure" and "benefit" from various dictionaries. No dictionary or any outside assistance is needed to understand the meaning of these simple words in the context and scheme of the Coal Act. The interest has to enure to the benefit of the owners of the coal mines. The claims before the Commissioner under the Coal Act are from the creditors of the owners, and the liabilities sought to be discharged are also of the owners of the coal mines. When the debts are paid and the liabilities discharged, it is only the owners of coal mines who are benefited. Taking away the interest amount by the owners without discharging their debts and liabilities would be unreasonable. They have only to adopt delaying tactics to postpone the disbursement of claims and consequently earn more interest. Due to such delay, the owner would get huge amount of interest though ultimately, he may not get a penny out of principal amount on the final settlement of claims. It would amount to conferring unjust benefit on the owners

> which can never be the intention of the Parliament. We do not agree with the interpretation given by the High Court and hold that the interest accruing under the Coal Act is the money paid to the Commissioner in relation to the coal mine and the same has to be utilized by the Commissioner in meeting the claims of the creditors and discharging other liabilities in accordance with the provisions of the Coal Act."

307. It may not be doubtful conduct to file frivolous litigation and obtain stay; but benefit of Section 24 (2) should not be conferred on those who prevented the taking of possession or payment of compensation, for the period spent during the stay.

1989 (3) SCC 411

308. In Padma Sundara Rao (Dead) & Ors. (supra), this Court considered the question of casus omissus and observed thus:

> "12. The rival pleas regarding rewriting of statute and casus omissus need careful consideration. It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in words used by the legislature itself. The question is not what may be supposed and has been intended, but what has been said. "Statutes should be construed, not as theorems of Euclid," Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them." (See Lenigh Valley Coal Co. v. Yensavage, 218 FR 547) The view was reiterated in Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama (1990) 1 SCC 277.
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> 13. In D.R. Venkatchalam v. Deputy Transport Commissioner (1977) 2 SCC 273, it was observed that Courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.
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> 14. While interpreting a provision, the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify, or repeal it, if deemed necessary. (See Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd., (2000) 5 SCC
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> 515) The legislative casus omissus cannot be supplied by the judicial interpretative process. The language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in Narasimhaiah's case. In Nanjudaiah's case, the period was further stretched to have the time period run from the date of service of the High Court's order. Such a view cannot be reconciled with the language of

> Section 6(1). If the view is accepted, it would mean that a case can be covered by not only clause (i) and/or clause (ii) of the proviso to Section 6(1), but also by a non-prescribed period. The same can never be the legislative intent.

16. The plea relating to the applicability of the stare decisis principles is clearly unacceptable. The decision in K. Chinnathambi Gounder v. Government of T.N., AIR 1980 Mad 251 was rendered on 22-6-1979, i.e., much prior to the amendment by the 1984 Act. If the legislature intended to give a new lease of life in those cases where the declaration under Section 6 is quashed, there is no reason why it could not have done so by specifically providing for it. The fact that the legislature specifically provided for periods covered by orders of stay or injunction clearly shows that no other period was intended to be excluded and that there is no scope for providing any other period of limitation. The maxim actus curiae neminem gravabit highlighted by the Full Bench of the Madras High Court has no application to the fact situation of this case."

309. There is no dispute with the aforesaid proposition that casus omissus cannot be applied by the court and in case of clear necessity, the court has to interpret the law, if the provision of law is misused and subjected to abuse of process of law. It is for the legislature to amend, modify and repeal a law, if deemed necessary. Because of the above- mentioned interpretation of the provisions of Section 24 itself, we are unable to accept the submission made. We are not applying casus omissus as urged. In Padma Sundara Rao (supra), this Court considered the period of limitation for issuances of declaration under Section 6 of the Act of 1894. The period has been stretched further in the case of State of Karnataka v. D.C. Nanjudaiah 199. Few expressions in the aforesaid decision were held to be incorrect. In Padma Sundara Rao (supra), this Court held that when a period, which the legislature has specifically provided, is covered by orders of stay and injunction, no other period could be intended to be excluded by providing time period to run from the date of service of the High Court's order and it would not be open to court to add to that period. The question in Padma Sundara Rao (supra) was totally different and it was of counting the period over and above excluded in the provisions, inter alia, from the very interpretation of Section 24.

(1996) 10 SCC 619

310. As regards application of the maxim to a statute, in Rana Girders Ltd. v. Union of India200, this Court observed that the statutory provision would prevail upon the common law principles. The decision in Rana Girders Ltd. (supra) was considered in Union of India (supra) where this Court observed thus:

> "9. Generally, the rights of the Crown to recover the debt would prevail over the right of a subject. Crown debt means the "debts due to the State or the King; debts which a prerogative entitles the Crown to claim priority for before all other creditors." [See Advanced Law Lexicon by P. Ramanatha Aiyar (3rd Edn.), p. 1147.] Such creditors, however, must be held to mean unsecured creditors. The principle of Crown debt as such pertains to the common law principle. A common law, which is law within the meaning of Article 13 of the Constitution, is saved in terms of Article 372 thereof. Those principles of common law, thus, which were existing at the time of coming into

> force of the Constitution of India, are saved by reason of the aforementioned provision. A debt that is secured or which by reason of the provisions of a statute becomes the first charge over the property having regard to the plain meaning of Article 372 of the Constitution of India must be held to prevail over the Crown debt, which is an unsecured one.
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> 10. It is trite that when Parliament or a State Legislature makes an enactment, the same will prevail over the common law. Thus, the common law principle which was existing on the date of coming into force of the Constitution of India must yield to a statutory provision. To achieve the same purpose, Parliament as also the State Legislatures inserted provisions in various statutes, some of which have been referred to hereinbefore, providing that the statutory dues shall be the first charge over the properties of the taxpayer. This aspect of the matter has been considered by this Court in a series of judgments."

311. There is no doubt that common law principles have to be weighed upon the statutory provision and latter has to prevail, but the statutory provision itself makes it clear that in the instant matter such period has to be excluded, thus, the principles of common law also apply with full 2013 (10) SCC 746 force. In Mary Angel and Ors. v. State of T.N.201, the maxim "expressio unius est exclusio alterius" came to be considered by this Court. It was held that maxim needs to be applied when its application having regard to the subject matter to which it is to be applied, leads to inconsistency or injustice. This Court observed:

> "19. Further, for the rule of interpretation on the basis of the maxim "expressio unius est exclusio alterius," it has been considered in the decision rendered by the Queen's Bench in the case of Dean v. Wiesengrund, (1955) 2 QB 120. The Court considered the said maxim and held that after all, it is no more than an aid to construction and has little if any, weight where it is possible to account for the "inclusio unius" on grounds other than the intention to affect the "exclusio alterius." Thereafter, the Court referred to the following passage from the case of Colquhoun v. Brooks, (1887) 19 QBD 400, QBD at 406 wherein the Court called for its approval— "... 'The maxim "expressio unius est exclusio alterius" has been pressed upon us. I agree with what is said in the court below by Wills, J., about this maxim. It is often a valuable servant, but a dangerous master to follow in the construction of statutes or documents. The exclusio is often the result of inadvertence or accident, and the maxim ought not to be applied, when its application, having regard to the subject-matter to which it is to be applied, leads to inconsistency or injustice.' In my opinion, the application of the maxim here would lead to inconsistency and injustice, and would make Section 14(1) of the Act of 1920 uncertain and capricious in its operation."

312. The maxim "lex non cogit ad impossibilia" means that the law does not expect the performance of the impossible. Though payment is possible but the logic of payment is relevant. There are cases in which compensation was tendered, but refused and then deposited in the treasury. There was litigation in court, which was pending (or in some cases, decided); earlier references for

enhancement of compensation were sought and compensation was enhanced. There was no challenge 1999 (5) SCC 209 to acquisition proceedings or taking possession etc. In pending matters in this Court or in the High Court even in proceedings relating to compensation, Section 24 (2) was invoked to state that proceedings have lapsed due to non-deposit of compensation in the court or to deposit in the treasury or otherwise due to interim order of the court needful could not be done, as such proceedings should lapse.

313. In Chander Kishore Jha v. Mahabir Prasad202 , an election petition was to be presented in the manner prescribed in Rule 6 of Chapter XXI- E of the Patna High Court Rules. The rules stipulated that the election petition, could under no circumstances, be presented to the Registrar to save the period of limitation. The election petition could be presented in the open court upto 4.15 p.m. i.e., working hours of the court. The Chief Justice had passed the order that court shall not sit for the rest after 3.15 p.m. Thus, the petition filed the next day was held to be within time. In Mohammed Gazi v. State of M.P. & Ors203., the maxim "actus curiae neminem gravabit" came up for consideration along with maxim "lex non cogit ad impossibilia" – the law does not compel a man to perform act which is not possible. Following observations had been made:

> "7. In the facts and circumstances of the case, the maxim of equity, namely, actus curiae neminem gravabit — an act of the court shall prejudice no man, shall be applicable. This maxim is founded upon justice and good sense, which serves a safe and certain guide for the administration of law. The other maxim is, lex non cogit ad impossibilia — the law does not compel a man to 1999 (8) SCC 266 2000 (4) SCC 342 do what he cannot possibly perform. The law itself and its administration are understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in consideration of particular cases. The applicability of the aforesaid maxims has been approved by this Court in Raj Kumar Dey v. Tarapada Dey, (1987) 4 SCC 398 and Gursharan Singh v. New Delhi Municipal Committee, (1996) 2 SCC 459."

314. Another Roman Law maxim "nemo tenetur ad impossibilia", means no one is bound to do an impossibility. Though such acts of taking possession and disbursement of compensation are not impossible, yet they are not capable of law performance, during subsistence of a court's order; the order has to be complied and cannot be violated. Thus, on equitable principles also, such a period has to be excluded. In Industrial Finance Corporation of India Ltd. v. Cannanore Spinning & Weaving Mills Ltd. & Ors.204, this Court observed that where law creates a duty or charge and the party is disabled to perform it, without any default and has no remedy over, there the law will in general excuse him. This Court relying upon the aforesaid maxim observed as under:

> "30. The Latin maxim referred to in the English judgment lex non cogit ad impossibilia also expressed as impotentia excusat legem in common English acceptation means, the law does not compel a man to do that which he cannot possibly perform. There ought always thus to be an invincible disability to perform the obligation, and the same is akin to the Roman maxim nemo tenetur ad impossible. In Broom's Legal Maxims, the state of the situation has been described as

below:

> "It is, then, a general rule which admits of ample practical illustration, that impotentia excusat legem; where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over, there the law will in general excuse him (t): and though impossibility of performance is, in general, no excuse for not performing an obligation which a party has expressly undertaken by contract, yet when the obligation is one implied by law, impossibility of performance is a good excuse. Thus in a case in which 2002 (5) SCC 54 consignees of a cargo were prevented from unloading a ship promptly by reason of a dock strike, the Court, after holding that in the absence of an express agreement to unload in a specified time there was implied obligation to unload within a reasonable time, held that the maxim lex non cogit ad impossibilia applied, and Lindley, L.J., said: 'We have to do with implied obligations, and I am not aware of any case in which an obligation to pay damages is ever cast by implication upon a person for not doing that which is rendered impossible by causes beyond his control.' "

315. In HUDA and Anr. v. Dr. Babeswar Kanhar & Anr 205, this Court considered the general principle that a party prevented from doing an act by some circumstances beyond his control, can do so at the first subsequent opportunity as held in Sambasiva Chari v. Ramasami Reddi206. In Dr. Babeswar Kanhar (supra), it was observed thus:

> "5. What is stipulated in clause 4 of the letter dated 30-10-2001 is a communication regarding refusal to accept the allotment. This was done on 28-11-2001. Respondent 1 cannot be put to a loss for the closure of the office of HUDA on 1-12-2001 and 2-12-2001 and the postal holiday on 30-11-2001. In fact, he had no control over these matters. Even the logic of Section 10 of the General Clauses Act, 1897, can be pressed into service. Apart from the said section and various provisions in various other Acts, there is the general principle that a party prevented from doing an act by some circumstances beyond his control, can do so at the first subsequent opportunity (see Sambasiva Chari v. Ramasami Reddi, (1898) 8 MLJ 265). The underlying object of the principle is to enable a person to do what he could have done on holiday, on the next working day. Where, therefore, a period is prescribed for the performance of an act in a court or office, and that period expires on holiday, then the act should be considered to have been done within that period if it is done on the next day on which the court or office is open. The reason is that the law does not compel the performance of an impossibility. (See Hossein Ally v. Donzelle, ILR (1880) 5 Cal 906.) Every consideration of justice and expediency would require that the accepted principle, which underlies Section 10 of the General Clauses Act, should be applied in cases where it does not otherwise in terms apply. The principles underlying are lex non cogit ad impossibilia (the law does not compel a man to do the impossible) and actus curiae neminem gravabit (the act of court shall prejudice no man). Above being the position, there is nothing infirm in the orders passed by the forums below. However, the rate of interest fixed appears to 205 (2005) 1 SCC 191 206 ILR (1899)

> 22 Mad 179 be slightly on the higher side and is reduced to 9% to be paid with effect from 3-12-2001, i.e., the date on which the letter was received by HUDA."

316. In re Presidential Poll207, this Court made similar observations. When there is a disability to perform a part of the law, such a charge has to be excused. When performance of the formalities prescribed by a statute is rendered impossible by circumstances over which the persons concerned have no control, it has to be taken as a valid excuse. The Court observed:

> "15. The impossibility of the completion of the election to fill the vacancy in the office of the President before the expiration of the term of office in the case of death of a candidate as may appear from Section 7 of the 1952 Act does not rob Article 62(1) of its mandatory character. The maxim of law impotentia excusat legam is intimately connected with another maxim of law lex non cogit ad impossibilia. Impotentia excusat legam is that when there is a necessary or invincible disability to perform the mandatory part of the law that impotentia excuses. The law does not compel one to do that which one cannot possibly perform.
>
> "Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him and has no remedy over it, there the law will in general excuse him."

Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like the act of God, the circumstances will be taken as a valid excuse. Where the act of God prevents the compliance of the words of a statute, the statutory provision is not denuded of its mandatory character because of supervening impossibility caused by the act of God. (See Broom's Legal Maxims 10th Edn. At pp. 162-163 and Craies on Statute Law 6th Edn. at p. 268)."

317. In Standard Chartered Bank v. Directorate of Enforcement 208, the legal maxim "impotentia excusat legem" has been applied to hold that law does not compel a man to do that which cannot possibly be performed. Though the maxim with respect to the impossibility of 207 (1974) 2 SCC 33 208 (2005) 4 SCC 530 performance may not be strictly applicable, however, the effect of the court's order, for the time being, made the Authorities disable to fulfill the obligation. Thus, when they were incapable of performing, they have to be permitted to perform at the first available opportunity, which is the time prescribed by the statute for them, i.e., the total period of 5 years excluding the period of the interim order.

318. The maxim actus curiae neminem gravabit is founded upon the principle due to court proceedings or acts of court, no party should suffer. If any interim orders are made during the pendency of the litigation, they are subject to the final decision in the matter. In case the matter is dismissed as without merit, the interim order is automatically dissolved. In case the matter has been filed without any merit, the maxim is attracted commodum ex injuria sua nemo habere debet, that is, convenience cannot accrue to a party from his own wrong. No person ought to have the advantage of his own wrong. In case litigation has been filed frivolously or without any basis,

iniquitously in order to delay and by that it is delayed, there is no equity in favour of such a person. Such cases are required to be decided on merits. In Mrutunjay Pani and Anr. v. Narmada Bala Sasmal and Anr209, this Court observed that:

> "(5) X x x The same principle is comprised in the latin maxim commodum ex injuria sua nemo habere debet, that is, convenience cannot accrue to a party from his own wrong. To put it in other words, no one can be allowed to benefit from his own wrongful act. ..." 209 AIR 1961 SC 1353

319. It is not the policy of law that untenable claims should get fructified due to delay. Similarly, sufferance of a person who abides by law is not permissible. The Act of 2013 does not confer the benefit on unscrupulous litigants, but it aims at and frowns upon the lethargy of the officials to complete the requisites within five years.

320. The States urge that by refusal to accept compensation, one cannot take advantage of own conduct. This idea is explained in Maxwell on the Interpretation of Statutes (12th Edition) by P. St. J. Langon, wherein following observations have been made:

> "On the principles of avoiding injustice and absurdity, any construction will, if possible, be rejected (unless the policy of the Act requires it) if it would enable a person by his own act to impair an obligation which he has undertaken, or otherwise to profit by his own wrong. He may not take advantage of his own wrong. He may not plead in his own interest a self created necessity" (Kish v. Taylor, (1911) 1 K.B. 625, per Fletcher Moulton I.J. at page 634).
>
> Thus an Act which authorised justices to discharge apprentice from his indenture in certain circumstances "on the master's appearance" before them justified a discharge in his wilful absence. It would have been unreasonable to have construed the Act in such a way that the master derived an advantage from his own obstinacy (Ditton's Case (1701) 2 Salk. 490)"

321. In G.T.C. Industries Ltd. v. Union of India210, it was observed that while vacating stay, it is the court's duty to account for the period of delay and to settle equities. It is not the gain which can be conferred. In Jaipur Municipal Corporation v. C. L. Mishra211, it has been observed that interim order merges in the final order, and it cannot have an independent existence, cannot survive beyond final decision. In Ram (1998) 3 SCC 376 211 (2005) 8 SCC 423 Krishna Verma v. the State of U.P212, reliance was placed on Grindlays Bank Ltd. v. C.I.T213. It was held that no one could be permitted to suffer from the act of the court and in case an interim order has been passed and ultimately petition is found to be without merit and is dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralized.

322. In Mahadeo Savlaram Shelke v. Pune Municipal Corporation 214, it has been observed that the Court can under its inherent jurisdiction ex debito justitiae has a duty to mitigate the damage

suffered by the defendants by the act of the court. Such action is necessary to put a check on abuse of process of the court. In Amarjeet Singh and Ors. v. Devi Ratan and Ors215, and Ram Krishna Verma (supra), it was observed that no person can suffer from the act of court and unfair advantage of the interim order must be neutralized. In Amarjeet Singh (supra), this Court observed:

> "17. No litigant can derive any benefit from mere pendency of the case in a court of law, as the interim order always merges in the final order to be passed in the case, and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of its own wrongs by getting an interim order and thereafter blame the court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim actus curiae neminem gravabit, which means that the act of the court shall prejudice no one, becomes applicable in such a case. In such a fact situation, the court is under an obligation to 212 (1992) 2 SCC 620 213 (1980) 2 SCC 191 214 (1995) 3 SCC 33 (2010) 1 SCC 417 undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralized, as the institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the court. (Vide Shiv Shankar v.

U.P. SRTC, 1995 Supp (2) SCC 726, GTC Industries Ltd. v. Union of India, (1998) 3 SCC 376 and Jaipur Municipal Corpn. v. C.L. Mishra, (2005) 8 SCC 423.)

18. In Ram Krishna Verma v. the State of U.P. (1992) 2 SCC 620, this Court examined a similar issue while placing reliance upon its earlier judgment in Grindlays Bank Ltd. v. ITO, (1980) 2 SCC 191 and held that no person can suffer from the act of the court and in case an interim order has been passed, and the petitioner takes advantage thereof, and ultimately the petition is found to be without any merit and is dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralized."

323. In Karnataka Rare Earth and Anr. v. Senior Geologist, Department of Mines & Geology216, this Court observed that maxim actus curiae neminem gravabit requires that the party should be placed in the same position but for the court's order which is ultimately found to be not sustainable which has resulted in one party gaining advantage which otherwise would not have earned and the other party has suffered but for the orders of the court. The successful party can demand the delivery of benefit earned by the other party, or make restitution for what it has lost. This Court observed:

> "10. In x x x x the doctrine of actus curiae neminem gravabit and held that the doctrine was not confined in its application only to such acts of the court which were erroneous; the doctrine is applicable to all such acts as to which it can be held that the court would not have so acted had it been correctly apprised of the facts and the law. It is the principle of restitution that is attracted. When on account of an act of the party, persuading the court to pass an order, which at the end is held as not sustainable, has resulted in one party gaining advantage which it would not have

> otherwise earned, or the other party has suffered an impoverishment which it would not have suffered, but for the order of the court and the act of such party, then the successful party finally held entitled to a relief, assessable in terms of money 216 (2004) 2 SCC 783 at the end of the litigation, is entitled to be compensated in the same manner in which the parties would have been if the interim order of the court would not have been passed. The successful party can demand: (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost.
>
> 11. In the facts of this case, in spite of the judgment of the High Court, if the appellants would not have persuaded this Court to pass the interim orders, they would not have been entitled to operate the mining leases and to raise and remove and dispose of the minerals extracted. But for the interim orders passed by this Court, there is no difference between the appellants and any person raising, without any lawful authority, any mineral from any land, attracting applicability of sub-section (5) of Section 21.

As the appellants have lost from the Court, they cannot be allowed to retain the benefit earned by them under the interim orders of the Court. The High Court has rightly held the appellants liable to be placed in the same position in which they would have been if this Court would not have protected them by issuing interim orders. All that the State Government is demanding from the appellants is the price of the minor minerals. Rent, royalty or tax has already been recovered by the State Government and, therefore, there is no demand under that head. No penal proceedings, much less any criminal proceedings, have been initiated against the appellants. It is absolutely incorrect to contend that the appellants are being asked to pay any penalty or are being subjected to any penal action. It is not the case of the appellants that they are being asked to pay the price more than what they have realized from the exports or that the price appointed by the respondent State is in any manner arbitrary or unreasonable."

(emphasis supplied)

324. In A.R. Antulay (supra), this Court observed that it is a settled principle that an act of the court shall prejudice no man. This maxim actus curiae neminem gravabit is founded upon justice and good sense and affords a safe and certain guide for the administration of the law. No man can be denied his rights. In India, a delay occurs due to procedural wrangles. In A.R. Antulay (supra), this Court observed:

> “102. This being the apex court, no litigant has any opportunity of approaching any higher forum to question its decisions. Lord Buckmaster in Montreal Street Railway Co. v. Normadin, 1917 AC 170 (sic) stated:
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> "All rules of court are nothing but provisions intended to secure the proper administration of justice. It is, therefore, essential that they should be made to serve and be subordinate to that purpose."

This Court in State of Gujarat v. Ramprakash P. Puri, (1970) 2 SCR 875, reiterated the position by saying: [SCC p. 159: SCC (Cri) p. 31, para 8] "Procedure has been described to be a handmaid and not a mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it. Like all rules of procedure, this rule demands a construction which would promote this cause." Once judicial satisfaction is reached that the direction was not open to be made and it is accepted as a mistake of the court, it is not only appropriate but also the duty of the court to rectify the mistake by exercising inherent powers. Judicial opinion heavily leans in favour of this view that a mistake of the court can be corrected by the court itself without any fetters. This is on principle, as indicated in (Alexander) Rodger case (1869-71) LR 3 PC 465. I am of the view that in the present situation, the court's inherent powers can be exercised to remedy the mistake. Mahajan., J. speaking for a Four Judge Bench in Keshardeo Chamria v. Radha Kissen Chamria, 1953 SCR 136 at Page 153 stated:

> "The judge had jurisdiction to correct his own error without entering into a discussion of the grounds taken by the decree- holder or the objections raised by the judgment-debtors."

325. In Superintendent of Taxes v. Onkarmal Nathmal Trust 217, this Court considered the conduct of the State Government in not questioning the interim order at any stage in seeking variation or modification of the order of injunction. It was held that the State could not take advantage of its own wrong and lack of diligence and could not contend it was impossible to issue notice within the purview of Section 7(2) of the new Act. The decision is distinguishable and turns on its own facts. Though the act is possible to be performed but not as per the public policy which frowns upon violation of the court's interim order. 217 (1976) 1 SCC 766 The decision cannot be applied, particularly in view of the provisions contained in Section 24(2), and on facts, it has no application.

326. Reliance was placed on Neeraj Kumar Sainy v. the State of U.P.218. There, this Court observed that no one should suffer any prejudice because of the act of the court; the legal maxim cannot operate in a vacuum. It has to get the sustenance from the facts. As the appellants resigned to their fate and woke up to have control over the events forgetting that the law does not assist the non-vigilant. One cannot indulge in the luxury of lethargy, possibly nurturing the feeling that forgetting is a virtue. If such is the conduct, it is not permissible to take shelter under the maxim actus curiae neminem gravabit. There is no dispute with the aforesaid principle. Party has to be vigilant about the right, but the ratio cannot be applied. In the opinion, the ratio in the decision cannot be applied for the purpose of interpretation of Section 24(2).

327. There can be no doubt that when parties are before court, the final decision has to prevail, and they succeed or fail based on the merits of their relative cases. Neither can be permitted to take shelter under the cover of court's order to put the other party in a disadvantageous position. If one has enjoyed under the court's cover, that period cannot be included towards inaction of the authorities to take requisite steps (2017) 14 SCC 136 under Section 24. The State authorities would have acted but for the court's order. In fact, the occasion for the petitioners to approach the court in those cases, was that the State or acquiring bodies were taking their properties. Ultimately case had to stand on its merit in the challenge to the acquisition or compensation, and no right or advantage

could therefore be conferred (or accrue) under Section 24(2) in such situations.

328. The argument of the landowners was that on the one hand, the court should not discern a casus omissus and in effect, the absence of provision to exclude the time during which an interim order operated, means that Parliament intended such omission. The maxim 'expressio unius est exclusio alterious' means that express mention of one or more persons or things of a particular class may be regarded as by implication excluding all others of that class. The maxim, however, does not apply when the provisions of the legislation in question show that the exclusion could not have been intended. In Colquhoun v. Brooks219, the House of Lords opined that:

> "The maxim 'expressio unius est exclusio alterious' has been pressed upon us. I agree with what is said in the court below by Wills, J. about this maxim. It is often a valuable servant, but a dangerous master to follow in the construction of statutes or documents. The 'exclusio' is often the result of inadvertence or accident, and the maxim ought not to be applied when its application, having regard to the subject matter to which it is to be applied, leads to inconsistency or injustice." 219 (1889) 21 QBD 52 Lewis Sutherland's Statutory Construction (2nd ed.), Section 491, applies the rule as follows:
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> "Expressio unius est exclusio alterious - The maxim, like all rules of construction, is applicable under certain conditions to determine the intent of the lawmaker when it is not otherwise manifest. Under these conditions, it leads to safe and satisfactory conclusions; but otherwise the expression of one or more things is not a negation or exclusion of other things. What is expressed is exclusive only when it is creative, or in derogation of some existing law, or of some provisions in the particular act. The maxim is applicable to a statutory provision which grants originally a power or right."

329. In a case before the United States Court of Customs and Patent Appeals decided on 5th November, 1934, Yardley & Co. Ltd. V. United States, the court considered the question of classification and assessment with duty of certain merchandise consisting of empty glass jars and lids, and whether these could be considered as 'entireties' that would be dutiable under paragraph 33 of the Tariff Act of 1930. The court in that case relied on the observations in Colquhoun v. Brooks (supra) and held that the glass jars with their lids would be dutiable as entireties, despite there not being an express legislative provision to that effect. It was held that the rule of expressio unius est exclusio alterious would not be applicable in the context of the legislative provision in the Tariff Acts of 1909, 1913 and 1922, as the relevant provision therein (in the 1930 Act) was merely declaratory in nature and not in derogation of existing law. In Assistant Collector of Central Excise v. National Tobacco Company of India Ltd.220, this Court held that the rule of expressio unius est exclusio alterious:

> "is subservient to the basic principle that courts must endeavour to ascertain the legislative intent and purpose, and then adopt a rule of construction which effectuates rather than one that may defeat these."

330. In Karnataka State v. Union of India221, the Court observed that:

> "Before the principle can be applied at all the Court must find an express mode of doing something that is provided in a statute, which, by its necessary implication, could exclude the doing of that very thing and not something else in some other way. Far from this being the case here, as the discussion above has shown, the Constitution makers intended to cover the making of provisions by Parliament for inquiries for various objects which may be matters of public importance without any indications of any other limits except that they must relate to subjects found in the Lists. I have also indicated why a provision like Section 3 of the Act would, in any case, fall under entry 97 of List I of Schedule VII read with Articles 248 and 356 of the Constitution even if all subjects to which it may relate are not found specified in the lists. Thus, there is express provision in our Constitution to cover an enactment such as Section 3 of the Act, hence, there is no room whatsoever for applying the "Expressio Unius" rule to exclude what falls within an expressly provided legislative entry. That maxim has been aptly described as a "useful servant but a dangerous master " (per Lopes L.J. in Colquhoun v. Brooks [1888] 21 Q.B.D. The limitations or conditions under which this principle of construction operates are frequently overlooked by those who attempt to apply it.

To advance the balder and broader proposition that what is not specifically mentioned in the Constitution must be deemed to be deliberately excluded from its purview, so that nothing short of a Constitutional amendment could authorise legislation upon it, is really to invent a "Cams Omissus" so as to apply the rule that, where there is such a gap in the law, the Court cannot fill it. The rule, however, is equally clear that the Court cannot so interpret a statute as "to produce a casus omissus" where there is really none (see: The Mersey Docks and Harbour Board v. Penderson Brothers [1888] 13 A.C. 595). If our Constitution itself provides for legislation to fill what is sought to be construed as a lacuna, how can legislation seeking to do this be held to be void because it performs its intended function by an exercise of an expressly conferred legislative power? In declaring the purpose of the provisions so made and the authority for making it, Courts do not supply an omission or fill up a gap at all. It is Parliament which can do so and has done it. To hold that parliament is incompetent 220 (1972) 2 SCC 560 221 (1977) 4 SCC 608 to do this is to substitute an indefensible theory or a figment of one's imagination- that the Constitution stands in the way somehow-for that which only a clear Constitutional bar could achieve." In Mary Angel (supra) this Court observed as follows:

> "...The rule of interpretation on the basis of the maxim "expressio unius est exclusio alterius", ... has been considered in the decision rendered by the Queen's Bench in the case of Dean v. Wiesengrund (1955) 2 QBD 120. The Court considered the said maxim and held that after all it is more than an aid to construction and has little, if any, weight where it is possible to account for the "exclusio unius" on grounds other than intention to effect the "exclusio alterius". Thereafter, the Court referred to the following passage from the case of Colquhoon v. Brooks (1887) 19 QBD 400 wherein the Court called for its approval – "The maxim 'expressio unius est exclusio alterius' has been pressed upon us. I agree with what is said in the Court below by Wills J,

about this maxim. It is often a valuable servant, but a dangerous master to follow in the construction of statutes of documents. The exclusio is often the result of inadvertence or accident, and the maxim ought not to be applied, when its application having regard to the subject matter to which it is to be applied, leads to inconsistency or injustice. In my opinion, the application of the maxim here would lead to inconsistency and injustice, and would make Section 14(1) of the Act of 1920 uncertain and capricious in its operation." The aforesaid maxim was referred to by this Court in the case of Asst. Collector, Central Excise v. National Tobacco Co. 1978 (2) ELT 416 (SC), the Court in that case considered the question whether there was or was not an implied power to hold an inquiry in the circumstances of the case in view of the provisions of the Section 4 of the Central Excise Act read with Rule 10(A) of the Central Excise Rules and referred to the aforesaid passage "the maxim" is often a valuable servant, but a dangerous master ...' and held that the rule is subservient to the basic principle that Courts must endeavour to ascertain the legislative intent and purpose, and then adopt a rule of construction which effectuates rather than one that may defeat these. Moreover, the rule of prohibition by necessary implication could be applied only where a specified procedure is laid down for the performance of a duty. In the case of Parbhani Transport Co-op Society Ltd. v. R.T.A. Aurangabad [1960] 3 SCR 177, this Court observed that the maxim 'expressio unius est exclusio alterius' is a maxim for ascertaining the intention of the legislature and where the statutory language is plain and the meaning clear, there is no scope for applying. Further, in Harish Chander Vajpai v. Triloki Singh, [1957] 1 SCR 370, the Court referred to the following passage from Maxwell on Interpretation of Statutes, 10th Edition, pages 316-317:

"Provisions sometimes found in statutes, enacting imperfectly or for particular cases only that which was already and more widely the law, have occasionally furnished ground for the contention that an intention to alter the general law was to be inferred from the partial or limited enactment, resting on the maxim expressio unius, exclusio alterius. But that maxim is inapplicable in such cases. The only inference which a court can draw from such superfluous provisions (which generally find a place in Acts to meet unfounded objections and idle doubts), is that the Legislature was either ignorant or unmindful of the real state of the law, or that it acted under the influence of excessive caution.

Lastly, we would state that in the case of Pampathy v. State of Mysore (supra), the Court has specifically observed that no legislative enactment dealing with the procedure can provide for all cases and that Court should have inherent powers apart from the express provisions of law which are necessary for the proper discharge of duties."

331. For all these reasons, it is held that the omission to expressly enact a provision, that excludes the period during which any interim order was operative, preventing the State from taking possession of acquired land, or from giving effect to the award,

> in a particular case or cases, cannot result in the inclusion of such period or periods for the purpose of reckoning the period of 5 years. Also, merely because timelines are indicated, with the consequence of lapsing, under Sections 19 and 69 of the Act of 2013, per se does not mean that omission to factor such time (of subsistence of interim orders) has any special legislative intent. This Court notices, in this context, that even under the new Act (nor was it so under the 1894 Act) no provision has been enacted, for lapse of the entire acquisition, for non-payment of compensation within a specified time; nor has any such provision been made regarding possession. Furthermore, non-compliance with payment and deposit provisions (under Section 77) only results in higher interest pay-outs under Section 80. The omission to provide for exclusion of time during which interim orders subsisted, while determining whether or not acquisitions lapsed, in the present case, is a clear result of inadvertence or accident, having regard to the subject matter, refusal to apply the principle underlying the maxim actus curae neminem gravabit would result in injustice.

In Re: Principle of Restitution:

> 332. The principle of restitution is founded on the ideal of doing complete justice at the end of litigation, and parties have to be placed in the same position but for the litigation and interim order, if any, passed in the matter. In South Eastern Coalfields Ltd. v. State of M.P. & Ors.222, it was held that no party could take advantage of litigation. It has to disgorge the advantage gained due to delay in case lis is lost. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final order going against the party successful at the interim stage. Section 144 of the Code of Civil Procedure is not the fountain source of restitution. It is rather a statutory recognition of the rule of justice, equity and fair play. The court has inherent jurisdiction to order restitution so as to do complete justice. This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it. In exercise of such power, the courts have applied the principle of restitution to myriad situations not falling within the terms of section 144 CPC. What attracts applicability of

222 (2003) 8 SCC 648 restitution is not the act of the court being wrongful or mistake or an error committed by the court; the test is whether, on account of an act of the party persuading the court to pass an order held at the end as not sustainable, resulting in one party gaining an advantage which it would not have otherwise earned, or the other party having suffered an impoverishment, restitution has to be made. Litigation cannot be permitted to be a productive industry. Litigation cannot be reduced to gaming where there is an element of chance in every case. If the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order. This Court observed in South Eastern Coal Field (supra) thus:

> "26. In our opinion, the principle of restitution takes care of this submission. The word "restitution" in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in execution of decree or order of the court or in direct consequence of a decree or order (see Zafar Khan v. Board of Revenue, U.P., 1984 Supp SCC 505) In law, the term "restitution" is used in three senses: (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits derived from a wrong done to another; and (iii) compensation or reparation for the loss caused to another. (See Black's Law Dictionary, 7th Edn., p. 1315). The Law of Contracts by John D. Calamari & Joseph M. Perillo has been quoted by Black to say that "restitution" is an ambiguous term, sometimes referring to the disgorging of something which has been taken and at times referring to compensation for the injury done:
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> "Often, the result under either meaning of the term would be the same. ... Unjust impoverishment, as well as unjust enrichment, is a ground for restitution. If the defendant is guilty of a non-tortious misrepresentation, the measure of recovery is not rigid but, as in other cases of restitution, such factors as relative fault, the agreed-upon risks, and the fairness of alternative risk allocations not agreed upon and not attributable to the fault of either party need to be weighed."

The principle of restitution has been statutorily recognized in Section 144 of the Code of Civil Procedure, 1908. Section 144 CPC speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on a par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favor of a party, stands reversed in the event of a final decision going against the party successful at the interim stage. xxx

27. x x x This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it (A. Arunagiri Nadar v. S.P. Rathinasami, (1971) 1 MLJ 220). In the exercise of such inherent power, the courts have applied the principles of restitution to myriad situations not strictly falling within the terms of Section 144.

28. That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the "act of the court" embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. x x x the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation." (emphasis supplied)

333. In State of Gujarat & Ors. v. Essar Oil Ltd. & Anr223, it was observed that the principle of restitution is a remedy against unjust enrichment or unjust benefit. The Court observed:

> "61. The concept of restitution is virtually a common law principle, and it is a remedy against unjust enrichment or unjust benefit. The core of the concept lies in the conscience of the court, which prevents a party from retaining money or some benefit derived from another, which it has received by way of an erroneous decree of the court. Such remedy in English Law is generally different from a remedy in contract or in tort and falls 223 (2012) 3 SCC 522 within the third category of common law remedy, which is called quasi-contract or restitution.
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> 62. If we analyze the concept of restitution, one thing emerges clearly that the obligation to restitute lies on the person or the authority that has received unjust enrichment or unjust benefit (see Halsbury's Laws of England, 4th Edn., Vol. 9, p. 434)."

334. In A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam 224, it was stated that restitutionary jurisdiction is inherent in every court, to neutralize the advantage of litigation. A person on the right side of the law should not be deprived, on account of the effects of litigation; the wrongful gain of frivolous litigation has to be eliminated if the faith of people in the judiciary has to be sustained. The Court observed:

> "37. This Court, in another important case in Indian Council for Enviro-Legal Action v. Union of India (of which one of us, Dr. Bhandari, J. was the author of the judgment) had an occasion to deal with the concept of restitution. The relevant paragraphs of that judgment dealing with relevant judgments are reproduced hereunder: (SCC pp. 238-41 & 243-46, paras 170-76, 183-88 & 190-93) "170. x x x
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> 171. In Ram Krishna Verma v. the State of U.P. this Court observed as under: (SCC p. 630, para 16) '16. The 50 operators, including the appellants/private operators, have been running their stage carriages by blatant abuse of the process of the court by delaying the hearing as directed in Jeewan Nath Wahal's case and the High Court earlier thereto. As a fact, on the expiry of the initial period of the grant after 29-9-1959, they lost the right to obtain renewal or to ply their vehicles, as this Court declared the scheme to be operative.

However, by sheer abuse of the process of law, they are continuing to ply their vehicles pending the hearing of the objections. This Court in Grindlays Bank Ltd. v. ITO held that the High Court, while exercising its power under Article 226, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralized. It was further held that the institution of the litigation by it should not be permitted to confer an unfair advantage on the party responsible for it. In the light of that law 224 (2012) 6 SCC 430 and in view of the power under Article 142(1) of the Constitution this Court, while exercising its jurisdiction would do complete justice and neutralize the unfair advantage gained by the 50 operators including the

appellants in dragging the litigation to run the stage carriages on the approved route or area or portion thereof and forfeited their right to hearing of the objections filed by them to the draft scheme dated 26-2-1959.'

172. This Court in Kavita Trehan v. Balsara Hygiene Products Ltd. observed as under: (SCC p. 391, para 22) '22. The jurisdiction to make restitution is inherent in every court and will be exercised whenever the justice of the case demands. It will be exercised under inherent powers, where the case did not strictly fall within the ambit of Section 144. Section 144 opens with the words:

> "144. Application for restitution.—(1) Where and insofar as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose ...." The instant case may not strictly fall within the terms of Section 144, but the aggrieved party in such a case can appeal to the larger and general powers of restitution inherent in every court.'
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> 173. This Court in Marshall Sons & Co. (I) Ltd. v. Sahi Oretrans (P) Ltd. observed as under: (SCC pp. 326-27, para 4) '4. From the narration of the facts, though it appears to us, prima facie, that a decree in favor of the appellant is not being executed for some reason or the other, we do not think it proper at this stage to direct the respondent to deliver the possession to the appellant since the suit filed by the respondent is still pending. It is true that proceedings are dragged on for a long time on one count or the other and, on occasion, become highly technical accompanied by unending prolixity at every stage, providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage, and the person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of the immovable property, its execution takes a long time. In such a situation, for protecting the interest of the judgment-creditor, it is necessary to pass appropriate orders so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property. Inappropriate cases, the court may appoint a Receiver and direct the person who is holding over the property to act as an agent of the [Receiver with a direction to deposit the royalty amount fixed by the] Receiver or pass such other order which may meet the interest of justice. This may prevent further injury to the plaintiff in whose favor the decree is passed and to protect the property, including further alienation.'
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> 174. In Padmawati v. Harijan Sewak Sangh decided by the Delhi High Court on 6-11-2008, the Court held as under: (DLT p.

413, para 6) '6. The case at hand shows that frivolous defenses and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where the court finds that using the courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the court must impose costs on such litigants which should be

equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the courts. One of the aims of every judicial system has to be to discourage unjust enrichment using courts as a tool. The costs imposed by the courts must in all cases should be the real costs equal to deprivation suffered by the rightful person.' We approve the findings of the High Court of Delhi in the case mentioned above.

175. The High Court also stated: (Padmawati case, DLT pp. 414-15, para 9) '9. Before parting with this case, we consider it necessary to observe that one of the [main] reasons for overflowing of court dockets is the frivolous litigation in which the courts are engaged by the litigants and which is dragged on for as long as possible. Even if these litigants ultimately lose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right but also must be burdened with exemplary costs. The faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make the wrongdoer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the courts to see that such wrongdoers are discouraged at every step, and even if they succeed in prolonging the litigation due to their money power, ultimately, they must suffer the costs of all these years' long litigation. Despite the settled legal positions, the obvious wrongdoers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour since even if they lose, the time gained is the real gain. This situation must be redeemed by the courts.'

176. Against this judgment of the Delhi High Court, Special Leave to Appeal (Civil) No. 29197 of 2008 was preferred to this Court. The Court passed the following order: (SCC p. 460, para 1) '1. We have heard the learned counsel appearing for the parties. We find no ground to interfere with the well-considered judgment passed by the High Court. The special leave petition is, accordingly, dismissed.' * * *

183. In Marshall Sons & Co. (I) Ltd. v. Sahi Oretrans (P) Ltd. this Court in para 4 of the judgment observed as under: (SCC pp. 326-27) '4. ... It is true that proceedings are dragged on for a long time on one count or the other and, on occasion, become highly technical accompanied by unending prolixity at every stage, providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage, and a person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes a long time. In such a situation, for protecting the interest of the judgment-creditor, it is necessary to pass appropriate orders so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property. In appropriate cases, the court may appoint a Receiver and direct the person who is holding over the property to act as an agent of the Receiver with a direction to deposit the royalty amount fixed by the Receiver or pass such other order which may meet the interest of justice. This may prevent further injury to the plaintiff in whose favour the decree is passed and to protect the property, including further alienation.'

184. In Ouseph Mathai v. M. Abdul Khadir, this Court reiterated the legal position that: (SCC p. 328, para 13) '13. ... [the] stay granted by the court does not confer a right upon a party and it is granted always subject to the final result of the matter in the court and at the risks and costs of the party obtaining the stay. After the dismissal of the lis, the party concerned is relegated to the position which existed prior to the filing of the petition in the court which had granted the stay. Grant of stay does not automatically amount to extension of a statutory protection."

There are other decisions as well, which iterate and apply the same principle.225

335. A wrong-doer or in the present context, a litigant who takes his chances, cannot be permitted to gain by delaying tactics. It is the duty of the judicial system to discourage undue enrichment or drawing of undue advantage, by using the court as a tool. In Kalabharati Advertising v. Hemant Vimalnath Narichania226, it was observed that 225 Indian Council for Enviro-Legal Action v. Union of India, (2011) 8 SCC 161, Grindlays Bank Ltd. v. CIT, (1980) 2 SCC 191, Ram Krishna Verma v. the State of U.P., (1992) 2 SCC

620. Also Marshall Sons & Co. (I) Ltd. v. Sahi Oretrans (P) Ltd. and Anr., (1999) 2 SCC 325. 226 (2010) 9 SCC 437 courts should be careful in neutralizing the effect of consequential orders passed pursuant to interim orders. Such directions are necessary to check the rising trend among the litigants to secure reliefs as an interim measure and avoid adjudication of the case on merits. Thus, the restitutionary principle recognizes and gives shape to the idea that advantages secured by a litigant, on account of orders of court, at his behest, should not be perpetuated; this would encourage the prolific or serial litigant, to approach courts time and again and defeat rights of others- including undermining of public purposes underlying acquisition proceedings. A different approach would mean that, for instance, where two landowners (sought to be displaced from their lands by the same notification) are awarded compensation, of whom one allows the issue to attain finality- and moves on, the other obdurately seeks to stall the public purpose underlying the acquisition, by filing one or series of litigation, during the pendency of which interim orders might inure and bind the parties, the latter would profit and be rewarded, with the deemed lapse condition under Section 24 (2). Such a consequence, in the opinion of this Court, was never intended by Parliament; furthermore, the restitutionary principle requires that the advantage gained by the litigant should be suitably offset, in favour of the other party.

336. In Krishnaswamy S. Pd. v. Union of India227, it was observed that an unintentional mistake of the Court, which may prejudice the cause of any party, must and alone could be rectified. Thus, in our opinion, the period for which the interim order has operated under Section 24 has to be excluded for counting the period of 5 years under Section 24(2) for the various reasons mentioned above.

In Re Question no.6: Whether Section 24 revives stale and barred claim

337. Before proceeding further, in our opinion, Section 24 contemplates pending proceedings and not the concluded ones in which possession has been taken, and compensation has been paid or deposited. Section 24 does not provide an arm or tool to question the legality of proceedings, which

have been undertaken under the Act of 1894 and stood concluded before five years or more. It is only in cases where possession has not been taken, nor compensation is paid, that there is a lapse. In case possession has been taken, and compensation has not been deposited with respect to majority of landholdings, the beneficial provision of the statute provides that all beneficiaries shall be paid compensation as admissible under the Act of 2013. The beneficiaries, i.e., landowners contemplated under the proviso to Section 24(2), are the ones who were so recorded as beneficiaries as on the date of issuance of notification under Section 4 of the Act of 1894. 227 (2006) 3 SCC 286 The provision is not meant to be invoked on the basis of void transactions, and by the persons who have purchased on the basis of power of attorney or otherwise, they cannot claim the benefit under Section 24 as is apparent from proviso to Section 24(2) and the decision in Shiv Kumar and Ors. v. Union of India and Ors228.

338. This Court is cognizant that Section 24 is used for submitting various claims, by way of filing applications in the pending proceedings either before the High Court or this Court. There are cases in which in the first round of litigation where the challenge to acquisition proceedings has failed, validity has been upheld, and possession has been taken after passing of the award. It is contended that drawing of panchnama was not the permissible mode to take possession, and actual physical possession remains with such landowners/purchasers/power of attorney holders as such benefit of Section 24 should be given to them notwithstanding the fact that they have withdrawn the compensation also.

339. This Court is cognizant of cases where reference was sought for enhancement of compensation, money was deposited in the treasury, enhancement was made, and possession was taken. Yet, acquisitions have been questioned, and claims are being made under Section 24, that acquisition has lapsed, as the deposit (of compensation amount) in 228 2019 (13) SCALE 698 the treasury was not in accordance with the law, the amount should have been deposited in reference court. Further, this Court also notes that there have been cases in which after taking possession, when development is complete, infrastructure has developed despite which claims are being made under Section 24, on the ground that either the possession has not been taken in accordance with law or compensation has been deposited in the treasury, thus questioning the acquisitions. The decision in Mahavir and Ors. v. Union of India229 was an instance in which a claim was made that acquisition was made more than a century ago, and compensation has not been paid as such acquisition has lapsed relating to the land of Raisina Hills in New Delhi. The importance of Raisina Hills is well-known to everybody. The grossest misuse of Section 24 has been sought to be made, which is intended to confer benefit. It was never intended to revive such claims and be used in the manner in which it has been today, where large numbers of acquisitions and development projects, such as construction of roads, hospitals, townships, housing projects, etc., are sought to be undone, though such acquisitions have been settled in several rounds of litigation. In several matters, the validity has been questioned under the guise as if the right has been conferred for the first time under the Act of 2013, claiming that such acquisitions have lapsed. There are also cases in which the claims for release of land under Section 48 of the Act of 1894 229 (2018) 3 SCC 588 have been dismissed. Now, claims are made that as land is open and landowners/intermediaries/POA holders continue to be in physical possession, thus, it should be returned to them, as the acquisition has lapsed under Section 24(2). Before us also arguments have been raised to grant relief in all such cases by making

purposive interpretation of benevolent provisions. It was urged that this Court is bound to give relief as Section 24 is retrospective in operation, and the authorities have not cared to take possession for more than five years or more, and they have not paid the compensation and deposited it in treasury which cannot be said to be legal. It is declared that the acquisition has lapsed, and the land is given back to them. In case any infrastructure is existing, the State Government should acquire the land afresh after following the process of Act of 2013. Earlier, injustice was done to landowners, as observed in various decisions mentioned above. We should not disturb the decisions of this Court and are bound to follow the law laid down in Pune Municipal Corporation (supra) and the principle of stare decisis.

340. By and large, concluded cases are being questioned by way of invoking the provisions contained in Section 24. In our considered opinion, the legality of concluded cases cannot be questioned under the guise of Section 24(2) as it does not envisage or confer any such right to question the proceedings and the acquisitions have been concluded long back, or in several rounds of litigation as mentioned above, rights of the parties have been settled.

341. In this context, it is noteworthy that the Urban Land (Ceiling and Regulation) Act, 1976, was repealed in the year 1999; thereafter, claims were raised. After repeal, it was claimed that actual physical possession has not been taken by the State Government as such repeal has the effect of effacing the proceedings of taking possession, which it was alleged, was not in accordance with the law. In State of Assam v. Bhaskar Jyoti Sarma and Ors230, submission was raised by the State of Assam that physical possession has been taken over by the competent authority and it was submitted on behalf of landowner that procedure prescribed under Section 10(5) of the Urban Land (Ceiling and Regulation) Act, 1976, was not followed. It was before taking possession under Section 10(6) of the Urban Land (Ceiling and Regulation) Act, 1976, the notification under Section 10(5) was necessary; thus, no possession can be said to have been taken within the meaning of Section 3 of the Repeal Act. The question this Court had to consider was whether actual physical possession was taken over in that case by the competent authority. The State of Assam submitted that though possession was taken over in the year 1991, may be unilaterally and without notice to the landowner. It was urged that mere non- compliance with Section 10(5) would be insufficient to attract the 230 (2015) 5 SCC 321 provisions of Section 3 of the Repeal Act. This Court repelled the submission of the landowner and held as under:

> "15. The High Court has held that the alleged dispossession was not preceded by any notice under Section 10(5) of the Act. Assuming that to be the case all that it would mean is that on 7- 12-1991 when the erstwhile owner was dispossessed from the land in question, he could have made a grievance based on Section 10(5) and even sought restoration of possession to him no matter he would upon such restoration once again be liable to be evicted under Sections 10(5) and 10(6) of the Act upon his failure to deliver or surrender such possession. In reality therefore unless there was something that was inherently wrong so as to affect the very process of taking over such as the identity of the land or the boundaries thereof or any other circumstance of a similar nature going to the root of the matter hence requiring an adjudication, a person who had lost his land by reason of the same being declared surplus under

> Section 10(3) would not consider it worthwhile to agitate the violation of Section 10(5) for he can well understand that even when the Court may uphold his contention that the procedure ought to be followed as prescribed, it may still be not enough for him to retain the land for the authorities could the very next day dispossess him from the same by simply serving a notice under Section 10(5). It would, in that view, be an academic exercise for any owner or person in possession to find fault with his dispossession on the ground that no notice under Section 10(5) had been served upon him.
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> 16. The issue can be viewed from another angle also. Assuming that a person in possession could make a grievance, no matter without much gain in the ultimate analysis, the question is whether such grievance could be made long after the alleged violation of Section 10(5). If actual physical possession was taken over from the erstwhile landowner on 7-12-1991 as is alleged in the present case, any grievance based on Section 10(5) ought to have been made within a reasonable time of such dispossession.

If the owner did not do so, forcibly taking over of possession would acquire legitimacy by sheer lapse of time. In any such situation, the owner or the person in possession must be deemed to have waived his right under Section 10(5) of the Act. Any other view would, in our opinion, give a license to a litigant to make a grievance not because he has suffered any real prejudice that needs to be redressed but only because the fortuitous circumstance of a Repeal Act tempted him to raise the issue regarding his dispossession being in violation of the prescribed procedure.

17. Reliance was placed by the respondents upon the decision of this Court in Hari Ram case. That decision does not, in our view, lend much assistance to the respondents. We say so because this Court was in State of UP v. Hari Ram, (2013) 4 SCC 280 considering whether the word "may" appearing in Section 10(5) gave to the competent authority the discretion to issue or not to issue a notice before taking physical possession of the land in question under Section 10(6). The question of whether the breach of Section 10(5) and possible dispossession without notice would vitiate the Act of dispossession itself or render it non-est in the eye of the law did not fall for consideration in that case. In our opinion, what Section 10(5) prescribes is an ordinary and logical course of action that ought to be followed before the authorities decided to use force to dispossess the occupant under Section 10(6). In the case at hand, if the appellant's version regarding dispossession of the erstwhile owner in December 1991 is correct, the fact that such dispossession was without a notice under Section 10(5) will be of no consequence and would not vitiate or obliterate the Act of taking possession for the purposes of Section 3 of the Repeal Act. That is because Bhabadeb Sarma, erstwhile owner, had not made any grievance based on breach of Section 10(5) at any stage during his lifetime, implying thereby that he had waived his right to do so." This Court held that provisions of the Repeal Act could not be extended in such a case where possession has been taken without following the procedure, and the landowner cannot retain the land. This Court also observed that once possession has been taken over in the year 1991, any grievance as to non-compliance of Section 10(5) ought to have been made within a reasonable time of such dispossession. By sheer lapse of time, the possession would acquire legitimacy. Thus, the owner or the person in possession must be

deemed to have waived his right under Section 10(5) of the Act. This Court also observed that only because of the fortuitous circumstance of a Repeal Act, which confers certain rights, the litigation had tempted the landowner to raise the issue regarding his dispossession being in violation of the prescribed procedure. It is clear from the aforesaid decision that such claims cannot be entertained, and any such dispute raised belatedly was repelled by this Court.

342. Section 24(2) is sought to be used as an umbrella so as to question the concluded proceedings in which possession has been taken, development has been made, and compensation has been deposited, but may be due to refusal, it has not been collected. The challenge to the acquisition proceedings cannot be made within the parameters of Section 24(2) once panchnama had been drawn of taking possession, thereafter re-entry or retaining the possession is that of the trespasser. The legality of the proceedings cannot be challenged belatedly, and the right to challenge cannot be revived by virtue of the provisions of Section 24(2). Section 24(2) only contemplates lethargy/inaction of the authorities to act for five years or more. It is very easy to lay a claim that physical possession was not taken, with respect to open land. Yet, once vesting takes place, possession is presumed to be that of the owner, i.e., the State Government and land has been transferred to the beneficiaries, Corporations, Authorities, etc., for developmental purposes and third-party interests have intervened. Such challenges cannot be entertained at all under the purview of Section 24(2) as it is not what is remotely contemplated in Section 24(2) of the Act of 2013.

343. In matters of land acquisition, this Court has frowned upon, and cautioned courts about delays and held that delay is fatal in questioning the land acquisition proceedings. In case possession has not been taken in accordance with law and vesting is not in accordance with Section 16, proceedings before courts are to be initiated within reasonable time, not after the lapse of several decades.

344. In Hari Singh and Ors. v. State of U.P. and Ors231, there was a delay of two and a half years in questioning the proceedings. This Court held that the writ petition was liable to be dismissed on the ground of laches only.

345. In State of T.N. and Ors. v. L. Krishnan & Ors232, this Court held that petitioners could not raise their claim at a belated stage. Following observations were made:

> "45. There remains the last ground assigned by the High Court in support of its decision. The High Court has held that the non- compliance with sub-rules (b) and (c) of Rule 3 of the Rules made by the Government of Tamil Nadu pursuant to Section 55(1) of the Land Acquisition Act vitiates the report made under Section 5-A and consequently the declarations made under Section 6. The said sub-rules provide that on receipt of objections under Section 5-A, the Collector shall fix a date of hearing to the objections and give notice of the same to the objector as well as to the department. It is open to the department to file a statement by way of answer to the objections filed by the landowners. The submission of the writ petitioners was that in a given case, it might well happen that in the light of the objections submitted by the landowners, the department concerned may decide to drop the acquisition. Since no

such opportunity was given to the department concerned herein, it could not file its statement by way of answer to their objections. This is said to be prejudice. We do not think it necessary to go into the merits of this submission on account of the laches on the part of the writ petitioners. As stated above, the declaration under Section 6 was made sometime in the year 1978, and the writ petitioners chose to approach the Court only in the years 1982-83. Had they raised this objection at the proper time and if it were found to be true and acceptable, the opportunity could have been given to the Government to comply with the said requirement. Having kept quiet for a number of years, the petitioners cannot raise this contention in writ petitions filed at a stage when the awards were about to be passed." AIR 1984 SC 1020 (1996) 1 SCC 250

346. In Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Pvt. Ltd233, this Court observed, with respect to delay and laches that:

"29. It is thus well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised by taking all relevant factors into pragmatic consideration. When the award was passed, and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising power under Article 226. The fact that no third party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches.

*** S.B. MAJUMDAR, J. (concurring)—I have gone through the judgment prepared by my esteemed learned brother K. Ramaswamy, J. I respectfully agree with the conclusion to the effect that Respondents 1 and 2 had missed the bus by adopting an indolent attitude in not challenging the acquisition proceedings promptly. Therefore, the result is inevitable that the writ petition is liable to be dismissed on the ground of gross delay and laches.

35. x x x The acquired land got vested in the State Government and the Municipal Corporation free from all encumbrances as enjoined by Section 16 of the Land Acquisition Act. Thus right to get more compensation got vested in diverse claimants bypassing the award, as well as the vested right, was created in favor of the Bombay Municipal Corporation by virtue of the vesting of the land in the State Government for being handed over to the Corporation. All these events could not be wished away by observing that no third party rights were created by them. The writ petition came to be filed after all these events had taken place. Such a writ petition was clearly stillborn due to gross delay and laches. I, therefore, respectfully agree with the

conclusion to which my learned brother Ramaswamy, J., has reached that on the ground of delay and laches the writ petition is required to be dismissed, and the appeal has to be allowed on that ground." (emphasis supplied) 233 (1996) 11 SCC 501 There are several other decisions of this Court, where delay was held, to disentitle litigants any relief.234

347. In Jasveer Singh and Anr. v. State of Uttar Pradesh & Ors.235 , the writ petition was filed in which High Court had directed the redetermination of the compensation. In that case the matter was remanded by this Court to consider the additional compensation under Section 23-(1A). Thereafter a submission was raised in the High Court under Section 24. This Court held that the challenge could not have been entertained. This Court observed thus:

"2. On 19-12-2005 the appellants filed a writ petition before the High Court seeking quashing of the acquisition proceedings which was decided by the High Court on 3-12-2010 directing redetermination of compensation. The said order was set aside by this Court on 16-10-2012 in State of U.P. v. Jasveer Singh [Civil Appeal No.7535 of 2012, order dated 16-10-2012 (SC)]. It was observed that:

"After considering the pros and cons, without entering into serious controversies and making any comment on the merit of the case, we are of the considered opinion that in view of the judgment and order of this Court dated 26-11-2010, which was passed in the presence of the counsel for both the parties, the High Court ought not to have heard the matter at all. Thus, the judgment and order impugned before us have lost its sanctity. Therefore, the same is hereby set aside.

However, in order to meet the ends of justice, we remand the case to the High Court to hear the writ petition afresh expeditiously, preferably within a period of six months from the date of production of the certified copy of the order before the Hon'ble Chief Justice. The matter may be assigned to any particular Bench by the Hon'ble Chief Justice for final disposal. The parties shall be at liberty to raise all factual and legal issues involved in the case. The High Court is requested to deal with the relevant issues in detail.

More so, if the respondents are so aggrieved regarding withdrawal of their appeals, which had been remanded by this In Hindustan Zinc Ltd. v. Bhagwan Singh Bhati and Ors., (2008) 3 SCC 462, there was a fatal delay of 10 years in the filing of the writ petition. In Govt. of A.P. and Ors. v. Kollutla Obi Reddy and Ors., (2005) 6 SCC 493, the writ petition was filed after six years of the land acquisition. The writ petition was dismissed on the ground of delay and laches. 235 (2017) 6 SCC 787 Court for determining the entitlement of interest under Section 23(1-A) of the Land Acquisition Act, 1984 and an application is made by the respondent to revive the same, the High Court may consider and decide the said application in accordance with law. All the matters shall be heard simultaneously by the same Bench if the appeals are restored."

> 3. Thereafter, the High Court considered the contention of the appellants that the award in respect of compensation was no award in the eye of the law and though the possession was taken long back and railway line had been laid out, the acquisition proceedings were liable to be set aside, and compensation was liable to be awarded at present market rate. The High Court rejected the said plea vide judgment dated 30-5-2014 in Jasvir Singh v. the State of U.P., 2014 SCC OnLine All 8465. It was observed that objection of the appellants against the award had already been considered and remand by the Supreme Court on 12-9-2005 was only in respect of statutory benefits. For the first time plea was sought to be raised in the writ petition against validity of acquisition which was impermissible in view of the law laid down by this Court in Aflatoon v. Lt. Governor of Delhi, (1975) 4 SCC 285, Swaika Properties (P) Ltd. v. State of Rajasthan, (2008) 4 SCC 695, Sawaran Lata v. State of Haryana, (2010) 4 SCC 532 and Banda Development Authority v. Moti Lal Agarwal, (2011) 5 SCC 394. The judgment of this Court in Royal Orchid Hotels v. G. Jayarama Reddy, (2011) 10 SCC 608, was distinguished as that case related to the fraudulent exercise of power of an eminent domain. The High Court concluded: (Jasvir Singh case, 2014 SCC OnLine All 8465 (SCC OnLine paras 45-
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> 47) "45. Taking into consideration the entire facts and circumstances of the case, we are of the view that the writ petition is highly barred by laches and deserves to be dismissed on the ground of laches alone.

46. As has been observed above, the petitioners' main grievance is for enhancement of compensation, for which the petitioner has already filed First Appeal No. 880 of 1993 and First Appeal No. 401 of 1998 which appeals are being allowed by order of the date, we see no reason to entertain the writ petition.

47. Although various submissions on merits challenging the entire acquisition proceedings have been raised by the learned counsel for the petitioners, we have taken the view that the writ petition is highly barred by laches, we do not find it necessary to enter into the submissions raised by the learned counsel for the petitioners on merits."

348. In Swaika Properties Pvt. Ltd. and Ors. v. State of Rajasthan and Ors236, the writ petition was filed after taking possession and award has 236 (2008) 4 SCC 695 become final. The writ petition was dismissed on the ground of delay and laches. In Larsen & Toubro Ltd. v. State of Gujarat and Ors.237, in the absence of a challenge to the acquisition proceedings within a reasonable time, the challenge was repelled. Delay was also fatal in Haryana State Handloom and Handicrafts Corporation Ltd. and Ors. v. Jain School Society238. The writ petition was filed after two years to question the declaration under Section 6 and was dismissed on the ground of delay in Urban Improvement Trust, Udaipur vs. Bheru Lal and Ors239. A Delay of 5 to 10 years was held to be fatal in questioning the acquisition proceedings as held in Vishwas Nagar Evacuee Plot Purchasers Association & Ors. v. Under Secretary, Delhi Admn. & Ors.240

349. There is a plethora of decisions where, owing to delay of 6 months or more, this Court has repelled the challenge to the acquisition proceedings. In our opinion, Section 24 does not revive the right to challenge those proceedings which have been concluded. The legality of those judgments and orders cannot be reopened or questioned under the guise of the provisions of Section 24(2). By reason of our reasoning in respect of that provision (which we have held that under Section 24(2) that word "or" is to be read as 'and' or as 'nor,' even if one of the requirements has been fulfilled, i.e., either possession taken or (1998) 4 SCC 387 238 (2003) 12 SCC 538 239 (2002) 7 SCC 712 240 (1990) 2 SCC 268 compensation paid), there is no lapse unless both conditions are fulfilled, i.e., compensation has not been paid nor has possession been taken; the legality of the concluded proceedings cannot be questioned. It is only in the case where steps have not been taken by the Authorities. The lapse or higher compensation is provided under Section 24(2) and its proviso under the Act of 2013.

350. In U.P. State Jal Nigam and Anr. v. Jaswant Singh and Anr241, this Court has observed that if a claimant is aware of the violation of his rights and does not claim his remedies, such inaction or conduct tantamounts a waiver of the right. In such cases, the lapse of time and delay are most material and cannot be ignored by the Court. In Rabindranath Bose and Ors. v. Union of India and Ors242, the Constitution Bench of this Court has observed that the Court cannot go into the stale demands after a lapse of several years. This Court observed thus:

> "32. The learned counsel for the petitioners strongly urges that the decision of this Court in Tilokchand Motichand case needs review. But after carefully considering the matter, we are of the view that no relief should be given to petitioners who, without any reasonable explanation, approach this Court under Article 32 of the Constitution after inordinate delay. The highest Court in this land has been given original jurisdiction to entertain petitions under Article 32 of the Constitution. It could not have been the intention that this Court would go into stale demands after a lapse of years. It is said that Article 32 is itself a guaranteed right. So it is, but it does not follow from this that it was the intention of the Constitution-makers that this Court should discard all principles and grant relief in petitions filed after inordinate delay." (2006) 11 SCC 464 242 (1970) 1 SCC 84

351. In Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd243, this Court observed that if delay has resulted in material evidence relevant to adjudication being lost or rendered unavailable, would be fatal. It was held that the time limit of 6 months prescribed under Section 10(4A) of the I.D. Act, 1947 and should not be interpreted to revive stale and dead claims, it would not be possible to defend such claims due to lapse of time and due to material evidence having been lost or rendered unavailable. The lapse of time results in losing the remedy and the right as well. The delay would be fatal. It will be illogical to hold that the amendment to the Act inserting Section 10(4A) should be interpreted as reviving all stale and dead claims. This Court observed thus:

> "29. This Court while dealing with Sections 10(1)(c) and (d) of the I.D. Act, has repeatedly held that though the Act does not provide a period of limitation for raising a dispute under Section 10(1)(c) or (d), if on account of delay, a dispute has become

> stale or ceases to exist, the reference should be rejected. It has also held that lapse of time results in losing the remedy and the right as well. The delay would be fatal if it has resulted in material evidence relevant to adjudication being lost or rendered unavailable (vide Nedungadi Bank Ltd. v. K.P. Madhavankutty, (2000) 2 SCC 455; Balbir Singh v. Punjab Roadways, (2001) 1 SCC 133; Asstt. Executive Engineer v. Shivalinga, (2002) 10 SCC 167 and S.M. Nilajkar v. Telecom Distt. Manager, (2003) 4 SCC 27). When belated claims are considered as stale and non-existing for the purpose of refusing or rejecting a reference under Section 10(1)(c) or (d), in spite of no period of limitation is prescribed, it will be illogical to hold that the amendment to the Act inserting Section 10(4-A) prescribing a time-limit of six months, should be interpreted as reviving all stale and dead claims.
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> 31. Section 10(4-A) does not, therefore, revive non-existing or stale or dead claims but only ensures that claims which were life, by applying the six-month rule in Section 10(4-A) as on the date when the section came into effect, have a minimum of six months' time to approach the Labour Court. That is ensured by adding the words "or the date of commencement of the Industrial Disputes 243 (2007) 9 SCC 109 (Karnataka Amendment) Act, 1987, whichever is later" to the words "within six months from the date of communication to him of the order of discharge, dismissal, retrenchment or termination."

In other words, all those who have communicated orders of termination during a period of six months prior to 7-4-1988 were deemed to have been communicated such orders of termination as on 7-4-1988 for the purpose of seeking a remedy. Therefore, the words "within six months from the date of commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987, whichever is later" only enables those who had been communicated order of termination within six months prior to 7- 4-1988, to apply under Section 10(4-A).”

352. In State of Karnataka v. Laxuman244, this court held that stale claims should not be entertained even if no time limit is fixed by the statute. This court observed as follows:

> “9. As can be seen, no time for applying to the Court in terms of sub-section (3) is fixed by the statute. But since the application is to the Court, though under a special enactment, Article 137, the residuary article of the Limitation Act, 1963, would be attracted and the application has to be made within three years of the application for making a reference or the expiry of 90 days after the application. The position is settled by the decision of this Court in Addl. Spl. Land Acquisition Officer v. Thakoredas, (1997) 11 SCC 412. It was held: (SCC p. 414, para 3) “3. Admittedly, the cause of action for seeking a reference had arisen on the date of service of the award under Section 12(2) of the Act. Within 90 days from the date of the service of the notice, the respondents made the application requesting the Deputy Commissioner to refer the cases to the civil Court under Section

> 18. Under the amended sub-section (3)(a) of the Act, the Deputy Commissioner shall, within 90 days from 1-9-1970, make a reference under Section 18 to the civil Court, which he failed to do. Consequently, by operation of subsection 3(b) with the expiry of the aforestated 90 days, the cause of action had accrued to the respondents to make an application to the civil Court with a prayer to direct the Deputy Commissioner to make a reference.

There is no period of limitation prescribed in subsection (3)(b) to make that application, but it should be done within the limitation prescribed by the Schedule to the Limitation Act. Since no article expressly prescribed the limitation to make such an application, the residuary article under Article 137 of the Schedule to the Limitation Act gets attracted. Thus, it could be seen that in the absence of any special period of limitation prescribed by clause

(b) of sub-section (3) of Section 18 of the Act, the application should have been made within three years from the date of expiry of 90 days prescribed in Section 18(3)(b), i.e., the date on which cause of action had accrued to the respondent claimant. Since the 244 (2005) 8 SCC 709 application had been admittedly made beyond three years, it was clearly barred by limitation. Since the High Court relied upon the case in Municipal Council, (1969) 1 SCC 873 which has stood overruled, the order of the High Court is unsustainable." This position is also supported by the reasoning in Kerala SEB v. T.P. Kunhaliumma, (1976) 4 SCC 634. It may be seen that under the Central Act sans the Karnataka amendment, there was no right to approach the Principal Civil Court of original jurisdiction to compel a reference, and no time-limit was also fixed for making such an approach. All that was required of a claimant was to make an application for reference within six weeks of the award or the notice of the award, as the case may be. But obviously, the State Legislature thought it necessary to provide a time-frame for the claimant to make his claim for enhanced compensation and for ensuring an expeditious disposal of the application for reference by the authority under the Act fixing a time within which he is to act and conferring an additional right on the claimant to approach the civil Court on satisfying the condition precedent of having made an application for reference within the time prescribed."

353. We are of the opinion that courts cannot invalidate acquisitions, which stood concluded. No claims in that regard can be entertained and agitated as they have not been revived. There has to be legal certainty where infrastructure has been created or has been developed partially, and investments have been made, especially when land has been acquired long back. It is the duty of the Court to preserve the legal certainty, as observed in Vodafone International Holdings B.V. v. Union of India and Ors245. The landowners had urged that since the Act of 2013 creates new situations, which are beneficial to their interests, the question of delay or laches does not arise. This Court is of the opinion that the said contention is without merits. As held earlier, the doctrine of laches would always preclude an indolent party, who chooses not to approach the court, or having approached the court, allows an adverse 245 (2012) 6 SCC 613 decision to become final, to re-agitate the issue of acquisition of his holding. Doing so, especially in cases, where the title has vested with the State, and thereafter with subsequent interests, would be contrary to public policy. In A.P. State Financial Corp. v. Garware Rolling Mill246, this Court observed that equity is always known to defend the law from crafty evasions and new subtleties invented to evade the law. There is no dearth of talent left in

longing for the undue advantage of the wholesome provisions of Section 24(2) on the basis of wrong interpretation.

354. In British Railway Board v. Pickin247, the following observations were made:

> "... equity, when faced with an appeal to a regulatory public statute, which requires compliance with formalities, will not allow such statute (assumedly passed to prevent fraud) to be used to promote fraud and will do so by imposing a trust or equity upon a legal right. ..."

355. We are unable to accept the submission on behalf of the landowners that it is by operation of law the proceedings are deemed to have lapsed and that this Court should give full effect to the provisions. It was submitted that lapse of acquisition proceedings was not contemplated under the Act of 1894, and there is departure made in Section 24 of the Act of 2013. Thus, Section 24 gives a fresh cause of action to the landowners to approach the courts for a declaration that the acquisition lapsed, if either compensation has not been paid or the 246 (1994) 2 SCC 647 247 (1974) AC 765 physical possession has not been taken. The decision of this Court in the Mathura Prasad Bajoo Jaiswal and Ors. v. Dossibai N.B. Jeejeebhoy248 was relied upon to contend that there cannot be res judicata in the previous proceedings when the cause of action is different; reliance is also placed on Canara Bank v. N.G. Subbaraya Setty and Anr249, where the decision of Mathura Prasad Bajoo Jaiswal and Ors. (supra) was followed as to belated challenges. Reliance was further placed on Anil Kumar Gupta v. the State of Bihar250 in which it was held that vesting of land in the Government can be challenged on the ground that possession had not been taken in accordance with the prescribed procedure. The invocation of the urgency clause in Section 17, can be questioned on the ground that there was no real urgency. The notification issued under Section 4 and declaration under Section 6 can be challenged on the ground of non-compliance of Section 5-A(1). Notice issued under Section 9 and the award passed under Section 11 can also be questioned on permissible grounds. Reliance has also been placed on Ram Chand and Ors. v. Union of India251 to contend that inaction and delay on the part of the acquiring authority would also give rise to a cause of action in favour of the landowner.

356. The entire gamut of submissions of the landowners is based on the misinterpretation of the provisions contained in Section 24. It does 248 (1970) 1 SCC 613 249 (2018) 16 SCC 228 250 (2012) 12 SCC 443 251 (1994) 1 SCC 4 not intend to divest the State of possession (of the land), title to which has been vested in the State. It only intends to give higher compensation in case the obligation of depositing of compensation has not been fulfilled with regard to the majority of holdings. A fresh cause of action in Section 24 has been given if for five years or more possession has not been taken nor compensation has been paid. In case possession has been taken and compensation has not been deposited with respect to the majority of landholdings, higher compensation to all incumbents follows, as mentioned above. Section 24 does not confer a new cause of action to challenge the acquisition proceedings or the methodology adopted for the deposit of compensation in the treasury instead of reference court, in that case, interest or higher compensation, as the case may be, can follow. In our considered opinion, Section 24 is applicable to pending proceedings, not to the concluded proceedings and the legality of the concluded

proceedings, cannot be questioned. Such a challenge does not lie within the ambit of the deemed lapse under Section 24. The lapse under section 24(2) is due to inaction or lethargy of authorities in taking requisite steps as provided therein.

357. We are also of the considered opinion that the decision in an earlier round of litigation operates as res judicata where the challenge to the legality of the proceedings had been negatived and the proceedings of taking possession were upheld. Section 24 does not intend to reopen proceedings which have been concluded. The decision in Mathura Prasad Bajoo Jaiswal and Ors. (supra) is of no avail. Similar is the decision in Anil Kumar Gupta v. State of Bihar (supra). No doubt about it that proceedings (i.e., the original acquisition, or aspects relating to it) can be questioned but within a reasonable time; yet once the challenge has been made and failed or has not been made for a reasonable time, Section 24 does not provide for reopening thereof.

358. So far as the proposition laid down in Ram Chand and Ors. v. Union of India (supra) is concerned, inaction and delay on the part of acquiring authorities have been taken care of under Section 24. The mischief rule (or Heydon's Mischief Rule) was pressed into service on behalf of landowners relying upon the decision in Bengal Immunity Co v. the State of Bihar (supra), it was submitted that Act of 1894 did not provide for lapse in the case of inordinate delay on the part of acquiring Authorities to complete the acquisition proceedings. Mischief has been sought to be cured by the legislature by introducing the Act of 2013 by making provisions in Section 24 of the lapse of proceedings. The submission is untenable. The provisions made under section 24 have provided a window of 5 years to complete the acquisition proceedings, and if there is a delay of 5 years or more, there is a lapse and not otherwise. The provision cannot be stretched any further, otherwise, the entire infrastructure, which has come up, would have to go and only the litigants would reap the undeserving fruits of frivolous litigation, having lost in several rounds of litigation earlier, which can never be the intendment of the law.

359. We are of the considered opinion that Section 24 cannot be used to revive dead and stale claims and concluded cases. They cannot be inquired into within the purview of Section 24 of the Act of 2013. The provisions of Section 24 do not invalidate the judgments and orders of the Court, where rights and claims have been lost and negatived. There is no revival of the barred claims by operation of law. Thus, stale and dead claims cannot be permitted to be canvassed on the pretext of enactment of Section 24. In exceptional cases, when in fact, the payment has not been made, but possession has been taken, the remedy lies elsewhere if the case is not covered by the proviso. It is the Court to consider it independently not under section 24(2) of the Act of 2013.

360. It was submitted that Section 101 provides for return of unutilized land under the Act of 2013. Section 101 provides that in case land is not utilized for five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government. Section 101 reads as under:

> “101. Return of unutilized land.-- When any land, acquired under this Act remains unutilized for a period of five years from the date of taking over the possession, the

> same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government.
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> Explanation.-- For the purpose of this section, "Land Bank" means a governmental entity that focuses on the conversion of Government-owned vacant, abandoned, unutilized acquired lands and tax-delinquent properties into productive use."

361. Section 24 deals with lapse of acquisition. Section 101 deals with the return of unutilized land. Section 101 cannot be said to be applicable to an acquisition made under the Act of 1894. The provision of lapse has to be considered on its own strength and not by virtue of Section 101 though the spirit is to give back the land to the original owner or owners or the legal heirs or to the Land Bank. Return of lands is with respect to all lands acquired under the Act of 2013 as the expression used in the opening part is "When any land, acquired under this Act remains unutilized". Lapse, on the other hand, occurs when the State does not take steps in terms of Section 24(2). The provisions of Section 101 cannot be applied to the acquisitions made under the Act of 1894. Thus, no such sustenance can be drawn from the provisions contained in Section 101 of the Act of 2013. Five years' logic has been carried into effect for the purpose of lapse and not for the purpose of returning the land remaining unutilized under Section 24(2).

362. Resultantly, the decision rendered in Pune Municipal Corporation & Anr. (supra) is hereby overruled and all other decisions in which Pune Municipal Corporation (supra) has been followed, are also overruled. The decision in Shree Balaji Nagar Residential Association (supra) cannot be said to be laying down good law, is overruled and other decisions following the same are also overruled. In Indore Development Authority v. Shailendra (Dead) through L.Rs. and Ors., (supra), the aspect with respect to the proviso to Section 24(2) and whether ‘or’ has to be read as ‘nor’ or as ‘and’ was not placed for consideration. Therefore, that decision too cannot prevail, in the light of the discussion in the present judgment.

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

> 1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.
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> 2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.
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> 3. The word ‘or’ used in Section 24(2) between possession and compensation has to be read as ‘nor’ or as ‘and’. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has

not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

4. The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the Act of 1894.

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

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

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

8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority as on 1.1.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

9. Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014.

It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.

Let the matters be placed before appropriate Bench for consideration on merits.

.....J. (Arun Mishra) .....J. (Indira Banerjee) .....J. (Vineet Saran) .....J. (M. R. Shah) .....J. (S. Ravindra Bhat) New Delhi;

March 06, 2020.