

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

RW RIT PETITION (PIL) NO. 130 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH

and

HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

MAHESH BHAI REVABHAIPANDYA

Versus

STATE OF GUJARAT

Appearance:

MR NM KAPADIA (394) for the Applicant(s) No. 1, 2, 3, 4

MR KAMAL TRIVEDI, ADVOCATE GENERAL WITH MS MANISH SHAH, GOVERNMENT PLEADER WITH MR JK SHAH and MS AISHVARYA GUPTA, ASST. GOVERNMENT PLEADERS for Opponent(s) No. 1, 2, 3, 4, 5

CORAM: **HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH**

and

HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI

Date: 01/05/2020

CAVJUDGMENT

(PER: **HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH**)

1. One Environmental Engineer, another a Social Welfare Activist, another a Public Spirited Citizen and one Social Worker, all four have joined together

to file the above Public Interest Litigation for protection of poor, downtrodden and Scheduled Tribes being illegally evicted from their agricultural lands and residence in District Narmada. Petitioner Nos.1, 3 and 4 are residents of Ahmedabad city and petitioner No.2 is a resident of Chandni Chowk, Rajpipla, District Narmada. All four are residents of urban areas, however, claiming themselves to be related to non-governmental organization working on socio-environmental issues, upliftment of residents of rural areas and forest areas, have joined together to file the present Public Interest Litigation raising a cause for the residents of village Kevadia, Vaghadiya, Navagam, Limbdi, Kothi and Gora. According to the petitioners, Adivasi villagers of the above six villages are being illegally and forcibly evicted from their agricultural lands and residence.

2. The reliefs claimed by means of the present petition are reproduced below :

“(A) Your Lordship be pleased to issue a writ of mandamus or any other appropriate writ or order or direction declaring that the respondents have no authority to evict the

affected local adivasi people as per list attached at Annexure A colly. and other similarly situated adivasi people, without following the due procedure of law, without serving notice and providing opportunity for personal hearing.

- (B) *Your Lordship be pleased to issue a writ of mandamus or any other appropriate writ or order or direction declaring that the acquisition proceedings initiated in respect of the land as per list attached at Annexure A colly. and other similarly situated adivasi people, as deemed to have lapsed in view of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and that the respondents have no right or title or interest upon the land in question;*
- (C) *Your Lordship be pleased to issue a writ of mandamus or any other appropriate writ or order or direction thereby directing the respondents not to interfere with the peaceful possession and enjoyment of the land of the adivasi persons as per the list attached at Annexure A colly. and other similarly situated adivasi people;*
- (D) *That pending hearing and final disposal of this petition, Your Lordship be pleased to*

restrain the respondents from taking possession of the parcels of land of the local affected people as per the list attached at Annexure A colly. and other similarly situated adivasi people, and be pleased to direct the respondents to maintain the status quo, and;

(E) Any other order or relief in the interest of justice."

3. As per the contents of the petition, the residents of these villages are downtrodden and poor people mostly illiterate, uneducated and fearful of the respondents and are unable to approach this Court for protection of their fundamental rights and as such, the present petitioners who have been working in this sector, have come forward to raise their cause and have filed the present Public Interest Litigation to protect the interest of the Adivasi and Tribal residents of these six villages.

4. In paragraph-4.2 of the petition, it has been stated that for the purposes of constructing a colony under the Narmada River Project Scheme and also for the purpose of construction of canal and road,

acquisition proceedings of the land of these villages was started some time in the year 1961-62. It is also stated **that** awards under the Land Acquisition Act, 1894 ("the 1894 Act", for short) were also declared mostly in the years 1963-65; **that** the affected residents of the villages have informed the present petitioners that though awards were passed ordering payment of compensation to their elders/ancestors, the actual payment of compensation was not remitted/paid to the respective landowners; **that** the above statement of non-payment of compensation is subject to correction by the respondent authorities inasmuch as the matter being very old and as the then landholders - the ancestors of the present residents were either not alive or very old and as such, the respondents may be called upon to produce the details of the actual payment.

5. In paragraph-4.3, it is stated that some efforts were made by the residents and also the petitioners under the provisions of the Right to Information Act, 2005, demanding proof of the payment of compensation, but were unsuccessful.

6. In paragraph-4.4, it is stated that the list of persons whose names appeared in the list filed as Annexure-A and whose land had been acquired was never utilized for the purpose for which it was acquired and its possession was never taken and as such, the said land never vested in the respondents. It is also stated in the same paragraph that as vesting of land presupposes actual taking of possession and that having not been done, the legal presumption as enshrined in Section-16 of the 1894 Act cannot be raised in favour of the acquiring body. It is also very emphatically stated that the persons mentioned in the list filed as Annexure-A are in actual physical possession of their lands and they have never been dispossessed. The petitioners have also gone to the extent of stating that Annexure-E contains the documents to show the names of these persons holding the land. As such, the present petition is filed for protection of such persons as also those who had not appeared in the said list but are similarly situated and residing in the above villages.

7. In paragraph-4.5, it has been stated that in early sixties, some nominal compensation towards damage caused to the crops due to use of heavy vehicles in the project was paid and now the respondents are projecting the said payment of compensation as for the purpose of acquisition and therefore, the respondents must prove that the compensation towards such acquisition was actually paid.

8. In paragraph-4.6, there is some reference to certain schemes of the government offering certain packages from time to time, at the time of displacement of the residents of the villages which indicates that in fact land was never acquired but as per the package offered, the residents were displaced.

9. Paragraph-4.7 refers to the fact that sufficient land is available with the State as also Sardar Sarovar Nigam Limited (SSNL) in village Kevadia for development of tourism while construction of hotels, State Bhavans etc. Few structures were

erected but the same are no longer being used by the State Government/SSNL. Certain photographs have been annexed to show such vacant land available with the government/SSNL. Again a demand has been raised that the respondents should provide necessary information regarding the land area available with them. It is also stated that as the acquisition has lapsed, the respondents have no right, title or interest in the land in question.

10. Paragraph-4.8 is basically repetition of the previously stated facts. In addition, it has been stated that the residents of these villages are happily living at their original ancestral place in original atmosphere and are continuing with their religious and traditional practice, which clearly shows that they were not affected by the project nor their land was ever required.

11. In paragraph-4.9, it is stated that the government had offered employment to few people affected by land acquisition. This employment was by way of engagement as casual labourers or contractual labourers.

12. In paragraph-4.10, it is stated that the residents of the aforesaid villages having continued in possession as they were never evicted and they are in actual and physical possession of the land in their ownership and possession. The acquisition proceedings undertaken in 1960 would stand lapsed in view of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("the 2013 Act", for short). Certain other violations of law are also stated in the said paragraph.

13. In paragraphs-4.11 and 4.12, it is stated that on account of recent development of the erection of the Statue of Unity, the State Government/SSNL are now threatening to vacate the residents.

14. In paragraph-4.13, again there is a reference to the provisions of the 2013 Act and application of Section-24(2) of the said Act with regard to the lapse of the earlier acquisition proceedings. It also refers to certain representations being made by the residents of the villages.

15. Paragraph-4.14 refers to certain resolutions passed by the Gram Sabha of Kevadia village to the effect that the *Adivasi* villagers are not to be disturbed by the government and objecting to the shifting/eviction of the residents of the villages. Paragraph-4.16 mentions the immediate cause of action for filing the petition as the officers of the Revenue Department who were carrying out some survey work, apprehending eviction in the month of June, 2019.

16. Paragraph-4.17 to 4.19 are mostly repetition and also refer to certain development activities being undertaken.

17. In paragraph-5, it is stated that the source of information was primarily based on the information received under the Right to Information Act, resolutions of the Gram Sabha and also that the present four petitioners had verified the facts by personally visiting the place. Paragraph-6 refers to the representations made by the petitioners. In paragraph-7, there is a statement that no Public

Interest Litigation raising similar issue is filed before this Court or any other Court.

18. Paragraph-8 refers to the grounds which in brief are mentioned below :

Grounds (a) and (b) refer that the residents of the villages who have actual and physical possession of their lands and houses from the time of their forefathers, cannot be evicted without following due procedure of law, that is, without serving any notice and without providing any opportunity of personal hearing and the threatening action of eviction is likely to infringe the rights of the Tribal/Adivasi people under Articles-19 and 21 of the Constitution.

Grounds (c) and (d) are to the effect that Article-15 and 46 of the Constitution have been violated and the action of the respondents being in violation of such constitutional provisions protecting the Socially and Educationally Backward Class.

Next ground (e) refers to violation of Article-300A of the Constitution as also the acquisition having lapsed under Section-24(2) of the 2013 Act. Ground (f) refers to the judgments of this Court and the Supreme Court, namely (i) **Shailesh R. Shah vs. State of Gujarat and others**, reported in 2002 (3) GLH 642, (ii) **Sachidanand Pandey and another vs. State of West Bengal and others**, reported in (1987) 2 SCC 295, (iii) **Techi Tagi Tara vs. Rajendra Singh Bhandari**, reported in (2018) 11 SCC 734 and (iv) **Intellectuals Forum, Tirupathi vs. State of A.P. and others**, reported in (2006) 3 SCC 549. The action of the government is contrary to the spirit of protecting the nature, the beauty and the environment of the area. The same is also violative of Article-48A of the Constitution of India.

Ground (g) states that the compensation though awarded was not paid to the respective landowners.

Ground (h) refers to the non-utilization of the land acquired for the purpose for which it was

acquired and the actual possession still continuing with the *Adivasi/tribals*. Reference has been made to Section-16 of the 1894 Act and Section-24(2) of the 2013 Act.

Ground (i) refers to a report of Grievance Redressal Authority directing the respondents not to change the purpose of acquisition without prior sanction.

Ground (j) refers to Section-99 of 2013 Act prohibiting any change of purpose of the acquired land.

Ground (k) refers to expropriation activities carried out by the government which is not permitted under the 1894 Act or the 2013 Act.

Ground (l) refers to the following judgments of the Supreme Court stating that there is violation of the provisions of the Indian Forest Act, 1927. Further reference has been made to the following judgment: **(i) Maharashtra Land Development Corporation and others vs. State of Maharashtra and another**, reported in **(2011) 15 SCC 616** and

(ii) State of Uttarakhand and others vs. Kumaon Stone Crusher, reported in **(2018) 14 SCC 537**.

Ground (m) mentions that mere mutation of the name of the government or the SSNL without actual possession cannot justify the action of the State.

Ground (n) refers to non-consultation with the Gram Sabha under the provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996.

19. Based on the above facts and grounds, the reliefs as already noted above have been claimed by the petitioners for the benefit of the residents of the six villages from being dispossessed.

20. On behalf of the State, an affidavit-in-reply dated 21.08.2019 was filed which was duly sworn by the Deputy Collector and Administrator, Kevadia Colony, Narmada, under the authorization of the Managing Director, SSNL. Paragraphs-1 to 5 of the affidavit-in-reply refer, in brief, to the facts, grounds and the reliefs claimed. In paragraph-6, preliminary objection has been raised to the effect

that the petitioners have no *locus standi* to maintain this petition in the form of Public Interest Litigation. Paragraph-7 of the affidavit-in-reply gives the facts as per the stand of the State respondents. Paragraphs-7.1 and 7.2 refer to the dates of acquisition, Notification under Section-4 and declaration under Section-6 and also the details of the area and the number of Khatedars evicted in the six villages referred to by the petitioners. It is specifically stated that in village Kothi, no area was acquired and acquisition was only in respect of five villages. It further mentions that awards were given with respect to each of the acquisition; that the amount of compensation determined was deposited with the Treasury; and that the same was withdrawn by the landholders/claimants. Annexure-R/1 is the collective compilation of the details of land acquisition of respective villages, amount awarded, deposited in Treasury, and its repayment date etc.

21. Paragraph-7.3 of the affidavit-in-reply gives the details *vide* Annexure-R/2 about the disbursement of the compensation and its acknowledgment. Paragraph-7.3 refers to the constitution of Narmada

Water Dispute Tribunal for adjudication of disputes under Section-5(3) of the Inter-State River Water Disputes Act, 1956 and its award dated 07.12.1979 filed as Annexure-R/3. Paragraph-7.4 refers to Government Resolutions dated 11.06.1979 extending the benefits to the 'oustees' from the States of Maharashtra and Madhya Pradesh which proposes benefits including resettlement grants, grant-in-aid, allotment of agricultural land, ex-gratia payment and rehabilitation of landless families.

22. Paragraph-7.5 of the affidavit-in-reply refers to constitution of an autonomous body namely Sardar Sarovar Punarvasvat Agency (In short "SSPA") in the year 1988 by the State Government to look after the project affected families as few landholders were raising grievance regarding rehabilitation and resettlement. Paragraph-7.6 of the affidavit-in-reply refers to Government Resolutions dated 16.02.1999 for constitution of higher level autonomous authority of the State of Gujarat as well as State of Madhya Pradesh under the directions of the Supreme Court. Paragraph-7.7 refers to a directive issued by the

Grievance Redressal Authority vide communication dated 11.02.2000 (Annexure-R/5) requiring maintenance of status-quo. Paragraph-7.8 of the affidavit-in-reply gives the details of the area acquired, area utilized, benefits of rehabilitation project having been received by a large number of Khatedars on the basis of information received by the Grievance Redressal Authority. Annexure-R/6 is a communication dated 13.07.2004 by which the Grievance Redressal Authority held that these six villages in question were not covered by the award of the subsequent packages giving additional beneficial facilities to the persons covered under the award.

23. In paragraph-7.9, it is stated that upon representations being received by the State Government, the State resolved vide Government Resolution dated 09.08.1992 to extend similar benefits of the packages even to the affected persons of these six villages. The said resolution dated 09.08.1992 is filed as Annexure-R/7. The same paragraph also mentions the highlights of the 1992 package.

24. Paragraph-7.10 states that pursuant to the package offered, the original Khatedars received the benefits and had willingly surrendered the possession of the land under acquisition. It also mentions that subsequently the package was amended by offering something more which details are also mentioned.

25. Paragraph-7.11 refers to another package floated by the State Government in the year 2013 and its highlights. It also mentions that benefits under the said package of 2013 was also received by the farmers. It again mentions that by another Resolution of 2015, additional benefits were extended. These packages of 2013 and 2015 have been filed as Annexure-R/8 and R/9. It further refers to another amended resolution of 2018, a copy whereof is filed as Annexure-R/10. Further, Annexure-R/11 is a copy of the details of the beneficiaries who had received the benefits under the Government Resolution of 1992, 2013, 2015 and 2018. Lastly, it is mentioned that actual physical possession of 1814.65 Acres belonging to 401 Khatedars of the aforesaid six villages with respect to which acquisitions being taken place in

the years 1961 to 1963 was taken and further additional compensation offered by way of packages was willingly accepted by land-holders. Even constructions were raised as far back as in 1979 till 1984 but later on as the constructions were dismantled, some of the landholders unauthorizedly reentered into the possession of the land and now claiming to be in continuous possession. Annexure-R/12 is a copy of the details of construction.

26. Paragraph-8 of the affidavit-in-reply deals with the legal submissions in response to the legal grounds raised by the petitioners to which we are not referring at present.

27. Paragraph-9 refers to certain future prospects which also we are not referring at present. Annexure-R/13 which is a part of the legal submissions, is a copy of the Panchayats (Extension to the Scheduled Areas) Rules, 2017. Annexure-R/14 and R/15 refer to the future prospects. Annexure-R/14 reflects the figures of visitors at the Statue of Unity between a certain period. Annexure-R/15 is a copy of the details about employment availed by the local people.

28. An additional affidavit dated 22.11.2019 was also sworn by respondent No.4 – Deputy Collector and Administrator, Kevadia Colony, Narmada. The contents of this affidavit gives a detailed analysis of the list of the persons mentioned in Annexure-A to the writ petition. It gives details of their descendants, the descendants who have received the compensation, details of their land. We may note here that these details have been provided village-wise and relevant documents in support thereof have also been annexed with this affidavit.

29. The petitioners have filed an affidavit-in-rejoinder duly sworn by Mr.Moses Daniel Mazgankar (petitioner No.2). The contents of this affidavit are basically denial of the contents of the affidavit-in-reply of the respondent-State. This affidavit is dated 16.12.2019. The petitioners have also filed additional affidavit-in-rejoinder, in reply to the additional affidavit of respondent No.4. This affidavit is also dated 16.12.2019. Thereafter, petitioner No.2 further filed additional affidavit on behalf of the petitioners dated 24.12.219 clarifying

certain facts.

30. We have heard Shri N.M.Kapadia, learned counsel for the petitioners and Shri Kamal Trivedi, learned Advocate General along with Ms.Manisha Lavkumar Shah, learned Government Pleader assisted by Shri J.K.Shah, learned Assistant Government Pleader for the State – respondents.

31. At the outset, Shri Kamal Trivedi, learned Advocate General raised a preliminary objection to the effect that the present petition framed as Public Interest Litigation would not be maintainable and that the petitioner would not have any *locus standi* to maintain this petition. It was submitted that a Public Interest Litigation in respect of the acquisition of land at the instance of a third person would not be maintainable as the legal right in respect of the land is that of the landowner and such landowner alone would have a right to assert about violation of any rights conferred under Article-300A of the Constitution or any of the provisions of the 1894 Act or the 2013 Act.

32. Shri Kapadia, learned counsel for the petitioners while defending the rights of the petitioners to maintain the present Public Interest Litigation submitted that since it was in the larger public injury of the people who belong to Scheduled Tribe and are poor and downtrodden as well as Socially and Educationally Backward, who find themselves inept and helpless in approaching the Court, as such the present petitioners have taken up their cause and that is how the present petition has been filed as Public Interest Litigation and this Court may not throw out the petition on the said ground of preliminary objection. It is also submitted that it affects large number of persons about 1800 belonging to 295 different families. Shri Kapadia has referred to the relevant provisions of the High Court of Gujarat (Practice and Procedure for Public Interest Litigation) Rules, 2010 and further placed reliance upon a number of judgments of the Supreme Court, the Gujarat High Court and other High Courts also listed below :

- (1) **People's Union for Democratic Rights vs. Union of India**, reported in (1982) 3 SCC 235 (relevant paras-2, 3, 9 and 11).

- (2) **Bandhua Mukti Morcha vs. Union of India**, reported in 1984 SCR (2) 67 (relevant paras-11, 14, 15, 185, 186, 188 and 189).
- (3) **State of Himachal Pradesh vs. A Parent of a Student of Medical College Simla and others**, reported in 1985 3 SCC 169 (relevant para-5).
- (4) **Sheela Barse vs. Union of India**, reported in (1988) 4 SCC 226 (relevant paras-11 and 12).
- (5) **Akhil Bharatiya Soshit Karmachari Sangh vs. Union of India**, reported in 1981 (1) SCC 246 (relevant para-62).
- (6) **S.P.Gupta vs. Union of India**, reported in 1981 (Supp.) SCC 87 (relevant paras-13, 17, 23 and 25).
- (7) **Olga Tellis and others vs. Bombay Municipal Corporation and others**, reported in 1985 (3) SCC 545.
- (8) **Banwasi Seva Ashram vs. State of U.P.**, reported in 1986 (4) SCC 753 (relevant para-1).
- (9) **B. Anjanappa and others vs. Vyalikaval House Building Cooperative Society Limited and others**, reported in 2012 (10) SCC 184 (relevant para-27).
- (10) **Lingappa Vs. State of Maharashtra**, reported in (1985) 1 SCC 479.
- (11) **State of M.P. vs. Naramade Bachao Andolan**, reported in (2011) 7 SCC 639.
- (12) **Farook Shaikh vs. State of Gujarat**, reported in 2013 (3) GLH 288 (relevant paras-11 and 13).
- (13) **Railway Corridor Virodh Kishan Sangh and others Vs. UOI and others**, reported in 2013 (2) GLR 1646 (relevant paras-16 to 19).

- (14) **Action Research in Community Health and Development and others vs. State of Gujarat and others**, being Writ Petition (PIL) No.100 of 2011, decided on 03.05.2013.
- (15) **Union of India vs. Nandkishore**, reported in 1982 SCC Online 147 (relevant paras-9, 18, 36 and 37).
- (16) **Prahladsingh vs. Union of India**, reported in 2011 (5) SCC 386 (relevant paras- 9, 12, 13, 19, 20 and 22).
- (17) **Karnil Kaur vs. State**, reported in 2015 (3) SCC 206 (relevant paras-6, 8,, 11, 18, 23 and 27).
- (18) **Anamallai Club vs. Government of Tamil Nadu**, reported in 1997 (3) SCC 169 (relevant paras-6, 8 and 9).
- (19) **Chairman Indore Vikas Pradhkaran**, reported in 2007 (8) SCC 169 (relevant paras-53 to 56).

33. On the other hand, Shri Trivedi relied upon the following judgments in support of his preliminary objection :

- (1) **State of Maharashtra V. Digambar**, reported in (1995) 4 SCC 683 (relevant paras-3, 14, 25 and 26).
- (2) **Northern Indian Glass Industries vs. Jaswant Singh and others**, reported in (2003) 1 SCC 335 (relevant paras-9).
- (3) **Mahavir and others vs. Union of India and another**, reported in (2018) 3 SCC 588 (relevant paras-1,7, 14, 23 to 27).
- (4) **Balco Employees' Union (Regd.) vs. Union of India**, reported in (2002) 2 SCC 333

(relevant paras-79, 80, 83, 88, 90 and 99).

- (5) **State of Uttaranchal Vs. Balwant Singh Chaufal and others**, reported in (2010) 3 SCC 402 (relevant paras-39, 105 and 181).
- (6) **Shree Shree Ram Jankiji Ashthan Tapovan Mandir and another vs. State of Jharkhand and others**, reported in (2019) 6 SCC 777 (relevant paras-8 to 10).
- (7) **Surendra Pratap Singh vs. State of M.P. And others**, reported in 2019 (1) MPLJ 75.

34. Having considered the respective submissions made by the learned counsels as we have observed above in the narration of facts stated in the petition and the pleadings on record, the affidavit-in-reply, the additional affidavit, there can be no denial that there are disputed questions of fact. There can also be no denial that the land of the villagers referred to in this petition was acquired. There is also no denial by the petitioners that awards were passed. However, insofar as receiving the compensation by the ancestors of the present residents is concerned, the petitioners have been not very specific and not very committal, but evasive. All the time and repeatedly the petitioners have stated that the respondent-State should be directed or called upon to prove that the compensation has

been paid and received by the ancestors of the villagers who are presently residing and occupying the land. In fact, once the State has come up with the specific stand and has given the details of the then Khatedars at the time of acquisition having received not only the compensation determined under the award but also the additional benefits extended through various packages offered by the State right from 1992 onwards till 2018, whatever statement has been made by the present petitioners who are neither the landholders nor are in possession of the land and that too on the basis of their submission of affidavit would have little relevance which otherwise also is not specific. Further, even the present residents in the six villages had not claimed by way of any separate affidavit or statement that they were witness to their forefathers statement given to them that they did not receive any compensation. It is not even the case of hearsay or a statement of their forefathers being conveyed to them that they did not receive any compensation or additional benefits under the package. Any information on the basis of which the four petitioners have filed this petition

alleging non-payment of compensation is thus completely without any basis and inadmissible in law.

35. Further, each and every residents of the six villages claiming occupation and possession of the land will have to independently and individually claim any right of compensation not being paid, their forefather not being evicted and the State Government having not taken possession of the land. Such rights are individual rights attached with each of the present residents who are claiming possession. Thus also, the petition on behalf of such 1800 persons (295 families) cannot be entertained as a Public Interest Litigation. None of the case-laws relied upon by the learned counsel for the petitioners have held that such a petition in respect of land of others would be maintained by third party not having any interest whatsoever in the land.

36. Further, after the judgment was reserved and during the preparation of the judgment, the Constitution Bench of the Supreme Court in the case of **Indore Development Authority vs. Manoharlal and others**, has delivered its judgment on 06.03.2020. The

ratio laid down by the Constitution Bench by answering the questions are mentioned in paragraph-363 of the judgment which is reproduced here :

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

1. Under the provisions of Section 21(1)(a) in case the award is not made as on 01.01.2014 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.

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.

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 01.01.2014. 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. 01.01.2014. 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."

37. The Constitution Bench has clearly held that no right would accrue to erstwhile landowners whose lands had been acquired and compensation paid to claim benefits of Section-24(2) only on the ground of possession. Such claimants would have to establish and pass both the tests of compensation not being paid to them and also that they are continuing in possession. The Constitution Bench further held that deposit of the compensation with the Treasury under Section-31(1) would be sufficient compliance of the fact that compensation has been paid. In the present case, no dispute has been raised that compensation was not deposited with the Treasury, whereas the

State has specifically stated on oath and has also filed documents to show that compensation was not only deposited in the Treasury, but also received by the claimants. The Constitution Bench further held that compensation offered and not received by the claimant would amount to compensation being paid.

38. Thus, the vague and bald assertion by the petitioners that compensation has not been paid, can be of no benefit to the residents presently residing in the villages. May be by filing separate petitions individually, the residents may succeed in establishing and passing their twin test laid down by the Constitution Bench in the case of **Indore Development Authority (supra)**, but the present petitioners by filing this petition as Public Interest Litigation instead of giving any benefit may actually result in harming the residents of the villages who are presently occupying the land.

39. In view of all the reasons recorded above, the writ petition fails and is dismissed, however, without affecting the rights of the individual residents to claim benefit of Section-24(2) of the

2013 Act in view of the Constitution Bench judgment
in the case of **Indore Development Authority (supra)**.

(VIKRAMNATH,CJ)

GAURAV J THAKER

(ASHUTOSHJ. SHASTRI,J)

