

ORISSA HIGH COURT : CUTTACK

W.P.(C) No. 10219 OF 2016

In the matter of an application under Articles 226 and 227
of the Constitution of India, 1950.

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1. Surendranath Sahu
 2. Rabindranath Sahu

Both are sons of Late Basudev Sahu
of Village: Kapileswar, P.O.: Old Town
P.S.: Shree Lingaraj, City: Bhubaneswar
District: Khordha

Petitioners



-VERSUS-

1. State of Odisha
represented by
Principal Secretary to Government
Revenue and Disaster Management Department
Lok Seva Bhawan, Lok Seva Marg, Unit-2
Bhubaneswar – 751 001
2. Land Acquisition Collector
Khordha
3. Bhubaneswar Municipal Corporation
represented by Commissioner
Bhubaneswar
4. Bhubaneswar Development Authority
represented by Secretary
Bhubaneswar

... Opposite Parties

Counsel appeared for the parties:

For the Petitioner : M/s. Ashok Kumar Panigrahi,
L.K. Behera and B.S. Das,
Advocates

For the Opposite Parties : Mr. Amiya Kumar Mishra,
Additional Government Advocate
for the opposite party Nos.1 & 2

M/s. Debadutta Behura,
Dipanshu Das and Bhaktisudha
Sahoo, Advocates

for intervenors-Sri Siba Prasad
Dash, Sri Bhagirathi Behera,
Smt. Laxmi Behera, Sri
Biswanath Senapati, Sri Babuli
Malia and Sri Deba Prasad Dash

M/s. Siba Narayan Biswal and
S.K. Mohanty, Advocates

for intervenors-Ms. Manjulata
Nanda, Sri Adikanda Sahoo,
Prahallad Panda, Ms. Renubala
Panda, Sri Prahallad Sahoo, Ms.
Ranjita Panda and Ms. Kuntala
Chhatoi.

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R. SARANGI
AND**

THE HONOURABLE MR. JUSTICE MURAHARI SRI RAMAN

Date of Hearing: 28.07.2023 :: Date of Judgment: 03.08.2023

MURAHARI SRI RAMAN, J.—

THE CHALLENGE:

The petitioners, sons of Late Basudev Sahu, in whose
favour subject-land acquired under the provisions of the

Land Acquisition Act, 1894 (hereinafter for convenience referred to as “LA Act”), by the opposite parties stood recorded in the Record-of-Right, have sought to invoke extraordinary jurisdiction of this Court under Article 226/227 of the Constitution of India, by making following prayer(s):

“Under the aforesaid circumstances, more fully narrated here-in-above the petitioners most humbly pray that this Hon’ble Court may graciously be pleased to admit this writ application and be pleased to issue notice to the Opposite Parties as to why,

- i) the Notification dated 24.06.1985 under Annexure-5 shall not be declared ultra vires;*
- ii) the land acquisition proceeding bearing L.A. Case No. 6/1986 shall not be quashed;*
- iii) the petitioners shall not be restored to the land in question measuring Ac.0.15 dec. (sic. Ac.0.015 dec.) out of total Ac.0.65 dec. (sic. Ac.0.065dec.) in Plot No.1884 under Khata No. 493 as per Annexure-1;*
- iv) And pleased to hold that the Notification under Annexure-5 is ultra vires being in opposition to the provision of Law under the said Act;*
- v) And pass such other order(s)/direction(s) as this Hon’ble Court deems fit and proper; ***”*

CASE OF THE PETITIONERS AS OUTLINED IN THE WRIT PETITION:

- 2.** Facts as adumbrated in the writ petition reveal that the petitioners are the legal heirs of Late Basudev Sahu, the recorded owner of the land measuring Ac.0.065 dec. in

Plot No. 1884, Khata No. 493 situated at Mouza: Kapilaprasad, which corresponds to Sabik Plot No. 887 in Sabik Khata No. 179 as per the Hal Settlement Record-of-Right. The opposite parties have taken over possession of the land measuring Ac.0.015 dec. out of Ac.0.065 dec. for construction of approach road under the provisions of the LA Act.

- 2.1. The petitioners have submitted that in the year 1981 certain private persons (no details are provided) filed a suit bearing O.S. No. 55 of 1981 against the father of the petitioners, namely Basudev Sahu before the learned Court of the Munsif, Bhubaneswar, District Puri (now, Khordha) claiming therein their right of easement for having a passage on the portion of land measuring Ac.0.065 dec. The said suit was dismissed on contest on 22.04.1982.
- 2.2. The opposite party No. 3-Bhubaneswar Municipality (now, Bhubaneswar Municipal Corporation) on 29.09.1982 moved with a requisition for acquisition of land, *i.e.*, the land claimed to be belonging to the petitioners (as legal heirs of Basudev Sahu), which was also subject matter of the aforesaid suit, since dismissed on contest, for construction of approach road.
- 2.3. In consideration of the requisition, Notification Nos.28797 and 28798 have been issued by the Government of Odisha in Revenue Department under

Section 4(1) read with sub-sections (1) and (4) of 17 of the LA Act, *vide* Extraordinary issue of Gazette of Odisha bearing No. 587, dated 19.05.1983. The position and paraphernalia for taking over possession of the land in question continued which stood revised under Section 6 of the LA Act by Revenue Department Declaration No. 31401/R, dated 12.06.1985 published in Extraordinary issue of Odisha Gazette No.890, dated 24.06.1985.

2.4. The petitioners have admitted that the land was acquired by the Land Acquisition Collector and compensation has been awarded.

2.5. However, challenge has been laid *inter alia* on the ground that the acquisition of land is actuated and perpetrated in a high handed manner inasmuch as prior to the acquisition of land residents staying in the vicinity had filed a civil suit against Basudev Sahu, the father of the present petitioners, *vide* O.S. No. 55 of 1981 claiming right of easement, which came to be dismissed on contest on 22.04.1982. The present proceeding bearing LA Case No. 6 of 1986 was initiated pursuant to the requisition made by the opposite party No.3-Bhubaneswar Municipality which was moved on 29.09.1982.

2.6. It is asserted by the petitioners that in connection with objection raised before the Land Acquisition Collector, a fact finding enquiry was caused. The concerned Officer

on ascertaining whether there exists necessity for construction of approach road for public purposes submitted report indicating that there exists a link road for public purposes and the construction of proposed road would not be necessary.

2.7. While the matter stood thus, the opposite parties concluded the land acquisition process and issued a letter on 29.05.2015 seeking police help for eviction of the petitioners after long lapse of time from the date of notification for acquisition of land for construction of approach road. It is alleged that such an action manifestly violates the principle of natural justice and the notification is, therefore, issued in colourable exercise of power.

2.8. This apart, the acquisition of land to the extent Ac.0.015 dec. having reduced the extent of total area possessed by the petitioners caused inconvenience. The acquisition of land in question being one under Section 17(4) of the LA Act, the Notification therefore ought to have been issued keeping in view the emergent necessity for public purpose. In absence of necessity of acquisition of land, there was no warrant for exercise of power under Section 17.

2.9. It is also stated that in absence of urgency, there was no necessity for construction of road. As such, the pre-requisite or condition precedent for invocation of power

conferred under Section 17 of the LA Act was lacking. Hence, the petitioners pleaded that the impugned Revenue and Excise Department Declaration made under Section 6 of the LA Act, 1894 bearing No.31401-LA-46/85-Puri-R.E., dated 12.06.1985 [published in the Extraordinary issue of the Odisha Gazette No.890, 24.06.1985] *vide* Annexure-5 is *ultra vires*.

COUNTER-AFFIDAVIT FILED ON BEHALF OF OPPOSITE PARTY NOS.1 AND 2:

3. After following statutory formalities, the land in question has been acquired for public purpose to cater to the needs of the larger interest. The possession of the acquired land had been delivered to the Requisitioning Officer on 26.10.1990. The abatement statement has been submitted *vide* Letter No.1585, dated 03.12.1990. Thus, the land acquisition proposal has been completed following due procedure laid down in the LA Act, 1894 since 1990.

MATERIAL CULLED OUT FROM THE APPLICATION OF THE INTERVENERS:

4. The interveners namely Siba Prasad Dash, Bhagirathi Behera, Laxmi Behera, Biswanath Senapati, Babuli Malia, Deba Prasad Dash of Kapilaprasad, claiming to be interested persons in the present *lis* as they reside in the vicinity of subject-land and users of approach road for which the land in question was acquired, filed Misc.

Case No.11872 of 2016 for participating in the writ proceeding.

4.1. *Vide* Notification No.28797-LA-25/83/Puri, dated 05.05.1983, of the Government of Odisha in Revenue Department, it has been stated that land measuring Ac.0.015 dec. was required in the Village Kapilaprasad. Therefore, said Department in exercise of provisions contained in Section 17(4) of the LA Act issued Notification No.28798-LA-25/1983/Puri-R.E., dated 05.05.1983, wherein it has been stated that Section 5A of the said Act does not apply to the present purpose. After due adherence to the provisions of the statute, the land in question was acquired by the Revenue Department of the Government of Odisha *vide* Declaration bearing No.31401, dated 12.06.1985 under Section 6 of the LA Act. Acknowledging said fact, the Government of Odisha in Revenue Department issued Letter bearing No.13007-LA-46/1985/Puri-R.E., dated 22.02.1986 indicating that the Collector, Puri was the competent authority to take over the possession of the land; with a copy of said letter to the Housing and Urban Development Department for sanction of estimate of cost.

4.2. After determination of compensation amount, the Land Acquisition Collector issued Form 20, dated 01.09.1988 in favour of Late Basudev Sahu (father of the writ petitioners in whose favour Record-of-Right stood at the

relevant point of time) mentioning therein that compensation awarded under the provisions of the LA Act, 1894 has been placed in revenue deposit with Puri Treasury, *vide* Challan No.2 dated 21.07.1988.

4.3. Basudev Sahu filed a suit bearing Title Suit No.20 of 1993 before the Civil Judge (Junior Division), Bhubaneswar against Bhubaneswar Municipality praying for decree of permanent injunction restraining the defendants not to interfere with the plaintiff's possession, not to make any construction and not to demolish any structure in respect of suit land. Said suit came to be dismissed for default *vide* Order dated 03.07.1995. Misc. Case No.206 of 1995 filed under Order 9, Rule 9 of the Code of Civil Procedure, 1908 for restoration of Title Suit No.20 of 1993 was also dismissed for default *vide* Order dated 25.09.1996.

4.4. In another suit being Title Suit No.205 of 1988 pending before the Civil Judge (Junior Division), Puri for declaration that "alleged acquisition of the suit property made by the defendants in Land Acquisition Case No.6/1986 and Misc. Case No.17/1983 is illegal and void and for permanent injunction against the defendants restraining them from interfering with the possession of the plaintiffs over the suit property" came to be disposed of *vide* Judgment dated 08.09.1995 with an order to return of plaint under Order 7, Rule 10 of

the Code of Civil Procedure, 1908, for presenting before proper Court.

4.5. It is asserted by the interveners that though Bhubaneswar Municipality (now, Bhubaneswar Municipal Corporation) has been handed over possession way back in 1990 by virtue of an Order dated 26.10.1990, no records were available in the Office of the Corporation. On much persuasion, documents were collected and upon reconstruction of records, unauthorized construction standing over Plot No.887, Khata No.179 measuring Ac.0.015 dec. has been demolished on 01.06.2015. Due intimation was sent to the Tahasildar, Bhubaneswar for effecting necessary corrections in the Record-of-Right.

4.6. It is further brought to the notice of this Court that the petitioner No.1 filed CRLMC No.825 of 2015 under Section 144 of the Code of Criminal Procedure, 1973, against the interveners namely Siba Prasad Dash and Deba Prasad Dash and taking advantage of restraintment orders, the petitioners have made construction over the land. Be that as it may, the Tahasildar, Bhubaneswar *vide* Letter No.2518, dated 19.02.2016 intimated the Deputy Commissioner (Recovery), Bhubaneswar Municipal Corporation about the corrections being effected in the Record-of-Right in favour of the Bhubaneswar Municipal Corporation in Khata No.1215, Plot No.1884/4229 on the strength of Abatement Case

No.20/2015 in respect of Hal Plot No.1884, Khata No.493, Mouza: Kapilaprasad corresponding to Sabik Plot No.887, Khata No.179 measuring an area of Ac.0.015 dec., with kisam “*Rasta Sadaka*”.

4.7. Therefore, the interveners prayed for dismissal of the writ petition on the ground of suppression of material fact by the petitioners.

4.8. To such a prayer, the petitioners have filed objection by way of Affidavit dated 16.09.2016 sworn to by Surendranath Sahu *inter alia* stating that the interveners have no *locus standi* inasmuch as no challenge has been laid against the Judgment dated 22.04.1982 of the Munsif, Bhubaneswar passed in Original Suit No.55 of 1981.

ARGUMENTS ADVANCED BY THE RESPECTIVE PARTIES:

5. Sri Ashok Kumar Panigrahi, learned advocate appearing for the petitioners would submit that the verdict of civil court protected the right of Late Basudev Sahu, defendant in OS No.55 of 1981 way back in the year 1982, whereby it was held that the plaintiffs could not rebut the presumptive value of correctness of settlement Record-of-Right finally published in the year 1962 in respect of Plot No.887 and the settlement entry of the year 1962 in respect of said plot was held to be correct. Therefore, the acquisition process under the LA Act becomes invalid and incompetent.

5.1. The learned counsel for the petitioner urged that since no compensation was paid, even though it is considered that award has been passed and notice in Form 20 indicating deposit of compensation under Rule 10 has been issued on 01.09.1988, in view of provisions contained in Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short, "RFCTLARR Act") the land acquisition proceeding is deemed to have been lapsed. Valiant attempt was made by Sri Ashok Kumar Panigrahi placing reliance on the decision of the Hon'ble Supreme Court of India in the case of *Karnail Kaur Vrs. State of Punjab*, (2015) 3 SCC 206, to contend that 2nd proviso to sub-section (2) of Section 24 of the RFCTLARR Act having been brought to force with effect from 01.01.2015 by virtue of the RFCTLARR (Amendment) Ordinance, 2014, the land acquisition proceeding is to be treated as lapsed.

6. Sri Amiya Kumar Mishra, learned Additional Government Advocate along with Ms. Bhaktisudha Sahu and Sri S.N. Biswal, Advocates for the interveners vehemently opposing the contentions of Sri Ashok Kumar Panigrahi, the counsel for the petitioner, has brought the attention of this Court to the record of proceedings being LA Case No.6 of 1986 and submitted that the authority concerned having fixed the market value of the subject-land *vide* Order dated 19.05.1984,

invited objections and considered the objection raised by the petitioner No.1. *Vide* Order dated 06.11.1986 the Land Acquisition Collector recorded satisfaction that the approach road was necessary for which there arose necessity for acquisition of private land. Accordingly he directed for revision of estimate of value of the land. On 22.01.1987, the Requisitioning Officer deposited the required amount as per revised estimate and draft award was prepared. On 09.03.1988 it was recorded as follows:

“Action in the file has been badly delayed. Inform the awardee to receive the compensation amount awarded in his favour on 21.03.1988 at Headquarters failing which the amount be deposited into the Treasury under civil deposit.”

- 6.1. Since the awardee did not turn up on the date fixed, the amount was credited to the Treasury and kept in the civil deposit. *Vide* Order 26.10.1990 it has been recorded by the authority that “possession of the acquired land measuring Ac.0.015 dec. delivered”.
- 6.2. It is, therefore, contended by Sri Amiya Kumar Mishra that the step taken by the Bhubaneswar Municipal Corporation in the year 2015 for demolition of structure constructed by encroachers would not be indicative of fact that the delivery has been taken much after introduction of the RFCTLARR Act, 2013. The factual position as transpired from the record of the Land Acquisition Authority clichés that the delivery of possession was taken in 1990 and the compensation

amount was deposited in the year 1988 itself with the Treasury as Basudev Sahu did not respond even though notice/intimation was served on him. Under the aforesaid scenario, the argument of the learned counsel for the petitioners, that Section 24(2) of the RFCTLARR Act that the land acquisition proceeding undertaken under the LA Act, 1894 lapsed, does not bear sanctity.

STATUTORY PROVISIONS:

7. Sections 24, 25 and 114 of the RFCTLARR Act, 2013, stand thus:

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.—

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said Section 11 has been made five years or more prior to the commencement

of this Act but **the physical possession of the land has not been taken or the compensation has not been paid** the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

¹*[Provided further that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a Tribunal for taking possession or such period where possession has been taken but the compensation lying deposited in a court or in any account maintained for this purpose shall be excluded.]*

²*[Provided further that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a tribunal for taking possession or*

¹ Inserted by virtue of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (Amendment) Ordinance, 2014 [9 of 2014].

² Inserted by virtue of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (Amendment) Ordinance, 2015 [4 of 2015].

such period where possession has been taken but the compensation lying deposited in a court or in any designated account maintained for this purpose shall be excluded.]

³*[Provided further that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a Tribunal for taking possession or such period where possession has been taken but the compensation is lying deposited in a court or in any designated account maintained for this purpose, shall be excluded.]*

25. *Period within which an award shall be made.—*

The Collector shall make an award within a period of twelve months from the date of publication of the declaration under Section 19 and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that the appropriate Government shall have the power to extend the period of twelve months if in its opinion, circumstances exist justifying the same:

Provided further that any such decision to extend the period shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned.

114. *Repeal and Saving.—*

- (1) *The Land Acquisition Act, 1894 [1 of 1894] is hereby repealed.*

³ Inserted by virtue of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (Amendment) Second Ordinance, 2015 [5 of 2015].

(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.”*

8. Sections 11 and 11A of the LA Act, 1894, before repeal stood thus:

“11. Enquiry and award by Collector.—

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

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

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

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

- (2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.*
- (3) The determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.*
- (4) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under sub section (2) shall be liable to registration under that Act.*

11A. Period within which an award shall be made.—

The Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of

1984), the award shall be made within a period of two years from such commencement.

Explanation.—

In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.”

LEGAL POSITION AND INTERPRETATION OF SECTION 24 OF THE RFCTLARR ACT, 2013 VIS-À-VIS THE LA ACT, 1894:

9. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013 replaced the Land Acquisition Act, 1894 with effect from 1st January, 2014. The RFCTLARR Act provides for higher compensation to those deprived of land by the Government for both public and private sector projects. It also mandates the consent of a majority of land-owners and contains provisions for rehabilitation and resettlement. Under Section 24(2) of the RFCTLARR Act, 2013 land acquisition made under the LA Act, 1894 lapses if the award of compensation had been made five years before the 01.01.2014, but has not been paid. In such cases, the process will have to be gone through afresh under the RFCTLARR Act, 2013.

9.1. The core issue cropped up before the Hon'ble Supreme Court as to feasibility to initiate fresh land acquisition proceeding under the RFCTLARR Act, 2013 by virtue of

Section 24(2) *ibid.* as the land acquisition proceedings under the LA Act, 1894 gets lapsed. There are cases in which the land owners refused to accept the compensation, which led to delay in taking over possession by the Government. Under such premise, the compensation amount is deposited in the Government Treasury.

9.2. According to one interpretation, if this is done, the acquisition process is saved. In view of others, such cases will fall within ambit of the RFCTLARR Act, 2013, because compensation has not been paid to the land-owners, and the lapsing clause in Section 24 would be made applicable. If through interpretation, a long pending land acquisition process initiated under the LA Act is closed and fresh acquisition proceedings is commenced under the RFCTLARR Act, 2013, the land-owners stand to benefit. Nonetheless, the project proponents will have to pay higher compensation. Therefore, the provision concerned has often been subject matter of litigation.

9.3. Piquant situation arose where acquisition of land that had taken place earlier than five years before commencement of the RFCTLARR Act, 2013, the acquisition proceeding under the LA Act, 1894 lapsed in the event the compensation amount was not paid to the land-owners or in cases where such owners refused to accept the compensation, but deposited in court.

9.4. Five-Judge Constitution Bench of the Hon'ble Supreme Court of India decided pertinent issues on 06.03.2020 in *Indore Development Authority Vrs. Manoharlal*, reported at (2020) 8 SCC 129 = (2020) 3 SCR 1, wherein it has been held as under:

"226. Thus, in our opinion, the word "paid" as 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 1894 Act, 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.

244. *The proviso to Section 24(2) of the 2013 Act, 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 landholdings, 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 the proviso to Section 24(2) of the 2013 Act. Even otherwise, if deposit in treasury is irregular, then the interest would follow as envisaged under Section 34 of the 1894 Act. Section 24(2) is attracted if acquisition proceeding is not completed within 5 years after the pronouncement of award. *** The 2013 Act 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 2013 Act never intended revival of 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. ****

245. *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 1894 Act 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 2013 Act came into force. It does not apply to concluded proceedings before the Collector after which it becomes functus officio. Section 24 of the 2013 Act, does not confer benefit in the concluded proceedings, of which legality if questioned 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 landholdings in a pending proceeding, higher compensation under the 2013 Act 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 1894 Act 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.*

247. *The question which arises whether there is any difference between taking possession under the 1894 Act and the expression “physical possession” used in Section 24(2). As a matter of fact, what was contemplated under the 1894 Act, by taking the possession meant only physical possession of the land. Taking over the possession under the 2013 Act always amounted to taking over physical possession of the land. When the State Government acquires land and draws 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 is 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.*

279. *The Court is alive to the fact that there 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 land-owners' 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 Vrs. Union of India, (2015) 4 SCC 325 and State of M.P. Vrs. Narmada Bachao Andolan, (2011) 7 SCC 639, paras 78-85 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 2013 Act.”

9.5. In concluding paragraph 366 the Supreme Court of India in the aforesaid case laid down as follows:

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

366.1. Under the provisions of Section 24(1)(a) in case the award is not made as on 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.

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

366.3. The word 'or' used in Section 24(2) between possession and compensation has to be read as 'nor' or as 'and'. The deemed lapse of land acquisition proceedings under Section 24(2) of the 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.

366.4. 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 (land-owners) 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 'land-owners' as on the date of notification for land acquisition under Section 4 of the Act of 1894.

366.5. 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.

366.6. 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). सत्यमेव जयते

366.7. 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).

366.8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the 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.

366.9. 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 land-owners 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.”

ANALYSIS AND DISCUSSIONS:

- 10.** Uncontroverted fact emanating from the pleadings and record of proceeding as forming part of petition(s) unequivocally settles that after following the manner and modality provided under the LA Act, 1894, on 21.03.1986 the Amin was directed to demarcate the land as required under Section 8 and objections were invited from the interested persons. The petitioner No.1 filed objection and produced documents sought for by the authority. Upon due enquiry and spot visit, it was finally found, as recorded in the Order-Sheet dated 06.11.1986 that the approach road to Plot Nos.885, 1049, 1084 etc. was absolutely necessary. Though notice was served on the awardee to receive the amount of compensation, it is revealed from the Order-Sheet dated 29.01.1987 that he

did not turn up, as a consequence thereof the amount was deposited with the Government Treasury. Record of proceeding dated 21.07.1988 and 26.10.1988 clearly reveal the following fact:

“21.07.1988

The compensation amount of Rs.1,487-90 awarded in the case has been credited into the Treasury under the Head Revenue Deposit vide Chalan No.2, dated 21.07.1988. Intimate the fact to the awardee in Form 20.

Possession of the acquired land taken under Section 16 of the Act. Inform R.O. to take delivery of possession of the acquired land immediately.

26.10.1990

Possession of the acquired land measuring Ac.0.015 dec. delivered to the representative of R.O. in the prescribed manner, copy retained in file.”

10.1. It is well-established that once a notification under Section 4 and Declaration under Section 6 of the LA Act is made, the Land Acquisition Collector has no power to decline to pass the award in respect of land(s) notified either partly or wholly. Unless and until the land(s) are denotified under and in accordance with Section 48, the Land Acquisition Officer has to pass an award with respect to the lands notified. See, *Ramniklal N. Bhutta Vrs. State of Maharashtra, (1997) 1 SCC 134*. In the present case, Land Acquisition Collector has taken all steps prudently and concluded the proceeding by taking delivery of possession of land in question in the year

1990, after depositing compensation amount as awarded with the Treasury on the failure of the awardee-Basudev Sahu to be present to receive the same.

10.2. It may be reiterated that in *Indore Development Authority Vrs. Manoharlal*, (2020) 8 SCC 129 it has been held 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 RFCTLARR Act, 2013.

10.3. In *State of Haryana Vrs. Sushila*, (2023) 1 SCR 573 the status of the awardee, after delivery of possession being taken, has been described in the following terms:

“3. From the aforesaid it can be seen that it was the specific case on behalf of the appellants that the possession of the land in question was taken over and handed over to the beneficiary on 04.08.2006. It was also the case on behalf of the appellant that the petitioners are encroachers in the acquired land and compensation of the acquired land was not paid to them because they were not co-owners at the time of award. The aforesaid has not at all been considered by the High Court while passing the impugned judgment and order. As the possession was taken over by the acquiring body and was handed over to the beneficiary, any possession by the petitioners thereafter can be said to be encroachment and the encroachers cannot be permitted to take the benefit of the provisions of Section 24(2) of the Act, 2013

and pray that as now they are in possession, may be as encroachers, they are entitled to relief under Section 24(2) of the Act, 2013. It would be giving a premium to the illegality and the encroachers which cannot be the intention of the legislature.”

10.4. In the present case, unauthorized structure/ construction over the subject-plot was removed on 01.06.2015 pursuant to Order No.15430, dated 29.05.2015 of the Bhubaneswar Development Authority. Therefore, it is fallacious on the part of the counsel for the petitioners to argue that the delivery of possession has been taken over after 01.01.2014. Rather it is fact on record that delivery of possession had been taken way back in the year 1990. Therefore, the provisions of the RFCTLARR Act, 2013 do not attract on the facts and in the circumstances of the present case.

10.5. As per Section 11A of the LA Act, the Collector was required to make an award under Section 11 within a period of two years from the date of publication of the declaration. Said provision further spells out that if no award is made within that period, the entire proceeding for the acquisition of the land shall lapse. The record of proceedings as maintained by the authority concerned indicates that the time-line stipulated under Section 11A of the LA Act has been followed.

10.6. Thus, in view of paragraph 366.9 of *Indore Development Authority Vrs. Manoharlal*, (2020) 8 SCC 129, Section 24(2) of the RFCTARR Act, 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 RFCTARR Act 2013 Act, *i.e.*, 01.01.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow land-owners 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.

10.7. In such view of the matter, the challenge laid to validity of the Government of Odisha in Revenue and Excise Department Notification No.31401-LA-46/85-Puri-R.E., dated 12.06.1985 *vide* Odisha Gazette Extraordinary No.890, dated 24.06.1985 is not accepted.

11. Much emphasis has been laid by Sri Ashok Kumar Panigrahi, learned counsel for the petitioners on the Judgment dated 22.01.2015 of the Hon'ble Supreme Court of India rendered in the case of *Karnail Kaur Vrs. State of Punjab*, MANU/SC/0061/2015 = (2015) 3 SCC 206, to contend that compensation amount having not been actually paid to the awardee till date, in view of Section 24(2) of the RFCTARR Act 2013, the proceeding under the LA Act, 1894 is deemed to have been lapsed.

11.1. Reading of said Judgment, it is apparent that at paragraph 20 the Hon'ble Supreme Court of India observed as follows:

“After referring to the aforesaid decisions with reference to the facts and circumstances of the case on hand, we are of the view that physical possession of the land belonging to the appellants have neither been taken by the respondents nor compensation paid to them even though the award was passed on 06.08.2007, and more than five years have lapsed prior to date on which the Act of 2013 came into force. Therefore, the conditions mentioned in Section 24(2) of the Act of 2013 are satisfied in this case for allowing the plea of the appellants that the land acquisition proceedings are deemed to have lapsed in terms of Section 24(2) of the Act of 2013. **The said legal principle laid down by this Court in the case of Pune Municipal Corporation and other cases referred to supra [Pune Municipal Corporation and Anr. Vrs. Harakchand Misirimal Solanki and Ors, (2014) 3 SCC 183] with regard to the interpretation of Section 24(2) of the Act of 2013, with all fours are applicable to the fact situation in respect of the land covered in these appeals for granting the relief as prayed by the appellants in the applications.**”

11.2. It is unfortunate and also a matter of regret that the learned counsel appearing for the petitioners has cited aforesaid Judgment without verifying the subsequent development and evolution of law as propounded by the Hon'ble Supreme Court. Pertinent here to refer to and reproduce the following paragraph from the Judgment in *Indore Development Authority Vrs. Manoharlal*, (2020) 8 SCC 129:

“365. Resultantly, the decision rendered in Pune Municipal Corpn. Vrs. Harakchand Misirimal Solanki, (2014) 3 SCC 183 is hereby overruled and all other decisions in which Pune

Municipal Corpn. Vrs. Harakchand Misirimal Solanki, (2014) 3 SCC 183 has been followed, are also overruled. The decision in *Sree Balaji Nagar Residential Assn. Vrs. State of T.N., (2015) 3 SCC 353* cannot be said to be laying down good law, is overruled and other decisions following the same are also overruled. In *Indore Development Authority v. Shailendra, (2018) 3 SCC 412*, the aspect with respect to the proviso to Section 24(2) and whether “or” has to be read as “nor” or as “and” was not placed for consideration. Therefore, that decision too cannot prevail, in the light of the discussion in the present judgment.”

11.3. This Court takes note of observation of the Hon'ble Supreme Court of India in the case of *State of Odisha Vrs. Nalinikanta Muduli, (2004) 7 SCC 19*, which is to the following extent:

“It is strange that a decision which has been overruled by this Court nearly quarter of a century back was cited by the Bar and the court did not take note of this position and disposed of the matter placing reliance on the said overruled decision. It does not appear that the decision of this Court reversing the judgment of the High Court was brought to the notice of the learned Single Judge who was dealing the matter. It is a very unfortunate situation that learned counsel for the accused who is supposed to know the decision did not bring this aspect to the notice of the learned Single Judge. **Members of the Bar are officers of the Court. They have a bounden duty to assist the Court and not mislead it. Citing judgment of a Court which has been overruled by a larger Bench of the same High Court or this Court without disclosing the fact that it has been overruled is a matter of serious concern.** It is one thing that the Court notices the

judgment overruling the earlier decision and decides on the applicability of the later judgment to the facts under consideration on it. It also does not appear that learned counsel appearing for the respondent before the High Court did not refer to judgment of this Court. All this shows that the matter was dealt with very casually.”

11.4. Thus, it is apt to say that the decision cited by Sri Ashok Kumar Panigrahi, learned counsel for the petitioners, has no force of law and in view of ratio laid down in *Indore Development Authority Vrs. Manoharlal*, (2020) 8 SCC 129, the instant writ petition is liable to be dismissed.

12. In the writ petition the petitioners have affirmed thus:

“7. *That it is pertinent to mention here that pursuant to the notification under Annexure-5, Land Acquisition Collector acquired the land and awarded compensation.”*

12.1. Sri Amiya Kumar Mishra, learned Additional Government Advocate at this juncture submitted that the land, after being acquired, approach road has already been laid. Since entire process of land acquisition being completed in the year 1990, there is no scope for the petitioners to question the validity of Revenue and Excise Department Declaration made under Section 6 of the LA Act, 1894 bearing No.31401-LA-46/85-Puri-R.E., dated 12.06.1985 [published in the Extraordinary issue of Odisha Gazette No.890, 24.06.1985] *vide* Annexure-5. This Court is complete

agreement with such a statement made by the learned Additional Government Advocate. Since the provisions of Section 24(2) of the RFCTARR Act, 2013 is not applicable to the fact-situation of the present case, and the mandate contained in the LA Act for acquisition of land Act has been followed, it cannot be held that aforesaid Declaration dated 12.06.1985 *vide* Annexure-5 is *ultra vires*.

12.2. In *State of U.P. Vrs. Pista Devi*, (1986) 4 SCC 251, that it has been observed as follows:

“Perhaps, at the time to which the decision in Narayan Govind Gavate Vrs. State of Maharashtra, (1977) 1 SCC 133, related to the year 1963. During this period of nearly 23 years since then the population of India has gone up by hundreds of millions and it is no longer possible for the Court to take the view that the schemes of development of residential areas do not ‘appear to demand such emergent action as to eliminate summary inquiries under Section 5A of the (Land Acquisition) Act’, 1894.”

12.3. In the said case, it is held that, “In the circumstances of the case it cannot be said that the decision of State Government in resorting to Section 17(1) of the Act was unwarranted”. In the same breath, it can be said in the instant context that the approach road was felt exigent need of public/residents of nearby the land in question. Hence, the action taken by the authority concerned is *intra vires* the powers conferred under the LA Act.

13. This Court finds it necessary to note that no averment is made to the effect that the petitioners have ever approached the authority concerned to receive the compensation amount which has been deposited with the Government Treasury. No scrap of paper has been enclosed to the writ petition in this regard. Nothing has been placed on record to repel the fact stated in the record of proceeding maintained in the Order-Sheet that despite notice and intimation, the awardee-Basudev Sahu did not turn up. This Court, therefore, feels it necessary to refer to following passages from *Mahavir Vrs. Union of India*, (2018) 3 SCC 588 = (2017) 11 SCR 553:

“21. In the instant case, the claim has been made not only belatedly, but neither the petitioners nor their previous three generations had ever approached any of the authorities in writing for claiming compensation. No representation had ever been filed with any authority, none has been annexed and there is no averment made in the petition that any such representation had ever been filed. The claim appears not only stale and dead but extremely clouded. This we are mentioning as additional reasons, as such claims not only suffer from delay and laches but courts are not supposed to entertain such claims. Besides such claims become doubtful, cannot be received for consideration being barred due to delay and laches.

22. The High Court has rightly observed that such claims cannot be permitted to be raised in the court, and cannot be adjudicated as they are barred. The

High Court has rightly observed that such claims cannot be a subject matter of inquiry after the lapse of a reasonable period of time and beneficial provisions of Section 24 of the 2013 Act are not available to such incumbents. In our opinion, Section 24 cannot revive those claims that are dead and stale.”

14. Looking at the matter from different angle, it is apparent that the father of the petitioners, namely Basudev Sahu, chose to remain absent in spite of notice/intimation for disbursement of compensation amount, as a consequence of which the authority concerned finding no alternative transferred the amount to the Government Treasury and kept in civil deposit. The fact of non-compliance of terms of such notice/intimation by the father of the petitioners remains uncontroverted. Delivery of possession was also taken by the Requisitioning Officer much prior to 01.01.2014. Entire process of land acquisition pertaining to land measuring Ac.0.015 dec. out of total Ac.0.065 dec. in Plot No.1884 under Khata No. 493 of Kapilaprasad Mouza in Puri District (now, Bhubaneswar in Khordha District) was completed in 1990.

14.1. Had there been any dissention, Basudev Sahu could have acted upon such notice/intimation. Having not questioned, the petitioners slept over the matter and woke up from deep slumber in the year 2016. By filing writ petition in the year 2016, they have admitted the position at paragraph 7 thereof that “the petitioners were

in *bona fide* impression that their objection under Annexure-6 has been taken for active consideration and in the meantime rolled on nearly 30 years. While so, the opposite party No.3 and 4 are threatening the petitioners for their eviction.” Such statement of the petitioners is founded upon no valid basis inasmuch as the objection dated 07.04.1986 of the petitioner No.1 was duly considered. Said petitioner furnished documents and records before the authority and in consideration thereof said authority also undertook spot visit. Thereafter, the father of the petitioners, namely Basudev Sahu, was given notice/intimation indicating amount of compensation to which he did not respond. Entire process of land acquisition culminated in the year 1990 and approach road now stands on the subject-plot.

14.2. Therefore, this Court takes cognizance of the maxim: *Nemo ex suo delicto meliorem suam conditionem facere potest*, meaning thereby, no one can improve his position by his own wrongdoing. This Court, having noticed maxim: *nullus commodum capere potest de injuria sua propria*, meaning ‘no man can take advantage of his own wrong’, in *Mideast Integrated Steel Limited Vrs. State of Odisha, 2015 SCC OnLine Ori 489 = 2016 (I) ILR-CUT 208*, observed therein as follows:

“In *Broom’s Legal Maxim (10th Edn.) at p.191*, it is stated:

“*** it is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this

maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure.'

The petitioner cannot be allowed to secure the assistance of a court of law or equity for enjoying the fruits of their own wrong."

14.3. A person alleging his own infamy cannot be heard at any forum, what to talk of a Writ Court, as explained by the legal maxim: "*allegans suam turpetudinem non est audiendus*". If the petitioners or their father at the right point of time by not taking appropriate step to question the action of the authority concerned have committed a wrong, they cannot be permitted to take the benefit of their own wrong. [Vide *G.S. Lamba Vrs. Union of India*, AIR 1985 SC 1019; *Narender Chadha Vs. Union of India*, AIR 1986 SC 638; *Jose Vrs. Alice*, (1996) 6 SCC 342; *T. Srinivasan Vrs. Mrs. T. Varalakshmi*, (1998) 3 SCC 112].

14.4. Scrutiny of document available on record brings it to the fore that pursuant to Order dated 22.01.1987 notice was issued under Section 12 of the LA Act fixing date to 29.01.1987. Again on 29.01.1987 further intimation was directed to be issued for affording opportunity for acknowledging receipt of amount of compensation. In pursuance thereto, the Office note on 17.03.1988 shows that "S.R. back after service". On 21.03.1988 following Order has been passed:

“The awardee did not turn up in spite of receipt of notice. Credit the amount into Treasury under civil deposit and intimate the fact to the awardee.”

14.5. Consequent upon such deposit being made Order dated 21.07.1988 reflects the following position:

“The compensation amount of Rs.1,478.90 awarded in this case has been credited into the Treasury under the Head “Revenue Deposit” vide Order No.2 dated 21.07.1988. Intimate the fact to the awardee in Form 20.

Possession of the acquired land taken over under Section 16 of the Act. Inform R.O. to take delivery of possession of the acquired land immediately.”

14.6. Accordingly on 26.10.1990 the delivery of possession was handed over to R.O. The principle laid in *Indore Development Authority Vrs. Manoharlal, (2020) 8 SCC 129 = (2020) 3 SCR 1* as referred to and applied in *Delhi Development Authority Vrs. Shiv Raj, (2023) 4 SCR 41* is noteworthy:

“3. Applying the law laid down by this Court in the case of Indore Development Authority Vrs. Manoharlal, (2020) 8 SCC 129 = (2020) 3 SCR 1 to the facts of the case on hand and the fact that the possession of the land in question was taken over on 21.04.2006, there shall not be any deemed lapse of acquisition as observed and held by the High Court. Under the circumstances, the impugned judgment and order passed by the High Court is unsustainable.”

14.7. In *National Capital Territory of Delhi Vrs. Subhash Chander Khatri*, (2023) 2 SCR 788 it has been observed as follows:

“3. In view of the above and once there shall be no deemed lapse of acquisition under Section 24(2) of the Act, 2013, the original writ petitioner shall not be entitled to the compensation as per the Act, 2013. Under the circumstances the impugned judgment and order passed by the High Court is unsustainable.”

14.8. Therefore, at this distance of time, the petitioners could not plead that neither delivery was taken nor was the amount of compensation paid so that their case would fall within the ken of Section 24(2) of the RFCTLARR Act, 2013. It is, thus, in the present circumstances, held that the writ petitioners are not entitled to compensation as per the RFCTLARR Act, 2013.

DECISION AND CONCLUSION:

15. The assertion of the petitioners that the land acquisition proceeding initiated under the LA Act is vitiated inasmuch as the compensation amount has not been actually paid to the awardee, as such deeming provision contained in Section 24(2) of the RFCTLARR Act does attract, does not stand to reason and such a contention cannot be countenanced for the simple reason that the awardee, being noticed coupled with subsequent intimation to receive the compensation amount, did not turn up. Finding no alternative the said amount was

deposited with the Treasury. Furthermore, fact on record reveals that the authority concerned had taken delivery of possession of the land under consideration much prior to 01.01.2014, *i.e.*, the date of enforcement of the RFCTLARR Act, 2013.

- 16.** For the discussions made above and the reasons stated *supra*, the present writ petition stands dismissed. However, there shall be no order as to costs.

DR. B.R. SARANGI, J.

I agree.

**(MURAHARI SRI RAMAN)
JUDGE**

**(DR. B.R. SARANGI)
JUDGE**

