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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5854 OF 2015

- | | | |
|-------|-------------------------------------|---|
| 1] | Shri Sakharam Govinda Kadam |] |
| | Since deceased through legal heirs |] |
| | |] |
| 1a] | Shri Shamrao Sakharam Kadam |] |
| | since deceased through legal heirs |] |
| | |] |
| 1ai] | Shri Aappaso Shamrao Kadam |] |
| | Age : 40 |] |
| | Occ : Agriculturist |] |
| | |] |
| 1aii] | Shri Dhanaji Shamrao Kadam |] |
| | Age 37, |] |
| | Occ : Agriculturist |] |
| | |] |
| 1b] | Shri Pandurang Sakharam Kadam |] |
| | Since deceased through legal heirs |] |
| | |] |
| 1bi] | Shri Prashant Pandurang Kadam |] |
| | Age 35, Occ : Agriculturist |] |
| | |] |
| 1bii] | Shri Pravin Pandurang Kadam |] |
| | Age 38, Occ : Agriculturist |] |
| | |] |
| 1c] | Shri Bhimrao Sakharam Kadam |] |
| | Age 65 Occ : Agriculturist |] |
| | |] |
| 1d] | Shri Gorakhnath Sakharam Kadam |] |
| | Age 62 Occ : Agriculturist |] |
| | |] |
| | All above R/At Post – Sonaichiawadi |] |
| | Tal – Patan, Dist. Satara |] |

-]
- (The Petitioner Nos. 1 to 1(d) through]
 Power of Attorney holder Shri Aappaso]
 Shamrao Kadam namely Petitioner]
 No.1(a)(i) above)]
- 2] Shri Khashaba Raghu Kadam]
 Since deceased through legal heirs]
]
- 2a] Shrimati Pamatai Khashaba Kadam]
 Age : 62 Occ : Agriculturist]
]
- 2b] Shri Raghunath Khashaba Kadam]
 Age : 26, Occ : Agriculturist]
]
- Petitioner Nos. 2 to 2(b)]
 All R/at Post Sonaichiwadi]
 Taluka : Patan, District : Satara]
]
- (The Petitioner Nos. 2 to 2(b) through]
 Power of Attorney Holder]
 Shri Raghunath Khashaba Kadam]
 namely Petitioner No.3 above]...Petitioners

Versus

- 1] State of Maharashtra]
 (Summons to be served on the Learned]
 Government Pleader appearing for]
 State of Maharashtra under Order XXVII]
 Rule 4, of the Code of Civil]
 Procedure, 1908)]
]
- 2] Deputy Collector Resettlement]
 Satara,]

- (Summons to be served on the Learned]
Government Pleader appearing for]
State of Maharashtra under Order XXVII]
Rule 4, of the Code of Civil]
Procedure, 1908)]
]
- 3] Sub Divisional officer, Karad]
(As Special Land Acquisition Officer)]
Karad Division, Karad]
(Summons to be served on the Learned]
Government Pleader appearing for]
State of Maharashtra under Order XXVII]
Rule 4, of the Code of Civil]
Procedure, 1908)]
]
- 4] Sub Divisional Officer]
Patan Division, Patan]
(Summons to be served on the Learned]
Government Pleader appearing for]
State of Maharashtra under Order XXVII]
Rule 4, of the Code of Civil]
Procedure, 1908)]
]
- 5] Executive Engineer Minor Irrigation]
Sangamnagar, Satara]
(Summons to be served on the Learned]
Government Pleader appearing for]
State of Maharashtra under Order XXVII]
Rule 4, of the Code of Civil]
Procedure, 1908)]
]
- 6] Tahasildar Patan,]
Taluka Patan, District Satara]
(Summons to be served on the Learned]
Government Pleader appearing for]

- State of Maharashtra under Order XXVII]
 Rule 4, of the Code of Civil]
 Procedure, 1908)]
]
 7] Shri Shivaji Laxman Bongane]
 Age : Adult, Occ : Agriculturist]
 R/at Post Nanegaon (Bu.),]
 Taluka : Patan, District : Satara]
]
 8] Shri Sambhaji Ramchandra Bongane]
 Age : Adult, Occ : Agriculturist]
]
 9] Hirabai Ramchandra Bongane]
 Age : Adult, Occ : Agriculturist]
]
 (Respondent Nos. 8 and 9 R/at Post]
 Kadavwadi, Taluka : Patan]
 District : Satara)]...Respondents
-

Mr Amol Gatne, for the Petitioners.
Mr B V Samant, Addl. GP a/w Ms M S Bane, AGP, for the
 Respondent Nos. 1 to 6 - State.
Mr. Akshay R Kapadia a/w Mr. M R Sherekar, for Respondent
 Nos.7 to 9

**CORAM M.S. Sonak &
 Jitendra Jain, JJ.**
Reserved on : 07 March 2025
Pronounced on : 10 March 2025

JUDGMENT : (Per M. S. Sonak, J)

1. Heard learned counsel for the parties.

2. The Petitioner Nos.1 to 1(d) are the owners of the property bearing Gat No.683, slab area admeasuring 0 Hectares 40 Are, and the Petitioner Nos. 2 to 2(b) are the owners of the property bearing Gat No. 275, slab area admeasuring 0 Hectares 40 Are, situated at village Sonaichiwadi, Taluka Patan, District Satara (collectively referred to as “the said properties”).

3. The said properties were acquired vide Award dated 25 February 2001 under the provisions of the Land Acquisition Act, 1894 (“1894 Act”). Upon coming into force of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (“2013 Act”), the Petitioners, by instituting this petition, challenged the acquisition invoking Section 24(2) of the 2013 Act because neither was any compensation paid to the Petitioners nor was the possession of the said properties taken over from the Petitioners under the Award dated 25 February 2001 (Award). This Writ Petition was allowed by a common judgment and order dated 02 May 2017, and the land acquisition proceedings were declared lapsed.

4. The Respondents 7 to 9, claiming that the said properties had been allotted to them by the State Government, challenged this Court’s judgment and order dated 02 May 2017 in Writ Petition No.5854 of 2015 by instituting Petition for Special Leave to Appeal No.4551 of 2018.

5. The Hon’ble Supreme Court allowed the appeal by order dated 21 October 2024 and made the following order:-

“Special Leave to Appeal (C) No(s). 4551/2018

1 It is submitted by the learned counsel for the petitioner(s) and not disputed by the counsel appearing for the State as also for the private respondents, that the issue involved in the instant petition(s) is squarely covered by the judgment of the Constitution Bench in *INDORE DEVELOPMENT AUTHORITY VS MANOHARLAL & ORS* reported in (2020) 8 SCC 129.

2 In view of the above submission, the matter(s) is remitted to the High Court for fresh consideration in the Light of the Judgment in the case of *Indore Development Authority* (supra).

3 It is clarified that all legal contentions are kept open to be raised by both the parties, as may be permissible.

4. The special leave petition is disposed of accordingly.

5 Pending application(s), if any, shall stand closed.”

6. According to the remand by the above order, this matter was placed before us on 24 January 2025. On this date, Mr. Dorman Dalal, the learned counsel for the Petitioners, pointed out that this Petition was disposed of by this Court by judgment and order dated 02 May 2017 as modified by order dated 19 July 2017. Therefore, he wondered why the matter was again on board. Upon our appraising him of the Hon’ble Supreme Court’s order dated 21 October 2024, Mr Dalal applied for an adjournment to obtain instructions from the Petitioners. Upon his request, the matter was posted on 21 February 2025 after clarifying that we would not entertain any further request for adjournment. On this date, Mr. Samant, the learned Additional Government Pleader, sought leave to file an Additional Affidavit. He stated that this Additional Affidavit was necessary to address the limited issue of the State taking over possession of the acquired land. Leave was granted to file the Affidavit. The Affidavit was directed to

be filed and served by 07 February 2025, and the matter was posted on 21 February 2025 for disposal.

7. On 21 February 2025, Mr. Amol Gatne appeared for the Petitioners. On this date, we passed the following order: -

“1. Writ Petition Nos. 5855 of 2015 and 5856 of 2015 are already disposed of. Therefore, they should not be shown as tagged with Writ Petition No. 5854 of 2015.

2. Mr Gatne points out that Petitioner No. 1b in Writ Petition No. 5854 of 2015 has expired. Accordingly, leave is granted to bring his heirs on record. Necessary amendment to be carried out before the next date. Reverification is dispensed with Mr Gatne states that he will appear on behalf of the legal representatives.

3. If for any reason no amendment is carried out or no heirs are brought on record, still, we will hear the Petition since other Petitioners are already on record.

4. As matter of abundant caution, Mr Gatne seeks leave to serve Respondent Nos. 7, 8 and 9 in Writ Petition No. 5854 of 2015 afresh. Leave is granted. In addition to the usual mode of service, private service/Hamdust is allowed The Petitioner to file affidavit of service.

5. Mr Samant states that earlier affidavits filed on behalf of the State Government are sufficient and therefore, no further affidavits would be filed on behalf of the State Government or the officials of the State Government.

6. List Writ Petition No. 5854 of 2015 for final disposal on 7 March 2025, high on board. Again, we reiterate that no further requests for adjournment would be entertained.”

8. On 07 March 2025, we heard the learned counsel for the parties at length for the final disposal of the Petition. After arguments were heard, the matter was reserved for orders.

9. Mr. Gatne, the learned counsel for the Petitioners, submitted that since the making of the Award dated 25 February 2001, the State had neither taken the physical

possession of the said properties nor were the Petitioners offered or tendered any compensation. Therefore, relying upon the provisions of Section 24(2) of the 2013 Act, he submitted that the acquisition proceedings had lapsed and should be declared as such. He relied upon **Indore Development Authority Vs. Manoharlal and others** reported in (2020) 8 Supreme Court Cases 129 in support of this contention.

10. In this case, Mr Gatne submitted that no Section 12(2) notice under the 1894 Act was ever issued to the Petitioners. There was no other evidence showing the offer/tender of compensation to the Petitioners. The Reply filed on behalf of the State also did not assert that the compensation was offered or tendered to the Petitioners. Thus, there was no doubt that the compensation amount was neither offered nor tendered to the Petitioners.

11. Mr Gatne submitted that there is no Panchanama evidencing takeover of possession. Under the RTI Act, the Petitioners were informed that there was no kabjepatti or possession receipt on the government record. There were no categorical denials in the reply filed on behalf of the government about the Petitioners continuing to possess the said properties. Based only on some revenue entries, there was no case to hold that physical possession of the said properties was ever taken over from the Petitioners. Therefore, relying upon *Indore Development Authority* (supra) and some other decisions, Mr Gatne submitted that even the possession continued with the Petitioners since the Award dated 25 February 2021.

12. Mr Gatne submitted that both the contingencies under Section 24(2) of the 2013 Act were fulfilled, and the acquisition had lapsed. He submitted that the State had correctly not relied upon the second Proviso to Section 24(2) (Maharashtra Amendment). He submitted that, in any event, this amendment was prospective as held by the Hon'ble Supreme Court in the case of **Karnail Kaur & ors. Vs. State of Punjab & ors.** reported in 2015 (3) SCC 206 and **R Radhakrishnan Vs. State of Tamil Nadu** reported in 2015 (6) SCC 604.

13. Based on all the above grounds, Mr Gatne submitted that this Petition should be allowed and the acquisition should be declared lapsed under section 24(2) of the 2013 Act.

14. Mr. Samant, the learned Additional Government Pleader, firstly submitted that the Award was made on 25 February 2001, and this Petition was instituted on 14 June 2015. He, therefore, submitted that this Petition was barred by delay and laches and should be dismissed on that ground alone.

15. Without prejudice, Mr Samant submitted that mutation was carried out in the survey records in 2001-2002. The survey records indicate that the mutation was based on a kabjepatti. He submitted that although such kabjepatti is not available with the State Government, it does not mean it never took over the possession under a kabjepatti. He submitted that the Petitioners filed no Rejoinder to the categorical statement made in Shrirang Tambe's Affidavit filed on 04 March 2017 on behalf of the State Government that the possession of the said properties was taken over from the Petitioners. He submitted that disputed questions of fact about

whether possession was taken or not should not be investigated by this Court in its extraordinary jurisdiction under Article 226 of the Constitution.

16. Mr. Samant, however, fairly accepted that there was no record of the compensation being offered or tendered to the Petitioners. He maintained that since possession of the said properties was taken over in 2001-2002, there was no lapsing under Section 24(2), given the law laid down in *Indore Development Authority* (supra).

17. Mr. Samant, very fairly, did not rely upon the second proviso to Section 24(2) (Maharashtra Amendment), accepting that a substantive provision introduced by the proviso could not be given a retrospective effect unless the legislature had stated so in clear terms. He, however, maintained that this was a case where possession of the said properties was taken over in 2001-2002, and therefore, there was no lapsing under Section 24(2) of the 2013 Act.

18. Mr. Samant also pointed out that the Petitioners had sought alternate relief to restore possession. He submitted that seeking such alternate relief was an admission that the government had already taken possession of the said properties. He submitted that the Petitioners cannot be allowed to approbate and reprobate or seek inconsistent and mutually destructive reliefs.

19. Based on the above arguments, Mr. Samant urged the dismissal of this Petition.

20. Mr. Akshay Kapadia, the learned counsel for Respondents 7 to 9, first tried to contend that along with Writ

Petition No.5854 of 2015, connected Writ Petition Nos.5855 of 2015 and 5856 of 2015 were also remanded by the Hon'ble Supreme Court to this Court. He submitted that even those Petitions should be taken up along with this Petition. However, the Hon'ble Supreme Court's order dated 21 October 2024, which we quoted above, does not refer to any remand of Writ Petition Nos. 5855 of 2015 and 5856 of 2015. In our order of 21 February 2025 mentioned above, we recorded that Writ Petition Nos. 5855 of 2015 and 5856 of 2015 were already disposed of. Mr Kapadia maintained that the AOR at Delhi had informed him about the remand, and we should accept this, though there was no apparent order to this effect.

21. Based upon some oral information from the AOR and without even a shred of document or orders to back the same, we cannot accept that Writ Petition Nos.5855 of 2015 and 5856 of 2015 were remanded. In any event, no case was made to defer the final hearing in Writ Petition No.5854 of 2015, which was explicitly remanded for a final hearing by the Hon'ble Supreme Court. Accordingly, Mr Kapadia argued Writ Petition No.5854 of 2015.

22. Mr.Kapadia did attempt to hand over some papers across the Bar, stating that these were the kabjepattis based upon which the State Government took possession of the said properties from the Petitioners. There was no question of accepting such documents that were tried to be thrust across the Bar backed by no application seeking leave to produce or any Affidavit confirming the authenticity of such records.

23. Mr. Kapadia then adopted Mr. Samant's arguments and submitted that this Petition may be dismissed. In the alternative, he submitted that directions should be issued to the State Government to rehabilitate Respondents 7 to 9 because the State Government had allotted the said properties to Respondents 7 to 9.

24. In rejoinder, Mr. Gatne submitted that the 2013 Act came into force on 01 January 2014. Until then, the Petitioner had no cause of action to see any relief based on the provisions of 24(2) of the 2013 Act. As a matter of abundant caution, the Petitioners, through RTI, sought the kabjepatti or possession receipt, if any. After the Petitioners were informed that no such kabjepatti or possession receipt was available, this Petition was instituted on 15 June 2015.

25. Mr. Gatne submitted that even the survey records on which the State Government relies show crops being grown by the Petitioners after 2001 and up to the institution of the Petition. He submitted that there were no disputed questions of fact, and the material on record clearly shows that the State Government had never taken over possession of the said properties, which continued with the Petitioners to date.

26. The rival contentions now fall for our determination.

27. The said properties were purported to have been acquired under an Award dated 25 February 2001 made by the Special Land Acquisition Officer, Karad ("the SLAO") in case No. SR 54 of 1997. The 2013 Act came into force on 01 January 2014. Under Section 24(2) of the 2013 Act, a lapsing of the acquisition was provided under certain contingencies.

28. In **Pune Municipal Corporation Vs. Harakchand Misrimal Solanki**, reported in (2014) 3 SCC 183 and **Delhi Development Authority Vs Sukhbir Singh** reported in AIR 2016 SC 4275, the Hon'ble Supreme Court had held that for five years since making of an award under the 1894 Act if possession of the land has not been taken or the compensation has not been paid, then, the land acquisition proceedings shall be deemed to have lapsed.

29. However, in *Indore Development Authority* (Supra), the decisions in *Pune Municipal Corporation* (supra) and *Delhi Development Authority* (supra) were overruled by interpreting the word "or" used in Section 24(2) as "nor" or as "and". The Hon'ble Supreme Court has held that the acquisition proceedings lapsed only if neither possession is taken, nor compensation is paid. The Court also held that the offer or tender of compensation should be construed as compensation paid for Section 24(2) of the 2013 Act.

30. The Petitioners, therefore, applied for a copy of the kabjepatti or possession receipt, if any, while maintaining that they continue to be in possession of the said properties. By Reply dated 20 December 2014, the Petitioners were informed that the kabjepatti or possession receipt in respect of the lands for Award SR 54 of 1997 was not available. This Petition was filed on 14 June 2015. Thus, there was no delay or laches involved.

31. Significantly, in paragraph 359 of *Indore Development Authority* (supra), the Hon'ble Supreme Court has held that a fresh cause of action in Section 24 has been given if possession has not been taken and compensation has not been

paid for five years or more since making of the award. Thus, in such facts, there is no delay and laches involved in the institution of this Petition. The fresh cause of action accrued to the Petitioners only on 01 January 2014 after Section 24(2) of the 2013 Act entered force. After that, some time was spent in collecting information. Crucial information was obtained in December 2014, and this Petition was filed on 14 June 2015. Therefore, the State's objection based on delay and laches fails and is hereby rejected.

32. Regarding tender or offer of compensation, Mr Samant agreed that there was no material on record to show that compensation was tendered or offered to the Petitioners. The Petitioners have made clear and cogent averments that the compensation was neither paid nor offered.

33. Shrirang Tambe, Sub Divisional Officer, Patan, filed an Affidavit in Reply on 04 March 2017. Since this Affidavit was not categorical on the twin aspects of taking over possession and offering compensation, the Coordinate Bench of this Court, by order dated 24 April 2017, directed the Deputy Collector (Land Acquisition) to file a fresh Affidavit. Despite such directions, no further Affidavit was filed on behalf of the State Government or the Land Acquisition Officer.

34. The Affidavit in Reply dated 04 March 2017 does not deny the Petitioners' clear and categorical averments in the Petition that no compensation was offered or tendered to the Petitioners. There is also no positive statement in the Affidavit that the compensation was tendered or offered to the Petitioners. The Affidavit admits that no notices under Section 12(2) of the 1894 Act were ever issued to the Petitioners.

Thus, there can be no dispute that no compensation was ever offered or tendered to the Petitioners since the passing of the Award dated 25 February 2001.

35. On the aspect of taking over possession again, we note that the Government or the Land Acquisition Officer has filed no Affidavit other than the Affidavit dated 04 March 2017. On 25.01.2025, Mr. Samant, the learned Additional Government Pleader, sought leave to file an Additional Affidavit. He stated that this Additional Affidavit was necessary to address the limited issue of the State taking over possession of the acquired land. Leave was granted to file the Affidavit. But no further affidavit was filed. On 21.02.2025, Mr Samant stated that the affidavit filed on 4 March 2017 would suffice and no further affidavit was proposed to be filed.

36. In the affidavit of 4 March 2017, the clear and categorical averments in the Petition that the Petitioners continue to possess the said properties are only evasively denied. The Affidavit refers to no kabjepatti or possession receipt. The Affidavit refers to no Panchanama or Memorandum of taking over possession. The only claim is that possession was taken and vide mutation entries the land was transferred to the State Government in the Revenue Records.

37. In paragraph 2 of the March 2017 Affidavit, there is the following statement regarding the first Petitioner's property:-

"I further say that possession of the said entire land belonging to the Original Petitioner No.1 was taken and vide Mutation Entry No.906 dated 15.5.2001, the said land was transferred to the name of the State Government in the Revenue records."

38. Regarding the second Petitioner's property, there is the following statement in paragraph 2 of the March 2017 Affidavit.

“I further say that possession of the said entire land belonging to the Original Petitioner No.2 was taken and vide Mutation Entry No.906 dated 15.5.2001, the said land was transferred to the name of the State Government in the Revenue records.”

39. Based on the above statements in the Affidavit and the endorsement in the survey record that the mutations were carried out after seeing the “kabjepatti,” the State Government asserts that possession of the said properties was taken over some time in 2001-2002 when the mutations were carried out. Perhaps realising the inadequacies, Mr Samant submitted that these are disputed questions of fact and, therefore, we should not investigate them when exercising our summary jurisdiction under Article 226 of the Constitution.

40. However, by merely raising a dispute backed by no credible material, the State Government cannot defeat the Petitioners' Petition or urge that this Court should not entertain it. There are no disputed questions of fact that cannot be adjudicated based on the pleadings and other material on record. There is significant material that supports the petitioners' case and militates against the State's diffident and vague assertion. No clear affidavits were forthcoming despite directions or seeking leave to file. Therefore, this petition cannot be defeated based on some self-serving dispute on facts.

41. Very recently, in the case of **A.P. Electrical Equipment Corporation Vs. Tahsildar and Others**, reported in 2025 SCC

Online SC 447, the Hon'ble Supreme Court rejected similar arguments made on behalf of the State with the following observations in paragraphs 47, 48 and 49.

47. One stock argument available with the State in this type of cases is that the question whether the actual physical possession of the disputed land had been taken over or not is a seriously disputed question of fact, which the High Court should not adjudicate or determine in exercise of its writ jurisdiction. As a principle of law, there need not be any debate on such a proposition, but by merely submitting that it is a seriously disputed question of fact, the same, by itself, will not become a question of fact. To put it in other words, having regard to the materials on record, which falsifies the case of the State Government, then such materials should not be overlooked or Ignored by the Court on the principle that the issue with regard to taking over of the actual physical possession would be a disputed question of fact.

48. Normally, the disputed questions of fact are not investigated or adjudicated by a writ court while exercising powers under Article 226 of the Constitution of India. But the mere existence of the disputed question of fact, by itself, does not take away the jurisdiction of this writ court in granting appropriate relief to the petitioner. In a case where the Court is satisfied, like the one on hand, that the facts are disputed by the State merely to create a ground for the rejection of the writ petition on the ground of disputed questions of fact, it is the duty of the writ court to reject such contention and to investigate the disputed facts and record its finding if the particular facts of the case, like the one at hand, was required in the interest of justice.

49. There is nothing in Article 226 of the Constitution to indicate that the High Court in the proceedings, like the one on hand, is debarred from holding such an inquiry. The proposition that a petition under Article 226 must be rejected simply on the ground that it cannot be decided without determining the disputed question of fact is not warranted by any provisions of law nor by any decision of this Court. A rigid application of such proposition or to treat such proposition as an inflexible rule of law or of discretion will necessarily make the provisions of Article 226 wholly illusory and ineffective more particularly Section 10(5) and 10(6) of the Act, 1976 respectively. Obviously, the High Court must avoid such consequences.

42. Even in the above case, the State Government had asserted that it had taken over the possession of the Petitioner's properties, and the Petitioner claimed that they were never dispossessed or that the physical possession continued with the Petitioner. The Hon'ble Supreme Court approved the view of the learned Single Judge that the mere issue of notices was insufficient to hold that the State Government had taken over possession of the Petitioner's properties. The Court held that in the absence of any cogent and convincing evidence or documents to show that the government had taken actual physical possession of the subject land, the valuable rights of the parties could not be allowed to be defeated based only on panchanamas that inspired no confidence whatsoever. In the present case there is no panchanama or other credible material to support the State's version.

43. The Hon'ble Supreme Court held that the law laid down in **State of Uttar Pradesh Vs. Hari Ram** reported in (2013) 4 SCC 280 and **Gajanan Kamlya Patil Vs. Additional Collector and Competent Authority (ULC)** reported in (2014) 12 SCC 523 continued to be good law. The Hon'ble Supreme Court noted that the dictum in *Hari Ram* (supra) was that mere paper possession would not establish that the State had actually taken over the possession of the subject land. For that, the State had to produce cogent evidence. The onus was on the State to establish that the physical possession of the excess vacant land was taken over before repealing the Urban Land Ceiling Act.

44. The proposition of law that mere possession is not sufficient to vest the land in the State was reiterated by the

Hon'ble Supreme Court in **Raghubir Singh Sehrawat Vs State of Haryana**, reported in AIR 2012 SCW 240. This was a case under the Land Acquisition Act of 1894. The Hon'ble Supreme Court, while allowing the Appeals and declaring the acquisition illegal, observed that taking possession means actual possession. Paper possession is not sufficient to vest the land in the State. The Court noticed various revenue entries recorded in the revenue records, which showed that the crops were grown on the different acquired land and to have been taken over. The Court noticed that the State had not questioned the genuineness and correctness of the entries contained in the revenue records. The Court also took notice of the fact that it was neither pleaded nor any evidence had been produced before the Court to show that the occupant of the land had unauthorisedly taken possession of the land after its acquisition.

45. In *Indore Development Authority* (supra), the Hon'ble Supreme Court has discussed the mode of taking possession under the 1894 Act. In paragraph 247, the Hon'ble Supreme Court has held that when the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land. In paragraph 262, after referring to **T. N. Housing Board Vs. A Viswam**, reported in (1996) 8 SCC 259, the Court observed that it is settled law by a series of judgments that one of the accepted modes of taking possession of the acquired land is a recording of a memorandum or panchanama by the LAO in the presence of witnesses signed by him/them that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land.

The Court also noted that it was common knowledge that in some cases the owner/interested person may not cooperate in taking possession of the land.

46. In paragraph 263, after referring to **Banda Development Authority vs. Moti Lal Agarwal**, reported in (2011) 5 SCC 394, the Hon'ble Supreme Court held that preparing a panchanama is sufficient to take possession. In paragraph 265, referring to **Balmokand Khatri Educational & Industrial Trust Vs. State of Punjab**, reported in (1996) 4 SCC 212, the Hon'ble Supreme Court held that the normal mode of taking possession in cases of compulsory acquisition is by way of drafting the panchanama in the presence of panchas.

47. Finally, in paragraphs 274 and 279, the Court held that drawing of panchanama of taking possession is the mode of taking possession in land acquisition cases thereupon the land vests in the State and any re-entry or retaining possession thereafter is unlawful and does not inure for conferring benefits under Section 24(2) of the 2013 Act.

48. In the present case, admittedly, no panchanama is available on the record. The Affidavit on behalf of the State Government does not even state that any panchanama was drawn in the presence of any independent witnesses. The survey record referred to a kabjepatti, but when the Petitioners asked for kabjepatti, if any, under the RTI Act, they were informed by communication dated 20 December 2014 that possession receipt or kabjepatti was not available. Even the Affidavit filed in this Petition does not even refer to the preparation of any kabjepatti or even the existence of any kabjepatti. Based on all this, the State government has not

discharged the onus of establishing that it had taken over the possession of the said properties from the Petitioners.

49. There is only a bald statement that the possession of the said properties “*was taken and vide Mutation Entry No.906 dated 15.5.2001, the said land was transferred in the name of the State Government in the Revenue records*”. There is no kabjepatti, and there is no panchanama. The State's version cannot be accepted based on such a bald statement backed by no credible evidence.

50. Though the State Government specified nothing, the kabjepatti is usually a unilateral receipt which may or may not contain the signature of a person from whom the possession is taken. Therefore, a panchanama is accepted as the proper mode for taking over possession. At times, the persons interested do not cooperate. Hence, the possession is taken by drawing a panchanama witnessed and signed by some respectable persons from the locality. In this case, there is neither any kabjepatti nor any panchanama.

51. The remark in the survey records that the same were prepared after seeing the kabjepatti, it cannot be accepted as evidence that the State Government had physically taken over the possession of the said properties. Such a contention is inconsistent with the law laid down in *Raghubir Singh Seehrawat* (supra) and *Hari Ram* (supra). Such a contention is also inconsistent with the law laid down in *A. P. Electrical Equipment Corporation* (supra) and *Indore Development Authority* (supra).

52. Suppose the mutation entries are to be accepted. In that case, the consistent endorsements in the revenue records about the Petitioners cultivating crops in the said properties for almost 10-12 years post-2001 also cannot be ignored. Merely because no Affidavit in Rejoinder is filed by the Petitioners dealing with the vague assertion in Shrirang Tambe's Affidavit, we cannot hold that the State Government has established that it had taken over possession of the said properties sometime in 2001-2002.

53. The attempt by Mr. Kapadia to produce some papers which he claimed were the kabjepattis is most unfortunate. The State Government does not claim to have any kabjepatti. The State Government, in response to RTI query accepted that it does not have any kabjepatti. The Affidavit filed on behalf of the State Government does not refer to any kabjepatti. Respondents 7 to 9 had not bothered to file any Affidavit in this Petition before it was allowed by this Court on 02 May 2017. Even after remand, no Affidavit was filed on behalf of Respondents 7 to 9. At the stage of the final hearing, we suspect that some documents were attempted to be thrust upon us only to secure an adjournment or create confusion.

54. Thus, the Petitioners have established that they continue possessing the said properties. The State has not discharged the onus of proving that it had taken over the possession of the said properties either by drawing out a panchanama or any other credible modes acceptable under the law. It is not even the State's case that the petitioners re-entered the said properties after it had lawfully taken over the possession of the said properties from the Petitioners. There is no dispute whatsoever that no compensation amount was ever offered or

tendered to the petitioners. Even section 12(2) notices were admittedly not given to the Petitioners.

55. The twin contingencies prescribed in Section 24(2) of the 2013 Act are thus fulfilled. In this case, possession of the said properties was not taken over, even though the Award was made on 25 February 2001. Compensation was also neither offered nor tendered to the Petitioners since the Award was made on 25 February 2001.

56. Therefore, following the law in *Indore Development Authority* (supra), the impugned acquisition will have to be declared as lapsed, leaving it open to the State Government, if it so chooses, to initiate proceedings for the acquisition of the said properties afresh in accordance with the provisions of 2013 Act. We declare and order accordingly.

57. Since no argument was made based upon the second proviso to Section 24(2) (Maharashtra Amendment), we do not deal with it. However, we note that in *Karnail Kaur* (supra), the Hon'ble Supreme Court held that the amendment introducing a proviso to Section 24(2) being substantive was only prospective and not retrospective. A similar view was taken in the case of *R Radhakrishnan* (supra).

58. The argument that the Petitioners had prayed for alternate reliefs and indulged in approbation and reprobation cannot be accepted. There is nothing wrong in claiming alternate reliefs. The Petitioners have consistently pleaded and even established that they are in possession. However, they felt that should this Court determine otherwise, some alternate relief should be granted to them, or at least alternate

relief should not be denied to them because they had not prayed for it. Not uncommonly, the State opposes moulding of relief or grant of alternate relief because this may not be specifically prayed.

59. There is no merit in the State Government's plea about taking over possession of the said properties in 2001-2002. In any event, now that it is admitted or since there is no material to indicate that any compensation was offered or tendered to the Petitioners since 2001, we must record that the State Government's conduct displays scant regard to the Petitioners' right to property.

60. As was held in **Kolkata Municipal corporation & another Vs. Bimal Kumar Shah & ors.** (2024) 10 SCC 533, property rights may not be fundamental rights, but they are constitutional or human rights. The Court has held that the State must restitute the party whose land is compulsorily acquired or pay fair compensation. The State also must conduct the acquisition process efficiently and within the prescribed timelines of the proceedings. In the present matter, the State has wholly disregarded all such principles.

61. For all the above reasons, we allow this Petition by declaring that the acquisition under the Award dated 25 February 2001 has lapsed, given the provisions of Section 24(2) of the 2013 Act. But we leave it open to the State Government, if it so chooses, to initiate proceedings for the acquisition of such lands afresh in accordance with the provisions of the 2013 Act.

62. Mr. Kapadia's alternate submission cannot be accepted in this case. If Respondents 7 to 9 consider themselves entitled to some lands through rehabilitation, they can pursue their claims against the State Government following the law. However, no directions can be issued in this Petition to direct the State Government to rehabilitate Respondents 7 to 9.

63. The Rule is accordingly made absolute in terms of prayer clause (A) of this Petition without any cost orders.

64. All concerned must act on an authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)

65. Mr. Akshay Kapadia, learned counsel for Respondent Nos. 7 to 9, seeks a stay on the judgment and order just pronounced.

66. There is no dispute that no compensation was paid to the Petitioners since the Award dated 25 February 2001. Based on material on record, even the possession of the Petitioners properties was never taken over.

67. In these circumstances, there is no question of any stay.

68. The prayer for stay is therefore declined.

(Jitendra Jain, J)

(M.S. Sonak, J)