

(2016) 02 MP CK 0053

In the Madhya Pradesh High Court

Case No : W.P. Nos. 4915, 2477, 3627, 5087/2014, 203/2012 and 10379/2011

Birani Steel Industries and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 17-02-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 7, Section 151

General Clauses Act, 1897 — Section 6

Land Acquisition Act, 1894 — Section 11, Section 17, Section 18, Section 31, Section 31(1), Section 31(2), Section 4, Section 5-A, Sec

Citation : (2016) 02 MP CK 0053

Hon'ble Judges : S.C. Sharma, J.

Bench : Single Bench

Advocate : V.K. Jain, Learned Counsel, for the Appellant; Aniket Naik, Learned Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.C. Sharma, J.—1. Regard being had to the similar controversy involved in above cases, they have been heard analogously together with the consent of the parties and a common order is being passed in the matter. Facts of W.P. No. 4915/2014 are narrated as under:-

2. The petitioners before this Court are companies registered under the Companies Act and have filed this present petition for issuance of an appropriate writ, order or direction directing the respondents to pay compensation to the petitioners as per the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The petitioners have also prayed for issuance of a direction to declare the land acquisition proceedings under the Land Acquisition Act 1984 has lapsed.

3. The facts of the case reveal that the petitioners 1 & 2 have purchased land bearing Survey No. 22/1/2 and 22/1/1 admeasuring 0.307 and 0.102 hectare respectively at Village Kumedi, Tehsil Sawer, District Indore vide registered sale

deed dated 20/08/1996. They have constructed industrial establishments and the industries are in existence over the land in question.

4. The petitioners contention is that a scheme was framed by Indore Development Authority in respect of land in question and thereafter, a notification was issued on 03/10/2002 under Section 4 of the Land Acquisition Act to acquire the land for the purpose of construction of MR 10 road. Urgency clause was also invoked under Section 17 of the Land Acquisition Act.

5. The petitioners further contention is that till date the Companies have not been paid compensation nor it has been deposited in the Court and therefore, in light of the Section 24 of the Act of 2013, the proceedings under the old Act have come to an end and respondents can certainly take action under the new Act of 2013. A detailed reply has been filed in the matter. It is an undisputed fact that possession has not been taken and the compensation has not been deposited in Court.

6. However, Shri Joshi has informed this Court that the matter relating to the payment of compensation and possession has been referred to a larger Bench and the same is pending before the Hon"ble Supreme Court. He has stated that the matter arising out of Pune Municipal Corporation & Anr. vs. Harakchand Misirimal Solanki & Ors. has been referred to a larger Bench and therefore, the question of allowing the petition does not arise.

7. On the other hand, learned Counsel for the petitioner has drawn the attention of this Court towards a recent judgment delivered by this Court in the case of Indore Hygiene Product & Ors. vs. Indore Development Authority & Ors. in W.P. No. 1263/2012 decided on 02/02/2016. This Court in paragraph 10 to 16 has held as under:-

10. In the present case, the undisputed facts are that no compensation has been paid to the petitioners nor the amount of the compensation has been deposited with the Court. The other undisputed fact is that the petitioners are in actual physical possession of the land in question which is the subject matter of the present petition and award dated 23/11/2004

"11. The Division Bench of this Court in the case of Smt. Shyam Verma vs. Indore Development Authority & Others has passed the following Orders:-

Parties through their counsel.

Learned counsel appearing for the parties at the outset have informed this Court that the issue involved in the present writ petition has been concluded in the matter of Smt. Syam Verma Vs. Indore Development Authority & Others. (W.A. No. 250/2008). The following order has been passed by this Court on 30.11.2015.

"Since the matter has been listed for final hearing, but the interlocutory applications filed vide I.A. Nos. 3418/2015 dated 6/07/2015 (in W.A. No. 514/06), I.A. No. 6308/2013 dated 12/11/2013 (in W.A. No. 799/2006) and I.A.

No. 6272/2013 dated 1/11/2013 in W.A. No. 250/2008 (applications u/o. VII Rule 7 of CPC); I.A. No. 64/2015 dated 6/01/2015 in W.A. No. 799/2005 (application for taking document on record) and I.A. No. 3772/2015 filed in July, 2015 (application u/w. 151 of CPC) in W.A. No. 250/2008, I.A. No. 227/2014, application for disposal of the appeal filed in W.A. No. 772/2006, and I.A. Nos. 1888/2013 filed in W.A. No. 323/2008 and 1889/2013 filed in W.A. No. 250/08 for taking additional documents on record, are pending for consideration.

2. The decision rendered in W.A. No. 514/2006 shall also govern the disposal of W.A. No. 799/2006, W.A. No. 772/2006, W.A. No. 250/2008 and W.A. No. 323/2008 respectively. In all these aforesaid writ appeals, the challenge is made to one land acquisition proceedings under the Land Acquisition Act.

3. The present appellants have challenged the Notification under Section 4 and 6 of the Land Acquisition Act, 1894. In one of the writ appeal, the challenge was also to a Scheme framed under the Madhya Pradesh Gram Tatha Nagar Nivesh Adhiniyam, 1973 (hereinafter "the Old Act, 1973") for which the land in question is acquired under the Notification dated 6/10/1989 issued under Section 4 read with Section 17(1) of the Old Act, issued and published which includes the lands in question published in Official Gazette dated 3/11/1989 and Notification under Section 6 of the Old Act issued and published in Official Gazette dated 9/11/1990.

4. As per the award, the appellants in W.A. No. 772/2006 are the owners/occupiers and Bhumiswami's of the land situated at Survey Nos. 431/1, 431/1/2, 431/1/3, 431/1/4, 431/1/5, 431/1/6, 431/1/7, 431/1/8, 431/1/9 and 431/1/10, admeasuring 3.28 Acres (1.368 Hectares) in village Niranjapur, Tehsil and District Indore.

5. In W.A. No. 799/2006, the appellants are the Bhumiswami's of land Survey No. 422/2 area 1.011 Hectares, situated at village Niranjapur, Tehsil and District Indore.

6. In W.A. No. 514/2006, the appellants are the recorded Bhumiswami's of land of Survey No. 422/1 area 0.405 Hectares situated at village Niranjapur, Tehsil and District Indore.

7. In all the aforesaid three appeals the Indore Development Authority framed a Scheme bearing No. 114(1) for development of residential as well as commercial colony, schools, health centre, fire station etc.

8. In W.A. No. 250/2008, which relates to Scheme No. 135, the appellant - Smt. Shyam Verma is the recorded owner of land survey No. 29/1 admeasuring 0.231 hectares, situated at village Tejpur Gadbad, Tehsil and District Indore, which has been purchased by her in the year 1970 along with building and temple standing thereon. Her land was acquired under Scheme No. 135 for construction of Physiotherapy Centre for mentally retarded children.

9. W.A. No. 323/2008 also relates to Scheme No. 135. The appellant - Santosh Kumar is the owner of the land survey No. 13/6/6 admeasuring 0.135 hectares.

10. In the present bunch of appeal, filed under Section 2 of M.P. Uchha Nyayalaya (Khand Pith Ko Appeal) Adhiniyam, 2005, the challenge is to order dated 13/11/2000, passed by the Writ Court in M.P. Nos. 1730/91, 205/91, 4628/90, 1757/91 and 1727/91, whereby challenge made to the acquisition proceedings under the Old Act, has been rejected. Even though various grounds has been raised by filing an interlocutory application in all these appeals and it is said that now in view of Section 24(2) "Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013" (New Act), the acquisition be lapsed and appeal be allowed and disposed of in terms thereof.

11. Shri B.L. Pavecha and Shri A.K. Sethi, learned Senior Counsels with Shri K.L. Hardia, learned counsel for the appellants have submitted that various grounds have been raised by them to challenge the acquisition proceedings in question and in view of the law laid down by the Apex Court, the provisions are illegal and cannot be sustained. During the pendency of the matter, the aforementioned I.As. were filed pointing out that after coming into force of New Act w.e.f. 1.01.2014 and in view of Section 24 of the said Act and, particularly, the provisions of Section 24(2), now after the award was passed in the Year 1992 and 2004, till date, neither any compensation has been paid to the landowners or beneficiaries nor has been deposited in the account of the beneficiaries. The acquisition proceedings have lapsed and land should be restored back to the appellants. Accordingly, it is contended that in accordance with the New Act, the appeal should be allowed and the land be restored back to the appellants. It is submitted that the proceedings for acquisition were started in the Year 1989 and declaration under Section 6 of the Old Act was published in the Year 1990 and have culminated in an award under Section 11 of the Old Act passed on 27/11/1992 by the Collector, District-Indore and by reasoning of the provisions of Section 24(2) of the New Act., the acquisition proceedings in question under challenge in these appeals lapsed immediately on commencement of the New Act on 1.01.2014 as (1) the award under Section 11 of the Old Act has been passed more than five years ago (2) neither the physical possession of the land in question has been taken by the respondents (and has all along been protected by the interim orders passed by this Court from time to time) and (3) nor any compensation has been paid to the appellant in respect of the land in question. Thus, the acquisition in respect of appellant's land had already lapsed under Section 24(2) on 01.01.2014 and, therefore, all these applications be allowed by holding that the acquisition proceedings shall be taken under the Old Act in respect of the land in question have lapsed by virtue of Section 24(2) of the New Act.

12. Shri Shekhar Bhargava, learned Senior Counsel assisted by Shri Sudarshan Joshi, learned counsel for the respondent No. 5/IDA refuted the aforesaid contention and submitted that the main part of Section 24(2) of the New Act, has no application to the present case, inasmuch as it does not apply to collective acquisition of lands for the purpose of developing a scheme framed by the

respondent No. 5/IDA in exercise of its statutory powers under the provision of the Adhiniyam, 1973. He further submitted that the question of lapsing of acquisition proceedings does not arise in cases where several parcel of lands belonging to several land holders have been acquired for implementation of a scheme which has been substantially, if not fully, implemented. He contended that the appellant's land is one of the several lands notified for acquisition in Scheme No. 114 and 135. Thereafter, after deciding the objections raised to the proposed acquisition by the land holders under Section 5-A of the Old Act, the State Government issued the final notification under Section 6 of the Old Act. Their writ petition bearing W.P. No. 1729/1991 was dismissed by the impugned judgment passed by the learned writ court.

13. Learned Senior Counsel further submitted that the Scheme in question has been substantially implemented/developed, the appellants are not entitled to the benefit of the main part of Section 24(2) of the New Act. He submitted that as per proviso to Section 24(2), the main part of Section 24(2) is not applicable where lands have been acquired for a scheme. He submitted that several parcels of lands belonging to several land holders, possessions were taken and compensation were paid and for some parcel, possessions were not taken and, therefore, the case of the present appellants cannot be governed by the provisions of Section 24(1)(b) of the New Act and as per the aforesaid provisions, they are entitled for compensation on enhanced rate under the New Act and prayed for dismissal of the application.

14. We have heard learned counsel for the parties at length and we have considered the rival contention advanced by them.

15. Section 24 of the New Act reads as under:

"24. (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, 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 holding 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."

16. Para 10, 11, 14, 19 and 21 of the judgment of the Apex Court in the case of Pune Municipal Corporation & Another Vs. Harakchand Misirimal Solanki & Others; , (2014) 3 SCC 183 are relevant which reads as under:

10. Insofar as sub-section (1) of Section 24 is concerned, it begins with non obstante clause. By this, Parliament has given overriding effect to this provision over all other provisions of 2013 Act. It is provided in clause (a) that where the land acquisition proceedings have been initiated under the 1894 Act but no award under Section 11 is made, then the provisions of 2013 Act shall apply relating to the determination of compensation. Clause (b) of Section 24(1) makes provision that where land acquisition proceedings have been initiated under the 1894 Act and award has been made under Section 11, then such proceedings shall continue under the provisions of the 1894 Act as if that Act has not been repealed.

11. Section 24(2) also begins with non obstante clause. This provision has overriding effect over Section 24(1). Section 24(2) enacts that in relation to the land acquisition proceedings initiated under 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied, viz; (i) physical possession of the land has not been taken or (ii) the compensation has not been paid, such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the appropriate government still chooses to acquire the land which was the subject matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the 2013 Act. The proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act 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 the beneficiaries specified in Section 4 notification become entitled to compensation under 2013 Act.

14. Section 31(1) of the 1894 Act enjoins upon the Collector, on making an award under Section 11, to tender payment of compensation to persons interested entitled thereto according to award. It further mandates the Collector to make payment of compensation to them unless prevented by one of the contingencies contemplated in sub-section (2). The contingencies contemplated in Section 31(2) are: (i) the persons interested entitled to compensation do not consent to receive it (ii) there is no person competent to alienate the land and (iii) there is dispute as to the title to receive compensation or as to the apportionment of it. If due to any of the contingencies contemplated in Section 31(2), the Collector is prevented from making payment of compensation to the persons interested who are entitled to compensation, then the Collector is required to deposit the compensation in the court to which reference under

Section 18 may be made.

Now, this is admitted position that award was made on 31.01.2008. Notices were issued to the landowners to receive the compensation and since they did not receive the compensation, the amount (Rs. 27 crores) was deposited in the government treasury. Can it be said that deposit of the amount of compensation in the government treasury is equivalent to the amount of compensation paid to the landowners/persons interested? We do not think so. In a comparatively recent decision, this Court in *Agnelo Santimano Fernandes*, relying upon the earlier decision in *Prem Nath Kapur* [3], has held that the deposit of the amount of the compensation in the state's revenue account is of no avail and the liability of the state to pay interest subsists till the amount has not been deposited in court.

21. The argument on behalf of the Corporation that the subject land acquisition proceedings have been concluded in all respects under the 1894 Act and that they are not affected at all in view of Section 114(2) of the 2013 Act, has no merit at all, and is noted to be rejected. Section 114(1) of the 2013 Act repeals 1894 Act. Sub-section (2) of Section 114, however, makes Section 6 of the General Clauses Act, 1897 applicable with regard to the effect of repeal but this is subject to the provisions in the 2013 Act. Under Section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of 2013 Act and possession of the land is not taken or compensation has not been paid. The legal fiction under Section 24(2) comes into operation as soon as conditions stated therein are satisfied. The applicability of Section 6 of the General Clauses Act being subject to Section 24(2), there is no merit in the contention of the Corporation.

As per reply of the Indore Development Authority, it is an admitted fact that the award for the acquired lands, was passed on 27.11.1992 in W.A. Nos. 799/06, 514/06 and 772/06 and in W.A. No. 250/08 and W.A. No. 323/08 the award for acquired lands was passed on 16/04/2004. Notices were issued to the landowners to receive the compensation and since they did not receive the compensation amount, the amount was deposited in the Government Treasury. Can it be said that deposit of the amount of compensation in the Government Treasury is equivalent to the amount of compensation paid to the landowners/persons interested? We do not think so. In a comparatively recent decision, the Principal Seat of M.P. High Court in the case of *Ivo Agnelo Santimano Fernandes v. State of Goa*, , (2011) 11 SCC 506, relying upon the earlier decision in *Prem Nath Kapur v. National Fertilizers Corpn. of India Ltd.*, , (1996) 2 SCC 71, has held that the deposit of the amount of the compensation in the state's revenue account is of no avail and the liability of the state to pay interest subsists till the amount has not been deposited in court.

18. As per Section 24(2), in case, where the land proceedings are initiated under the Old Act, by legal fiction and where award has been made five years or more

prior to the commencement of the New Act and possession of the land is not taken or compensation has not been paid, the said proceedings shall be deemed to have been lapsed.

19. Further, Section 31(1) of the Old Act pertains to payment of compensation awarded or deposit of same in Court. This provision contemplates that on making an award under Section 11, the Collector shall tender payment of compensation as awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by someone or more of the contingencies. Sub-section 2 of Section 31 of the Old Act contemplates that if, for any reason, the amount has not been paid or there is no competent person to receive the compensation, the Collector shall deposit the amount of compensation in the court to which a reference under Section 18 would be submitted. A conjoint reading of both these aforesaid Section clearly indicates that if award under land acquisition proceeding held under the Land Acquisition Act of Old Act is passed five years prior to coming into force of New Act and if either physical possession of the land has not been taken over or compensation has not been paid to the beneficiaries, then the land acquisition lapse.

20. The manner of payment of compensation is contemplated under Section 31 of the Old Act and eventuality any receipt of compensation warrants the Collector to deposit the amount with the Court where the reference can be subjected. Both these aforesaid provisions, particularly the provisions of Section 24 has been interpreted by the Apex Court in the case of Pune Municipal Corporation & another (supra) and after considering various aspects of the matter, held that if the physical possession of the land has not been taken by the acquisition authority then the award has been passed and if compensation has not been paid to the landowners or has not been deposited by the appropriate forum then the proceedings initiated under the Old Act is deemed to have been lapsed.

21. The judgment of the Apex Court in the case of Pune Municipal Corporation & another (supra), has been subsequently considered by the Apex Court in the case of Union of India vs. Shivraj (, AIR 2014 SC 2242); Bimladevi vs. State of Haryana [, (2014) 6 SCC 583]; Bharat Kumar vs. State of Haryana [, (2014) 6 SCC 586]; M/s. Radiance Fincap (Civil Appeal No. 4283/2011), Velaxan Kumar vs. Union of India (, AIR 2015 SC 1462); Karnail Kaur vs. State of Punjab (, 2015 AIR SCW 1980; Ramkishan v. State of Haryana (, AIR 2015 SC 440) and Rajiv Chowdhrie HUF vs. Union of India (, AIR 2015 SC 614).

The arguments on behalf of IDA that the subject land acquisition proceedings have been concluded in all respects under the Old Act and that they are not affected at all in view of Section 24(1) and Section 114(2) of the New Act, has no merit at all because the case of Pune Municipal Corporation (supra) has been subsequently considered in the case of Shivraj and others (supra) and after taking note of the said judgment certain other judgments in the case of Bharat Kumar (supra) & Bimladevi & Ors. (supra) have taken note of and in Para 26 and 27 of case of Purushottam Lal vs. the State of M.P. decided on 15/10/2015, the

matter has been crystallized in the following manner:

26. The objects and Reasons of the 2013 Act and particularly Clause 18 thereof fortify the view taken by this Court in the judgments referred to hereinabove. Clause 18 thereof reads as under:

18. The benefits under the new law would be available in all the cases of the land acquisition under the Land Acquisition Act 1894 where award has not been made or possession of land has not been taken.

27. However, the aforesaid appeals have to be decided in the light of the above settled legal propositions. The admitted facts of the case remain that the respondent tenure holders had filed objections under Section 5-A of the 1894 Act as admitted in the affidavit filed by Smt. Usha Chaturvedi, Deputy Secretary (Land Acquisition), land and Building Department, Vikas Bhawan, New Delhi, filed in January 2014 before this Court. Award No. 15/87-88 had been made on 5.6.1987 and possession has not been taken till date though compensation has been deposited with the Revenue Department, which cannot be termed's a deemed payment as has been held in Harakchand Case.

23. Similar is the view taken by the Apex Court in the case of Sharma Agro Industries vs. State of Haryana & Ors. , (2015) 3 SCC 341, wherein also the principles laid down in the case of Pune Municipal Corporation (supra) etc., has been considered and principle reiterated. It is, therefore, clear from these judgments and interpretation of Section 24 of the New Act and implication of Section 31 of the Act of 1894 that if after passing of the award and five years prior to coming into force of New Act, amount is not paid in accordance to the requirement of law, the entire proceedings lapsed. If aforesaid principle is applied in the present case, we find that award in question was passed on 27.11.1992 in W.A. Nos. 799/06, 514/06 and 772/06 and in W.A. No. 250/08 and W.A. No. 323/08 the award for acquired lands was passed on 16/04/2004 and from the averments made by the Indore Development Authority in their reply filed, it is only indicated that the amount of compensation has been deposited with the competent authority and in view of the interim relief granted by the learned writ court as well as by the Division Bench of the Appellate Court, the possession has not been taken over from the present appellants. However, nothing is said with regard to payment of the compensation to the beneficiaries in accordance to the requirement of Section 24(2). The Apex Court has clearly laid down the principle that if either of the eventualities contemplated under sub-section 2 of Section 24 are in existence, the land acquisition proceedings lapsed. The two eventualities are that possession is not taken over or compensation in accordance to law is not given to the beneficiaries.

24. In this case, even though the reply filed by the Indore Development Authority indicates that neither possession is taken over by them nor compensation has been paid to the beneficiaries, in accordance with the requirement of Section 31 of the Old Act. As held by the Apex Court, mere

deposit of the amount in the Government Treasury or with the Revenue Department is not sufficient, it has to be paid to the beneficiaries or deposit in the Court where reference under Section 18 is normally filed. That being so, we are satisfied that documents overwhelming available on record to demonstrate that inspite of award having been more than five years prior to coming into force of the New Act, the award of compensation has not been paid to the beneficiaries as required under law nor possession of the land in question has been taken over from the owners and, therefore, in the light of legal principles laid down by the Apex Court as referred to herein above, entire proceedings lapsed.

25. In view of the foregoing discussion, it is not necessary to consider the correctness of the impugned judgment on merits.

26. Accordingly, I.A. Nos. 3418/2015 dated 6/07/2015 in W.A. No. 514/06, I.A. No. 6308/2013 dated 12/11/2013 in W.A. No. 799/2006 and I.A. No. 6272/2013 dated 1/11/2013 in W.A. No. 250/2008 (applications u/o. VII Rule 7 of CPC); I.A. No. 64/2015 dated 6/01/2015 in W.A. No. 799/2005 (application for taking document on record) and I.A. No. 3772/2015 filed in July, 2015 (application u/w 151 of CPC) in W.A. No. 250/2008, I.A. No. 227/2014, application for disposal of the appeal filed in W.A. No. 772/2006, and I.A. Nos. 1888/2013 filed in W.A. No. 323/2008 and 1889/2013 filed in W.A. No. 250/08 for taking additional documents on record are allowed.

27. The writ appeals bearing W.A. No. 514/2006, W.A. No. 772/2006, W.A. No. 799/2006, W.A. No. 250/2008 and W.A. No. 323/2008 are also allowed. Order dated 13/11/2000, passed by the Writ Court in M.P. Nos. 1730/91, 205/91, 4628/90, 1757/91 and 1727/91 are hereby quashed. It is held that the acquisition proceedings are lapsed. If the land is required, the respondents may proceed in accordance with the New Act. No costs."

12. In light of the judgment delivered by the Division Bench of this Court and in light of the fact that the petitioners are in actual physical possession of the property in question and also in light of the fact that no compensation has been paid or deposited with the Court, the writ petition deserves to be allowed and it is accordingly allowed.

13. The Judgment delivered in the case of Smt. Shyam Verma (Supra) shall be applicable mutatis mutandis in the present case also. Not only this, the Division Bench of this Court in the case of Purushottam Lal vs. State of M.P. (supra) in paragraph 8 to 10 has held as under:-

8. A perusal of sub-section (2) of Section 24 indicates that-Notwithstanding anything contained in sub-section (1) of Section 24, in case where land acquisition proceedings are initiated under the Land Acquisition Act of 1894 and when an award under Section 11 has been made five years prior to commencement of the Act of 2013 but physical possession of the land has not been taken or compensation has not been paid, the said proceeding shall be deemed to have been lapsed. Further Section 31 of the Land Acquisition Act,

1984 pertains to payment of compensation or deposit of the same in Court. This provision contemplates that on making of an award under Section 11, the Collector shall tender the payment of compensation awarded by him to the person interested, entitled thereto according to the award and shall pay to them unless prevented by someone or some competency. Sub-section (2) contemplates that if for any reason, amount is not paid or there is no competent person to receive the compensation, Collector shall deposit the amount of compensation to the Court to which reference under Section 18 would be submitted. A conjoint reading of both these sections clearly indicates that if award under land acquisition proceeding held under the Land Acquisition Act of 1894 is passed five years prior to coming into force of Act of 2013 and if either physical possession of the land has not been taken over or compensation is not paid to the beneficiaries, then the land acquisition proceedings lapse. The manner of payment of compensation is contemplated under Section 31 of the 1894 Act and the eventualities or non receipt of compensation warrants the Collector to deposit the amount with the Court where the reference can be submitted. Both these provisions, particularly, the provisions of Section 24 has been interpreted by the Supreme Court in the case of Pune Municipal Corporation (supra) and after considering various aspects of the matter in para 11, 19 and 21 the following principles have been laid down:-

11. Section 24(2) also begins with non obstante clause. This provision has overriding effect over Section 24(1). Section 24(2) enacts that in relation to the land acquisition proceedings initiated under 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied, viz; (i) physical possession of the land has not been taken or (ii) the compensation has not been paid, such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the appropriate government still chooses to acquire the land which was the subject matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the 2013 Act. The proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act 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 the beneficiaries specified in Section 4 notification become entitled to compensation under 2013 Act.

19. Now, this is admitted position that award was made on 31.01.2008. Notices were issued to the landowners to receive the compensation and since they did not receive the compensation, the amount (Rs. 27 crores) was deposited in the government treasury. Can it be said that deposit of the amount of compensation in the government treasury is equivalent to the amount of compensation paid to the landowners/persons interested? We do not think so. In a comparatively recent decision, this Court in Agnelo Santimano Fernandes, relying upon the earlier decision in Prem Nath Kapur [3], has held that the deposit of the amount of the compensation in the state's revenue account is of no avail and the liability

of the state to pay interest subsists till the amount has not been deposited in court.

21. The argument on behalf of the Corporation that the subject land acquisition proceedings have been concluded in all respects under the 1894 Act and that they are not affected at all in view of Section 114(2) of the 2013 Act, has no merit at all, and is noted to be rejected. Section 114(1) of the 2013 Act repeals 1894 Act. Sub-section (2) of Section 114, however, makes Section 6 of the General Clauses Act, 1897 applicable with regard to the effect of repeal but this is subject to the provisions in the 2013 Act. Under Section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of 2013 Act and possession of the land is not taken or compensation has not been paid. The legal fiction under Section 24(2) comes into operation as soon as conditions stated therein are satisfied. The applicability of Section 6 of the General Clauses Act being subject to Section 24(2), there is no merit in the contention of the Corporation. It has been clearly laid down by the Supreme Court in the aforesaid case, that if compensation is not paid or if possession of the land is not taken over and if five years period or more is over, prior to commencement of the Act of 2013, the land acquisition proceedings lapse. Section 31(1) of the Act is also taken note of and it has been clearly held that if compensation is neither paid to the beneficiaries nor deposited in the Court where reference would be met under Section 18, land acquisition proceedings would lapse. It is also held that deposit of the amount as per the award with the treasury of the Government of State Revenue Department is not sufficient compliance. This judgment of the Supreme Court in the case of Pune Municipal Corporation (supra) has been subsequently considered in the case of Shiv Raj and others (supra) and after taking note of the said judgment certain other judgments in the case of Bharat Kumar (supra) and Bimla Devi and others (supra) have been taken note of and in para 26 and 27 the matter has been crystallized in the following manner:-

26. The objects and Reasons of the 2013 Act and particularly Clause 18 thereof fortify the view taken by this Court in the judgments referred to hereinabove. Clause 18 thereof reads as under:-

"18. The benefits under the new law would be available in all the cases of the land acquisition under the Land Acquisition Act 1894 where award has not been made or possession of land has not been taken."

(Emphasis added)

27. However, the aforesaid appeals have to be decided in the light of the above settled legal prepositions. The admitted facts of the case remain that the respondent tenure holders had filed objections under Section 5-A of the 1894 Act as admitted in the affidavit filed by Smt. Usha Chaturvedi, Deputy Secretary (Land Acquisition), Land and Building Department, Vikas Bhawan, New Delhi,

filed in January 2014 before this Court. Award No. 15/87-88 had been made on 5.6.1987 and possession has not been taken till date though compensation has been deposited with the Revenue Department, which cannot be termed as deemed payment as has been held in Harakchand case.

9. Similar is the view taken by the Supreme Court in the case of Sharma Agro Industries (supra) wherein also the principles laid down in the case of Pune Municipal Corporation (supra) etc., has been considered and principle reiterated. It is therefore, clear from these judgments and interpretation of Section 24 of the Act of 2013 and implication of Section 31 of the Act of 1894 that if after passing of the award and five years prior to coming into force of Act of 2013, amount is not paid in accordance to the requirement of law, the entire proceedings lapsed. If aforesaid principle is applied in the present case, we find that award in question was passed on 15.4.1999 and from the averments made by the M.P. State Housing Board in their counter affidavit filed, it is only indicated that the amount of compensation has been deposited with the competent authority namely the Collector, Bhopal. Thereafter, in the additional affidavit filed on 5.10.2015, they only indicate about taking over of possession. However, nothing is said with regard to payment of the compensation to the beneficiaries in accordance to the requirement of Section 24(2). The Supreme Court has clearly laid down the principle that if either of the eventualities contemplated under sub-section 2 of Section 24 are in existence, the land acquisition proceedings lapsed. The two eventualities are that possession is not taken over or compensation in accordance to law is not given to the beneficiaries. In this case even though the affidavit filed by the Housing Board indicates that possession is taken over by them and they have entered into some agreement with the contractor for development of the area and have also paid some amount in furtherance thereto but the amount of compensation has not been paid to the beneficiaries in accordance to the requirement of Section 31 of the Land Acquisition Act of 1894. On the contrary, the note sheet of the Collector dated 17.1.2003 available in the record of W.P. No. 2633/2002 filed along with an interlocutory application I.A. No. 9867/2015 which was heard by us along with this appeal, goes to show that after the amount of compensation was deposited by the Housing Board with the Revenue Department, namely the Collector on 17.1.2003. It was indicated that the amount has not been paid to the beneficiaries and therefore, in accordance to the provisions of Section 31 of the Act of 1894, the amount should be deposited in the Court where the proceeding under Section 18 are normally held. However, there is no material to show as to when, how and in what manner the amount has been deposited in the Court where the proceeding under Section 18 is maintainable. In spite of granting repeated opportunities respondents have failed to demonstrate before this Court that the amount of compensation as required under law was paid. As held by the Supreme Court mere deposit of the amount in the Government Treasury or with the Revenue Department is not sufficient, it has to be paid to the beneficiaries or deposit in the Court where a reference under Section 18 is normally filed. That

being so, we are satisfied that documents overwhelming available on record do demonstrates that inspite of award having been passed more than five years prior to coming into force of the Act of 2013 i.e. w.e.f. 1.1.2014, the award of compensation has not been paid to the beneficiaries as required under law and therefore, in the light of legal principles laid down by the Supreme Court as referred to herein above, entire proceedings lapsed.

10. Accordingly, interlocutory applications are allowed. Petition and appeal are also allowed. Order passed in W.P. No. 1719/1999 is quashed. It is held that the acquisition proceedings are lapsed and now the land be restored back to the land owners and if required, the respondents may proceed in accordance with law.

14. The subsequent judgment of the Division Bench of this Court delivered in the case of Purushottam Lal and Others vs. State of M.P. And Others reported in , 2016 (1) MPLJ 32 has further clarified the matter relating to grant of compensation and the Division Bench has gone to the extent by stating that mere deposit of amount in Government Treasury or with the Revenue Department is not sufficient, it has to be paid to the beneficiaries or it has to be deposited in the Court where reference under Section 18 is normally filed. In the present case, the amount has not been paid to the petitioners nor it has been deposited in the Court. Not only this, the petitioners are undisputedly in actual physical possession of the land in question.

15. Resultantly, in light of the aforesaid judgment, the acquisition proceedings are lapsed and now the land is restored back to the land owners. However, if required, the respondents may proceed in accordance with law under the provisions of Right to Fair Compensation & Transparency in Land Acquisition Rehabilitation & Resettlement act 2013, afresh.

16. The respondent/State shall also correct the revenue entries in the revenue record which have been changed within a period of 30 days from the date of receipt of certified copy of this order.

In light of the judgment delivered in the identical case, this Court is of the considered opinion that the petition deserves to be allowed and it is accordingly allowed. The judgment delivered in the case of Indore Hygiene Product Private Ltd., and others vs. Indore Development Authority and others shall be applicable mutatis mutandis in the present case also, meaning thereby, it is held that the acquisition proceedings are lapsed and land stands restored back to the land owner and if required, respondents may proceed afresh in accordance with law, keeping in view the Act of 2013.

This shall govern disposal of other identical matters also.

Certified copy as per rules.