

(2000) 07 AP CK 0058

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16805 of 1997 and Batch

O. Balajojamma

APPELLANT

Vs

Govt. of A.P. and others

RESPONDENT

Date of Decision : 04-07-2000

Acts Referred:

Constitution of India, 1950 — Article 141
Land Acquisition Act, 1894 — Section 4(1), 5

Citation : (2000) 5 ALD 322 : (2000) 5 ALT 134

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : M/s. E. Manohar, for V. Mallik, Government Pleader for LA, Sriramulu Naidu SC for SKU and M. Subba Reddy, for the Appellant;

Judgement

1. All these writ petitions can be disposed of by this common order. The petitioners in all the writ petitions are the owners of various extents of land situated in Pasupula and B. Thandrapadu villages in Kurnool District. Writ Petition No.16805 of 1997 was filed by M/s. Chalapathi Housing Finance Private Limited, which holds an agreement of sale in respect of Ac.12-44 cents of land.

2. The averments in all the writ petitions are that the petitioners are the owners of the land an extent of Ac.30-87 cents. The Government issued Section 4(1) Notification under Land Acquisition Act, 1894 (the Act, for short) in G.O. Rt. No. 508 Education Department dated, 23-3-1994 and published in A.P. Gazette, dated 5-4-1994 proposing to acquire a total extent of Ac. 112-51 cents and Ac.45-79 cents of land situated in Pasupula and B. Thandrapadu villages respectively in Kurnool District for the purpose of establishing a PG Centre for Sri Krishnadevaraya University (the University, for short), Section 6 declaration was issued on 5-5-1994 and urgency clause was invoked u/s 17 of the Act duly dispensing with the enquiry u/s 5A of the Act. The petitioners herein are the owners of various extents of land out of the land proposed for acquisition, having total extent of Ac.30-87 cents and the WPs., are filed challenging the notification

to the extent of only Ac.30-87 cents. According to the petitioners there was no proper publication of notices and actual possession of the land to an extent of Ac.30-87 cents was not taken and they have been agitating for payment of 80% compensation which is a precondition u/s 17(3-A) of the Act and, therefore, until and unless the said amount is offered or paid, they requested the authorities not to take possession of the land. On the request of the petitioners the University has written letters to the Land Acquisition Officer 9n 25-11-1995 and 12-12-1995 requesting the RDO to delete an extent of Ac. 30-87 cents of land from the acquisition proceedings in view of the request made by the petitioner in WP No.16805 of 1997 and also expected litigation between the parties. On the basis of the said requests a joint meeting was convened on 16-12-1995 between the Joint Collector, Kurnool, Vice-Chancellor of the University and the RDO, Kurnool wherein a decision was taken to keep in abeyance passing of the award in respect of the disputed Ac.30-87 cents of land. Therefore, the Land Acquisition Officer passed award on 20-12-1995 in respect of Ac.87-96 cents of land excluding the area of Ac.30-87 cents as per the decision taken on 16-12-1995. Therefore, the University again requested the LAO on 16-11-1996 to delete the area of Ac. 30-87 cents from acquisition proceedings. It appears a news item appeared on 23-1-1997 in Vaartha daily Newspaper wherein it was alleged that the University had colluded with the staff of the Revenue Department with regard to plotting of land by M/s. Chalapathi Housing and Finance Private Limited. On the said news item the University wrote a letter on 25-1-1997 to the Joint Collector to pass award in respect of entire extent Ac. 158-40 cents of land including the disputed Ac. 30-87 cents of land as notified on 5-4-1994. Accordingly the Land Acquisition Officer passed an award on 31-7-1997 in respect of Ac. 30-87 cents of the land in question. In the meanwhile the petitioners filed writ petitions and this Court granted Interim stay of dispossession. Subsequently some more writ petitions were filed challenging the very same notification issued u/s 4(1) of the Act and, therefore, all the writ petitions came to be heard jointly.

3. In the counter filed by the Land Acquisition Officer, it is stated that Section 4(1) Notification was issued on 5-4-1994, Section 6 declaration was issued on 5-5-1994, publication in two daily newspapers was made on 31-5-1994 and 13-6-1994 and as urgency clause was invoked possession of the land was taken and handed over to the University on 21-9-1994. In the meeting held on 16-12-1995, it was decided to keep in abeyance the passing of the award in respect of Ac.30-87 cents of land for which protest was made by the Managing Director of M/s. Chalapathi Housing and Finance Pvt. Limited and other landowners covering the said area. Since a request was received from the University to proceed with the acquisition proceedings in respect of Ac.30-87 cents also, an award was passed on 31-7-1997. Therefore, there is no illegality or irregularity in the conduct of acquisition proceedings in respect of the said land.

4. The University filed a counter stating that an amount of Rs.90,00,000/-was

deposited before the Land Acquisition Officer to enable him to proceed with the acquisition of the land and that possession of the land was taken on 21-9-1994 and when the University was contemplating to proceed with the constructions, obstacles were created by the petitioners on the ground that they were not paid 80% of the compensation and thus they were prevented from proceeding with the construction. It is stated that they have already taken possession of the entire land by virtue of the proceedings concluded on 21-9-1994. Therefore, once possession is taken, it would not be open for the petitioners to challenge the acquisition proceedings and they are at liberty to participate in the award enquiry for claiming compensation in accordance with law. Therefore, it is submitted that the writ petitions lack merit and they are liable to be dismissed.

5. Sri E. Manohar, the learned senior Counsel appearing for the petitioners submits that possession as contemplated u/s 17(3-A) of the Act was not taken and mere symbolic possession is not the requirement of Section 17 of the Act and what is contemplated u/s 17 is actual possession of the land and, therefore, until and unless actual possession is taken, no further proceedings can be initiated. In support of this proposition he relies on a decision of the Supreme Court in *Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others*, . In the above said decision, speaking for the majority, Bhagwati, J., held as under:

"....We think it is enough to state that when the Government proceeds to take possession of the land acquired by it under the Land Acquisition Act, 1894, it must take actual possession of the land, since all interests in the land are sought to be acquired by it. There can be no question of taking "symbolical" possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land. How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of. There can be no hard and fast rule laying down what act would be sufficient to constitute taking of possession of land. We should not, therefore, be taken as laying down an absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise would be sufficient to constitute taking of possession of land in every case,..... It is also not strictly necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken at a particular time, though it may be desirable where possible, to give such notice before possession is taken by the authorities, as that would eliminate the possibility of any fraudulent or collusive transaction of taking of mere paper possession, without the occupant or the owner ever coming to know of it."

Taking assistance from the said judgment, the learned senior Counsel submits that in the instant case there was only delivery of possession on paper and there was no actual delivery of possession as per law and, therefore, all further proceedings have to be declared as invalid and without jurisdiction. He also

submits that the award in question (dated 31-7-1997) was not passed within two years from the date of Section 6 declaration (5-5-1994). He further submits that no stay of passing of the award was granted by this Court and in such a situation the Notification issued u/s 4(1) of the Act would lapse as the award was passed beyond the time stipulated u/s 11A of the Act. He further submits that u/s 17(3-A) of the Act, it is obligatory on the part of the LAO, to offer/ pay 80% of the compensation and admittedly it was neither offered nor paid to the petitioners and, therefore, the entire proceedings have to be declared as illegal and void.

6. On the other hand, the learned Government Pleader for Land Acquisition, Mr. Rajagopal Rao, submits that merely because 80% of the compensation was not offered/paid, it does not vitiate the land acquisition proceedings as it is not an illegality which goes to the root of the matter and, therefore, the contention of the learned Counsel for the petitioners has to be rejected. In support of this proposition, the learned Government Pleader relied on a decision of the Supreme Court in *Satendra Prasad Jain and Others Vs. State of U.P. and Others*, and two Division Bench judgments of this Court in *Govt. of A.P. and another Vs. Mohd. Moinuddin Hussan and others*, , and *Government of Andhra Pradesh v. K. Sivananda Reddy* 1996 (2) ALD 930 (DB). He also submits that when urgency clause was invoked u/s 17 of the Act, Section 11A of the Act has no application and, therefore, the contention of the learned Counsel for the petitioners that the notification issued u/s 4(1) of the Act would lapse has to be rejected.

7. Mr. Sriramulu Naidu, the learned Counsel appearing for Sri Krishna Devaraya University, submits that inasmuch as possession of the land was taken, it vested with the University and the question of challenging the Notification would not arise and it will be open for the petitioners to seek appropriate compensation in accordance with law. He further submits that on 21-1-1994 possession was taken and construction was also commenced in various places. At that stage as the petitioners objected, they sent requisitions on 25-11-1995 and 12-12-1995 to the Land Acquisition Officer to delete an extent of Ac. 30-87 cents of land from acquisition proceedings to avoid litigation in future, as per the decision taken on 16-12-1995. But when a news item appeared on 23-1-1997 attributing certain motives to the University, a communication was sent to the Joint Collector by the University on 25-1-1997 to proceed with the acquisition proceeding in respect of remaining extent also, including the land in question. Therefore, there is no illegality or irregularity in the proceedings initiated by the authorities.

8. The issue that arises for consideration is whether actual possession of the land was taken as required u/s 17(1) of the Act and what is the effect of violation of the provisions of Section 17(3-A) of the Act on the further acquisition proceedings.

9. In *B.N. Bhagde's* case (supra), the Supreme Court categorically held that symbolic possession is not the requirement of law and there must be actual possession of the land. However, the Supreme Court clarified that what is actual possession depends on the circumstances of each and that no hard and fast rule

can be laid down in this regard. The Supreme Court further held that "Symbolic possession" as understood in the CPC has no place in Land Acquisition proceedings and that the Act contemplates as a necessary condition of vesting the land in the Government is taking of actual possession of the land. In the instant case, it is the clear case of the respondents that the possession of the land was taken and handed over to the University also. The learned Counsel for the petitioners seriously disputes this. He relies on the correspondence between the University and the Revenue Divisional Officer and also minutes drafted during the tripartite meeting held between the Joint Collector, Vice-Chancellor and the RDO on 16-12-1995. In the said minutes it was clearly admitted by the Joint Collector that the land was not actually handed over on ground to the requisitioning department. It was also stated by him that the farmers objected on the ground that compensation was not paid and under such circumstances any handing over of possession by the Land Acquisition Officer, without paying 80% of the compensation was not correct and the Land Acquisition Officer has no authority to hand over the possession. Therefore, it clearly denotes that in respect of the land in question covered by the present batch of writ petitions, actual possession of the land was not taken and the farmers were still cultivating the land. That is the reason why the Joint Collector himself stated that it was only technical handing over and taking over of the land on paper, but not on ground. The minutes as drafted in the meeting held on 16-12-1995 reads thus:

"The University authorities have sent a letter in reference No.SKU/PGC/KNL/LA/95 dated 12-12-1995 to the LAO, that an extent of Ac. 30-87 cents of land may be deleted from the acquisition. In response of that letter the Land Acquisition Officer and the Revenue Divisional Officer, Kurnool has written to the University authorities that withdrawal of this extent is not possible, as the land is already handed over by the Mandal Revenue Officer, Kurnool to the University authorities as reported by the Mandal Revenue Officer. But in practice the land is not actually handed over on ground to the requisitioning department. As reported by the University authorities the farmers are still cultivating the said piece of land. Actually when the Requisitioning Department went to take over the possession of the land, the farmers objected on the ground that compensation is not paid to them and hence they have no right to enter into the land. It is a fact that compensation is not paid to the farmers and under such circumstances any handing over possession by the LAO, without paying at least 80% compensation is not correct and the LAO, has no authority to hand over possession. Hence it is only a technical handing over and taking over of land on paper, but not on ground. It may be treated as null and void. The RDO, Kurnool may go ahead with passing of the award for the remaining extent of land keeping this piece of land in abeyance for the time being as part of this land is under litigation".

In this regard, it is to be noted that Chalapathi Housing Private Limited (WPNo.16805 of 1997) submitted a representation dated 3-6-1995 to the Minister for Higher Education to delete certain land from the acquisition proceedings. It appears that the Vice-Chancellor passed Orders on 24-11-1995

and on 25-11-1995 a letter was sent to the Land Acquisition Officer to delete an extent of Ac. 30-87 cents on the ground that this piece of land falls on North of Pasupula village forming a separate block and there are certain land disputes. The relevant extract of the letter reads thus:

"Out of 154.46 acres of land about 30.87 acres of land is belonging to Pasupula village is North of Pasupula road forming separate block.

1. Survey No.35/1B Measuring 1.79 acres.
 2. Survey No.34/1A2 Measuring 2.47 acres.
 3. Survey No.3471A3 Measuring 0.10 acres
- are in Court dispute out of the above block.

Further about 12,44 acres of land in the same block has been divided into house plots sold to private parties by M/s. Chalapathi Housing & Finance Pvt. Ltd., Guntur.

So far the Revenue authorities hand over the lands under acquisition proceedings to the University and no compensation has been paid to the land owners.

After careful consideration the University has decided to delete from the land acquisition proceedings about 30.87 acres of land existing in North side of Kumool Pasupula Road to avoid legal complications and other related disputes in future.

Hence, I request you to delete from land acquisition proceedings the following survey Numbers of Pasupula village measuring 30.87 acres of land in North of Pasupula Road as shown in the enclosed site plan and request you not to pay the compensation to the land owners of the 30-87 acres of land as per the following:

1. Survey No.35/1B -- 1.79 Acres.
2. Survey No.34/1A2 -- 2.47 Acres.
- Survey No.34/A1.3 -- 0-10 Acres.
3. Survey No-75/1B -- 0-83 Acres.

Survey NO.24/1B1 -- 1.06 Acres.

Survey No.24/1C1 -- 1.16 Acres.

Survey No.26/1B -- 2-40 Acres.

Survey No.28/1A2 -- 0-59 Acres.

Survey No.28/1B2 -- 0-50 Acres.

Survey No.28/1C2 -- 0.05 Acres. Survey No.32/1 A -- 3.04 Acres.

Survey No.32/1B -- 2.59 Acres.

4. Survey No.24/1A2 -- 2.19 Acres.

Survey No.38/1 A -- 0.37 Acres. Survey No.36/1C -- 0.07 Acres.

Survey No.36/1B -- 0.25 Acres.

Survey No.77/1B -- 1.03 Acres.

Survey No.77/C -- 0.02 Acres.

Survey No.77/1D -- 0.01 Acres.

Survey No-77/1E -- 1.18 Acres.

Survey No.78/2 -- 1.92 Acres.

Survey No-79/1B -- 0.52 Acres.

Survey No.79/2B -- 0.44 Acres. Survey No.79/3B -- 0.94 Acres.

Survey No-80/1B -- 1.11 Acres.

Survey No.80/2B -- 2.72 Acres.

5. 26. Survey N0.9/1B-- 1.28 Acres. (9/1B of B. Tandpad") Total: 30.87 In order to compensate the deletion of the land in the survey Numbers noted above, separate requisition will be sent in due course to acquire about 30 acres of land in survey number 70, 69, 46, and 47 of Pasupula village adjoining to the land under acquisition/alienation towards south of the road of Pasupula village, so that the entire land of about 268 acres (including 110.96 acres of Government land for alienation) under a single block for developing of S.K. University P.G. Centre, Kurnool.

This is for favour of further necessary action"

Again another letter was sent to the Land Acquisition Officer on 12-12-1995 by the University which reads thus:

"With reference to your letter cited above, I am herewith furnishing the exact extent of land to be deleted from land acquisition proceedings as detailed below:

Extent of land originally proposed for deletion: 30.87 acres.

Error committed during addition 0.02 acres.

Extent of survey N0.28-1C3 missing from the deletion erroneously 0.22 acres. Actual extent of land proposed for deletion from land acquisition proceedings including S.No.28/1C3 (30.63 + 0.22 acres.) 30.85 acres.

We have not proposed or grounded any works in the 30.85 acres of land proposed for deletion from the land acquisition proceedings.

This is for favour of further necessary action."

Thereupon, a meeting was held between Joint Collector, Revenue Divisional

Officer (Land Acquisition Officer) and Vice-Chancellor of the University on 16-12-1995 and minutes were drafted in this regard and they were already extracted above.

10. It is thus admitted case of the Joint Collector that no physical possession was taken, that the compensation amount of 80% was not paid and that it was only technical handing over of possession and not handing over of possession on ground and therefore, it has to be treated as null and void. In the wake of this factual situation, would it be available for the Land Acquisition Officer, or the University to now say that physical possession of the subject land was taken and handed over to the University. Though the University in its counter contended that the actual possession of the land was taken and constructions were commenced, it is silent as to on which piece of land constructions were stated. It may be on the land in which there was no resistance or objection. But that is not clearly stated in the counter affidavit. Considering the sequence of events and the minutes of the Joint Collector himself, it has to be held that actual possession of the land in question was not taken and when once actual possession of the land was not taken, it does not vest in the Government as contemplated u/s 17 of the Act.

11. However, the learned Government Pleader strenuously contends that even if 80% of the compensation was not offered or paid, such non-payment will not vitiate the proceedings. As already mentioned, in support of this proposition he relies on the decision of the Supreme Court reported in S.P. Jain's case (supra) and the two Division Bench judgments of this Court reported in Mohd Moinuddin 's case (supra) and K. Sivananda Reddy's case (supra). It is no doubt true that the Division Bench in Mohd. Moinuddin's case (supra), reluctantly followed the decision of the Supreme Court since it is a binding precedent under Article 141 of the Constitution of India. The reluctance of the Division Bench could be seen from paragraph 9, which reads thus:

"Speaking for ourselves, we are inclined to take the view, without meaning slightest disrespect to their Lordships of the Supreme Court, that sub-section (3-A) should be read as a pre-condition for taking valid possession of the land u/s 17(1) and in the absence of tender of 80% of the amount, the take over of possession by the Collector is not a valid act and does not have the effect of vesting the land absolutely in the Government. The possession contemplated by Section 17(1) must be such that has been taken over after complying with sub-section (3-A). This interpretation, in our view, could impart an element of equity and rationality to the provision so as to undo the effect of delays in passing the awards. The land holder can neither get back the land nor claim compensation at a rate higher than the rate prevailing on the date of Section 4(1) notification issued long back, because no further notification can be issued by the Government when once it acts u/s 17(1). In such a situation, the view, which we have expressed, will mitigate the hardship to some extent. But we are unable to take a view contrary to the law laid down by the Supreme Court. Their Lordships

have also held in categorical terms that take over possession does not become illegal even if the 80% compensation was not paid in advance. That being the position in law, we must necessarily come to the conclusion that acquisition proceedings could not have lapsed at any time after the possession was taken over u/s 17(1) and the land became vested in the Government as a consequence thereof..."

Even though in Sivananda Reddy's case (supra), the Division Bench observed that it is mandatory to offer 80% compensation, yet in view of the decision of the Supreme Court in S.P. Jain's case (supra), the Division Bench held that when once possession was taken the land stand vested with the Government free of all encumbrances. But, in the instant case, we need not delve on the issue whether the taking possession without payment of 80% was fatal to the land acquisition proceedings or it is a mere irregularity. I have already held that there was no actual taking over and handing over of the possession of subject land and consequently the land did not vest with the Government. Admittedly, the University was not inclined to go for acquisition of this disputed portion of land. In such a situation, as held by the Supreme Court, it is always open for the Government to withdraw the land from the acquisition proceedings before taking possession of the land. But, when once possession is taken, it gets vested in the Government and the question of withdrawing the land from acquisition proceedings would not arise. In the instant case, admittedly request was made by the University from time to time to withdraw Ac.30-S7 cents of land from land acquisition proceedings. As it is now held by this Court that actual possession of the said land was not taken, it is always open for the Government to withdraw this extent of land by virtue of the provisions of Section 38 of the Act. Be that as it may, since the Government as required u/s 17 of the Act, did not take over the possession of this land to the University, the effect of further proceedings has to be considered. Section 4(1) notification was issued dispensing with Section 5A Notice and invoking Section 17(1) process. It is now found that the possession of subject land was not taken over. The very intendment of dispensing with Section 5A enquiry and taking advance possession is to facilitate the authorities to take possession by passing Section 5A in view of the urgent requirement of the land. But for this urgency clause, the acquisition proceedings could have taken place in the normal course, in which event the award ought to be passed within 2 years from the date of declaration, failing which the acquisition proceedings get lapsed u/s 11A of the Act. Therefore, when once the land acquisition proceedings were initiated u/s 4(1) duly dispensing with Section 5A enquiry and invoking urgency clause u/s 17(1) it is mandatory that possession of the subject land should be taken after following the procedure u/s 17(1) and 17(3-A). That is the reason the Apex Court held that if urgency clause u/s 17 is invoked, Section 11A has no application, to say that the award need not be passed within 2 years of publication of Section 6 declaration, thereby implying that the land loser was assured of 80% payment u/s 17(3-A) and the award could be passed beyond 2 years without allowing the acquisition proceedings to get lapsed. These aspects

did not come up for consideration before the Supreme Court. In S.P. Jain's case (supra), the facts stand on different stand. The Government issued Section 4(1) notification dispensing with Section 5A enquiry and invoking Section 17, the possession was taken and in fact it was admitted by the parties concerned that the possession was taken by the Land Acquisition Officer. The grievance of the owner was that the award was not published and hence they filed writ petition seeking directions to the Land Acquisition Officer to pass the award. The writ petition was dismissed by the High Court. Thereupon, the unsuccessful owners carried the matter in appeal through Special Leave. The Supreme Court observed as follows:

"14. Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made u/s 11. Upon the taking of possession the land vests in the Government, that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11A are intended to benefit the landowner and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration u/s 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior of the making of the award u/s 11 and thereupon the owner is divested of the title to the land, which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11A can have no application to cases of acquisitions u/s 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner.

15. Further, Section 17(3-A) postulates that the owner will be offered an amount equivalent to 80 percent of the estimated compensation for the land before the Government takes possession of it u/s 17(1). Section 11A cannot be so construed as to leave the Government holding title to the land without the obligation, to @ page-SC 2521 determine compensation, make an award and pay to the owner the difference between the amount of the award and the amount of 80 percent of the estimated compensation.

16. In the instant case, even that 80 per cent, of the estimated compensation was not paid to the appellants although Section 17(3-A) required that it should have been paid before possession of the said land was taken but that does not mean that the possession was taken illegally or that the said land did not thereupon vest in the Ist respondent. It is, at any rate, not open to the third respondent, who, as the letter of the Special Land Acquisition Officer dated 27th June, 1990 shows, failed to make the necessary monies available and who has been in occupation of the said land ever since its possession was taken, to urge that the possession was taken illegally and that, therefore, the said land has not

vested in the first respondent and the first respondent is under no obligation to make an award.

Therefore, it was not a case where the notification was challenged, nor the award was challenged but the land losers themselves approached the Court for direction to mandamus the authorities to pass the award. In that regard, a contention was sought to be raised by the requisitioning Department that the owners were not paid 80% of the compensation amount and therefore, the possession even it was taken over it was illegal and therefore, should be passed within 2 years from the date of Section 6 declaration, failing which the acquisition proceedings shall lapse. In that situation, the Supreme Court held that it would not open for the beneficiary having taken possession, that the possession was illegal. The judgment of Supreme Court was thus rendered in a different circumstances. The Supreme Court did not discuss the effect of violation of Section 17(3-A) except stating that the taking over of possession was not illegal and the land vested with the Government. It is to be noted that Section 11A and Section 17(3-A) and some other provisions were brought into effect by Act 68 of 19894. The Supreme Court having observed that "Section 11A cannot be so construed as to leave the Government holding title to the land without the obligation to determine the compensation, make an award and pay to the owner the difference between the amount of the award and the amount of 80% of the estimated compensation again found that even though 80% of estimated compensation was not paid and although 17(3-A) required that it should have been paid before taking possession, that could not be held as illegal and consequently it could not be said that the land did not vest in the Government. In fact this was interpreted in favour of land losers so as to protect the award proceedings from getting lapsed u/s 11A of the Act. That is the reason the Supreme Court held that such a contention cannot be raised by the beneficiary requisitioning department. But, the findings though may not be directly on the point, yet, it binding on the High Courts under Article 141 of the Constitution of India. I am of the considered view that the judgment of the Supreme Court requires reconsideration to avoid forming of conflicting opinions by the High Court. This would not be construed as disrespect of the judgment of the Supreme Court, but in the larger interest of the society such matters are settled in clear terms.

12. Therefore, in the scenario with which we are faced in this situation, two issues would arise for consideration :

(a) Whether the land acquisition proceedings initiated u/s 4(1) dispensing with Section 5A enquiry and invoking Section 17(1) get vitiated if the proceedings are carried out without taking possession u/s 17(1)?

(b) Whether the award could be passed beyond 2 years from the date of declaration ?

13. The learned Government Pleader submits that there is no impediment from proceeding with land acquisition proceedings even without taking possession u/s

17(1) as the Supreme Court held that taking possession without payment of 80% would not amount to illegal or irregular possession. I am unable to accept this extreme contention. Firstly, the Supreme Court was not dealing; with a situation where the possession was not at all taken. Secondly, if the Government is allowed to proceed with land acquisition proceedings then there will not be any difference between the usual land acquisition proceedings viz., 5-A enquiry, Sections 6 and 9 proceedings etc. and the proceedings initiated by dispensing with Section 5A enquiry and involving urgency clause u/s 17. This would confer added advantage to the State that the award could be passed at any time without reference to Section 11A. Parliament in its wisdom divided the acquisition proceedings under two categories (a) non-urgency and (b) urgency. If it is a non-urgency acquisition, usual enquiry u/s 5A and other proceedings will have to be taken and if it is an urgency category, enquiry u/s 5A is dispensed with, the possession is taken and further proceedings are initiated. Hence, if the acquisition proceedings are taken without taking possession u/s 17, the very purpose is frustrated and it defeats the very intendment of Sections 5A and 17. Therefore, in my considered view the further land acquisition proceedings without taking possession u/s 17(1) are to be declared as illegal and without jurisdiction.

14. Adverting to the issue regarding applicability of Section 11A, there is no dispute that if urgency clause is invoked the award need not be passed within 2 years of the date of declaration. But, if the possession is not taken having invoked urgency clause u/s 17(1) entire proceedings get engulfed with irreconcilable illegality and consequently entire proceedings in pursuance of 4(1) notification are void. Hence, in such a situation, passing of award either within a period of 2 years or beyond would not arise and per consequences Section 11A has no applicability.

15. What would be the position when the possession of land was not taken in accordance with law and yet an award is passed after 2 years of Section 6 declaration is a question that cannot be decided in this present writ petition. Since the award was passed during the pendency of the writ petition, it is always subject to the result of the writ petition. Under these circumstances, I am satisfied that the acquisition proceedings initiated by the authorities in respect of the land in question to an extent of Ac.30-87 cents is illegal and contrary to law and is liable to be quashed.

16. In the result, all the writ petitions are allowed and the award dated 31-7-1997 in respect of the land admeasuring Ac.30-87 cents is set aside. There shall be no order as to costs.