
(2020) 07 RAJ CK 0163

In the Rajasthan High Court

Case No : Spl. Appl. Writ No. 1148, 1365, 1573, Of 2018, 160, 172, 173, 602, 609, 835, 869, 1089, 1091, 1209, 1213 Of 2019

Rajasthan State Industrial Development and Investment Corporation Ltd And Ors

APPELLANT

Vs

Jawari Lal Jain And Ors

RESPONDENT

Date of Decision : 06-07-2020

Acts Referred:

Rajasthan Land Acquisition Act, 1894 — Section 4, 6, 11, 12, 16, 24, 24(1), 24(1)(a), 24(1)(b), 24(2), 31, 31(1)
Right to Fair Compensation and Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24(2), 24(1)(b)

Citation : (2020) 07 RAJ CK 0163

Hon'ble Judges : Sangeet Lodha, J;Rameshwar Vyas, J

Bench : Division Bench

Advocate : Sanjeet Purohit, Surendra Thanvi, Pradeep Swami, Sandeep Shah, Abhimanyu Singh, Shridhar Mehta

Final Decision : Allowed

Judgement

1. These intra court appeals are directed against the orders dated 5.5.2018 and 14.5.2018 passed by the learned Single Judge of this Court, whereby the writ petitions preferred by the respondents-writ petitioners seeking directions to the appellants herein to redetermine the amount of compensation payable for the acquisition of the land, adhering to the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the Act of 2013") have been allowed.

2. The facts relevant are that the agriculture land of the respondents/khatedar tenants situated at villages Boranada, Salawas, Heera Khera, Tehsil-Luni, District-Jodhpur were acquired by the State Government under the provisions of Rajasthan Land Acquisition Act, 1894 (for short "the Act of 1894") for establishment of Rajasthan Industrial Development and Investment Corporation Limited (RIICO) Industrial Area. The notification under Section 4 of the Act of

1894 for proposed acquisition was issued on 16.8.2010. The declaration under Section 6 was issued vide notification dated 10.8.2011. After following the procedure laid down and prior approval of the State Government, the award determining the compensation payable inter alia to the respondents-writ petitioners was passed by the Land Acquisition Officer-cum-Sub Divisional Officer on 24.9.2013.

The Land Acquisition Officer issued notice of the award under Section 12 of the Act of 1894 to the persons interested on 28.12.2015. The respondents-writ petitioners made representation claiming that as the amount of compensation has not been deposited/paid in respect of a majority of land holdings in the account of beneficiaries and therefore, by virtue of proviso to Section 24, they are entitled to compensation in accordance with provisions of the Act of 2013. However, the amount of compensation offered to the respondents-writ petitioners by cheques was accepted by them under protest. The prayer for re-determination of the compensation made as aforesaid was not acceded to by the Land Acquisition Officer and therefore, while claiming the relief as aforesaid, the respondents preferred writ petitions before this Court, which stand allowed by the learned Single Judge. Hence, these appeals.

3. The learned Single Judge has allowed the writ petitions relying upon a coordinate Bench decision dated 22.1.2018 rendered in S.B.C.Writ Petition No.11688/2016 (Vikas Construction Company vs. Union of India & Ors.) and other connected petitions, the operative portion whereof reads as under:

"As observed earlier, the admitted position in these cases is that though the award was passed on 20.11.2014 but the sanction of compensation amount was received only on 05.01.2015 and, therefore, it is clear that the compensation to the petitioners was not paid on or before 31.12.2014 and in that situation as per the latest guidelines issued by the MoRTH on 28.12.2017, compensation would be payable to the petitioners in accordance with the First Schedule of Acquisition Act of 2013.

In view of the above discussions, these writ petitions are disposed of with the direction to the respondents to redetermine the compensation amount, awarded to the petitioners, and revise the award dated 20.11.2014 as per the First Schedule of the Acquisition Act of 2013 within a period of three months from the date of production of certified copy of this order."

4. Mr. Sandeep Shah, learned Additional Advocate General and Mr. Sanjeet Purohit, learned counsel appearing for RIICO submitted that indisputably, the award was passed by the Land Acquisition Officer on 24.9.2013, however, the compensation was paid/deposited to the beneficiaries after coming into force of the Act of 2013 w.e.f. 1.1.2014. But since, the award passed in favour of the writ petitioners and other beneficiaries is covered by the provisions of Section 24 (1) (b) of the Act of 2013, all proceedings in respect of the award passed under Section 11 of the Act of 1894 shall continue under the provisions of the said Act

and the proviso appended to Section 24 (2) of the Act of 2013 is not attracted in the matter. Learned counsel submitted that under the Scheme of Section 24, the proviso cannot be treated as part of Section 24(1)(b) rather, it is appended to the exception carved out in Section 24(2) of the Act of 2013. Learned counsel submitted that where the award has been passed within five years preceding to the date of commencement of the Act of 2013 i.e. 1.1.2014, further proceedings of taking possession and payment compensation by virtue of provisions of Section 24(1)(b) shall continue under the Act of 1894 as if it has not been repealed and therefore, the beneficiaries covered by the award in question which is passed on 24.9.2013 cannot claim re-determination of compensation under the provisions of the Act of 2013. Learned counsel submitted that as a matter of fact, the controversy raised by the writ petitioners regarding the applicability of the proviso to Section 24(2) stands set at rest by a Constitution Bench decision of the Supreme Court in Indore Development Authority vs. Manoharlal & Ors. Etc. [S.L.P.(C) No.9036-9038 of 2016 & other connected SLPs], decided on 6.3.2020 and therefore, the impugned order passed by the learned Single Judge deserves to be set aside and the writ petitions preferred by the respondents-writ petitioners deserve to be dismissed.

5. On the other hand, learned counsel appearing for the respondents-writ petitioners while reiterating the contention raised before the learned Single Judge, submitted that the proviso appended to Section 24 covers both sub-sections (1) & (2) of Section 24 and therefore, notwithstanding the fact that the award in favour of the writ petitioners was passed by the Land Acquisition Officer prior to commencement of the Act of 2013, the appellants having failed to deposit the amount of compensation in the accounts of a majority of beneficiaries, the writ petitioners were entitled for enhanced compensation under the provisions of the Act of 2013. However, learned counsel fairly not disputed that the position of law stands settled by a Constitution Bench of the Supreme Court in Indore Development Authority's case (supra).

Learned counsel submitted that admittedly, the amount of compensation pursuant to the award passed was deposited/paid by the RIICO in the year 2016 whereas, even under the Scheme of the Act of 1894, the Collector must be armed with the amount of compensation payable to the persons interested as soon as the award is made and thus, the failure on the part of RIICO in depositing the amount of compensation soon after the award is passed vitiates the proceedings subsequent thereto and the acceptance of the amount of compensation by the respondents-writ petitioners under protest shall not come in their way.

6. We have considered the rival submissions and perused the material on record.

7. Indubitably, the controversy raised in the instant appeals rolls around the provisions of Section 24 of the Act of 2013, which may be beneficially quoted:

"24. Land acquisition process under Act No.1 of 1894 shall be deemed to have

lapsed in certain cases.-(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),-

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

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

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act.

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

8. A bare perusal of Section 24(1) makes it abundantly clear that it covers two situations arising in case of land acquisition proceedings initiated under the Act of 1894 prior to commencement of the Act of 2013; (i) where no award has been passed under Section 11 of the Act of 1894 as on the date of the commencement of the Act of 2013 and (ii) where an award had already been passed under Section 11 of the Act of 1894 prior to commencement of the Act of 2013. Apparently, where no award is passed as per provisions of Section 11 of the Act of 1894, by virtue of provisions of Section 24(1)(a), all provisions of the Act of 2013 relating to the determination of compensation shall be applicable, but in case where the award has already been passed under Section 11 of the Act then, the proceedings subsequent thereto shall be governed by the Act of 1894 as if the same is not repealed.

9. Sub-section (2) carves out an exception to Section 24(1) and provides that where the land acquisition proceedings has been initiated under the Act of 1894 and award under Section 11 has been made five years or more prior to the commencement of the 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 shall be at liberty to initiate the proceedings of such land acquisition afresh in accordance with the provisions of the Act of 2013. The proviso to Section 24(2) provides for payment

of higher compensation to the beneficiaries in accordance with the provisions of the Act of 2013 where the compensation in respect of a majority of the land holdings has not been deposited in account of the beneficiaries.

10. Admittedly, notwithstanding the fact that award in favour of the writ petitioners has already been passed under Section 11 of the Act of 1894 before the commencement of the Act of 2013, the higher compensation in terms of provisions of the Act of 2013 is claimed by the writ petitioners solely on the ground that the proviso to Section 24 is applicable to the situations envisaged under Sections 24(1) and 24(2) both. In other words, the contention of the writ petitioners is that the proviso needs to be read not only alongwith the main provision of Section 24 (2) rather, it needs to be read alongwith Section 24 (1) (b) as well.

11. In Indore Development Authority's case (supra), a Constitution Bench of the Supreme Court while considering the issue as to whether under the Scheme of Section 24, the proviso is treated as part of Section 24(1)(b) or it is part of the exceptions carved out in Section 24(2), held:

"171. The main question is whether under the scheme of section 24 the proviso is treated as part of Section 24(1)(b) or it is part of the exception carved out in section 24(2) particularly in view of the fact that the word 'or' has been interpreted by us as 'and'. In that context, when Delhi Metro Rail Corporation Ltd. v. Tarun Pal Singh & Ors as well as when the question was considered in Delhi Development Authority v. Virender Lal Bahri & Ors., [SLP[C] No.37375/2016], the question did not come up for consideration in any of the matters whether 'or' in two negative conditions in Section 24(2) has to be read conjunctively or disjunctively. When we read the word "or" as 'and' in the main part of section 24(2), it is clear that the proviso has to stay as part of section 24(2) where it has been placed by the legislature, and only then it makes sense. If 'or' used in-between two negative conditions of 'possession has not been taken' or 'compensation has not been paid', disjunctively, in that case, the proviso cannot be operative and would become otiose and would make no sense as part of Section 24(2). In case of amount not having been paid the acquisition has to lapse, though possession (of the land) has been taken would not be the proper interpretation of the main part as mentioned above, when "or" is read conjunctively, section 24(2) provided for lapse in a case where possession has not been taken, nor compensation has been paid, in such a case proviso becomes operative in given exigency of not depositing amount with respect to majority of landholdings.

172. A reading of section 24(2) shows that in case possession has been taken even if the compensation has not been paid, the proceedings shall not lapse. In case payment has not been made nor deposited with respect to the majority of the holdings in the accounts of the beneficiaries, then all the beneficiaries specified in the notification under Section 4 of the Act of 1894 shall get the enhanced compensation under the provisions of the Act of 2013.

Section 24(2) not only deals with failure to take physical possession but also failure to make payment of compensation. If both things have not been done, there is lapse of the acquisition proceedings. But where payment has been made though possession has been taken or payment has been made to some of the persons but not to all, and it has also not been deposited as envisaged in the proviso, in that event all beneficiaries (under the same award) shall get higher compensation. This is because once possession is been taken, there can be no lapse of the proceedings, and higher compensation is intended on failure to deposit the compensation. Once an award has been passed and possession has been taken, there is absolute vesting of the land, as such higher compensation follows under the proviso, which is beneficial to holders. In a case where both the negative conditions have not been fulfilled, as mentioned in section 24(2), there is a lapse. Thus, the proviso, in our opinion is a wholesome provision and is, in fact, a part of section 24(2); it fits in the context of section 24(2) as deposit is related with the payment of compensation and lapse is provided due to non-payment along with not taking possession for five years or more whereas for non-deposit higher compensation is provided. Thus, when one of the conditions has been satisfied in case payment has been made, or possession has not been taken, there is no lapse of the proceedings as both the negative conditions must co-exist.

173. When we consider the provisions of section 24(1)(b) where an award has been passed under section 11 of the Act of 1894, then such proceedings shall continue under the provisions of the said Act as if it has not been repealed. The only exception carved out is the period of 5 years or more and that too by providing a non-obstante clause in Section 24(2) to anything contained in section 24(1). The non- obstante clause qualifies the proviso also to Section 24(2). It has to be read as part of Section 24(2) as it is an exception to Section 24(1)(b). In our opinion, Section 24(1)(b) is a self-contained provision, and is also a part of the non-obstante clause to the other provisions of the Act as provided in sub-section (1). Parliament worked out an exception, by providing a non-obstante clause in section 24(2), to Section 24(1). Compensation is to be paid under Section 24(1)(b) under the Act of 1894 and not under the Act of 2013. As such Section 24(2) is an exception to section 24(1)(b) and the proviso is also an exception which fits in with non-obstante clause of Section 24(2) only. Any other interpretation will be derogatory to the provisions contained in Section 24(1)(b) which provides that the pending proceedings shall continue under the Act of 1894 as if it had not been repealed, that would include the part relating to compensation too. Even if there is no lapse of proceedings under section 24(1) (a), only higher compensation follows under Section 24(1)(a). Section 24(2) deals with the award having been made five years or before the commencement of the new Act. The legislative history also indicates/it was intended that five years' period should be adequate to make payment of compensation and to take possession. In that spirit, the proviso has been carved out as part of section 24(2). Thus when Parliament has placed it at a particular place, by a process of

reasoning, there can be no lifting and relocation of the provision. To bodily lift it would be an impermissible exercise. Unless it produces absurd results and does not fit in the scheme of the Act and the provisions to which it is attached such an interpretation, doing violence to the express provision, is not a legitimate interpretative exercise. There is no need to add it as the proviso to Section 24(1) (b) as it has not been done by the legislature, and it makes sense where it has been placed. It need not be lifted.

.....XXX.....XXXXXXX.....

182. The present case involves placement of colon preceding to the Proviso to Section 24(2) and not Section 24(1), which ends with a full stop, and it makes sense and the true meaning where Parliament has placed it. The proviso is part of section 24(2). It is not permissible to alter the provision and to read it as a proviso to section 24(1)(b), mainly when it makes sense where Parliament so placed it. To read the proviso as part of section 24(1)(b), will create repugnancy which the provisions contained in section 24(1)(b). The window period of 5 years is provided to complete the acquisition proceedings where the award has been passed, and the provisions of the Act of 1894 shall be applied as if it has not been repealed. Section 24(2) starts with a non-obstante clause; it plainly is notwithstanding Section 24(1), and the proviso to section 24(2) enlarges the scope of section 24(2). When the window period has been provided under section 24(1)(b), i.e., section 24(2) and its proviso, higher compensation cannot follow in case of an award which has been passed within 5 years of the enactment of the Act of 2013 otherwise anomalous results shall accrue. In case proviso is read as a part of section 24(1)(b), it would be repugnant to the consideration of the provision which has been carved out saving acquisition and providing window period of 5 years to complete the acquisition proceedings. There were cases under the Act of 1894, in which award may have been made in December, 2013, a few days before the Act was enforced on 1.1.2014. As the provisions of the Act of 1894 are applicable to such awards, obviously notice of the award has to be given under Section 12 of the said Act. There is no question of outright deposit. In such event as the deposit is to be made when the Collector is prevented by the exigencies specified in Section 31(2) from making payment. The deposit is not contemplated directly either in the court or the treasury, as the case may be as provided in section 31(2), corresponding to section 77(2) of the Act of 2013.

183. The proviso relates to the non-payment. Compensation is deposited when the Collector is prevented from making payment. It is the obligation made under section 31(1) to tender the amount and pay unless prevented by the contingencies specified in section 31(2). Thus, the deposit has a co-relation with the expression "payment has not been made", and the proviso makes sense with Section 24(2) only. In case of non-payment or prevention from payment, compensation is required to be deposited as the case may be in the Reference Court or otherwise in Treasury, if permissible.

184. The proviso uses the expression that the amount is to be deposited in the

account of beneficiaries. Earlier under the Act of 1894, there was no such provision for depositing the amount in the bank account of beneficiaries but the method which was used as per the forms which were prescribed to deposit the amount, it was credited to the Reference Court or in the Treasury in the names of the beneficiaries and as against the award. It was not a separate account but an account of the Reference Court or set apart in the treasury. The proviso has to be interpreted and given the meaning with Section 24(2) as an amount was required to be paid and on being prevented had to be deposited as envisaged under the Act of 1894.

185. If we hold that even if the award has been passed within 5 years and the compensation amount has not been deposited with respect to such an award passed in the window period, higher compensation to follow if it is not deposited with respect to the majority of the holdings would amount to re-writing the statute. The provision of section 24(1)(a) is clear if an award has not been passed, higher compensation to follow. No lapse is provided. In case award has been passed within the window period of section 24(1)

(b), inter alia, the provisions for compensation would be that of the Act of 1894. The only exception to section 24(1) is created by the non-obstacle clause in section 24(2) by providing that in case the requisite steps have not been taken for 5 years or more, then there is lapse as a negative condition. The proviso contemplates higher compensation, in case compensation has not been paid, and the amount has not been deposited with respect to the majority of the holdings, to all the beneficiaries under the Act of 2013, who were holding land on the date of notification under Section

4. If the proviso is added, section 24(1)(b) will destroy the very provision of section 24(1)(b) providing proceedings to continue under the Act of 1894, which is not the function of the proviso to substitute the main Section but to explain it. It is not to cause repugnancy with the main provision. The function of the proviso is to explain or widen the scope. It is a settled proposition of law that the proviso cannot travel beyond the provision to which it is attached. The proviso would travel beyond the Act of 1894 as it is the intention of section 24(1)(b) the proceedings to govern by the Act of 1894. Thus, the proviso has no space to exist with section 24(1)(b), and it has rightly not been attached by Parliament, with Section 24(2) and has been placed at the right place where it should have been.

.....XXXX.....XXX

187. The fundamental consideration is that the proviso cannot supersede the main provision of section 24(1)(b) and destroy it. The function of the proviso is to except out the pressing provisions to which it is attached. In case possession has been taken, but only a few beneficiaries have been paid, there is no lapse, but higher compensation to all the beneficiaries has to follow. The provision provides equal treatment to all, not only to a few-and, in effect, his similar to

Section 28A of the Act of 1894-in case the obligation to pay or deposit has not been discharged and there is no arrangement of money to discharge the obligation either by paying or depositing in the Reference Court and, if permissible, in the treasury. Section 24(2) saves land which has been vested in the State, once award has been passed and possession of land. However, in case compensation has not been deposited with respect to majority of landowners, in any given award, all beneficiaries have to be paid higher compensation under the new Act.

188. It was urged that section 24(1) and 24(2) deal with different subjects. It was submitted that Section 24(1) deals with compensation, whereas section 24(2) deals with the lapsing of the acquisition. We are unable to accept the submission. Section 24(2) also deals with payment of compensation and taking of possession. Section 24(1)(a) is concerning a situation where no award has been made, higher compensation under the new Act to follow. In section 24(1) (b) where the award is made (at the time of coming into force of the new Act) further proceedings would be under the new law; subject to Section 24(2), the provisions of the Act of 1894 would apply to such an award. Thus, the main part of section 24(2) deals with payment of compensation; also the proviso which provides for higher compensation to be paid to all is in the context of section 24(2) and cannot be lifted and added to Section 24(1)(b) in the aforesaid circumstances. What would be the majority of the landholdings has to be seen in the context, what has been acquired in the case of a single plot being acquired, and in case compensation has not been deposited with respect to that, it will constitute the majority. The majority does not depend upon the number of holdings acquired, but what constitutes the majority as per the acquired area under the notification.

189. Section 24(1)(a) operates where no award is made in a pending acquisition proceedings; in such event all provisions of the new Act relating to determination of compensation would apply. Section 24(1) (b) logically continues with the second situation, i.e. where the award has been passed, and states that in such event, proceedings would continue under the Act of 1894. Section 24(2)- by way of an exception, states that where an award is made but requisite steps have not been taken for five years or more to take possession nor compensation has been paid then there is lapse of acquisition. If one of the steps has been taken, then the proviso can operate. Time is the essence. It is on the basis of time-lag that the lapse is provided and in default of payment for five years as provided on failure to deposit higher compensation is to be paid. It is based on that time-lag higher compensation has to follow. It is not the mere use of colon under section 24(2) but the placement of the proviso next to Section 24(2) and not below Section 24(1)(b). Thus, it is not permissible to alter a placement of proviso more so when it is fully in consonance with the provisions of section 24(2). Section 24(2) completely obliterates the old regime to the effect of its field of operation. Under section 24(1)(a), there is a partial lapse of the old regime because all proceedings, till the stage of award are preserved. The award, in such

proceedings, made after coming into force of the Act of 2013 has to take into account its provisions, for determination of compensation. Thus, proceedings upto the stage of award are deemed final under the old Act. In the case under section 24(1)(b), the old regime prevails. The proviso is an exception to section 24(2) and in part the new regime for payment of higher compensation in case of default for 5 years or more after award.

190. A proviso has to be construed as a part of the clause to which it is appended. A proviso is added to a principal provision to which it is attached. It does not enlarge the enactment. In case the provision is repugnant to the enacting part, the proviso cannot prevail. Though in absolute terms of a later Act. Its placement has been considered, and purpose has been considered in the following decisions. It was observed in *State of Rajasthan v. Leela Jain & Ors.* that:

"14.....So far as a general principle of construction of a proviso is concerned, it has been broadly stated that the function of a proviso is to limit the main part of the section and carve out something which but for the proviso would have been within the operative part"

(emphasis supplied) Similarly, this court in *Sales-tax Officer, Circle 1, Jabalpur v. Hanuman Prasad* stated that :

" 5.... It is well-recognised that a proviso is added to a principal clause primarily with the object of taking out of the scope of that principal clause what is included in it and what the Legislature desires should be excluded."

(emphasis supplied) In *Commissioner of Commercial Taxes, Board of Revenue, Madras and Anr. vs. Ramkishan Shrikishan Jhaver etc* it was observed:

"8.....Generally speaking, it is true that the proviso is an exception to the main part of the section; but it is recognised that in exceptional cases a proviso may be a substantive provision itself."

(emphasis supplied)xxxx.....

195. The proviso thus, is not foreign to compensation to be paid under section 24(2). It provides what is dealt with in Section 24(2) and takes to its logical conclusion, and provides for higher compensation, where there is and can be no lapsing of acquisition proceedings. The rule of construction-as is clear from the preceding case law discussed, is that the proviso should be limited in its operation to the subject-matter in a clause. A proviso is ordinarily a proviso and has to be harmoniously construed with the provisions. In our opinion, the proviso is capable of being harmoniously construed with Section 24(2) and not with section 24(1)(b), once we interpret the word 'or' as 'not' in section 24(2).

196. In keeping with the ratio in the aforesaid decisions, this court is of the considered view that the proviso cannot nullify the provision of Section 24(1)(b) nor can it set at naught the real object of the enactment, but it can further by

providing higher compensation, thus dealing with matters in Section 24(2). Therefore, in effect, where award is not made [Section 24(1)(a)] as well as where award is made but compensation is not deposited in respect of majority of the landowners in a notification (for acquisition) [i.e. proviso to Section 24(2)] compensation is payable in terms of the new Act, i.e. Act of 2013.

197. For the aforesaid reasons, considering the placement of the proviso, semi-colon having been used at the end of section 24(2), considering the interpretation of section 24(1)(b) and the repugnancy which would be caused in case the proviso is lifted which is not permissible and particularly when we read the word 'or' as 'nor' in section 24(2), it has to be placed where the legislature has legislated it, it has not been wrongly placed as part of section 24(2) but is intended for beneficial results of higher compensation for one and all where there is no lapse, but amount not deposited as required. Higher compensation is contemplated by the At of 2013, which intention is fully carried forward by the placement and interpretation."

(emphasis added)

12. The Supreme Court answered the questions referred for consideration as under:

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

1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.

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

3. The word 'or' used in Section 24(2) between possession and compensation has to be read as 'nor' or as 'and'. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

4. The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit in compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013.

In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the Act of 1894.

5. In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013.

6. The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part of Section 24(1)(b).

7. The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).

8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay and pay compensation for five years or more before the Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority as on 1.1.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

9. Section 24(2) of the Act of 2014 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition." (emphasis added)

13. In view of the authoritative pronouncement of the Supreme Court in Indore Development Authority's case (supra) that:(i) The proviso is part of Section 24(2) and cannot be read as part of Section 24(1)(b); (ii) The window period of five years is provided to complete the acquisition proceedings, where the award has been passed under Section 11 of the Act of 1894, the provisions of the Act of

1894 shall be applied as if it has not been repealed; and

(iii) In case where the award is passed during the window period of five years in terms of Section 24(1)(b), the compensation is to be paid under the Act of 1894 and not under the Act of 2013, the only contention raised by the writ petitioners as aforesaid falls through and therefore, the order under appeal passed by the learned Single Judge deserves to be set aside.

14. Coming to the contention of the learned counsel for the respondents that even under the Scheme of Act of 1894, as soon as the award is passed, the Collector must be armed with the amount of compensation payable to the person interested, suffice it to say that no such case was ever set out by the writ petitioners in the writ petition filed or the present appeals and therefore, the question of consideration of the abstract contention sought to be raised by the writ petitioners at this stage, without any foundation of fact, cannot be entertained by this Court. Moreover, under Section 31 of the Act of 1894, on making the award under Section 11, the Collector shall tender payment of compensation awarded by him to the persons interested entitled thereto according to award and shall pay it to them unless prevented by some one or more of the contingency mentioned in sub-sections (2), (3) and (4) of Section 31. From the provisions of Section 31, in no manner it could be inferred that if the award amount is deposited with some delay, it will vitiate the acquisition proceedings. It is pertinent to note that the writ petitioners have already accepted the amount of compensation with interest and therefore, at this stage, even otherwise, they are precluded from raising any issue regarding the legality of land acquisition proceedings on the ground of alleged violation of the provisions of the Act of 1894.

15. In the result, the special appeals succeed, the same are hereby allowed. The orders under appeal dated 5.5.2018/14.5.2018 passed by the learned Single Judge of this Court are set aside. The writ petitions preferred by the writ petitioners are dismissed. No order as to costs.