
(2016) 11 AHC CK 0039

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 24351 of 2015.

**Sudarshan Kumar Jain and 11 Others - Petitioners @HASH State of U.P.
and 2 Others**

Date of Decision : 09-11-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 11, Section 17(1), Section 4
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and
Resettlement Act, 2013 — Section 24(2)

Citation : (2016) 11 ADJ 190 : (2017) 1 AllWC 344 : (2017) 120 ALR 641 :
(2017) 134 RD 793 : (2016) 4 UPLBEC 3389

Hon'ble Judges : V.K. Shukla and Mahesh Chandra Tripathi, JJ.

Bench : Division Bench

Advocate : Y.S. Bohra and Ashok Khare, Advocates, for the Petitioners; B.
Dayal, S.C., for the Respondents

Final Decision : Dismissed

Judgement

1. Heard Shri Y.S. Bohra, learned counsel for the petitioners; Shri Sanjay Kumar Singh, learned Standing Counsel for respondent nos. 1 and 2 and Shri B. Dayal for Meerut Development Authority-respondent no.3.

2. The present writ petition has been filed for following principal reliefs:-

"(i) to issue writ, order or direction in the nature of certiorari quashing the impugned order dated 30.1.2015 passed by respondent No.1 (Annexure No.1 to the writ petition).

(ii) to issue writ, order or direction in the nature of mandamus commanding the respondents to release the land in question of the petitioners comprising of plot Nos.565, 566, 567, 555, 583, 586, 585, 556, 560, 552, 535 and 538 situated at Village Abdullapur, Pargana, Tehsil and District Meerut in favour of the petitioners, which was acquired vide notification dated 27.1.1990 under Section 4 (1) of Land Acquisition Act, 1894 and declaration under Section 6 read with Section 17 (1) & (4) of Land Acquisition Act, 1894 on 07.3.1990 which is deemed to have lapsed in view of Section 24 (2) of the Right to Fair Compensation and

Transparency in the Land Acquisition, Rehabilitation and Resettlement Act, 2013.

(iii) to issue writ, order or direction in the nature of mandamus commanding the respondent Nos. 2 and 3 to mutate the names of the petitioners in revenue records over plots no.565, 566, 567, 555, 583, 586, 585, 556, 560, 552, 535 and 538 situated at Village Abdullahpur, Pargana, Tehsil and District Meerut in place of Meerut Development Authority regarding which representation has already been moved by the petitioners on 17.2.2014 to the Collector, Meerut and other State authorities.

(iv) to issue writ, order or direction in the nature of mandamus commanding and directing the respondents not to interfere with the peaceful possession of petitioners in any manner whatsoever over the land in question of petitioners comprising of plot Nos.565, 566, 567, 555, 583, 586, 585, 556, 560, 552, 535 and 538 situated at Village Abdullahpur, Pargana, Tehsil and District Meerut."

3. Brief background of the case is that the petitioner nos. 1 to 4 claim to be owners and bhumidhars of plot Nos.565, 566, 567, 555 and 802/1105 situated in Village Abdullahpur, Pargana, Tehsil and District Meerut. Shri Bimal Chand Jain, who was bhumidhar of plot no.566, died on 13.11.2011 and the said plot was inherited by petitioner nos. 1 to 4. Shri Subhash Kumar was a co-sharer in plot No.802/1105 and he died on 15.9.2005. His share was inherited by petitioner nos. 3 and 4. The petitioner nos. 5 and 6 also claim to be co-sharers and bhumidhar of plot Nos.583 and 586 along with Sri Om Prakash Jain. Plot no.585 belongs to petitioner nos. 8 and 9. Smt. Sushma Jain-the petitioner no.7 and Smt. Chandra Kani Devi are bhumidhars of plot no.585. Smt. Chandra Kani Devi died on 8.5.2014 leaving behind Rakesh Jain-petitioner no.5 as her heir and legal representative. The petitioner nos. 10, 11 and 12 are bhumidhars and co-sharers of plot nos.556, 560, 552, 535 and 538 to the extent of ? share. The entire land of the petitioners is situated in the village in question.

4. The State Government had proposed to acquire 246.931 acres of land of the village in question vide notification dated 27.1.1990 under Section 4(1) of the Land Acquisition Act, 1894 (for short, "the Act"). Since the land in question was urgently required by the State Government, the declaration under Section 6 of the Act was issued in the official Gazette on 7.3.1990 and provision of Section 17(1) of the Act was invoked. The land in question was sought to be acquired for the purpose of construction of a residential/commercial building under "Planned Development Scheme" by the Meerut Development Authority (for short, "the MDA"). Since Section 17(1) of the Act was invoked, the inquiry under Section 5A of the Act was dispensed with. Consequently, declaration under Section 6 read with Section 17(1) & (4) of the Act was published in a daily newspaper. Thereafter, the notice under Section 9 of the Act was issued on 20.8.1991 to which the petitioners had submitted their reply/objections.

5. Finally the Special Land Acquisition Officer, Meerut passed an award under Section 11 of the Act on 17.3.1992 and a sum of Rs. 5,51,00,000/- was

calculated as compensation of the land. Out of total compensation, the MDA deposited a sum of Rs. 5,32,00,000/- through Allahabad Bank in the office of respondent no.2 on 23.3.1992 and the remaining amount of Rs. 19,00,000/- was deposited by the MDA on 27.1.2001. The Special Land Acquisition Officer had disbursed Rs. 3,05,00,000/- to the tenure holders. However, an amount of Rs. 2,46,00,000/- was not received by the interested claimants for the reason that some of the claimants had sold their land and some of them had challenged the acquisition of the land. Therefore the balance amount of Rs. 2,46,05,733/- was deposited in the Court of District Judge, Meerut through treasury cheque no.581944 dated 7.12.2007.

6. Record in question also reflects that earlier some petitions were filed before this Court for a direction to the MDA to press its resolution dated 17.9.1997 submitted to the State Government for proposal of withdrawal of acquisition on the ground that the land in question was not required for the purpose for which it was acquired. The leading Writ Petition Nos.7748 of 2002 and 21407 of 2002 were filed for following reliefs:-

"i. Issue a writ, order or direction in the nature of mandamus commanding the respondent no. 1 to accept the proposal for withdrawing from acquisition in view of the resolution dated 17.9.97 submitted by the Meerut Development Authority at the earliest within a period to be fixed by this Hon''ble Court.

ii. Issue a writ, order or direction in the nature of certiorari quashing the entire land acquisition proceedings in pursuance of the notification u/s 4 dated 27.1.1990 and declaration u/s 6 of the Act dated 7.3.90. ii-a. Issue a writ, order or direction in the nature of certiorari quashing the order/decision communicated by letter dated 24.08.2002 (Annexure-16 to the writ petition).

iii. Issue a writ, order or direction in the nature of mandamus commanding the respondents not to dispossess the petitioners from their respective lands forcibly in pursuance of the acquisition for declaration was issued u/s 6 of the Act on 6.3.90.

iv. Issue a writ, order or direction in the nature of mandamus commanding the respondents to pay the damages for financial loss, mental agony and pain to the petitioners in view of section 48(2) of the Act.

v. Issue any other writ, order or direction which this Hon''ble Court may deem fit and proper in the facts and circumstances of the case.

vi. Award cost of the writ petition to the petitioners."

7. The aforesaid writ petitions were disposed of by this Court on 2.12.2009 directing the MDA to press its resolution, if the authority is not in need of the said land. The operative portion of the order reads as under:-

"In this petition, the original owners are They have not pressed other reliefs, except the relief seeking a writ of mandamus to command the Meerut

Development Authority, Respondent No. 4 to press the resolution dated 14.05.02, which has been rejected by the Government.

A perusal of the rejection order reveals that rejection is not based for other reasons, except that the land proposed to be released under Section 48 of the Land Acquisition Act, has been thrust upon the development authority to sell it out so that its financial position is improved. This is no reason. The acquisition under the Land Acquisition Act is made for the public purpose if needed. No doubt the town plan development of the council is a public purpose done by the development authority but the development authority when itself says that is not needed, then the condition of acquisition is not fulfilled as contained in the Land Acquisition Act. Therefore reason of rejection is not germane to the provisions of the Land Acquisition Act. The Development Authority is directed to press its resolution if the authority is not in need of the said land. The petition is accordingly disposed of."

8. Dissatisfied with the aforesaid order passed by the Division Bench of this Court, the petitioners had approached Hon"ble Supreme Court by means of Civil Appeal Nos. 2944 to 2947 of 2013 (Mahadeo (dead) through LRs and ors. v. State of UP and ors.), and the aforesaid appeals were dismissed by Hon"ble Apex Court on 8.4.2013, reported in 2013 (3) AWC 2787 (SC), with following observations:-

"10. Some of the important facts which are not in dispute can be summarised as under:

i) Notification under Section 4 and Declaration under Section 6 were issued for the acquisition of 246.931 acres of the land for the purpose of construction of residential/commercial building under the planned Development Scheme in the District of Meerut by the MDA;

ii) Inquiry under Section 5A of the Act was dispensed with since provision of Section 17(1) & (4) was invoked; iii) In response to the notice under Section 9(1) of the Act, the appellant-land owners filed their objections and finally the award under Section 11 of the Act was passed on 17.3.1992 by the Special Land Acquisition Officer; and iv) As requested by the appellants and other land owners, reference under Section 18 of the Act was made on 22.9.1997.

11. The respondent-MDA has filed a detailed counter affidavit stating inter alia that the land was acquired for Ganga Nagar Housing Extension Scheme because of the need for housing accommodation and to prevent unplanned growth of construction. Notices were issued under Section 9(1) inviting objections and after completing all the procedure award was passed on 17.03.1992.

12. After the said award, a sum of Rs. 5.32 crores out of the total amount of Rs. 5.51 crores was deposited. The appellants filed reference application for enhancement of compensation in 2002. It was further stated that possession of the land so acquired was taken by the State Government and delivered to MDA in

2002. The MDA further stated that out of 246 acres of land, approximately 125 acres of land has already been allotted for residential and institutional use as per the Master Plan.

13. It is stated that the MDA has already spent Rs. 21 crores for development since 2002 which includes construction of overhead tanks, roads, sewage treatment plant etc. It is stated that the earlier request of MDA was withdrawn by passing fresh resolution on 15.03.2002 in order to develop the entire acquired land as Ganga Nagar Colony. The MDA further stated that rest of the acquired land is also being developed making a huge investment on roads, sewage and other civic amenities.

14. Lastly, it has been brought on record that some of the appellants were not the original owners of the land at the time when notifications under Section 4, 6 and 9 of the Act were issued. It has further been brought to our notice that some of the appellants are the purchasers of the land from the land owners after the notification was issued under Section 4 of the Act.

15. On these facts, the sole question, therefore, that falls for consideration is as to whether merely because of internal correspondences between the MDA and the State that by the resolution dated 17.9.1997 the MDA took a decision to withdraw the acquisition and to get approval from the State Government, a writ of mandamus can be issued directing the State or the MDA to denotify or de-requisition the land which was acquired after following the due process of law and an award to that effect has been passed by the Special Land Acquisition Officer.

16. There is no dispute with regard to the settled proposition of law that once the land is acquired and mandatory requirements are complied with including possession having been taken the land vests in the State Government free from all encumbrances. Even if some unutilised land remains, it cannot be re-conveyed or re-assigned to the erstwhile owner by invoking the provisions of the Land Acquisition Act. This Court in the case of Govt. of A.P. and Anr. v. V. Syed Akbar AIR 2005 SC 492 held that :-

It is neither debated nor disputed as regards the valid acquisition of the land in question under the provisions of the Land Acquisition Act and the possession of the land had been taken. By virtue of Section 16 of the Land Acquisition Act, the acquired land has vested absolutely in the Government free from all encumbrances. Under Section 48 of the Land Acquisition Act, Government could withdraw from the acquisition of any land of which possession has not been taken. In the instant case, even under Section 48, the Government could not withdraw from acquisition or to reconvey the said land to the respondent as the possession of the land had already been taken. The position of law is well settled. In State of Kerala and Ors. v. M. Bhaskaran Pillai & Anr. (1997) 5 SCC 432 para 4 of the said judgment reads: (SCC p. 433)

"4. In view of the admitted position that the land in question was acquired under

the Land Acquisition Act, 1894 by operation of Section 16 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges whether the Government can assign the land to the erstwhile owners. It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting a higher value.

"17. In the case of *Satendra Prasad Jain & Ors. v. State of U.P. and Ors.*, AIR 1993 SC 2517, a 3-Judge Bench of this Court after considering various provisions including Section 17 of the Act observed as under:

"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 under Section 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 11-A are intended to benefit the land owner 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 under Section 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 11-A, lapse.

When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 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 11-A can have no application to cases of acquisitions under Section 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.

"18. Indisputably, land in question was acquired by the State Government for the purpose of expansion of city i.e. construction of residential/commercial building under planned development scheme by the Meerut Development Authority and that major portion of the land has already been utilised by the Authority. Merely because some land was left at the relevant time, that does not give any right to the Authority to send proposal to the Government for release of the land in

favour of the landowners. The impugned orders passed by the High Court directing the Authority to press the Resolution are absolutely unwarranted in law.

19. For the reasons aforesaid, there is no merit in these appeals which are accordingly dismissed."

9. Thereafter the father of petitioner nos. 1 and 2 namely late Bimal Chand Jain also filed Writ Petition No.7748 of 2002 and on 25.2.2002 the Division Bench of this Court had passed an interim order directing the parties to maintain status-quo as on date till the next date of listing. Finally the said writ petition was disposed of by this Court vide its order dated 2.12.2009 directing the MDA to press its resolution, if the authority is not in need of the said land. Against the order dated 2.12.2009, the Special Leave to Appeal (Civil) No.7878 of 2010 was filed before Hon"ble Apex Court and the same was converted to Civil Appeal No.2946 of 2013. Finally the Civil Appeal No.2946 of 2013 was dismissed by the Apex Court vide judgment and order dated 8.4.2013. The relevant portion of the judgement has already been extracted as above.

10. This much is also reflected from the record in question that the petitioners had further proceeded to file Review Petition (C) Nos. 1685-1688 of 2013 before the Apex Court. Meanwhile the new Act known as "Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013" had come into effect on 1.1.2014. It is claimed that on the date of enactment of the said Act of 2013, the review application was pending consideration before the Apex Court. Finally the same was rejected vide order dated 9.1.2014. Thereafter the petitioners had preferred Writ C No.28636 of 2014 for a direction to the respondents to release the land in dispute in their favour keeping in view the provisions of Section 24 (2) of 2013 Act and for mutating their names over the said land. The said writ petition was disposed of by the Division Bench vide order dated 22.5.2014 asking the 1st respondent to take appropriate decision on their representation within two months. The moot question was pressed before the 1st respondent by the petitioners to the effect whether the possession of the land was taken by the State Government or not. Finally by the impugned order dated 30.1.2015 the claim of the petitioners was rejected precisely on the ground that once the possession had been taken over and the award was made, then the land in question had been vested absolutely in the state free from all encumbrances.

11. In this backdrop, Shri Y.S. Bohra, learned counsel for the petitioners has vehemently contended that once the petitioners had proceeded to make detailed representation in response to the directives issued by this Court dated 22.5.2014 in Writ C No.28636 of 2014 along with material evidence to establish their claim regarding possession and non-payment of compensation, the State Government had not taken care to look into the representation or evidence filed by the petitioners and in most cursory manner the claim of the petitioners has been rejected. He further made submission that the claim of the petitioners was liable to be considered as per provisions contained under Section 24 (2) of 2013 Act

and as such, this Court should come for rescue and reprieve to the petitioners.

12. Shri Sanjay Kumar Singh, learned Standing Counsel, on the other hand, has vehemently opposed the writ petition precisely on the ground that in the present matter while issuing notification dated 27.1.1990 under Section 4 (1) of the Act, the State Government had invoked urgency clause under Section 17 (1) and 17 (4) of the Act and thereafter notice under Section 9 of the Act was issued on 20.8.1991 and the award in question was also made well within time on 17.3.1992. Consequently the possession of the land in question was taken by the State Government strictly in accordance with law. Similar controversy has already been dealt with in detail by the Apex Court in the case of Mahadeo (dead) (supra) and even the review application, which had been filed before the Apex Court, has also been turned down on 9.1.2014. Even on that stage, the claim, if any, under Section 24 (2) of 2013 Act was available before the petitioners but neither the same has been pressed nor the Apex Court has intervened in the matter. Therefore, at this stage once the possession of the land has been taken over, the same has vested in the state free from all encumbrances and even at this stage the State Government does not have power to release the land in question and as such, the entire claim is unsustainable in the eye of law.

13. Shri B. Dayal, learned counsel appearing for the MDA has vehemently contended that the land in question was acquired by the State Government vide notification dated 27.1.1990 invoking urgency clause under Section 17 (1) and 17 (4) of the Act and declaration under Section 6 of the Act was made on 7.3.1990. Thereafter the notice under Section 9 of the Act was issued on 20.8.1991 to which the petitioners had submitted their objections and the award in question was also made well within time on 17.3.1992. The possession of 31 acres of land was taken by the State Government on 18.6.1998; possession of other 11 acre of land was taken on 12.4.1999; possession of other 200 acres land was taken on 24.5.2002 and possession of the remaining land was taken on 30.12.2010. The entire acquisition proceedings were in conformity with the provisions contained under the Act and the acquisition of land stands affirmed and concluded in view of judgment passed by Apex Court in the case of Mahadeo (dead) (supra). At this stage, no fresh ground or plea can be raised and even the possession aspect has also been dealt with by the Apex Court in detail. The petitioners cannot be permitted to rake the issue as to whether the possession was taken strictly in accordance with law or not and the issue of physical possession cannot be re-agitated any further and the writ petition is liable to be dismissed with heavy cost. He has further apprised to the Court through his counter affidavit that in the present matter, the entire amount of compensation had been deposited in the competent court and in most of the cases in pursuance of the award in question the compensation had been disbursed and if some tenure holders have not received the compensation, they would have opportunity to approach to the competent court for receiving the compensation and even on this score, the acquisition of the land in question would not be

initiated. In support of his submission, he has relied on the judgment of Three-Judges Bench of Hon''ble Apex Court in Satendra Prasad Jain v. State of UP AIR 1993 SC 2517.

14. Heard rival submission and perused the record in question.

15. Hon''ble Apex Court, while considering the present acquisition, has clearly proceeded to summarise the dispute in para-10 of the judgment in the case of Mahadeo (dead) (supra) and clearly proceeded to observe in para-16 that there is no dispute with regard to the settled proposition of law that once the land is acquired and mandatory requirements are complied with including possession having been taken the land vests in the State Government free from all encumbrances. Even if some unutilised land remains, it cannot be re-conveyed or re-assigned to the erstwhile owner by invoking the provisions of the Land Acquisition Act. The Supreme Court has further placed reliance on the judgment in the case of Govt. of A.P. and anr. v. V. Syed Akbar AIR 2005 SC 492.

16. Just to appreciate the present controversy regarding payment of compensation, whereas urgency had been invoked, it would be relevant to consider the judgment of Three-Judges Bench of Hon''ble Apex Court in Satendra Prasad Jain's case (supra). Relevant paras are reproduced hereinafter:-

"10. Learned Counsel for the third respondent supported the reasoning of the judgment under appeal. He also submitted that the requirements of Section 17 (3A), namely, the tender of 80 per cent of the estimated compensation for the said land not having been complied with, the taking of possession of the said land from the appellants was illegal and there was, therefore, no vesting thereof in the first respondent. He submitted that for being kept out of possession of the said land the payment of compensation to the appellants under Section 5 would adequately recompense them.

11. Section 4 of the said Act requires the publication of a notification that it appears to the appropriate Government that certain land is needed or is likely to be needed for a public purpose. Thereupon an officer authorised by the Government may enter upon the land to survey it and do all other acts necessary to ascertain whether the land is suitable for the public purpose. Section 5 requires the payment of estimated compensation to the owner for damage done in entering upon the land and doing such acts as are necessary to ascertain whether it can be used for the public purpose. Under the provisions of Section 5-A any person interested in the land may raise objections to the proposed acquisition. Upon considering the report of the Collector who hears such objections, if the Government is satisfied that the land is needed for the public purpose, a declaration to that effect shall be made under the provisions of Section 6. Section 9 (1) contemplates the issue of a notice that the Government intends to take possession of the land and it must invite claims for compensation for all interests in the land. The Collector must inquire into the claims under the provisions of Section 11 and make an award of compensation in favour of the

persons found interested in the land. Section 16 states that the Collector may, after he has made an award under Section 11, "take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrances." Section 11-A was inserted in the said Act by Act 68 of 1984 and it reads thus:

11-A. Period within which an award shall be made. The Collector shall made an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse :

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

The provisions of Section 48 (1) may also be noted. It states that "the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

12. Section 17 provides from cases where there is urgency. The relevant provisions for our purposes read thus :

17. Special powers in cases of urgency - (1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, Sub-section (1), take possession of any land needed for public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(3-A) Before taking possession of any land under Sub-section (1) or Sub-section (2), the Collector shall, without prejudice to the provisions of Sub-section (3),

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto,

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in Section 31, Sub-section (2), and where the Collector is so prevented, the provisions of Section 31, Sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section, (3-B) The amount paid or deposited under Sub-section (3-A) shall be taken into account for determining the amount of compensation required to be tendered under Section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under Section 11, the excess may, unless refunded within three months from the date of the Collector's award, be recovered as an arrear of land revenue.

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of Sub-section (1) or Sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5-A shall

not apply, and, if it does so direct, a declaration may be made under Section 6 in respect of the land at any time after the date of the publication of the notification under Section 4, Sub-section (1).

13. There are two judgments of this Court which we must note. In *Rajasthan Housing Board and ors v. Shri Kishan and ors.*, it was held that Government could not withdraw from acquisition under Section 48 once it had taken possession of the land. In *Lt. Governor of Himachal Pradesh v. Avinash Sharma*, it was held that "after possession has been taken pursuant to a notification under Section 17 (1) the land is vested in the Government and the notification cannot be cancelled under Section 21 of the General Clauses Act, nor can the notification be withdrawn in exercise of the powers under Section 48 of the Land Acquisition Act. Any other view would enable the State Government to circumvent the specific provision by relying upon a general power. When possession of the land is taken under Section 17 (1), the land vests in the Government. There is no provision by which land statutorily vested in the Government reverts to the original owner by mere cancellation of the notification."

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 under Section 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 11-A are intended to benefit the land owner and ensure that the award is made within a period of two years from the date of Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration under Section 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 11-A, lapse. When Section 17 (1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 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 11-A can have no application to cases of acquisition under Section 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 per cent of the estimated compensation for the land before the Government takes possession of it under Section 17 (1). Section 11-A cannot be so construed as to leave the Government holding title to the land without the obligation to determine compensation, make an award and pay to the owner the difference between the amount of the award and the amount of 80 per cent 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 1st 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."

17. In the present matter the possession of the land in question had been taken by the respondents between the years 1998 to 2010 and therefore, in view of the law settled by Hon''ble Apex Court in Satendra Prasad Jain's case (supra) the objections at this stage cannot be sustained and are accordingly rejected.

18. Now we come to sub-section (2) of Section 24 of the 2013 Act. There are pre-conditions, as mentioned in the said sub-section. They are, (i) where an award under the said Section 11 has been made five years or more prior to the commencement of this Act; (ii) the physical possession of the land has not been taken; (iii) or the compensation has not been paid. Thus for applicability of sub-section (2) of Section 24 of the 2013 Act, first condition is that award under Section 11 of the 1894 Act has been made five years or more prior to commencement of the 2013 Act. The 2013 Act has commenced with effect from 1.1.2014 by virtue of notification issued by the Central Government under Section 1 sub-section (3) of the 2013 Act. While considering the argument advanced by Shri Y.S. Bohra, learned counsel for the petitioners, it is suffice to indicate that Section 24 (1) and (2) of 2013 Act had been considered by the Apex Court in Pune Municipal Corporation & another v. Harakchand Misirimal Sonanki & ors 2014 (3) SCC 183 wherein the acquisition proceedings were initiated under the 1894 Act; compensation has not been paid to the land owners and the award was made five years or more prior to the commencement of the 2013 Act and it was held that the deposit of compensation of amount in Government treasury is not enough. We have also proceeded to make a mention that Section 24 (2) of the 2013 Act provides 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.

19. At this stage it is relevant to go through the judgment in Pune Municipal Corporation (Supra), which is holding the field of the present controversy. For ready reference, paragraphs 17, 18 and 19 of which are reproduced hereinafter:-

"17. While enacting Section 24(2), Parliament definitely had in its view Section 31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word "paid" to "offered" or "tendered". But at the same time, we do not think that by use of the word "paid", Parliament intended receipt of

compensation by the landowners/persons interested. In our view, it is not appropriate to give a literal construction to the expression "paid" used in this sub-section (sub-section (2) of Section 24). If a literal construction were to be given, then it would amount to ignoring procedure, mode and manner of deposit provided in Section 31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view, therefore, that for the purposes of Section 24(2), the compensation shall be regarded as "paid" if the compensation has been offered to the person interested and such compensation has been deposited in the court where reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act. In other words, the compensation may be said to have been "paid" within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33.

18. 1894 Act being an expropriatory legislation has to be strictly followed. The procedure, mode and manner for payment of compensation are prescribed in Part V (Sections 31-34) of the 1894 Act. The Collector, with regard to the payment of compensation, can only act in the manner so provided. It is settled proposition of law (classic statement of Lord Roche in *Nazir Ahmad*) that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden."

20. Admittedly, the land in question was acquired by the State Government vide notification dated 27.1.1990. Since the land in question was urgently required by the State Government for the purpose of construction of residential/commercial building under "Planned Development Scheme" by the MDA, the provisions of Section 17 (1) and Section 17 (4) of the Act were invoked and the enquiry under Section 5A of the Act was dispensed with. Consequently the declaration under Section 6 read with Section 17 (1) and (4) of the Act was made on 7.3.1990 and the notice under Section 9 of the Act was issued on 20.8.1991. The possession of the land in question was taken by the State Government between the years 1998 to 2010. The award was made on 17.3.1992 and a sum of Rs. 5,51,00,000/- was calculated as compensation of the land. Out of the total compensation, the MDA deposited Rs. 5,32,00,000/- in the office of respondent no.2 on 23.3.1992 and the remaining amount of Rs. 19,00,000/- was deposited on 27.1.2001. The Special Land Acquisition Officer had disbursed Rs. 3,05,00,000/- to the tenure holders. However, Rs. 2,46,00,000/- was not received by the claimants as some of the claimants had sold their land and some of them had challenged the acquisition of the land. Therefore, Rs. 2,46,05,733/- towards the balance amount was deposited in the competent court on 7.12.2007.

21. Once invocation of urgency clause had been approved by the Apex Court in the case of *Mahadeo (dead) (supra)*" and further in para-16 of the said judgment

the Apex Court has also approved the possession taken by the State Government and even after the judgment of the Apex Court the review application was also filed and when review application was pending consideration, 2013 Act had come into force w.e.f. 1.1.2014 and thereafter the review application in question was rejected by the Apex Court vide order dated 9.1.2014 and as such, the argument so advanced by Shri Y.S. Bohra, that there is no sufficient material to indicate that the possession in question was taken strictly in accordance with law or the claim is liable to be considered under Section 24 (2) of 2013 Act, is unsustainable and accordingly rejected.

22. The writ petition sans merit and is dismissed.