



2026:AHC:160402-DB

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 23087 of 2015

Kishan Lal Ahuja and another

.....Petitioner(s)

Versus

State of U.P. and 4 others

.....Respondent(s)

Counsel for Petitioner(s)	: Ashish Agrawal, Kshitij Shailendra, Shiv Pratap Singh Chauhan, Sumit Suri
Counsel for Respondent(s)	: C.S.C., Krishna Mohan Asthana, P.K. Singh, Satish Chaturvedi, Upendra Singh

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Court No. - 21

HON'BLE MAHESH CHANDRA TRIPATHI, J.
HON'BLE KUNAL RAVI SINGH, J.

A. Appearance of Counsel:-

1. Heard Shri Nipun Singh, learned Senior Counsel, assisted by Shri S.P.S. Chauhan, learned counsel for the petitioners, Shri Fuzail Ahmad Ansari, learned Standing Counsel for the State-respondents, and Shri K.M. Asthana, learned counsel for the respondent - Moradabad Development Authority.¹

B. Relief:-

2. The present writ petition has been preferred praying for the following relief:

“(i) issue a writ or direction or pass an order in the nature of Certiorari quashing the impugned order dated 30.01.2015 and 31.03.2015 both passed by State Government committing gross abuse of the powers contained under ‘THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013’;

(ii) issue an appropriate writ or direction or pass an appropriate order maintaining the order dated 16.01.2015 passed by the District Magistrate, Moradabad in relation to the petitioners' land covered by three gatas bearing old gata nos. 19, 20 and 21 (new numbers being 38, 39 and 40) having approximate area of 4000 Sq. Metres, situated at Village Manoharpur, Delhi Road, Moradabad;

(iii) issue a writ or direction or pass an order in the nature of Mandamus commanding the respondents not to cause any interference in the petitioners' right, title, interest and possession over the land covered by three gatas bearing old gata nos. 19, 20 and 21 (new numbers being 38, 39 and 40) having approximate area of 4000 Sq. Metres, situated at Village Manoharpur, Delhi Road, Moradabad;

(iv) issue any other suitable writ or direction or pass an order as this Hon'ble Court may deem fit or proper in the facts and circumstances of the case; and

(v) award costs of the writ petition to the petitioners.”

1 MDA

C. Facts of the Case:-

3.1. The dispute in the present writ petition relates to a small piece of land measuring about 0.410 hectares (around 4,000 square metres), comprising old Gata Nos. 19, 20 and 21, now renumbered as Gata Nos. 38, 39 and 40, situated in Village Manoharpur, Delhi Road, Moradabad.

3.2. This land formed part of a larger acquisition of 9.270 hectares covering 28 gatas in Village Manoharpur. The acquisition began with a notification dated 06.04.2000 issued under Section 4(1) of the Land Acquisition Act, 1894², read with Section 17(4). Since the urgency provisions under Section 17(1) were invoked, no inquiry under Section 5-A was held. The notification stated that the land was required by the MDA for developing a planned residential colony at Village Manoharpur.

3.3. The petitioners filed objections against this notification on 15.04.2000. The then Vice Chairman of the MDA forwarded these objections to the State Government under cover of a letter dated 19.04.2000. Despite this, a further notification dated 16.05.2001 was issued under Section 6(1) read with Section 17(1). This notification also covered the petitioners' three gatas, along with the rest of the acquired land.

3.4. It is not disputed that no award under Section 11-A of the Act, 1894 was ever made for the petitioners' land. Two awards were later passed for other parts of the larger acquisition, i.e. one dated 20.02.2006, for 4.269 hectares, and another dated 06.11.2009, for 1.169 hectares. Neither of the awards covers the petitioners' three gatas.

² The Act, 1894

3.5. A possession memo dated 02.04.2003 states that possession of the entire 9.270 hectares, including the disputed land, was taken on that date after Rs. 1.07 crore, said to be 80% of the estimated compensation for the acquired land, was deposited in the Government Treasury.

3.6. The MDA's Vice Chairman submitted a report dated 27.07.2001, stating that the acquired land could be adjusted for zonal roads and public facilities. The Vice Chairman also wrote a letter dated 18.09.2001 to the State Government, stating that exempting the petitioners' land from acquisition would not adversely affect the MDA's scheme.

3.7. The petitioners asked the State Government to exempt their land from acquisition. By order dated 22.02.2002, the State Government directed the Vice Chairman of the MDA to adjust the petitioners' land after recovering development charges from them.

3.8. This proposal was placed before the MDA's Board in its 80th meeting, held on 10.02.2005, where it was rejected. The Vice Chairman's letter dated 01.03.2005, informing the State Government of this rejection, stated that possession of the land had already been handed over to the MDA.

3.9. The petitioners, along with their co-sharers Sooraj Bajaj and Sanjay Sahgal, filed Civil Misc. Writ Petition No. 28752 of 2007. They challenged the Board's resolution and the letter issued pursuant to it. They also sought a direction restraining the authorities from interfering with their possession and prayed for a declaration that the land acquisition had lapsed under Section 11-A of the Act, 1894. However, no interim relief was granted in the said proceedings. During the pendency of the writ petition, the State Government recalled its earlier order dated 22.02.2002 by passing another order dated 12.05.2006. The petitioners did not challenge this recall order.

3.10. Writ Petition No. 28752 of 2007 was decided on 28.11.2008 by a Division Bench of this Court. The Court did not go into the possession dispute. It gave only the following limited direction, which reads as follows:

“In the facts and circumstances of the case we only provide that in case the petitioner had made an application prior to 02.04.2003 under Section 48 before the State Government, it shall be considered and decided within a period of six weeks from the date a certified copy of this order is filed before the authority concerned.

Status quo for a period of six weeks shall be maintained with regards to possession over the disputed plot and shall thereafter abide by the orders to be passed by the State Government.”

3.11. The petitioners did not act on this for about three years. When they filed a representation on 08.11.2011, the State Government rejected it by order dated 04.01.2012 stating, therein, that possession of the land, including the petitioners' gatas, had already been handed over to the MDA on 02.04.2003, and that there was no reason to exempt or adjust the land. A similar order was passed on 05.12.2011 for the co-sharer Sooraj Bajaj's land, Gata No. 24, in the connected Writ Petition No. 55310 of 2008.

3.12. The petitioners then filed a review application dated 22.06.2012. The application stated that no award had been made within the required time, that actual possession had never been taken, and that they had not been heard before the order dated 04.01.2012 was passed. This review application is still pending. No order has yet been passed on it.

3.13. In the meantime, the land belonging to one Arvind Vadera was completely exempted from acquisition. By a notification dated 11.08.2009 issued under Section 48(1) of the Act, 1894, the State

Government withdrew Gata Nos. 25, 26, 27, 29, 30 and 31 from the acquisition proceedings. The notification refers to Civil Misc. Writ Petition No. 57446 of 2005 filed by Arvind Vadera, which was decided by this Court on 28.11.2008. The order was passed on the same date and in substantially the same terms as the order passed in the petitioners' Civil Misc. Writ Petition No. 28752 of 2007, referred to in paragraph 3.10 above.

3.14. The law changed on 01.01.2014, when the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013³ came into force. This Act repealed the Act, 1894, subject to the saving provisions in Section 24. Relying on this, and pointing to the exemption already given to Arvind Vadera, the petitioners moved an application dated 03.02.2014 before the Collector, Moradabad. The application was pressed on two grounds that neither an award had been made nor possession of the land was taken.

3.15. By Government Order dated 24.03.2014, the State Government directed the Housing Commissioner, the Vice Chairmen of Development Authorities, the Commissioners and the District Magistrates to decide such claims of lapsing under Section 24 on a priority basis, by passing speaking orders. This Government Order also referred to the law then laid down in **Pune Municipal Corporation v. Harakchand Misrimal Solanki**⁴, on what counts as 'payment' of compensation.

3.16. Acting on the petitioners' application, the District Magistrate called for a report from the Tehsil authorities. A joint inspection was carried out on 20.03.2014 by the Amin and the Lekhpal. Their report, dated 22.03.2014 and forwarded on 25.03.2014, found that the three gatas in question lie together at the spot, enclosed on three sides by a boundary wall about six feet high. It found four poplar trees at the edge of the land,

3 The Act, 2013

4 (2014) 3 SCC 183

and a small pucca structure at the north-eastern corner. It found the land under cultivation and in the possession of the landowners.

3.17. Acting on this report, the District Magistrate, Moradabad, by order dated 26.06.2014, declared that the acquisition of the petitioners' land had lapsed under Section 24(2) of the Act, 2013. This order was passed without any notice to the MDA.

3.18. The MDA challenged this order in Writ-C No. 47069 of 2014 (Moradabad Development Authority Thru Vice Chairman vs. State of U.P. and 3 others). A Division Bench of this Court allowed that petition by order dated 07.10.2014, holding as follows:

“Consequently, this petition stands allowed in the manner indicated above. The impugned order dated 26.6.2014 is set aside and the matter stands remitted to the Collector concerned for decision afresh in accordance with law, keeping in view the observations made above. The Collector shall proceed with the matter after due notice of date of hearing to the parties concerned.”

3.19. This Court also allowed the MDA to argue that the Section 24 of the Act, 2013 proceedings were not maintainable at all, apart from the merits. Following this order, the District Magistrate issued notice to both sides. The objections filed by the MDA on 13.11.2014 stated that possession was handed over on 02.04.2003, that since no award had been made under Section 11, only Section 24(1)(a) applied and not Section 24(2), and that the earlier order dated 04.01.2012 had become final since it was never challenged. The petitioners filed their reply on 25.11.2014. Both sides were heard on 15.12.2014.

3.20. The District Magistrate, Moradabad passed a fresh, detailed order on 16.01.2015. He again held that the acquisition had lapsed under Section 24(2) of the Act, 2013. Relying on **Pune Municipal Corporation** (supra), he held that deposit of 80% compensation in the Treasury was not to be treated as payment to the tenure-holders. Relying on the Tehsil report, he held that physical possession remained with the petitioners. He

rejected the MDA's objections, and declared the acquisition proceedings for these three disputed gatas to have lapsed under Section 24(2) of the Act, 2013.

3.21. Thereafter, the MDA wrote a letter dated 20.02.2015 to the State Government, seeking permission to file a writ petition against it. The State Government held a meeting on 18.03.2015, attended by the District Magistrate, the Special Land Acquisition Officer and the Vice Chairman of the MDA. It then passed the impugned order dated 31.03.2015, staying the District Magistrate's order dated 16.01.2015 with immediate effect, and directing that further action be taken under the Government Order dated 30.01.2015.

3.22. This impugned order dated 31.03.2015 also stated that the final decision would be taken after consulting the Administrative, Revenue and Legal Departments, and with the approval of the Minister concerned. The Government Order dated 30.01.2015 was issued only after the District Magistrate had already passed his order dated 16.01.2015. It set out the second proviso to Section 24(2), added by the 2014 Ordinance, which reads as follows:

“Provided further that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a Tribunal for taking possession or such period where possession has been taken but the compensation lying deposited in a court or in any account maintained for this purpose shall be excluded.”

3.23. On the procedure to be followed in deciding such claims, the same Government Order dated 30.01.2015 directed that applications under Section 24(2) first be verified by the concerned District Magistrate and examined by the Administrative Departments, who would then obtain the views of the Revenue Department and the Law Department. The

final notification declaring an acquisition lapsed would be issued only with the approval of the concerned Minister.

3.24. Aggrieved by the Government Order dated 30.01.2015 and the consequential order dated 31.03.2015, the petitioners filed the present writ petition seeking their quashing. On 23.04.2015, this Court granted an interim order, which is reproduced as under:

“Heard Sri Kshitij Shailendra, counsel for petitioner, learned standing counsel appearing for respondent no. 1, 4 and 5 and Sri Upendra Singh appearing for respondent no. 2 and 3.

The moot question that arises for consideration in this petition is regarding applicability of section 24(1) and 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No. 30 of 2013). It appears from record in the instant case that there is dispute of possession of the land having been taken by the State Government and admittedly award has not been made, hence in this backdrop, applicability of section 24(2) of the aforesaid Act no. 30 of 2013 is to be seen.

It further appears that Moradabad Development Authority has sought permission from the State Govt. vide letter dated 20.2.2015 for challenging the order of Collector dated 16.1.2015. Instead of passing an order either granting or rejecting the permission, the State Govt. by its order dated 31.3.2015 has issued the impugned order relying upon Government Order dated 30.1.2015, relevant extract of which reads thus:

“3. उपरोक्त से स्पष्ट है कि द्वितीय परन्तुक में उल्लिखित अवधि यदि कोई हो को अवधि की गणना में से निकालने पर यदि अवशेष अवधि 05 वर्ष या अधिक है तथा एर्वाड की घोषणा 01-01-2014 से 05 वर्ष अथवा उसके पूर्व हुई है तो धारा 2492 के प्राविधान लागू होंगे। भूमि पर भौतिक कब्जा लिया जाना या प्रतिकर का संदाय मा0 न्यायालय न किया जाना अथवा इस विशिष्ट प्रयोजन के लिये खोले गये खाते में न किये जाने में से कोई एक शर्त पूरी होने पर धारा 24 (2) के प्राविधान लागू होंगे। धारा 24 (2) का प्रथम परन्तुक धारा 24 (2) का अपवाद है। अतः जो प्रकरण धारा 24 (2) के प्रथम परन्तुक से आच्छादित होंगे उनमें धारा 24 (2) के प्राविधान लागू नहीं होंगे।

4. उपरोक्त धारा 24 (2) के अंतर्गत प्राप्त प्रार्थना पत्रों / संदर्भों / प्रकरणों के निस्तारण की निम्नलिखित प्रक्रिया निर्धारित किये जाने का शासन द्वारा सम्यक विचारोपरान्त निर्णय लिया गया है :-

(क) धारा 24 (2) के अंतर्गत प्राप्त आवेदन पत्रों / संदर्भों / प्रकरणों पर संबंधित जिलाधिकारी से तथ्यात्मक पुष्टि कराकर प्रशासनिक विभागों द्वारा परीक्षणोपरांत मत स्थिर किया जायेगा।

(ख) तदोपरान्त प्रशासनिक विभागों द्वारा राजस्व एवं न्याय विभाग का परामर्श प्राप्त कर मा0 विभागीय मंत्री जी के अनुमोदन से यथावश्यक संबंधित अर्जन प्रक्रिया के व्यपगत करने की अधिसूचना विधायी विभाग से विधीक्षत कराकर जारी की जायेगी।

5. अनुरोध है कि कृपया उपरोक्तानुसार सभी संबंधित को अवगत कराते हुऐ तदनुसार कार्यवाही करने हेतु निर्देशित करने का कष्ट करें।”

Contention of the counsel for petitioner is that after decision of Writ Petition No. 47069 of 2014, decided on 7.10.2014, the State Government or its authorities has no right to sit in appeal over the order passed by the High Court.

Per contra Sri Upendra Singh appearing for M.D.A. has submitted that by the aforesaid judgment dated 7.10.2014, the High Court had only remanded the matter to the District Magistrate for reconsideration of the matter and according to him, section 24(2) of U.P. Act No. 30 of 2013, is not attracted at all in the present matter.

Learned Standing Counsel prays for time to seek instructions and file counter affidavit.

The matter requires consideration.

As prayed, three weeks' time is granted to the respondents for filing counter affidavit. Rejoinder affidavit may be filed within two weeks thereafter.

List after expiry of the aforesaid period.

Parties are directed to maintain status quo till next date of listing.”

3.25. Thereafter, the parties exchanged counter and rejoinder affidavits. The petitioners also filed a supplementary rejoinder affidavit bringing later developments on record, which contained that they applied on 21.09.2019 for approval of a building map over their land. On 16.12.2019, the Deputy Secretary of the State Government sought a report. By a letter dated 22.11.2020, the Secretary of the MDA stated that the building map would be considered on payment of development charges. An official note-sheet obtained under the Right to Information Act stated that the petitioners' case can be decided in their favour without affecting the MDA's scheme, subject to compliance with the Building Bye-laws, 2008. Another letter dated 15/16.11.2011, along with a coloured map, shows that the petitioners' land is surrounded on almost all sides by land already exempted from acquisition, where substantial construction has since taken place.

D. Submissions on Behalf of the Petitioners:-

4.1. Shri Nipun Singh, learned Senior Counsel for the petitioners, makes several submissions, which may be summarised as follows.

4.2. He submits that the acquisition that begun in the year 2000, has lapsed. No award under Section 11 of the Act, 1894 was ever made, and the petitioners have remained in actual physical possession throughout.

He submits that these facts were rightly found by the District Magistrate in his order dated 16.01.2015.

4.3. He submits that the order dated 16.01.2015 was passed in compliance with this Court's own direction dated 07.10.2014, notices were issued, both sides were heard, and a reasoned order followed. The MDA never challenged this order before this Court. Instead, it wrote to the State Government, which then stayed the order through the impugned order dated 31.03.2015. In doing so, the State Government exercised an appellate power that the statute does not give it.

4.4. He submits that the Government Order dated 30.01.2015 was issued after the order dated 16.01.2015, which had finally decided the matter. Since the Government Order does not have retrospective effect, it could not reopen or nullify a decision that had already been taken by District Magistrate in response to the order of the Division Bench order.

4.5. He further submits that the effect of Section 24 of the Act, 2013 cannot be taken away by an executive order. Under Section 24(2), where an award under Section 11 of the Act, 1894 was made five years or more before the commencement of the Act, 2013, but either physical possession of the land had not been taken or compensation had not been paid, the acquisition automatically lapses. If the Government still wishes to acquire the land, it must start fresh acquisition proceedings under the Act, 2013.

4.6. Learned Senior Counsel further submits that once the competent authority has already declared the acquisition proceedings lapsed, the State Government's only option is to begin fresh acquisition proceedings under the Act, 2013, exactly as this provision allows, and not to revive lapsed proceedings by an executive order. He submits that if the State Government had no power to reopen the lapsed proceedings, it also had

no power to stay the order that declared them lapsed, since a power to grant interim relief cannot be larger than the power to grant final relief.

4.7. On facts, he emphatically places reliance upon the Tehsil report and on the District Magistrate's own findings to show that physical possession were never taken from the petitioners. Relying on **Pune Municipal Corporation (supra)** and **Union of India v. Shiv Raj**,⁵ he submits that deposit of 80% compensation in the Treasury is not payment to the tenure-holders.

4.8. He finally submits that the impugned orders nullify the order dated **16.01.2015** and defeat this Court's order dated **07.10.2014**. The State Government has exercised a power which the law does not confer. He, therefore, prays that the impugned orders be quashed and the petitioners' possession be protected.

E. Submissions on Behalf of the Respondent - MDA:-

5.1. Shri K.M. Asthana, learned counsel for the MDA, opposes the petition on several grounds.

5.2. He explains that the disputed land, 0.410 hectares, is part of a larger 9.270 hectare acquisition made under the notifications dated 06.04.2000 and 16.05.2001. He submits that possession of the entire acquired land, including the petitioners' plots, was taken by the Special Land Acquisition Officer on 02.04.2003, after deposit of Rs. 1.07 crore towards 80% of the estimated compensation.

5.3. He points to the two awards passed later, i.e. dated 20.02.2006 and 06.11.2009, for other parts of the acquisition. He explains that the award for the remaining land, including the petitioners' gatas, was kept pending

⁵ (2014) 6 SCC 564

only because other writ petitions about that land were pending before this Court.

5.4. He submits that the MDA Board, in its meeting held on 10.02.2005, rejected the proposal for adjustment of the land. He further submits that the State Government, by its order dated 04.01.2012, rejected the petitioners' claim for exemption. Since this order was never challenged, it has become final. He argues that both decisions are based on the same finding that possession of the land had already been handed over to the MDA.

5.5. He submits that the order dated 26.06.2014 was rightly set aside, since it was passed without any notice to the MDA.

5.6. He further submits that the order dated 16.01.2015 is contrary to law. Section 24(2) of the Act, 2013 does not apply because no award under Section 11 of the Act, 1894 was ever made. He submits that Section 24(1) clearly distinguishes between cases where an award has been made and those where no award has been made. Where no award has been made, as in the present case, only the provisions of the Act, 2013 relating to determination of compensation apply.

5.7. He submits that Section 24(2) applies only when an award under Section 11 had been made five years or more before the Act, 2013 came into force and either possession had not been taken or compensation had not been paid. Since no award was ever made in the present case, the petitioners cannot seek the benefit of Section 24(2). He submits that the case of the petitioners, if at all, is governed by Section 24(1)(a), under which only the compensation is to be determined in accordance with the Act, 2013, and the acquisition does not lapse.

5.8. He submits that the District Magistrate had no jurisdiction to decide a claim of lapsing under Section 24. This power belongs to the State Government, the acquiring authority, or to a court. The District Magistrate is only an instrument of the State Government, subject to correction by it.

5.9. He finally submits that, since 02.04.2003, the disputed land has become part of the MDA's residential scheme, 'Naya Moradabad'. The petitioners' claim that they are still in possession is contrary to the possession memo and the revenue records. He further submits that the impugned order dated 31.03.2015 is only an interim order and that the final decision is yet to be taken by the State Government. Therefore, the writ petition is premature and deserves to be dismissed, and the interim order should also be vacated.

F. Submissions on Behalf of the State-Respondents:-

6.1. Shri Fuzail Ahmad Ansari, learned Standing Counsel for the State-respondents, adopts the submissions made on behalf of the MDA, without reservation.

6.2. In addition, he submits that the petitioners have not shown any ground to call the impugned orders contemptuous or against the Act, 2013. He submits that, on the official record, possession of the land was handed over to the MDA as far back as 02.04.2003.

6.3. He submits that the proposal made under the order dated 22.02.2002 was placed before the MDA's Board, considered, and rejected.

6.4. He submits that the order dated 16.01.2015, though passed in compliance with this Court's order dated 07.10.2014, came before the

Government Order dated 30.01.2015. That Government Order was not passed against any direction of this Court.

6.5. He lastly submits that the petitioners have shown no ground for this Court to interfere under Article 226 of the Constitution of India, and that the writ petition should be dismissed.

G. Submissions of the Petitioners in Rejoinder:-

7.1. In rejoinder arguments, Shri Nipun Singh, learned Senior Counsel for the petitioners, relies on subsequent developments, brought on record through the supplementary rejoinder affidavit, which, according to him, support the relief sought by the petitioners.

7.2. He submits that, during the pendency of the writ petition, the petitioners applied on 21.09.2019 for approval of a building map over the disputed land. Thereafter, on 16.12.2019, the Deputy Secretary of the State Government sought a report from the District Magistrate and the Vice Chairman of the MDA on the petitioners' application.

7.3. He further submits that, by letter dated 22.11.2020, the Secretary of the MDA stated that the petitioners' building map would be considered after payment of the prescribed development charges. The said letter shows that the MDA no longer requires the land for its development scheme and is only insisting on payment of development charges.

7.4. He also relies on an official note-sheet obtained under the Right to Information Act. The note-sheet records that the petitioners' case can be decided in their favour without affecting the MDA's scheme, provided they comply with the Building Bye-laws, 2008. According to him, this itself shows that the land is no longer required for the MDA's purposes.

7.5. He further relies on a letter dated 15/16.11.2011 issued by the then Vice Chairman of the MDA, along with a coloured map. He submits that the map shows that the petitioners' land is surrounded on almost all sides by land already exempted from acquisition, where substantial construction, including a residential colony and the export unit of one Arvind Vadera, has already come up and the MDA has no practical use for the petitioners' land.

7.6. On these facts, learned Senior Counsel submits that, apart from the legal issues under Section 24 of the Act, 2013, the subsequent conduct of the respondents also supports the petitioners' case. He, therefore, prays that the writ petition be allowed and the MDA be directed to approve the petitioners' building map on payment of the prescribed development charges without further delay.

H. Discussion and Findings:-

8.1. This Court has heard learned counsel for all the parties at length and has examined the record carefully. The following two questions arise for consideration:

- (i) Did the State Government have power to stay the District Magistrate's order dated 16.01.2015, through the Government Order dated 30.01.2015 and the order dated 31.03.2015?
- (ii) Can the finding of lapse under Section 24(2) of the Act, 2013 be upheld on the facts of this case?

8.2. On the first question, a coordinate bench of this Court by means of the order dated 07.10.2014 sent the matter back to the Collector, as set

out at paragraph 3.18 above. The District Magistrate did exactly what this Court asked. He gave notice, heard both sides, and passed a reasoned order on 16.01.2015. If the MDA was unhappy with this order, its remedy was to file a writ petition before this court. It chose, instead, to write to the State Government, which then stayed the District Magistrate's order through the impugned order dated 31.03.2015.

8.3. This Court cannot accept the action taken by the State Government. The District Magistrate's order dated 16.01.2015 was not a simple administrative order. It was a quasi-judicial order, passed after deciding a legal dispute between the parties.

8.4. The order has all the features of a quasi-judicial decision. First, it decided a dispute between the petitioners, who claimed that the land acquisition had lapsed, and the MDA, which claimed that it had not. Second, it was passed only after giving both sides an opportunity of hearing. By its order dated 07.10.2014, this Court had directed the Collector to decide the matter after issuing notice to all concerned parties. Accordingly, notices were issued, the MDA filed its objections on 13.11.2014, the petitioners filed their reply on 25.11.2014, and both sides were heard on 15.12.2014. Third, the District Magistrate decided the matter by applying the requirements of Section 24(2) of the Act, 2013 to the facts on record, such as the award, the period of five years, possession of the land, payment of compensation, the Tehsil report, and the possession memo. Finally, the order determined the legal rights of the parties by deciding whether the acquisition had lapsed and whether the petitioners retained ownership of the land or the MDA continued to hold the acquisition.

8.5. Once such a quasi-judicial order is passed, it can be changed only in the manner provided by law, such as through an appeal, revision, or judicial review by a competent court, if the statute permits. Section 24 of the Act, 2013 does not give the State Government any power to review

or set aside an order passed under that provision. Therefore, the State Government could not nullify the District Magistrate's order by issuing the Government Order dated 30.01.2015 or the order dated 31.03.2015.

8.6. This principle finds support in the law laid down by the Supreme Court in **Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji**⁶. The Supreme Court held that the power to alter, review, or set aside a decision already rendered is not an inherent power. Such power must be conferred by law, either expressly or by necessary implication. In the absence of such a statutory provision, any exercise of that power is without jurisdiction. Although that case concerned an authority seeking to review its own earlier order, the principle is of wider application. It applies with equal force where, as in the present case, a superior executive authority seeks to stay, modify, or override a quasi-judicial order passed by a subordinate authority. Unless the statute expressly confers appellate or revisional jurisdiction, no such power exists, and any order purporting to exercise it is legally unsustainable. The Supreme Court succinctly stated this principle in paragraph 4 of the judgment, which is reproduced below:

*“4. The first question that we have to consider is whether Mr. Mankodi had competence to quash the order made by the Saurashtra Government on October 22, 1956. It must be remembered that Mr. Mankodi was functioning as the delegate of the State Government. The order passed by Mr. Mankodi, in law amounted to a review of the order made by Saurashtra Government. **It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication.** No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order. The question whether the Government's order is correct or valid in law does not arise for consideration in these proceedings so long as that order is not set aside or declared void by a competent authority. Hence the same cannot be ignored The Subordinate*

6 (1971) 3 SCC 844

Tribunals have to carry out that order. For this reason alone the order of Mr. Mankodi was Liable to be set aside.

(Emphasis supplied)

8.7. Learned counsel for the MDA submits that the District Magistrate had no jurisdiction at all to decide the petitioners' claim under Section 24, and that this power belongs only to the State Government or to a court. This Court cannot accept this submission, for two reasons.

8.8. First, it was the State Government's own Government Order dated 24.03.2014 that told District Magistrates across the State to decide such claims, by passing speaking orders on a priority basis. It was under this very direction that the District Magistrate decided the petitioners' application. The State Government cannot now say that the District Magistrate had no jurisdiction, when it was the State Government's own order that gave him this task.

8.9. Second, this Court's own order dated 07.10.2014 sent the matter back to 'the Collector concerned', not to the State Government, and proceeded on the footing that the Collector had the power to decide it. The MDA did not challenge that order. It cannot now argue, indirectly, that the very authority to whom the matter was sent lacked jurisdiction to decide it.

8.10. There is a further, and decisive, difficulty. The Government Order dated 30.01.2015 came into existence only after the District Magistrate had already passed his order dated 16.01.2015. By then, the decision had already been made. No provision has been shown to this Court giving the Government Order dated 30.01.2015 any retrospective effect. It could not, therefore, be used to reopen a decision already taken. For these reasons, the Government Order dated 30.01.2015 and the order dated 31.03.2015 are without jurisdiction and cannot stand. It amounts to colourable exercise of power and is arbitrary and perverse in law.

8.11. This brings the Court to the second question, i.e. whether the finding of lapse under Section 24(2) can be upheld? It is useful to set out the provision in full. Section 24 reads as follows:

“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,--

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

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

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

Provided that where an award has been made and compensation in respect of a majority of land 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.”

(Emphasis supplied)

8.12. Section 24 deals with land acquisition proceedings started under the Act, 1894 but not completed before the Act, 2013 came into force. It creates two situations. First, where no award under Section 11 has been made. In such cases, the acquisition does not lapse. Only the provisions of the Act, 2013 relating to determination of compensation apply. Second, where an award under Section 11 has already been made. In such cases, the acquisition continues under the old Act. However, if such an award was made five years or more before the Act, 2013 came into force and either possession has not been taken or compensation has not

been paid, then the acquisition is treated as having lapsed under Section 24(2).

8.13. Applying these provisions to the present case, it is clear that no award under Section 11 was ever made in respect of the petitioners' three gatas. The two awards dated 20.02.2006 and 06.11.2009, relied upon by the MDA, relate to other land covered by the same acquisition and not to the petitioners' land. Therefore, the petitioners' case appears to fall under Section 24(1)(a) and not Section 24(2). Section 24(1)(a) only provides that compensation shall be determined under the new Act. It does not say that the acquisition comes to an end. This is the first difficulty with the finding recorded by the District Magistrate that the acquisition had lapsed under Section 24(2).

8.14. There is another difficulty. While passing the order dated 16.01.2015, the District Magistrate held that deposit of 80% of the compensation in the Government Treasury did not amount to payment to the landowners. This conclusion was based on the decision in ***Pune Municipal Corporation*** (*supra*). However, in ***Indore Development Authority v. Manoharlal***⁷, the Constitution Bench of the Supreme Court overruled that decision. In the said case, Hon'ble Supreme Court specifically observed that the decision in ***Pune Municipal Corporation*** (*supra*) is hereby overruled and all other decisions in which ***Pune Municipal Corporation*** (*supra*) has been followed, are also overruled.

8.15. In ***Indore Development Authority*** (*supra*), the Constitution Bench clarified two important points. First, deposit of compensation in the Government Treasury is a valid payment for the purposes of Section 24(2). It is not necessary that the amount should be deposited only in court. Secondly, an acquisition lapses under Section 24(2) only when the conditions required by that provision are satisfied. Therefore, the reasoning adopted by the District Magistrate, based on the overruled

⁷ (2020) 8 SCC 129

decision in *Pune Municipal Corporation (supra)*, no longer reflects the correct legal position.

8.16. Thus, the finding that the acquisition had lapsed under Section 24(2) suffers from two serious legal difficulties. First, it is doubtful whether Section 24(2) applies at all in a case where no award under Section 11 was ever made. Secondly, the District Magistrate's conclusion regarding payment of compensation is based on a legal position which has since been overruled by the Constitution Bench. This Court does not consider it necessary to finally decide the first question about the applicability of provisions of Section 24(2) in the present case and leaves it open for an appropriate case. However, these issues make it clear that the finding of lapse under Section 24(2) is not free from legal doubt and, therefore, cannot by itself be made the sole basis for granting relief to the petitioners.

8.17. At the same time, the factual record cannot be ignored. The Tehsil report dated 22/25.03.2014, prepared after a joint spot inspection, records that the petitioners' land had a boundary wall, trees, a small structure, cultivated land and was in their possession. These findings do not support the MDA's claim that it had taken possession in 2003. On the other hand, the possession memo dated 02.04.2003 is only a general document relating to the entire acquisition of 9.270 hectares and does not specifically mention the petitioners' land.

8.18. The conduct of the MDA also supports the petitioners' case. While rejecting the proposal for adjustment in 2005, the MDA did not say that the land was required for its housing scheme. It rejected the proposal only because it claimed to have already taken possession. This is consistent with the earlier view of the Vice Chairman that release of the petitioners' land would not affect the scheme. Further, the neighbouring land was exempted from acquisition in 2009, and later correspondence of 2019–2020 shows that the State Government and the MDA were

willing to consider the petitioners' building map on payment of development charges. This indicates that the land is no longer required for the MDA's scheme.

8.19. In these circumstances, this Court does not consider it necessary to finally decide the issue of lapse under Section 24(2). Since the legal position has changed after *Indore Development Authority* (supra) and no award under Section 11 was ever made, it would be more appropriate to decide the petitioners' claim on another legal basis.

8.20. From the very beginning, the petitioners have sought release of their land under Section 48 of the Act, 1894. Section 48 gives the Government the power to withdraw from acquiring any land as long as physical possession of the land has not been taken (except in the case covered by Section 36). The Section 48 reads as follows:

“48. Completion of acquisition not compulsory, but compensation to be awarded when not completed. –

(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.”

(Emphasis supplied)

8.21. This was also the relief contemplated by this Court while disposing of Writ Petition No. 28752 of 2007 on 28.11.2008. The petitioners again sought the same relief in their review application dated 22.06.2012, which is still pending. However, this claim has never been finally decided on its own merits.

8.22. Therefore, this Court finds it appropriate to direct the State Government to decide the petitioners' long-pending application for release of the land under Section 48 of the Act, 1894, within a fixed time. This direction is issued because the power to release land from acquisition under Section 48 lies with the State Government and not with the MDA. While deciding the application, the State Government shall consider all relevant records, including the Tehsil report, possession memo, Board's resolution, and the letters of the Vice Chairman.

I. Conclusion:-

9. For the reasons given above, this Court holds as follows:

(i) Under the facts and circumstances of the case enumerated above, the State Government had no authority to stay the aforesaid order dated 16.01.2015 passed by the District Magistrate, Moradabad. The Government Order dated 30.01.2015 and the consequential order dated 31.03.2015 are, therefore, without authority and cannot be sustained.

(ii) The correctness of the finding of lapse recorded under Section 24(2) of the Act, 2013 is left open, for the reasons discussed above.

(iii) The petitioners' grievance can be properly resolved by directing the State Government to finally decide their long-pending application for release of the land under Section 48 of the Act, 1894.

J. Final Orders:-

10. In view of the above findings, the following directions are issued:

(i) The writ petition is partly **allowed**.

(ii) The Government Orders dated 30.01.2015 and 31.03.2015 passed by the State Government are hereby quashed.

(iii) The matter is remitted to the State Government to decide the petitioners' pending application for release of the land, comprising old Gata Nos. 19, 20 and 21 (new Gata Nos. 38, 39 and 40), under Section 48 of the Land Acquisition Act, 1894.

(iv) The State Government shall pass its decision within three months from the date a certified copy of this order is produced before it.

(v) Until the State Government takes its decision, both parties shall maintain status quo regarding possession of the land.

(vi) There shall be no order as to costs.

(Kunal Ravi Singh,J.) (Mahesh Chandra Tripathi,J.)

July 30, 2026

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