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**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
*M.R. SHAH; J., MANOJ MISRA; J.***

March 17, 2023

**CIVIL APPEAL NOS. 1753 - 1754/2023 (@SLP (C) NOS.34752-53 OF 2016)
STATE OF GUJARAT & ORS. versus JAYANTIBHAI ISHWARBHAI PATEL**

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; Section 24 (2) - Once the land owner refuses to accept the amount of compensation offered by the Acquiring Body, thereafter it will not be open for the original land owner to pray for lapse of acquisition on the ground that the compensation has not been paid. Followed *Indore Development Authority v Manoharlal*, (2020) 8 SCC 129

For Appellant(s) Ms. Deepanwita Priyanka, AOR

For Respondent(s) Mr. Nakul Dewan, Sr. Adv. Mr. Pradhuman Gohil, Adv. Mrs. Taruna Singh Gohil, Adv. Ms. Ranu Purohit, Adv. Mr. Alapati Sahithya Krishna, Adv. Ms. Jaikriti S. Jadeja, AOR

J U D G M E N T

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 31.08.2015 passed by the High Court of Gujarat at Ahmedabad in Special Civil Application No.9740/2012 by which the Division Bench of the High Court of Gujarat has allowed the said writ petition and has declared that the acquisition with respect to the land in question is deemed to have lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as “Act, 2013”) as also the judgment and order dated 01.04.2016 passed by the High Court of Gujarat in Misc. Civil Application (For Review) No.3036 of 2015 in Special Civil Application No.9740/2012, the State of Gujarat and others have preferred the present appeals.

2. The facts leading to the present appeals in nut-shell are as under:

2.1 That, the respondent herein – original writ petitioner was the owner of the land bearing Survey No.287 admeasuring 2 Hectare 37 Are 75 Sq. Mtrs. of village Tarsava, Taluka Vaghodia, District Vadodara (hereinafter referred to as “land in question”). A notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as “Act, 1894”) came to be issued on 11.04.1991 to acquire the land in question alongwith adjacent agricultural lands for the purpose of re-settlement of Narmada Project oustees. That, thereafter, notification under Section 6 of the Act, 1894 was issued on 06.02.1992. The respondent herein – original land owner – original writ petitioner entered into an agreement and a consent award was passed on 11.06.1993. As per the agreement and the consent award, initially 90% of the amount of compensation was required to be paid to the land owners and 10% amount was required to be paid thereafter. However, it appears that the respondent – land owner had second thought about the consent and on 13.02.1995, he wrote to the Assistant Commissioner, Sardar Sarovar Rehabilitation Agency that the compensation may not be paid and the land in question be released from acquisition. On such application, the Assistant Commissioner passed an order dated 07.03.1995, in which, he recorded that the order was passed for payment of 90% of the compensation, however, the land

owner did not accept such compensation. Thereafter, even the order of payment of remaining 10% of compensation was also passed however, the land owner – respondent herein did not accept such compensation and that he has now applied for cancellation of acquisition itself on the ground that due to family disagreements, he is not prepared to sell the land. Thereafter, nothing further happened till 2009 and it appears that the land owner/s continued to be in possession and continued to cultivate the agricultural lands.

2.2 That, on 21.01.2009, the Assistant Commissioner, Sardar Sarovar Rehabilitation Agency cancelled the order dated 07.03.1995 by observing that the acquisition of the land in question has been completed and the land has been vested in Sardar Sarovar Rehabilitation Agency and on basis of that affected persons were allotted also and therefore, as per the legal provision, once an order is passed, it is mandatory to make the payment of compensation. Therefore, the Assistant Commissioner, Sardar Sarovar Rehabilitation Agency cancelled the earlier order dated 07.03.1995 and restored the order for 90% and 10% amount of compensation as per the earlier orders dated 05.05.1993 and 09.02.1994 (for payment of 90% and 10% of the amount of compensation respectively). Pursuant to the aforesaid order dated 21.01.2009 of the Assistant Commissioner, the Special Land Acquisition Officer vide communication / letter dated 05.04.2010 conveyed to the respondent herein – original land owner that his case for payment of compensation is fixed on 16.04.2010 in the office of Talati-cum-Mantri, Tarsava and therefore, he shall remain present and receive compensation. That, thereafter the respondent No.1 – original writ petitioner filed the writ petition for setting aside the consent award dated 11.06.1993 passed under Section 11 of the Act, 1894.

2.3 Before the High Court, it was the case on behalf of respondent No.1 – original writ petitioner – land owner that his request for withdrawal of the consent was accepted by the Special Land Acquisition Officer and thereafter, no compensation was received and the possession of the land in question was also not taken over and therefore, many years later the authority cannot implement the award by insisting on payment of compensation.

2.4 In the meantime, Act, 2013 came into force with effect from 01.01.2014 and therefore, Section 24(2) of the Act, 2013 was pressed into service and it was submitted on behalf of the land owner that as, neither the compensation has been paid nor the possession of the land in question is taken and that the land owner continued to be in possession of the land in question, the acquisition proceedings are deemed to have lapsed under Section 24(2) of the Act, 2013.

2.5 It was the case on behalf of the Acquiring Body and the State Government that the land owner cannot withdraw such consent once the award was passed. It was also submitted on behalf of the Acquiring Body and the State Government that merely because the land owner did not accept the compensation would not make any difference. It is submitted that once the award was passed and a further order was passed to pay the amount of compensation as per the consent award, the same has to be implemented and therefore, the Assistant Commissioner was justified in passing the order dated 21.01.2009 which was communicated by Land Acquisition Officer on 05.04.2010 asking the land owner to receive the compensation, as originally fixed.

2.6 By the impugned judgment and order, the High Court has set aside the order dated 05.04.2010 by observing that such an order could not have been passed after a period

of 15 years having once accepted the request on behalf of the land owner to cancel the acquisition. Thereafter, the Division Bench of the High Court has further passed an order that as, neither the compensation is paid nor the possession is taken and/or the original land owner continued to be in possession and cultivating the land in question, the acquisition is deemed to have lapsed under Section 24(2) of the Act, 2013. Consequently, the Division Bench of the High Court has allowed the said writ petition by setting aside the land acquisition award dated 11.06.1993 *qua* the land in question.

2.7 That, thereafter the Assistant Commissioner and others filed the review petition before the High Court against the observations made by the Division Bench that possession has not been taken over. It was pointed out that as such the possession was already taken over by the Sardar Sarovar Rehabilitation Agency at the time of passing of the award. However, the High Court has dismissed the review application.

2.8 The impugned judgment and order passed by the High Court in Special Civil Application as well as the impugned order passed in Review Application are the subject matter of present appeals.

3. Ms. Deepanwita Priyanka, learned counsel appearing for the State of Gujarat has vehemently submitted that as such the issue involved in the present appeals viz. Whether in the facts and circumstances of the case, there shall be deemed lapse of acquisition under Section 24(2) of the Act, 2013 is now not *res integra* in view of the decision of the Constitution Bench of this Court in the case of **Indore Development Authority Vs. Manoharlal and Ors.** reported in **(2020) 8 SCC 129**.

3.1 It is submitted that in the present case there was a consent award passed on 11.06.1993 and thereafter the orders were passed to pay 90% and 10 % compensation vide orders dated 05.05.1993 and 09.02.1994 . However, the original land owner did not accept the compensation though offered and he insisted for withdrawal of the acquisition. It is submitted that therefore, thereafter vide order dated 07.03.1995, the order of compensation under the award came to be cancelled.

3.2 It is submitted that however as Award under Section 11 of the Act, 1894 continued and amount of compensation was to be paid under the consent award / award, the Assistant Commissioner was justified in passing the order dated 21.01.2009, which was communicated to the original writ petitioner by the Special Land Acquisition Officer vide communication dated 05.04.2010.

3.3 It is submitted that once the award under Section 11 of the Act, 1894 was a consent award, the same could not have been set aside by the High Court subsequently on the ground that the compensation under the Act, 1894 has not been paid for number of years and that the land owner continued to be in possession of the land in question. It is submitted that as such it was the specific case on behalf of the appellants before the High Court that it was the original land owner who did not accept the compensation offered and despite consent award, he continued to cultivate the land forcibly. It is submitted that even it was the specific case on behalf of the appellants before the High Court that possession of the land in question was taken over by drawing panchnama at the time of passing of the consent award. It is submitted that however the High Court has not believed taking over the possession considering the affidavit filed by the Assistant Commissioner in which the Assistant Commissioner stated that the land owner continued to cultivate the land. It is submitted that however the High Court has not considered the entire affidavit on

possession in its true perspective. It is submitted that as per the decision of this Court in the case of **Indore Development Authority (Supra)** taking over the possession of land / open land by drawing the panchnama is one of the mode which is legally permissible. It is submitted that therefore the High Court has materially erred in setting aside the award dated 11.06.1993 under Section 11 of the Act, 1894 and also declaring that the acquisition with respect to the land in question is deemed to have lapsed under Section 24(2) of the Act, 2013.

3.4 Ms. Deepanwita Priyanka, learned counsel appearing for the appellants – State of Gujarat and Others has further submitted that even otherwise in the facts and circumstances of the case, there shall not be any deemed lapse of acquisition under Section 24(2) of the Act, 2013.

It is submitted that in the present case admittedly pursuant to the consent award passed under Section 11 of the Act, 1894, the orders were passed to pay the compensation to the land owner and the land owner was called upon to come to the office of Talati-cumMantri, Tarsava to accept the compensation. However, the land owner refused to accept the compensation as offered. It is submitted that once there was a refusal on the part of the land owner to accept the compensation though offered, there shall not be any deemed lapse under Section 24(2) of the Act, 2013.

3.5 It is further submitted that as observed and held by this Court in the case of **Indore Development Authority (Supra)**, only in a case where there is a lapse on the part of the Acquiring Body in not tendering / paying the compensation, and not taking over the possession, there shall be deemed lapse under Section 24(2) of the Act, 2013. It is submitted that in the present case there was no lapse at all on the part of the Acquiring Body and/or State Government in not taking the possession and in not tendering / paying the compensation. It is submitted that as such the original land owner refused to accept the compensation which has been recorded in the order dated 07.03.1995.

Making above submissions and relying upon decision of the Constitution Bench of this Court in the case of **Indore Development Authority (Supra)**, it is prayed to allow the present appeals.

4. Present appeals are vehemently opposed by Shri Nakul Diwan, learned senior counsel appearing on behalf of the contesting respondent – original writ petitioner – original land owner.

4.1 It is prayed by Shri Diwan, learned senior counsel appearing on behalf of the original land owner that before the High Court there was a challenge to the subsequent communication dated 21.01.2009 by the Assistant Commissioner communicated vide letter dated 05.04.2010 by the learned Special Land Acquisition Officer *suo moto* cancelling the earlier order dated 07.03.1995. It is submitted that the said issue has not been decided by the High Court and therefore, the matter may be remanded to the High Court to consider the legality and validity of the order dated 21.01.2009 passed by the Assistant Commissioner and the communication dated 05.04.2010 by the Special Land Acquisition Officer calling upon the land owner to remain present in the office of Talati-cum-Mantri, Tarsava to receive / accept the compensation.

4.2 It is further submitted by Shri Diwan, learned senior counsel appearing on behalf of the original land owner that in the present case the original land owner withdrew his consent and therefore, refused to accept the compensation awarded under the

consent award and requested to withdraw the acquisition, which came to be accepted by the Assistant Commissioner vide order dated 07.03.1995 and the award was cancelled. It is submitted that in that view of the matter, thereafter, after a period of 15 years, it was not open for the Assistant Commissioner to cancel the order dated 07.03.1995 that too in exercise of *suo moto* powers and without giving any opportunity of hearing to the original land owner.

4.3 It is further submitted by Shri Diwan, learned senior counsel that even otherwise when the original land owner continued to remain in physical possession and cultivating the land in question even for a period of 15 years after the consent award passed in the year 1993 and the compensation was not paid for number of years, in view of Section 24(2) of the Act, 2013, there shall be deemed lapse of acquisition proceedings. It is submitted that therefore the Division Bench of the High Court has not committed any error in setting aside the consent award on the ground that the same has not been implemented for number of years and that the land in question is not used by the Acquiring Body for the purpose for which it was acquired and the High Court has rightly declared that the acquisition with respect to the land in question is deemed to have lapsed under Section 24(2) of the Act, 2013.

Making above submissions, it is prayed to dismiss the present appeals.

5. We have heard learned counsel appearing for respective parties at length.

5.1 At the outset it is required to be noted that the original award dated 11.06.1993 passed under Section 11 of the Act, 1894 was a consent award with respect to the land owned by the present respondent – original land owner as well as other lands acquired for re-settlement of Narmada Project oustees. It is also to be noted that thereafter and pursuant to the consent award, the amount of compensation (90% + 10%) was in fact offered to the land owner and he was called upon to accept the compensation offered, but the respondent – original land owner refused to accept the compensation offered and insisted to withdraw the acquisition. It was the case on behalf of the appellants before the High Court that the possession of the land in question was taken by drawing spot panchnama at the time of passing of the consent award. However, the High Court has disbelieved the same by observing that even as per the affidavit of the Assistant Commissioner, the land owner continued to be in possession of the land in question and continued to cultivate the same. However, the affidavit which is reproduced in the impugned judgment and order is required to be considered in its true perspective and in its entirety. In the affidavit dated 22.03.2013 filed by one Shri Bhagora Kamlasingh Jokhanbhai on behalf of the Assistant Commissioner, it was stated as under:

“6. I state that however the Petitioner refused to handover the land and to take compensation along with other similarly situated farmers whose land were also acquired as per the Award dated 11.06.1993. The Petitioner along with other persons made an application dated 27.07.1993 for cancellation of the Award.

7. I state that by the order dated 07.03.1995, pursuant to the reluctance of the Petitioner to hand over the possession and to take the compensation on so called grounds of family disputes, the order of payment of compensation was cancelled, but at the same time, the order of acquisition was not cancelled. It appears that the Petitioner has successfully avoided to handover the possession of the land acquired under the provisions of Act though the land is vested in the Respondent No.3”

14. With regard to the averments made in para No.3.2 of the petition, I deny the same inasmuch as Petitioner refused to take the compensation and therefore, last notice was given to the Petitioner on 05.04.2010 and the Petitioner refused to accept the compensation, the same is now, deposited with the Government Treasury as stated hereinabove. The Petitioner is, therefore, require to handover the possession of land to the Respondent No.3 so that the same can be allotted for rehabilitation of the affected persons of Narmada Project.”

5.2 Thus, from the aforesaid it can be seen that it was the specific case on behalf of the appellants and the Assistant Commissioner that the land owner refused to hand over the land and refused to accept the compensation alongwith other similarly situated farmers whose lands were also acquired as per the consent award dated 11.06.1993. It can also be seen that it was the case on behalf of the appellants that by order dated 07.03.1995, pursuant to the reluctance of the land owner to hand over the possession (physical possession) and to take the compensation on so-called ground of family disputes, the order of payment of compensation was cancelled. But at the same time, the order of acquisition was not cancelled and that the land owner successfully avoided to hand over the possession of the land acquired under the provisions of the Act, 1894 though the land vested in the Sardar Sarovar Rehabilitation Agency.

5.3 Considering the aforesaid factual aspects it is required to be considered whether there shall be deemed lapse of acquisition under Section 24(2) of the Act, 2013 as observed and held by the High Court ?

In the case of **Indore Development Authority (Supra)**, it is observed and held as under:

“**366.** In view of the aforesaid discussion, we answer the questions as under:

366.1. 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 the 2013 Act, there is no lapse of proceedings. Compensation has to be determined under the provisions of the 2013 Act.

366.2. 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 2013 Act under the 1894 Act as if it has not been repealed.

366.3. 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 2013 Act 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.

366.4. The expression “paid” in the main part of Section 24(2) of the 2013 Act does not include a deposit of compensation in court. The consequence of non-deposit is provided in the proviso to Section 24(2) in case it has not been deposited with respect to majority of landholdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation under Section 31 of the Land Acquisition Act, 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 nondeposit with respect to the majority of holdings for five

years or more, compensation under the 2013 Act has to be paid to the “landowners” as on the date of notification for land acquisition under Section 4 of the 1894 Act.

366.5. In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, 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). The landowners 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 2013 Act.

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

366.7. The mode of taking possession under the 1894 Act 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 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).

366.8. 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 compensation for five years or more before the 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned 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.

366.9. Section 24(2) of the 2013 Act 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 2013 Act i.e. 1-1-2014. It does not revive stale and timebarred 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.”

5.4 Therefore, as per the law laid down by this Court in the case of **Indore Development Authority (Supra)**, taking over the possession of the land by drawing panchnama is held to be legally permissible and can be said to be taking over the possession legally. In the present case, there was a consent award under Section 11 of the Act, 1894. The possession was taken by drawing the panchnama at the time of passing of the consent award dated 11.06.1993. However, thereafter, because of the reluctance on the part of the land owner, he did not actually and physically hand over the possession and he continued to cultivate the acquired land which actually vested in the State Government / Acquiring Body / Sardar Sarovar Rehabilitation Agency.

6. Even otherwise, in the facts and circumstances of the case, there shall not be any deemed lapse under Section 24(2) of the Act, 2013 on the ground that the amount of compensation was not paid. It is an admitted position that after the consent award, under Section 11 of the Act, 1894, was passed on 11.06.1993, the amount of compensation was in fact offered to the land owner alongwith other land owners and the respondent – original land owner was called upon to remain present in the office of Talati-cumMantri to receive / accept the compensation. However, the land owner refused to accept the compensation though offered. In that view of the matter, once the compensation was offered, which as such was offered pursuant to the consent award under Section 11 of the Act, 1894, but the land owner refused to accept the same, how there can be any deemed lapse of acquisition under Section 24(2) of the Act, 2013?

6.1 As per the law laid down by this Court in the case of **Indore Development Authority (Supra)** and even otherwise considering the object of providing the deemed lapse of acquisition under Section 24(2) of the Act, 2013 seems to be that if there is any lapse on the part of the Acquiring Body / agency in not taking the possession and not paying the compensation there shall be deemed lapse of acquisition. Therefore, for a deemed lapse under Section 24(2) of the Act, 2013, there shall be a lapse on the part of the Acquiring Body / beneficiary in not taking the possession and not paying the compensation. In the present case, both the conditions are not satisfied. In fact, the amount of compensation under the consent award under Section 11 of the Act, 1894 was offered and the land owner was called upon to accept the compensation however, the land owner refused to accept the same. Even the possession was taken by drawing the panchnama at the time of declaration of the consent award under Section 11 of the Act, 1894. However, thereafter, because of the reluctance on the part of the original land owner, the physical and actual possession of the land could not be taken by the Acquiring Body. From the aforesaid it can be seen that there was no lapse at all on the part of the Authority neither in offering / paying the compensation nor in not taking the possession. Therefore, the Division Bench of the High Court has materially erred in declaring that the acquisition with respect to the land in question is deemed to have lapsed under Section 24(2) of the Act, 2013.

7. Now, so far as the impugned judgment and order passed by the High Court in setting aside the award dated 11.06.1993 on the ground that the award has not been implemented for number of years and the amount of compensation has not been paid for number of years and the land is not utilized / used for number of years is concerned, at the outset it is required to be noted that it was the original owner who refused to accept the compensation offered in the year 1993. Therefore, an order dated 07.05.1993 was passed cancelling the order of offering the compensation. However, the acquisition and the consent award, both continued. However, thereafter, the land owner continued to make representations to release the land from acquisition. Therefore, it was the original land owner who did not accept the compensation offered and continued to make representations to release the land from acquisition. In these circumstances, the Division Bench of High Court has committed a very serious error in setting aside the consent award on the aforesaid ground. The consent award under Section 11 of the Act, 1894 ought not to have been set aside in the manner in which it is set aside. The High Court has not at all properly appreciated and considered the conduct on the part of the land owner. At this stage it is required to be noted that at many places the High Court has observed in paragraph 11 that “the petitioner, alongwith other land owners of the area, agreed to acquisition of his land on a fixed rate of compensation”. Even the High Court has also taken note of the fact that the amount of compensation was offered but the original land owner refused to accept the same. Once the land owner refuses to accept the amount of compensation offered by the Acquiring Body, thereafter it will not be open for the original land owner to pray for lapse of acquisition on the ground that the compensation has not been paid. As observed hereinabove, there shall be deemed lapse of acquisition under Section 24(2) of the Act, 2013 if there is a lapse on the part of the Acquiring Body / beneficiary in not taking the possession and the compensation is not paid. Even otherwise as observed and held by this Court in the case of **Indore Development Authority (Supra)**, for the deemed lapse under Section 24(2) of the Act, 2013, twin conditions of not taking the possession and not paying the compensation, both are required to

be satisfied. Therefore, if one of the conditions is not satisfied, there shall not be any deemed lapse.

8. Now, so far as the prayer on behalf of the land owner to remand the matter to the High Court to consider the legality and validity of the subsequent order dated 21.01.2009 cancelling the earlier order dated 07.03.1995 is concerned, at the outset it is required to be noted that the order dated 21.01.2009 was as such not the subject matter of the writ petition before the High Court. No prayer was made to set aside the order dated 21.01.2009 passed by the Assistant Commissioner, Sardar Sarovar Rehabilitation Agency. What was challenged before the High Court was award under Section 11 of the Act, 1894 and the subsequent communication dated 05.04.2010 issued by the Special Land Acquisition Officer calling upon the land owner to remain present in the office of Talati cum Mantri to accept the compensation and to release the land. Be that as it may, assuming that the order dated 21.01.2009 was bad in law and the earlier order dated 07.03.1995 is restored, in that case also, it would not have a bearing on the aspect of deemed lapse under Section 24(2) of the Act, 2013. The fact remains that though the amount of compensation was offered and the original land owner was called upon to accept the compensation as per the consent award, he refused to accept the same.

9. In view of the above and for the reasons stated above, present appeals succeed. Impugned judgment and order dated 31.08.2015 passed by the High Court of Gujarat in Special Civil Application No.9740/2012 and the order dated 01.04.2016 passed in review application being Misc. Civil Application (For Review) No.3036 of 2015 in Special Civil Application No.9740/2012 are hereby quashed and set aside. In the facts and circumstances of the case, there shall be no order as to costs.

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