REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.20982 OF 2017

INDORE DEVELOPMENT AUTHORITY ...APPELLANT (S)

VERSUS

SHAILENDRA (DEAD)
THROUGH LRS.& ORS. ...RESPONDENT (S)

WITH

SPECIAL LEAVE PETITION (C) No.10742 OF 2008

YOGESH KUMAR & ORS. ...PETITIONER (S)

VERSUS

STATE OF MADHYA PRADESH & ORS. ...RESPONDENT (S)

WITH

SPECIAL LEAVE PETITION (C) No.20920 OF 2011

SPECIAL LEAVE PETITION (C)Nos.26574-26575 OF 2011

SPECIAL LEAVE PETITION (C)No.28993 OF 2011

SPECIAL LEAVE PETITION (C)No.30198 OF 2015

SPECIAL LEAVE PETITION (C)No.30192 OF 2015

SPECIAL LEAVE PETITION (C)No.30142 OF 2015

www.taxcode.in

SPECIAL LEAVE PETITION (C)No.30128 OF 2015

SPECIAL LEAVE PETITION (C)No.30203 OF 2015

CIVIL APPEAL No.4835 OF 2015

SPECIAL LEAVE PETITION (C)No.25289 OF 2015

SPECIAL LEAVE PETITION (C).....CC No.9842 OF 2016

SPECIAL LEAVE PETITION (C) No.22356 OF 2015

SPECIAL LEAVE PETITION (C) No.31678 OF 2015

CIVIL APPEAL NO.4836 OF 2015

SPECIAL LEAVE PETITION (C) No.22527 OF 2015

SPECIAL LEAVE PETITION (C) No.4705 OF 2016

SPECIAL LEAVE PETITION (C) No.30577-30580 OF 2015

SPECIAL LEAVE PETITION (C) No.27389 OF 2015

SPECIAL LEAVE PETITION (C) No.27383 OF 2015

SPECIAL LEAVE PETITION (C) No.34787 OF 2015

SPECIAL LEAVE PETITION (C) No.10190-10200 OF 2017

SPECIAL LEAVE PETITION (C) No.38290 OF 2016

SPECIAL LEAVE PETITION (C) No.9571 OF 2016

SPECIAL LEAVE PETITION (C) No.15127 OF 2016

SPECIAL LEAVE PETITION (C) No.15144 OF 2016

SPECIAL LEAVE PETITION (C) No.15131 OF 2016

SPECIAL LEAVE PETITION (C) No.15139 OF 2016

SPECIAL LEAVE PETITION (C) No.16425 OF 2016

SPECIAL LEAVE PETITION (C) No.15117 OF 2016

SPECIAL LEAVE PETITION (C) No.15140 OF 2016

SPECIAL LEAVE PETITION (C) No.9570 OF 2016

SPECIAL LEAVE PETITION (C) No.15113 OF 2016

SPECIAL LEAVE PETITION (C) No.16438 OF 2016

SPECIAL LEAVE PETITION (C) No.15119 OF 2016

SPECIAL LEAVE PETITION (C) No.15126 OF 2016

SPECIAL LEAVE PETITION (C) No.15125 OF 2016

SPECIAL LEAVE PETITION (C) No.15118 OF 2016

SPECIAL LEAVE PETITION (C) No.15124 OF 2016

SPECIAL LEAVE PETITION (C) No.15112 OF 2016

SPECIAL LEAVE PETITION (C) No.11824 OF 2016

SPECIAL LEAVE PETITION (C) No.15143 OF 2016

SPECIAL LEAVE PETITION (C) No.15141 OF 2016

SPECIAL LEAVE PETITION (C) No.15142 OF 2016

SPECIAL LEAVE PETITION (C) No.15213-15217 OF 2017

SPECIAL LEAVE PETITION (C) No.17324 OF 2016

SPECIAL LEAVE PETITION (C) No.38368 OF 2016

SPECIAL LEAVE PETITION (C) No.5182-5184 OF 2017

SPECIAL LEAVE PETITION (C) No.23846 OF 2016

SPECIAL LEAVE PETITION (C) No.23097 OF 2016

SPECIAL LEAVE PETITION (C) No.19804-19805 OF 2016

SPECIAL LEAVE PETITION (C) No.22127-22128 OF 2016

SPECIAL LEAVE PETITION (C) No.21997-21998 OF 2016

W.P.(C) No.602 OF 2017

SPECIAL LEAVE PETITION (C) ..Diary No.24901 OF 2017

J U D G M E N T

ARUN MISHRA, J.

1. In *Indore Development Authority v. Shailendra (Dead) through LRs. & Others* [C.A No.20982 of 2017] correctness of the decision of *Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki* [2014 (3) SCC 183] has been doubted. The main issue is interpretation of section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the Act of 2013') and section 31 of the Land Acquisition Act, 1894 (for short, 'the Act of 1894').

2. In *Yogesh Neema & Ors. v. State of M.P. & Ors.* [S.L.P. [C] No.10742 of 2008] vide order of 12.1.2016, observing that other

question, that may arise undoubtedly to be considered question Nos. IV and V have been referred.

Following questions arises for consideration:

I. What is the meaning of the expression 'paid'/ 'tender' in Section 24 of the Act of 2013 and section 31 of the Act of 1894? Whether non-deposit of compensation in court under section 31(2) of the Act of 1894 results into a lapse of acquisition under section 24(2) of the Act of 2013. What are the consequences of non-deposit in Court especially when compensation has been tendered and refused under section 31(1) of the Act of 1894 and section 24(2) of the Act of 2013? Whether such persons after refusal can take advantage of their wrong/conduct?

II Mode of taking physical possession as contemplated under section 24(2) of the Act of 1894.

III Whether section 24 of Act of 2013 revives barred and stale claims?

IV. Whether the conscious omission referred to in paragraph 11 of the judgment in *Shree Balaji Nagar Residential Association v.*

State of Tamil Nadu [(2015) 3 SCC 353] makes any substantial difference to the legal position with regard to the exclusion or inclusion of the period covered by an interim order of the Court for the purpose of determination of the applicability of Section 24(2) of the 2013 Act?

V. Whether the principle of **"*actus curiae neminem gravabit*"**, namely act of the Court should not prejudice any parties would be applicable in the present case to exclude the period covered by an interim order for the purpose of determining the question with regard to taking of possession as contemplated in Section 24(2) of the 2013 Act?

In Re: Question No.1

3. Question that has been referred in as to meaning of the expression 'paid' used in section 24 of Act of 2013 and expression 'tender' used in section 31(1) of Act of 1894 when deposit under section 31(2) of Act of 1894 is necessary, effect of refusal to accept compensation and whether deposit in treasury is permissible and effect of non-deposit of compensation in Court.

4. In order to appreciate the various questions to be answered, it is appropriate to first consider the provisions contained in the Act of 1894 with respect to the passing of the award, together with its

communication and payment; the following then is a 'bird's eye view' of the same.

SCHEME OF ACT & RELEVANT PROVISIONS :

5. After notification under section 4 and declaration under section 6 have been issued under the Act of 1894, the Collector is required to proceed to pass an award under section 11. Section 12 requires the Collector to give immediate notice of the award to such persons interested as are not present personally or by their representatives when the award is made. Section 16 deals with the power of the Collector to take possession of the land after an award has been made under section 11. It is open to the Collector to take possession of the land, which shall, thereupon, vest absolutely in the Government. Section 16 is extracted hereunder:

> "16. Power to take possession – When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances. (emphasis supplied)

6. Section 17 deals with special powers in cases of urgency. The same authorizes the Collector to take possession before passing of the award as provided in section 17(1) of the Act of 1894, and on taking possession of any land, such land shall thereupon vest

www.taxcode.in

absolutely in the Government, free from all encumbrances. Section 17 is extracted hereunder:

> "17. Special powers in case 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, subsection 1). [take possession of any land needed for a public purpose]. Such land shall thereupon [vest absolutely in the [Government], free from all encumbrances.
>
> (2) Whenever owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or accesses to any such station, [or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity,] the Collector may immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the [appropriate Government], enter upon and take possession of such land, which shall thereupon [vest absolutely in the [Government]] free from all encumbrances : Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.
>
> (3) In every case under either of the preceding sub-sections the Collector shall at that time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and from any other damage sustained by them caused by such sudden dispossession and not excepted in section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein

contained.

3[(3A) 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 person interested entitled thereto, and (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.

(3B) The amount paid or deposited under section (3A), 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 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 5A 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)." (emphasis supplied)

Before taking possession of the land, it is necessary under Section 17(3A) to tender payment of 80% compensation unless prevented by some one or more of the contingencies mentioned in sub-section (2) of section 31, and where the Collector is so prevented, the provisions of section 31(2), except the second proviso, shall apply as they apply to the payment of compensation

under that section. As required under section 17(3A) and section 17(3B), the amount paid or deposited under sub-section (3A) shall be taken into account for determining the amount of compensation to be tendered under section 31. Section 18 of the Act of 1894 provides that any person interested, who has not accepted the award, may ask for a reference to be made to the court with respect to (1) measurement of the land; (2) the amount of compensation (3) the persons to whom it is payable or (4) the apportionment of the compensation among the persons interested. Under section 30, there can be a reference to the court; its scope is confined to any dispute arising as to the apportionment of the amount of compensation or any part thereof, or as to the persons to whom the same or any part thereof is payable. In a reference under section 30, measurement of land and quantum of compensation cannot be questioned. There is a limitation for reference under section 18(2); whereas, the limitation is not prescribed in the Act of 1894 for seeking reference under section 30.

7. There is yet another reference under the Act of 1894, *i.e.* under section 28A. The provisions of section 28A aim at removal of the disparity in the matter of payment of compensation which provides

www.taxcode.in

for re-determination of the amount of compensation, on the basis of the award of the court, in respect of a person who had not sought reference, and had accepted the Collector's award; such a person can seek re-determination of compensation within three months from the date of the award of the court. In case a person is not satisfied with the re-determination so made under section 28A(2), he can seek a reference to court under section 28A(3).

8. The payment of compensation and deposit of it in Court is dealt with in Part V of the Act of 1894, in section 31. Section 31 is extracted hereunder:

> "31. Payment of compensation or deposit of same in Court. - (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.
>
> (2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted: Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount: Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18: Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

www.taxcode.in

> (3) Notwithstanding anything in this section the Collector may, with the sanction of the [appropriate Government] instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.
>
> (4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof."

9. The provision of section 31(2) makes it clear that only in the exigencies as provided in section 31(2), the amount has to be deposited in reference court, not in all exigencies. As discussed hereinafter rules framed under section 55 provide that in case a person seeks no reference and he refuses to accept the compensation it has to be deposited in the treasury. An attempt has to be made to harmonize the Act and the rules. The expression used in section 31(2) is that on refusal amount to be deposited in Court where reference would be submitted. When no reference is sought there is no question of it being submitted to the Court. Hence, Reference Court does not come into picture then the deposit is to be obviously made in treasury as provided in Rules/ Order discussed hereinafter.

www.taxcode.in

10. Sub-section (1) of section 31 deals with "payment", whereas, sub-section (2) of section 31 deals with "deposit" of the amount of compensation in court in certain contingencies. "Payment" of compensation is differently dealt with in section 31(1), and "deposit" is separately dealt with in section 31(2) of the Act of 1894. Section 31(1) provides tender of the amount to be the mode to pay. The provisions of sub-section (1) deal with payment, and sub-section (2) of section 31 deals with deposit in the Court "where reference would be submitted", only in the contingencies mentioned, *i.e.* (1) if the person interested shall not consent to receive it, and has sought reference to Court or (2) if there be no person competent to alienate the land, or (3) if there be any dispute as to the entitlement to receive the compensation, or (4) if there be any dispute as to the apportionment of compensation between the interested persons. The Collector is required to deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted. It is also provided in section 31(2) that no person who has received the amount otherwise than under protest shall be entitled to make an application for seeking reference under section 18. It is open to a person, under the first proviso to section 31(2), to

www.taxcode.in

receive payment of compensation under protest as to the sufficiency of the amount, and such person is also entitled to maintain a reference. The third proviso to section 31(2) makes it clear that any person who has received the whole or any part of compensation awarded under the Act, shall still be liable to pay the same to a person who is lawfully entitled thereto. It is with the purpose as provided in section 31 when the amount is tendered it can be accepted under protest and still a reference can be maintained. In case awarded amount has been accepted without protest, reference cannot be maintained under section 18.

11. In case of incompetency of a person to alienate the land in question, amount has to be deposited in the reference court under section 31(2), and when money of such person is deposited in Court, court may order the money to be invested in the purchase of another land to be held under the like title and conditions of ownership, as the land, in respect of which, such money shall have been deposited, was held, or if such purchase cannot be effected forthwith, money can be invested in Government or other approved securities as the court shall think fit and has to be dealt with in accordance with the provisions contained in section 32. Section 33

deals with an investment of money deposited in other cases.

12. In case money is deposited in court otherwise than as provided under section 32, any party interested can apply to the court for investing the same in Government or other approved securities, is the purpose of deposit. The provisions of sections 32 and 33 of the Act of 1894 are extracted hereunder:

> "32. Investment of money deposited in respect of lands belonging to persons incompetent to alienate. -
>
> (1) If any money shall be deposited in Court under sub-section (2) of the last preceding section and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall-
>
> (a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held, or
>
> (b) if such purchase cannot be effected forthwith, then in such Government of other approved securities as the Court shall think fit;
>
> and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would, for the time being, have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied-
>
> (i)in the purchase of such other lands as aforesaid; or
>
> (ii) in payment to any person or persons becoming absolutely entitled thereto.
>
> (2) In all cases of money deposited to which this section applies the Court shall order the costs of the following matters, including therein all reasonable

> charge and expenses incident thereon, to be paid by the Collector, namely: -
>
> (a) the costs of such investments as aforesaid; (b) the costs of the orders for the payment of the interest or other proceeds of the securities upon which such moneys are for the time being invested, and for the payment out of Court of the principal of such moneys, and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.
>
> 33. Investment of money deposited in other cases - When any money shall have been deposited in Court under this Act for any cause other than mentioned in the last proceeding section, the court may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and paid in such manner as it may consider will give the parties interested therein the same benefit the reform as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be."

13. The provisions contained in section 34 deals with the exigencies where the amount of compensation is not paid or deposited on or before taking possession of the land. The Collector shall pay the amount awarded with interest thereon @ 9% from the time of so taking possession until it shall have been so paid or deposited; and if such compensation or any part thereof is not paid or deposited within one year from the date on which possession is taken, interest @ 15% per annum shall follow. Section 34 of 1894 Act is extracted hereunder:

> "34. Payment of interest - When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of (nine per centum) per annum from the time of so taking possession until it shall have been so paid or deposited:
>
> [Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date or expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry."

14. The expression "paid"/"tender" and the expression "deposited" have both been used separately in section 31, as well as in section 34, of the Act of 1894; so also in Section 24(2) of the Act of 2013. They carry different meanings, and different consequences flow from them. Significantly, it is clear under Section 16 of the Act of 1894, that once award has been passed and possession has been taken, land absolutely vests in the State, and in the case of contingencies as provided in section 17(1) when possession is taken in the case of urgency, even before passing of the award, land vests absolutely in the State under section 17(3A), 80% amount is required to be tendered before taking possession under sections 17(1) and 17(2); and, the same is to be paid in the mode as provided for under section 31(1) and, in case of refusal, incompetency etc. to alienate

and other such cases as provided under section 31(2), it has to be deposited in the court and in case it is not so deposited, consequences, as prescribed under section 34, shall follow i.e. from the date of taking possession 9% interest for the first year and after 1 year, 15% interest has to be paid on the amount not so paid or deposited. Under the provisions of the Act of 1894, there is no divesting of the land which has vested absolutely in the State; and, the consequences of non-payment, or of non-tendering of compensation, or of non-depositing of the same in court, would only be that of the additional liability of interest as provided in section 34. The provision with respect to the payment of 15% interest has been inserted via the proviso to section 34, *w.e.f.* 24.9.1984, vide Amendment Act No.68/1984.

15. When we consider the provisions of the Act of 2013, *vis-à-vis* those of the Act of 1894, it becomes apparent that Section 11 of the Act of 2013 is *akin* to section 4 of the Act of 1894. Section 19 deals with publication of declaration and summary of Rehabilitation and Settlement, it is *equivalent* to section 6 of the Act of 1894. Section 23 deals with matters to be considered while determining

compensation by the Collector.

16. Section 24 of the Act of 2013 deals with land acquisition process initiated under the Act of 1894, which shall be deemed to have lapsed in certain cases. With respect to acquisition, when award, under the Act of 1894, has not been passed, then, as per Section 24(1)(a) of the Act of 2013, all the provisions of the Act of 2013 relating to the determination of compensation shall apply; where, however, an award under section 11 of the act of 1894 has been made, then such proceedings shall continue,as per section 24(1)(b), under the Act of 1894, as if the said Act has not been repealed.

17. Section 24(2) begins with a non-obstante clause — as notwithstanding anything contained in sub-section (1). The provisions of sub-section (2) of section 24 shall, under the exigencies provided therein, have the overriding effect, i.e. in case of award, under Act of 1894, has been made five years or more prior to the commencement of the Act of 2013, but either the physical possession has not been taken, or compensation has not been paid, the said proceedings shall be deemed to have lapsed. The proviso to section 24(2) lays down when the award has been made and

www.taxcode.in

compensation in respect of majority of holdings has not been deposited in the account of the beneficiaries, the acquisition would not lapse; however, all the beneficiaries shall be entitled to compensation in accordance with the provisions of the Act of 2013.

18. When we consider the scheme of the Act of 2013 also with respect to the mode of payment of compensation, we find provisions of section 77 are almost *akin* to those of section 31. The provisions of section 77 of the Act of 2013 are extracted hereunder:

> "77. Payment of compensation or deposit of same in Authority. –(1) On making an award under section 30, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them by depositing the amount in their bank accounts unless prevented by someone or more of the contingencies mentioned in sub-section (2).
>
> (2) If the person entitled to compensation shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Authority to which a reference under section 64 would be submitted:
>
> Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:
>
> Provided further that no person who has received the amount otherwise than under protest shall be entitled to make any application under sub-section (1) of section 64:
>
> Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto."

19. Section 80 of the Act of 2013, is equivalent to section 34 of the Act of 1894, the same is extracted hereunder:

> "80. Payment of interest. –When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine percent. per annum from the time of so taking possession until it shall have been so paid or deposited:
>
> Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen percent. per annum shall be payable from the date or expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry."

20. It is apparent, from the provisions contained in section 77 of the Act of 2013, that, the expression used in section 77 that the Collector shall "tender" payment of the compensation to landowners/interested persons, and the obligation is to pay it to them by depositing the amount in their bank accounts unless prevented by exigencies provided in section 77(2), are akin to section 31(2) of the Act of 1894.

21. In proviso to section 24(2), expression used is compensation has not been "deposited" in the account of the beneficiaries, which may be deposited separately in treasury also; whereas, in section 77, of the Act of 2013 the deposit is required, in the "bank" account of beneficiaries, unless refused. The expression "bank-account" has

www.taxcode.in

not been used in section 31 of the Act of 1894 or in section 24(2) of Act of 2013. In proviso to section 24(2), the expression used "deposited in account" would mean deposited only in Treasury or with the Land Acquisition collector for payment.

22. It is pertinent to mention that section 80 of the Act of 2013 also imposes a liability of interest, akin to Section 34 of the Act of 1894, upon amount not being deposited; *i.e.* 9% for the first year and, thereafter, 15% per annum. The Act of 2013 does not envisage the consequence of lapse of the acquisition on non-deposit of compensation in court, and neither was it so provided for in section 31 of the Act of 1894. The provision of section 24 thus does not contemplate deposit of amount in Court. In our opinion, the expression "paid" and "deposited" are separately used in both enactments, and they both carry a different meaning. The aforesaid provisions deal with tender and deposit; and, consequences are similar.

INTERPRETATION OF SECTION 24

23. Section 24 of the Act of 2013 is extracted hereunder:-

> **"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

www.taxcode.in

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

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

24. When we consider the provisions of section 24 of the 2013 Act, it is clear that in case of the award has not been passed then as per section 24(1)(a), compensation has to be determined under the Act of 2013. It is also clear that section 24(1)(b) provides that where an award under section 11 of the 1894 Act has been made, then such proceedings shall continue under the provisions of the said Act of 1894 as if it has not been repealed. However, in case physical

www.taxcode.in

possession of the land has not been taken, or the compensation has not been paid, the proceedings shall be deemed to have lapsed; and, in case of compensation with respect to a majority of landholdings has not been deposited in the account of the beneficiaries, then, all beneficiaries i.e. landowners shall be entitled to compensation in accordance with the provisions of the Act of 2013.

25. In section 24(2), the expression that has been employed is "compensation has not been paid". The expression "deposited", which occurs in the proviso to sub-section (2), has not been used in the main section 24(2). Its proviso uses the expression "deposited in the account of the beneficiaries", meaning thereby, in the case with respect to the majority of land holdings amount has not been deposited in the account of beneficiaries, though the acquisition would not lapse, all beneficiaries would get benefit of the compensation under the Act of 2013. Thus, the consequence of non-deposit of the amount, with respect to the majority of land holdings, in the account of the beneficiaries, is that the acquisition would not lapse, and only compensation under the new Act would be payable. Whereas, under the main part of section 24(2), it is apparent that, the expression "compensation has not been paid"

www.taxcode.in

has been used. The word "deposited" is missing from main part of section 24(2), and it is only used in the proviso. Thus it is crystal clear that the Legislature has used two different expressions to carry, respectively different meanings; and, the proviso operates in a different field, where the acquisition would not lapse. The object is that a body or State Government, for whose benefit land has been acquired, must have possessed the requisite funds for payment to the landowners. The proviso is not attracted where compensation has been paid.

26. The proviso to section 24(2) does not provide that amount of compensation has to be deposited in the court. It obviously refers to a payment deposited with LAO or in treasury.

27. The different expression “paid”, used in section 24(2) of the 2013 Act, thus, cannot carry same meaning and include in it the deposit to be made in Court under section 31(2) of the Act of 1894; it only reflects the mode of payment as envisaged under section 31(1) of the Act of 1894 *i.e.* “tender”.

28. The expression used in section 31 of Act of 1894 and Section 77(1) of Act of 2013 is to “tender payment”. Once there is tender, then in case of refusal to accept the same,the obligation to pay

www.taxcode.in

under section 31(1) is complete by tender, and that tantamount to making the payment; and, that is precisely what is intended by the word “paid” in section 24(2) of 2013 Act.

29. In Section 31(2) of the 1894 Act, the word ‘deposited in Court’ is used. The deposit in Court is not payment to the beneficiaries. It is only after their refusal to accept the compensation tendered under section 31(1) of the Act of 1894 it is to be deposited in Court. It is further provided in the rules that in case of reference is sought, the amount is to be deposited in court where reference would be submitted otherwise it is to be deposited in the treasury.If the expression “deposited”, used in the proviso to section 24(2), and expression “paid” used in main section 24(2), are both taken as contained in expression “paid” *i.e.* the tender; and, on refusal it is deposited in court to make the “payment” complete; if expression “deposited” is included in expression ‘payment’ under Section 24(2), inconsistency and repugnancy would be caused as between the proviso and the main sub-section; which has to be eschewed. The Court cannot add the word "deposited" to the expression “paid”/ “tender” in Section 31 of Act 1894 or Section 24(2) of Act of 2013.

www.taxcode.in

30. The proviso to section 24(2) of the 2013 Act deals with 'deposit' of compensation in treasury or with Land Acquisition Collector with respect to the majority of holding it does obviously contemplate that amount has not been 'paid' to landowners/ beneficiaries/ interested persons. Thus, when Scheme of entire section 24 is considered, the concept of 'paid' in the main section 24(2) is different than the deposit. If the deposit is included in word paid the proviso to section 24(2), which has the different consequence of no lapse, but only higher compensation would be otiose and become redundant and repugnancy would occur.

31. It is clear that expression 'paid' in section 24 is different than 'deposit' which is provided in its proviso. The word 'deposit' is included in section 24 in word 'paid'. Same is the position even under section 31(1) and 31(2). The provisions of section 24 cannot be rendered wholly unworkable by the inclusion of 'deposit' in 'paid'.

MEANING OF "PAID" IN SECTION 31 OF THE ACT OF 1894 AND SECTION 24(2) OF THE ACT OF 2013 :

www.taxcode.in

32. The question arises what is the meaning of the expression 'paid' in section 24 and 'tender' in section 31(2) of the Act of 1894. Whether the tender of compensation amount to discharge of obligations to make payment. The meaning of expression "tender": is when a person has tendered the amount and made it unconditionally available and the landowner has refused to receive it, the person who has tendered the amount cannot be saddled with the liability, which is to be visited for non-payment of the amount. "Tender" has been defined in Black's Law Dictionary thus:

> "**tender**, *n.* (16c) 1. A valid and sufficient offer of performance; specific, an unconditional offer of money or performance to satisfy a debt or obligation a tender of delivery.The tender may save the tendering party from a penalty for non-payment or non-performance or may, if the other party unjustifiably refuses the tender, place the other party in default. Cf. OFFER OR PERFORMANCE; CONSIGNATION."

It is apparent from aforesaid that "tender" may save the tendering party from the penalty for non-payment or non-performance or penalty if another party unjustifiably refusing the tender, places the other party in default. A formal offer duly made by one party to another especially an offer of money in discharge of liability fulfills the terms of the law and of the liability. Tender is to offer of money in satisfaction of a debt, by producing

www.taxcode.in

and showing the amount to a creditor or party claiming and expressing verbally, willingness to pay it. The expression "tender" has been used in section 31.The concept of deposited in court is different from tender and “paid”.

33. This Court in *the Straw Board Manufacturing Co. Ltd., Saharanpur v. Gobind*, AIR 1962 SC 1500 has held in the context of section 33 of the Industrial Disputes Act where payment of one month's wages was necessary. It was held that the payment of one-month wages can always mean that the employer has tendered his wages and that would amount to payment for otherwise a workman could always make the section unworkable by refusing to take wages. The Court observed thus:

> "8. Let us now turn to the words of the proviso in the background of what we have said above. The proviso lays down that no workman shall be discharged or dismissed unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer. It will be clear that two kinds of punishment are subject to the conditions of the proviso, namely, discharge or dismissal. Any other kind of punishment is not within the proviso. Further, the proviso lays down two conditions, namely (i) payment of wages for one month and (ii) making of an application by the employer to the authority before which the proceeding is pending for approval of the action taken. It is not disputed before us that when the proviso lays down the condition as to payment of one month's wages, all that the employer is required to do in order to carry out that condition is to tender the wages to the employee. But if

> the employee chooses not to accept the wages, he cannot come forward and say that there has been no payment of wages to him by the employer. Therefore, though s. 33 speaks of payment of one month's wages it can only mean that the employer has tendered the wages and that would amount, for payment, for otherwise, a workman could always make the section unworkable by refusing to take the wages. So far as the second condition about the making of the application is concerned." (emphasis supplied)

34. In *The Management of Delhi Transport Undertaking v. The Industrial Tribunal, Delhi &Anr.* AIR 1965 SC 1503, a 3-Judge Bench of this Court considered the question of payment of wages under the proviso to section 33(3) of Industrial Disputes Act and has taken a similar view and observed:

> "The proviso does not mean that the wages for one month should have been actually paid because in many cases the employer can only tender the amount before the dismissal but cannot force the employee to receive the payment before dismissal becomes effective. In this case, the tender was definitely made before the order of dismissal became effective and the wages would certainly have been paid if Hari Chand had asked for them. There was no failure to comply with the provision in this respect."

35. This Court in *Indian Oxygen Ltd. v. Narayan Bhoumik* (1968) 1 PLJR 94 has discussed the concept of 'paid' and has observed:

> "4. The proviso to Section 33(2)(b) lays down that no workman shall be discharged or dismissed unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by him. Though the word used in the proviso is 'paid', the proviso does not mean that the employer must actually hand over or pay to the

> workman dismissed or discharged his one month's wages. In (1962) 3 Suppl. S.C.R. 618] Strawboard Manufacturing Co. v. Gobind this Court while construing this proviso, observed that when it lays down the condition as to payment of one month's wages all that the employer is required to do to carry out that condition is to tender the wages to the employee. But if the employee chooses not to accept them, he cannot come forward and say that there has been no payment of wages to him by the employer, Therefore, though Section 33 speaks of payment of one month's wages, it can only mean that the employer has tendered the wages and that would amount to payment, for otherwise, a workman could always make the section unworkable by refusing to take the wages. In (1964) 2 SCR 104, 109 *P.H. Kalyani v. M/s. Air France*, the employer had offered one month's wages to the workman before the order of dismissal against him came into force. The offer was held to be sufficient compliance of the said condition laid down in the proviso, [(1955) 1 SCR 998] Management of Delhi Transport Undertaking v. Industrial Tribunal, Delhi was a case where the wages were remitted by money order but the workman purposely refused to receive them. It was held that the employer could not be said not to have complied with the condition laid down by the proviso. It is thus clear that the condition as to payment in the proviso does not mean that the wages have to be actually paid but if wages are tendered or offered, such a tender or offer would be sufficient compliance for the purposes of Section 33(2)(b) proviso."

36. The word "paid" means applied, settled or satisfied. The concept of paid has also been considered by this Court in *The Benares State Bank Ltd. v. The Commissioner of Income Tax, Lucknow,* (1969) 2 SCC 316, in the context of section 14(2)(c) of Income Tax Act, 1922. This Court observed that the expression "paid" in section 16(2) does not contemplate actual receipt of the dividend by the members of the community; in general, the dividend

www.taxcode.in

may be said to be paid when company discharges its liability and makes the amount of dividend unconditionally available to the member entitled thereto. The Court has observed:

> "5. …..This Court observed in J. Dalmia v. Commissioner of Income-tax, Delhi 53 ITR 83 that the expression "paid" in Section 16(2) does not contemplate actual receipt of the dividend by the member : in general, dividend may be said to be paid within the meaning of Section 16(2) when the Company discharges its liability and makes the amount of dividend unconditionally available to the member entitled thereto……." (emphasis supplied)

37. In *N.B. Sanjana, Assistant Collector of Central Excise, Bombay & Ors. v. The Elphinstone Spinning & Weaving Mills Co. Ltd.* (1971) 1 SCC 337, the court observed that literal meaning of the word "paid" need not be adopted.

38. In *J.Dalmia v. Commissioner of Income Tax, New Delhi*, AIR 1964 SC 1866 at 1869, this Court has observed that the expression "paid" does not contemplate actual receipt of the dividend by the member. The dividend may be said to be paid within the meaning of section 16(2) when the company discharges its liability and makes amount unconditionally available the members entitled thereto.

> "The expression "paid" in s. 16(2) it is true does not contemplate actual receipt of the dividend by the member. In general, dividend may be said to be paid within the meaning of s. 16(2) when the company discharges its liability and makes

> the amount of dividend unconditionally available to the member entitled thereto.
>
> (emphasis supplied)

39. The expression "paid" would mean in section 31(1) of Act 1894 and section 24(2) of Act of 2013 as soon as it is offered and made unconditionally available. Merely, if a landowner refuses to accept it, it cannot be said that it has not been paid. Once amount has been tendered that would amount to payment. Thus, word "paid" does not mean actual payment to be made but whatever is possible for an incumbent to make the payment is only contemplated. "Paid" does not mean receipt or deposited in Court. There may be refusal to receive an amount in spite of its tender. Thus, in view of the decisions of this court in *CIT Kerala* (supra), *N.B. Sanjana* (supra) and *J. Dalmia* (supra), the provisions of section 24(2) have to be construed to mean tender of amount would mean payment as envisaged.

40. It is settled that a Court cannot add or subtract a word; the expression "compensation has not been paid" is used in section 24(2); it is not open to the court to add to these words, or to substitute the said expression with any further expression, such as 'deposit'. In the "*Principles of Statutory Interpretation*" by G.P. Singh

(14th edition), it has been observed that court has to avoid addition or substitution of the words. Thus, when the word "paid" is there, it is not open to adding "deposited", particularly when the scheme of the Act of 1894 also contains different provisions in section 31(1) with respect to tender is payment, while section 31(2)deals with deposit in the court; on non-deposit consequence in section 34, later is not a payment made to the landowner. The deposit is only in certain exigencies with a view to wiping off the liability of making payment of interest as provided in section 34.

41(a). While interpreting a statutory provision, no addition to, or subtraction from, the Act is permissible. It is not open to Court to either add or subtract, a word. The legal maxim ***"A Verbis Legis Non Est Recedendum"*** means: from the words of law, there must be no departure. The learned author in Interpretation of Statutes has referred to the Privy Council decision in *Crawford v. Spooner*, (1846) 6 Moore PC 1 and *Lord Howard de Walden v. IRC*, (1948) 2 AER 825 and other decisions of the Court and observed:

> "…….**(a) Avoiding addition or substitution of words**
>
> As stated by the Privy Council: "We cannot aid the Legislature's defective phrasing of an Act, we cannot add or mend and, by construction makeup deficiencies which are left there". "It is contrary to all rules of construction to read words

into an Act unless it is absolutely necessary to do so." Similarly, it is wrong and dangerous to proceed by substituting some other words for words of the statute. Speaking briefly the court cannot reframe the legislation for the very good reason that it has no power to legislate.

x xxxx

While interpreting section 621-A(1) of the Companies Act, 1956, the Supreme Court held that the Court must avoid rejection or addition of words and resort to that only in exceptional circumstances to achieve the purpose of the Act or to give a purposeful meaning to the section. Section 621-A provides for compounding, by the Company Law Board, of any offence punishable under the Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, either before or after the institution of any prosecution. It was held that the Company Law Board has the power to compound such offences without the permission of the Court. Since the Legislature, in its wisdom, has not put the rider of prior permission in the section, addition of the words 'with the prior permission of the court' to the provision is not permissible.

Section 2(2) of the Arbitration and Conciliation Act, 1996, which is in Part I of the Act, provides that 'This Part shall apply where the place of arbitration is in India. In *Bharat Aluminium Company v. Kaiser Aluminium Technical Services Inc*., a Constitution Bench of the Supreme Court rejected the contention that Part I of the Act was also applicable to arbitrations seated in foreign countries on the ground that in such a case certain words would have to be added to section 2(2), which would then have to provide that 'this part shall apply where the place of arbitration is in India and to arbitrations having its place out of India'. This would amount to a drastic and unwarranted rewriting or alteration of the language of section 2(2), and it is not permissible for the Court to reconstruct a statutory provision. In this case, the Constitution Bench prospectively overruled the decision of a three-Judge Bench of the Supreme Court in *Bhatia International v. Bulk Trading SA*, which had held that provisions of Part I would apply to international commercial arbitrations held outside India unless the parties, by agreement, express or implied, exclude all or any of its provisions.

x xxxx

And, in construing section 14(f) of the U.P. Town Areas Act, 1914, which reads 'A tax on persons assessed according to their circumstances and property not exceeding such rate and subject to such limitations and restrictions as may be prescribed', the Supreme Court refused to read residence within the town area as a necessary part of the condition for imposition of the said tax. S.K. DAS, J. said, "To do so will be to read in clause (f) words which do not occur there".

Further, in interpreting section 6(a) and section 43 of the Transfer of Property Act, 1882, the Supreme Court refused to read a further exception in section 43 excluding its operation in cases of transfer of *spessuccessionis*. VENKATARAMA AIYER, J. quoted with approval the observations of LORD LOREBURN, L.C., "We are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself".

x xxxx

0n the same principle the House of Lords refused to read the word 'satisfied' in section 4 of the Matrimonial Causes Act, 1950 to mean 'satisfied beyond reasonable doubt'.

X xxxx

Sections 12(5) and 15(5) of the Right to Information Act, 2005, while providing that the Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life, with wide knowledge and experience in law, science, and technology, social science, management, journalism, mass media or administration and governance, do not further prescribe any basic qualification which such persons must have in the respective fields in which they work. As a result, the Court cannot read into the provisions of sections 12(5) and 15(5) of the Act the words that such persons must have a basic degree in their respective fields.'"

(emphasis supplied)

41(b). This Court in *Nali Nalinakhya Bysack v. Shyamsunder Halder*, AIR 1953 SC 148 at 152, *State of Madhya Pradesh v. G.S. Dall and Flour Mills*, AIR 1991 SC 772, *State of Gujarat and Others v. Dilipbhai Nathjibhai Patel and Another* (1998) 3 SCC 234, *Competition Commission of India v. Steel Authority of India Ltd*. (2010) 10 SCC 744, *Assessing Authority cum-Excise and Taxation Officer v. East India Cotton Mfg. Co. Ltd.* (1981) 3 SCC 531, *Paul Enterprises & Ors. v. Rajib Chatterjee & Co. & Ors*., AIR 2009 SC 187, *Sakshi v. Union of India* (2004) 5 SCC 518, *Commissioner of Income Tax, Kerala v. Tata Agencies* (2007) 6 SCC 429, *Ram Narain Medhi v. State of Bombay* AIR 1959 SC 459, *S.P. Gupta v. President of India* AIR 1982 SC 149, *Dadi Jagannadham v. Jammulu Ramulu* (2001) 7 SCC 71, *P.K. Unni v. Nirmala Industries* AIR 1990 SC 933, *Crawford v. Spooner* (1846) 6 Moore PC 1, *Royal Trust Company v. Minister of Finance* AIR 1921 PC 184, *Padma Sundara Rao (dead) & Ors. v. State of T. N. & Ors.* (2002) 3 SCC 533 has observed that what legislation wanted has been stated in the provision. The court cannot give extended meaning to the expression. It is not open to the Court to aid defective phrasing of the Act or to make up for the deficiencies. It is not open to the Court to recast, rewrite, or

www.taxcode.in

reframe the provision. The court cannot assume omission and add or amend words. Plain and unambiguous construction has to be given without addition and substitution of the words. The temptation of substituting words by explaining what it thought legislation is endeavoring is to be discouraged. Court has to consider what has been said and what has not been said. It is wrong and dangerous to proceed by substituting some other words for the words of the statute. When literal reading produces an intelligible result it is not open to read words or add words to statute. Making any generous addition to the language of the Act would not be a construction of the statutory provision; rather, would be an amendment thereof. While interpreting the provision the Court only interprets the law. The intention of the legislation must be found by the words used by the legislature itself. The legislative *casus omissus* cannot be supplied by judicial interpretative process. When language of the provision is clear, there is no scope for reading something into it. The scenario that thus emerges in relation to an interpretationof a statute can be explained as follows. It is a salutary principle that it is not open to the Court to add or substitute some words in place of the words of

the statute. The court cannot reframe the legislation. The court cannot add to, or amend, the provisions; neither can the expressions used in the statute be treated as fungible.

We need not add any word when Section 24(2) uses the expression "compensation has not been paid". To complete the payment, we cannot read words into it to the effectthat deposit of payment in the court is payment to the landowners. It is clear that unless it is absolutely necessary to do so, it is not open to read the word "deposited" in court as part of 'paid' when payment is contemplated to the landowners. The consequence of nondeposit is culled out in proviso to section 24(2). It is not that section 31(2) would become meaningless. Hence, deposit cannot and need not be added to expressions paid/ tender. In case the legislature wanted the 'deposit in Court' to be included in 'paid/ tender', it could have easily said so. But it has used expressions differently, with different consequences.

42. What follows from the aforesaid enunciation is that the legislature has consciously omitted the expression "deposited" in main section 24(2), whereas, it is used in the proviso; both have

www.taxcode.in

different objectives. When the legislature has used different expressions with respect to past events — the word "paid" is used in a discernibly distinctive sense than the sense conveyed by the word "deposited" occurring in the proviso — both are required to be given different meanings. There is *casus omissus*, i.e. conscious omission made by the Legislature in main Section 24(2) when the expression "deposited" has not been used in the expression "has been paid", and it is only after amount tendered is declined, it is to be deposited in Court that too in certain exigencies as per section 31(2).

43. The word "paid", in view of the different consequences of paid and deposited, has to be given different meaning from "deposited". Otherwise, if it were the case that 'deposit' is included in the 'payment', then there would have been no necessity of using two different expressions, in different provisions, carrying different consequences. Deposit made in the court cannot be said to be payment made to the landowner i.e. persons interested/beneficiaries. Thus, in case of deposit is directly made in the court without tender, it could not be said that it was tendered or paid. 'Deposit in court' simply is the discharge of Collector's liability of making payment of interest as envisaged under section

34 of the 1894 Act, and no more; deposit in Court is not tender to landowner. Once the amount has been tendered and not accepted, obligation to pay is discharged, as envisaged under section 31(1); no penal consequences can follow and, the person who has refused to accept cannot be permitted to take an advantage of his own wrong, or in case his conduct is of filing litigations, delaying the passing of the award or obtaining stay of the proceedings; such action would tantamount to refusal to accept compensation, and the person then may not even be entitled to higher rate of interest as envisaged under section 34.

44. While making statutory interpretation, inconsistency and repugnancy is to be avoided and harmonious construction has to be adopted. The construction to be adopted should be such, as would make the statute as a whole, a consistent enactment. Such a construction would have the merit of avoiding any inconsistency or repugnancy, either within a given section or as between a particular section on the one hand and other parts of the statute on the other. It is the duty of the courts to avoid "a head-on clash", as held in *Raj Krushna v. Binod Kanungo*, AIR 1954 SC 202, at 203; *Sultana Begum v. Premchand Jain*, AIR 1997 SC 1006, at page 1109;

Kailash Chandra v. Mukundi Lal, (2002) 2 SCC 67; and, *CIT v. Hindustan Bulk Carriers*, (2003) 3 SCC 57, at p.74.

45. When we apply the rule of harmonious construction to the provisions of section 24(2) of the Act of 2013, i.e. as between the main part of the section and its proviso, the word "paid" occurring in the main part, has to be construed differently (with a different meaning being given to it) from the word "deposited" occurring in the proviso; otherwise, inconsistency and repugnancy would be the result of the provision contained in section 24 (2) as a whole; and, that is what has to be avoided. As discussed, the provisions would be irreconcilable, and an anomalous result would be occasioned.

46. This Court, in *Balasinor Nagrik Cooperative Bank Limited vs. Babubhai Shankerlal Pandya*, (1987) 1 SCC 606, held that a section is to be interpreted by reading all its parts altogether, and it is not permissible to omit any part thereof. Thus, in the instant case, proviso to Section 24(2) cannot be ignored while interpreting the main subsection.

47. The proviso is enacted as part of section 24(2); it is not an independent provision and applies to an acquisition made five years or before, in which amount, with respect to majority of holdings,

www.taxcode.in

has not been deposited in court. There has to be harmonized construction of provision of section 24(2).

48. Since there is no ambiguity of drafting in the provisions contained in section 24(2) of the Act of 2013, so also none is there in those contained in sections 31(1) and 31(2) of the Act of 1894. Thus, in discharging its interpretative function, to exercise the power to correct obvious drafting errors that can be done only in suitable cases where there is error of drafting. Before adding the word or omitting a word the court has to consider 3 matters : (1) the intended purpose of the statute or the provision in question, (2) that by inadvertence the draftsman and Parliament failed to give effect to that purpose in the provision in question, and (3) substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used, had the error in the Bill been noticed. As observed in *Inco Europe Ltd. v. First Choice Distribution (a firm) by the House of Lords* in (2000) 2 All ER 109 at 115. There is no accidental omission as to the concept of payment in section 24(2) or section 31(1) of the aforesaid Acts. Thus, it is not permissible to supply the word "deposited" to include in the expression "payment".

www.taxcode.in

49(a). Rule of literal construction lays down that words of a statute are first understood in their natural, ordinary or popular sense and phrases, and sentences are construed according to their grammatical meaning. The learned author G.P. Singh, in "Principles of Statutory Interpretation" (14th edition), at Page 91 onwards, has observed:

> "……..Natural and grammatical meaning. The words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary." "The true way", according to LORD BROUGHAM is, "to take the words as the Legislature have given them, and to take the meaning which the words given naturally imply, unless where the construction of those Words is, either by the preamble or by the context of the words in question, controlled or alter "; and in the words of VISCOUNT HALDANE, L.C., if the language used "has a natural meaning we cannot depart from that meaning unless reading the statute as a whole, the context directs us to do so. In an oft-quoted passage, LORD WENSLEYDALE stated the rule thus: "In construing wills and indeed statutes and all written instruments, the grammatical and ordinary sense of the word is adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity, and inconsistency, but no further". And stated LORD ATKINSON: "In the construction of statutes, their words must be interpreted in their ordinary grammatical sense unless there be something in the context, or in the object of the statute in which they occur or in the circumstances in which they are used, to show that they were used in a special sense different from their ordinary grammatical sense".28 VISCOUNT SIMON, L.C., said: "The golden rule is that the words of a statute must prima facie be given their ordinary meaning".

> Natural and ordinary meaning of words should not be departed from "unless it can be shown that the legal context in which the words are used requires a different meaning". Such a meaning cannot be departed from by the judges "in the light of their own views as to policy" although they can "adopt a purposive interpretation if they can find in the statute read as a whole or in material to which they are permitted by law to refer as aids to interpretation an expression of Parliament's purpose or policy". For a modern statement of the rule, one may refer to the speech of LORD SIMON OF GLAISDALE in a case where he said: "Parliament is prima facie to be credited with meaning what is said in an Act of Parliament. The drafting of statutes, so important to a people who hope to live under the rule of law, will never be satisfactory unless courts seek whenever possible to apply 'the golden rule' of construction, that is to read the statutory language, grammatically and terminologically, in the ordinary and primary sense which it bears in its context, without omission or addition. Of course, Parliament is to be credited with good sense; so that when such an approach produces injustice, absurdity, contradiction or stultification of statutory objective the language may be modified sufficiently to avoid such disadvantage, though no further". The rules stated above have been quoted with approval by the Supreme Court……"
>
> (emphasis supplied)

49(b). This Court, in *Harbhajan Singh v. Press Council of India*, AIR 2002 SC 1351, at 1354 has observed thus :

> "Legislature does not waste its words. Ordinary, grammatical and full meaning is to be assigned to the words used while interpreting a provision to honour the rule -- Legislature chooses appropriate words to express what it intends, and therefore, must be attributed with such intention as is conveyed by the words employed so long as this does not result in absurdity or anomaly or unless material -- intrinsic or external -- is available to permit a departure from the rule." (emphasis supplied)

50. Thus, in the instant case, when we give the plain, natural and grammatical meaning to the word 'paid'/ 'tender', which has been used in contradistinction to the words "deposited in court", it is clear that tendering payment would not include deposit in court, in that it is only when payment is refused, that the same is deposited in court; obligation to pay is over as soon as amount is tendered and refused.

51(a) When two different expressions have been used in the same provision of a statute, there is a presumption that they are not used in the same sense. In this regard, G.P. Singh, in his treatise Interpretation of Statutes (14th Edition) at page 395, has observed thus:

> ".....When in relation to the same subject matter, different words are used in the same statute, there is a presumption that they are not used in the same sense.
>
> In construing the words 'distinct matters' occurring in section 5 of the Stamp Act, 1899, and in concluding that these words have not the same meaning as the words 'two or more of the descriptions in Schedule I' occurring in section 6, VENKATARAMA AIYAR, J., observed: "*When two words of different import are used in a statute in two consecutive provisions, it would be difficult to maintain that they are used in the same sense*." Similarly, while construing the word 'gain' under Section 3(ff) of the Bombay Municipal Corporation Act, 1888, which used the words 'profit or gain', the Supreme Court relied on the dictionary meanings of the words to hold that the word 'gain' is not synonymous with the word 'profit' as it is not restricted to pecuniary or commercial profits, and that any advantage or benefit acquired or value addition made

by some activities would amount to 'gain'……."

***14.Brighton Parish Guardians v. Strand Union Guardians, (1891) 2 QB 156, p. 167 (CA); Member, Board of Revenue v. Arthur Paul Benthall, AIR 1956 SC 35, p. 38: 1955 (2) SCR 842; CIT v. East West Import & Export (P.) Ltd., Jaipur, AIR 1989 SC 836, p.838 : (1989) 1 SCC 760; B.R. Enterprises v. State of U.P., AIR 1999 SC 1867, p.1902 : (1999) 9 SCC 700 ('trade and business' in Article 298 have different meaning from 'trade and commerce' in Article 301); ShriIshal Alloy Steels Ltd. v. JayaswalasNeco Ltd., JT 2001 (3) SC 114, p. 119 : (2001) 3 SCC 609 : AIR 2001 SC 1161 (The words 'a bank' and 'the bank' in section 138 N.I. Act, 1881 do not have the same meaning); The Oriental Insurance Co. Ltd. v. Hansrajbhai v. Kodala, AIR 2001 SC 1832, p. 1842 : (2001) 5 SCC 175; KailashNathAgarwal v. PradeshiyaIndust and Inv. Corp. of U.P., 2003 AIR SCW 1358, p. 1365 : (2003) 4 SCC 305, p. 313. (The words 'proceeding' and 'suit' used in the same section construed differently); But in Paramjeet Singh Pathak v. ICDS Ltd, (2006) 13 SCC 322 : AIR 2007 SC 168 different view was taken therefore in Zenith Steel Tubes v. Sicom Ltd, (2008) 1 SCC 533 : AIR 2008 SC 451 case referred to a larger Bench; D.L.F. Qutab Enclave Complex Educational Charitable Trust v. State of Haryana, 2003 AIR SCW 1046, p. 1057: AIR 2003 SC 1648: (2003) 5 SCC 622 (The expressions 'at his own cost' and 'at its cost', used in one section given different meanings)" (emphasis supplied)

51(b). The author has referred to the decisions in *Brighton Parish Guardians v. Strand Union Guardians*, 1891 QB 156, *Member, Board of Revenue v. Arthur Paul Benthall*, AIR 1956 SC 35 at p.38, and *CIT v. East West Import & Export (P) Ltd., Jaipur*, (1989) 1 SCC 760, in that case this Court has observed :

"7. The Explanation has reference to the point of time at two places: the first one has been stated as "at the end of the previous year" and the second, which is in issue, is "in the

> course of such previous year". Counsel for the Revenue has emphasised upon the feature that in the same Explanation reference to time has been expressed differently and if the legislative intention was not to distinguish and while stating "in the course of such previous year" it was intended the convey the idea of the last day of the previous year, there would have been no necessity of expressing the position differently. There is abundant authority to support the stand of the counsel for the Revenue that when the situation has been differently expressed the legislature must be taken to have intended to express a different intention."
>
> (emphasis supplied)"

51(c). In *Kailash Nath Agarwal v. Pradeshiya Industries and Investment Corporation of Uttar Pradesh,* (2003) 4 SCC 305, *Tejmohammed Hussainkhan Pathan v. V.J. Raghuvanshi*, 1993 supp. (2) SCC 493, *D.L.F. Qutab Enclave Complex Educational Charitable Trust v. State of Haryana,* (2003) 5 SCC 622, *Pallawi Resources Ltd. v. Protos Engineering Company Pvt. Ltd.,* (2010) 5 SCC 196, *Grasim Industries Ltd. v. Collector of Customs, Bombay*, (2002) 4 SCC 297, *B.R. Enterprises v. State of U.P.*, AIR 1999 SC 1867, *ShriIshar Alloy Steels Ltd. v. Jayaswals Neco Ltd.*, (2001) 3 SCC 609, *Labour Commissioner, Madhya Pradesh vs. Burhanpur Tapti Mills and Ors*. AIR 1964 SC 1687 this Court has observed that as a general rule when two different words are used by statute *prima facie* one has to construe different words as carrying different meanings. Rule of 'purposive constructions' would be resorted to

only when the statute to observe or when read literally it leads to manifest injustice or absurdity. The Court has to keep in mind that the provision enacted by the legislature in a certain manner as had intended. Different words are used in different senses.

51(d) The aforesaid principles of statutory construction, different words to be given different meaning as also the binding precedents of this Court, indicate that the expression 'deposited' cannot be added to 'tender' / 'paid', both carry different consequences under section 24, tender on lapse of acquisition/non-deposit higher interest under section 34 of the Act of 1894.

51(e). It is a settled proposition of law that when two different expressions have been used in section 24(2) of the Act of 2013, as well as in section 31 of the Act of 1894, i.*e.* "paid to the landowners" and "deposited in the court", they both carry different meanings, and have to be interpreted as used in the respective contexts. It is not the expression used that deposit in the court is payment to landowners, neither it is used that amount deposited in the treasury is the payment to the landowners. The payment indicates the obligation to pay; and, deposit is made in the court or

www.taxcode.in

revenue treasury only upon happening of various exigencies as provided in Section 31, and there can be several other exigencies which are not covered under section 31(2) of the Act of 1894 and in the statutory rules/orders.

52. In section 24 of the Act of 2013, brooks no lethargy on the part of authorities, the expression "possession of the land has not been taken" indicates a failure on the part of authorities to take for five years or more.

53. When we consider the intendment of the beneficial provisions of the Act of 2013, it addresses the concern of farmers and of those whose livelihood is dependent upon the land being acquired, while at the same time facilitating land acquisition for myriad reasons, including urbanization, rural electrification *et al.*, in a timely and transparent manner. The legislature has not brook the delay of five years or more on part of authorities in completing the acquisition. When it says 'timely',it would mean without delay on the part of authorities, not delay due to dilatory tactics and conduct of land owners/interested persons.

EFFECT OF RULES FRAMED UNDER SECTION 55 OF 1894 ACT AND ORDERS ISSUED BY STATE GOVERNMENTS

54. There are various State rules framed under section 55 of the Act of 1894 by various State Governments as well as there are instructions issued with respect to dealing with Government money as provided in Article 283 of the Constitution of India, and when it is the Government money it has to be dealt with in accordance with the instructions issued by the State Government from time to time. There are other Financial Codes/Rules/orders issued time to time by various State Governments with respect to dealing with Government money. The Land Acquisition (Bihar and Orissa) Rules were framed under the Act of 1894 and Rule 10 thereof provided thus :

> "10. In giving notice of the award under section 12(2) and tendering payment under section 31(1), to such of the persons interested as were not present personally or by their representatives when the award was made, the officer shall require them to appear personally or by representatives by a certain date to receive payment of the compensation awarded to them, intimating also that no interest will be allowed to them if they fail to appear. <u>If they do not appear, and do not apply for reference to the Civil Court under section 18, the officer shall after any further endeavour to secure their attendance that may seem desirable, cause the amounts due to be paid into the Treasury as Revenue deposits payable to the persons to whom they are respectively due and vouched for in the accompanying form (marked E)</u>. The officer shall also give notice to the payees of such deposits, the Treasury in which the deposits specifying have been made. When the payees ultimately claim payment of sums placed in deposit, the amounts will be paid to them in the same manner as

www.taxcode.in

> ordinary revenue deposits. The officer should, as far as possible, arrange to make the payments due in or near the village to which the payees belong, in order that the number of undisbursed sums to be placed in deposit on account of non-attendance may be reduced to a minimum. Whenever payment is claimed through a representative whether before or after deposit of the amount awarded, such representative, must show legal authority for receiving the compensation on behalf of his principal."
>
> (emphasis supplied)

55. The Karnataka Land Acquisition Rules 1965 were also framed under section 55 of the Land Acquisition Act, 1894. Similarly in the State of Kerala Rule 14(2) of the Land Acquisition (Kerala) Rules, 1990 were framed under section 55 of the Act of 1894 provided that the payment relating to an award shall be made or the amount credited to the court or Revenue deposit (Treasury) within one month from the date of award.

56. The state of Assam has also framed the rules dealing with deposit in exercise of power under Section 55 of the Act of 1894. Rule 9 whereof provides that on failure to collect the compensation if landowner/interested person does not appear, and do not apply for a reference to the civil court under section 18, the Collector shall after making endeavour to secure their attendance or make payment that may seem desirable, cause the amounts due to be

paid into the Treasury as revenue deposits payable to the persons to whom they are respectively due, and vouched for in the form prescribed or approved by Government from time to time. He shall also give notice to the payee of such deposits, specifying the Treasury in which the deposits have been made. When no reference is sought for amount has to be deposited in treasury only. Rule 9 of Assam Rules is extracted hereunder:

> "9. In giving notice of the award under section 12(2) and tendering payment under section 31(1), to such of the persons interested as were not present personally or by their representatives when the award was made, the Collector shall require them to appear personally or by representatives by a certain date, to receive payment of the compensation awarded to them intimating also that no interest will be allowed to them, if they fail to appear. <u>If they do not appear and do not apply for a reference to the Civil Court under section 18, he shall, after any further endeavour to secure their attendance or make payment that may seem desirable, cause the amounts due to be paid into the WW as revenue deposits payable to the persons to whom they are respectively due</u>, and vouched for in the form prescribed or approved by Government from time to time. He shall also give notice to the payees of such deposits, specifying the Treasury in which the deposits have been made. When the payees ultimately claim payment of sums placed in deposit, the amount will be paid to them in the same manner as ordinary revenue deposits. The Collector should, as far as possible, arrange to make the payment due in or near the village to which the land pertains in order that the number of undisbursed sum to be placed in deposit on account of nonattendance may be reduced to a minimum. Whenever payment is claimed through a representative, such representative, must show legal authority for receiving the compensation on behalf of the principal."
>
> (emphasis supplied)

www.taxcode.in

57. Identical is the rule for Bihar and Orissa. Similar instructions have been issued by the other State Government so as to deal with public money. They have the force of law. The duty of the court is to harmonize rules with provision of Act. In State of West Bengal also similar rules had been framed under section 55 of the Act of 1894.

58. Standing Order No.28 issued in 1909 the State of Punjab is applicable to Delhi also, provides 5 modes of payment in Para 74 and 75 based on Government of India's orders, which are extracted hereunder:

> "74. Methods of making payments-There are five methods of making payments:
> (1) By direct payments, see paragraph 75(I) infra
> (2) By order on treasury, see paragraph 75(II) infra
> (3) By Money Order, see paragraph 75(III) infra
> (4) By cheque, see paragraph 75(IV) infra
> (5) By deposit in a treasury, see paragraph 75(V) infra
>
> 75. Direct payments
> (V) By treasury deposit-In giving notice of the award Under Section 12(2) and tendering payment Under Section 31(1) to such of the persons interested as were not present personally or by their representatives when the award was made, the officer shall require them to appear personally or by representatives by a certain date to receive payment of the compensation awarded to them, intimating also that no interest will be allowed to them if they fail to appear, if they <u>do not appear and do not apply for a reference to the civil court Under Section 18, the officer shall after any further endeavours to secure their attendance that may seem desirable, cause the amounts due to be paid to the treasury as revenue deposited payable to the persons to whom they are respectively due and vouched for in the Form marked E below.</u> The officer shall also give notice to the payees of such

www.taxcode.in

deposits, specifying the treasury in which the deposit has been made. When then payees ultimately claim payment of sums placed in deposit, the amounts will be paid to them in the same manner as ordinary revenue deposit. The officer should, as far as possible, arrange to make the payments due in or near the village to which the payee belong in order that the number of un-disbursed sums to be placed in deposits on account of non-attendance may be reduced to a minimum. Whenever payment is claimed through a representative whether before or after deposit of the amount awarded, such representative, must have legal authority for receiving the compensation on behalf of his principal."

Form E	Form E
Name of work for which land has been acquired _____ To the officer incharge of _____ treasury Please receive for transfer to credit of revenue deposit the sum of Rs._____ on account of compensation for land taken up for the above purpose payable as detailed below:-	Name of work for which land has been acquired _____ To the officer incharge of _____ treasury Please receive for transfer to credit of revenue deposit the sum of Rs._____ on account of compensation for land taken up for the above purpose payable as detailed below:-

Serial Number in award statement No.	Name of persons to whom due	Area of land	Amount payable to each	Remarks		Name of persons to whom due	Area of land	Amount payable to each	Remarks
		Acres	Rs.				Acres	Rs.	

Total _____ Total _____
Land Acquisition Officer Land Acquisition Officer

Dated _____ Dated _____

Received the above amount and credited to Revenue deposit

Treasury Officer

Note – this form should be used when the amounts of compensation due are sent to treasury in the absence of proprietors who have failed to present themselves for payment.

Received the above amount and credited to Revenue deposit

Treasury Officer

Note – this form should be used when amounts of compensation due are sent to treasury in the absence of proprietors who have failed to present themselves for payment."

59. In *Delhi Development Authority v. Sukhbir Singh & Ors.* (2016) 16 SCC 258. This court with respect to mode under section 31(1) has held:

> "18. Para 73 makes it clear that payment may be accepted either without protest or under protest, and Paragraph 74 makes it clear that there are five methods of making payment. The first four methods are all methods strictly in consonance with Section 31 of the Land Acquisition Act in that they are all direct payments that have to be made to persons ready to accept compensation. This is clear from a reading of sub-paragraphs (I) to (IV) of paragraph 74. Even the second method, which <u>is payment by order on the treasury, is a direct method of payment in cases where no officer is specially deputed for acquisition of land</u>. In such cases instead of making a direct payment, a receipt is countersigned making it immediately payable at the treasury to the payee. Otherwise, in certain circumstances, payment is to be made by money order and/or by cheque. When we come to paragraph (V), it is clear that payment is made into the treasury only when persons who are served notice Under Section 12(2) are not present personally at the time the award is delivered. Even though they may not appear at that stage, the officer shall require them to appear personally or by representatives by a certain date to receive payment of compensation awarded. It is only if they fail to appear after such an intimation, and if the officer, after further endeavours to secure their attendance, cannot so secure their attendance, that amounts due are to be paid to the treasury as revenue deposited payable to persons to whom they are due. It is clear, therefore, that sub-para (V), when read in its proper perspective, is not a separate mode of payment by itself as is contended by learned Counsel for the Appellants. It is a residuary mode of payment after all necessary efforts have been made by the authorities to secure the attendance of the persons entitled to compensation, and it is only after all such methods have failed that, as a last resort, the money is then to be deposited in the treasury. In any case, such deposit in the treasury is referable only to Section 31(1) and cannot ever be a substitute for deposit before the reference court as provided Under Section 31(2) of the Land Acquisition Act, which applies in the circumstances mentioned in the aforesaid Sub-section.

We agree with aforesaid part of *Sukhbir Singh* (supra) related to section 31(1), however, not with respect to part relating section 31(2).

60. It is apparent from rules that when no reference is sought on refusal to accept, amount is to be deposited in treasury. Rules have to be harmonized with the provision in the Act, thus, it would be necessary to deposit in court when reference is sought. Thus, under section 31(2) provision of deposit in court on refusal would be attracted, when reference had been sought, as provided in rules. Section 31(2) does not come in play at all in cases of refusal to accept amount when reference has not been sought and deposit in treasury would be valid deposit even otherwise where reference is sought and person refuses to accept it only liability of non-compliance of deposit in Court would be higher interest under section 34.

61. Though as per subsection (2) of section 31 in the certain exigencies the amount has to be deposited in court where the reference would be made, it does not cover the entire situation when it is not possible to disburse the compensation and deposit in

treasury has to be made as per rules and if not deposited in Court at the most would be merely a procedural irregularity and the maximum liability would be as envisaged under section 34 of Act of 1894 in case it has not been "tendered". Due to non deposit at the most it could be said that amount could not be invested in Government security etc. under section 32 or 33 of Act of 1894. In such securities the interest is not more than 15 % as such.

62. Moreover, the proviso to section 24(2) which prescribes amount to be deposited with respect to 'majority of holding', in the account of beneficiaries, it is not provided that such amount has to be deposited in court. Section 31 of the Act of 1894 does not deal with the deposit of the amount with respect to "the majority of holdings" in the court in the account of landowners. Section 31(2) of the Act of 1894 only contemplates certain exigencies i.e. (1) refusal to accept, and reference is sought (2) incompetence to alienate the land, (3) there is dispute as to entitlement or (4) apportionment and authority decides not to disburse compensation in later two exigencies. In such cases, it has to be deposited in court. It is not necessary to make tender of amount of compensation under Section 31(1) in the 3 latter exigencies provided in section 31(2) itself. The

www.taxcode.in

proviso to section 24(2) of the Act of 2013 does not envisage any of the exigencies as contemplated under section 31(2) it clearly deals with deposit of money before the Land Acquisition Collector or in the treasury with respect to "majority of the holding" as the State/authority who is acquiring the land or has acquired it, must have arrangement to pay the money to the landowners and in case such money has not been deposited with the Land Acquisition Collector or with the treasury or in any other permissible mode consequence enumerated in proviso to follow, regarding payment of higher compensation under the Act of 2013 to all land holders. In the Treasury also separate accounts are opened of the landowners and money is kept in such separate accounts. As is apparent from the standing order 28 of Punjab and the rules framed under section 55 of Act of 1894 by various State Governments in case the amount has been deposited as per the proviso to section 24(2) in the treasury or with the Land Acquisition Collector with respect to majority of the holding the provisions contained in proviso to section 24(2), in our opinion, would be fully complied with.

63. A perusal of Section 24(2)of the Act of 2013 shows that the expression 'paid' does not include deposit in it. The expression

www.taxcode.in

'deposit' would include deposit in terms of the rules also. Section 24(2) does not, in any manner, lay down that the amount cannot be said to have been 'deposited' even when a deposit is made in terms of the mandatory rules, or in accordance with the applicable instructions. 'Deposit-in-treasury' is stipulated under the rules made with reference to a constitutional provision, so also framed under Section 55 of the 1894 Act, as well as under other statutory or administrative powers. The deposit in treasury is not, in any manner, invalid. If the deposit is valid, there is no reason to hold that the said deposit has to be ignored. Government finances, after all, have to be handled as per the applicable rules. The deposit in treasury was as per binding procedural rules/orders issued by Government of India and/or in exercise of the powers under Article 283 of the Constitution of India.

PRACTICAL DIFFICULTY ON REFUSAL/NON ACCEPTANCE OF COMPENSATION BY CONDUCT, PRACTICE AND LEGAL POSITION UNDER ACT OF 1894.

64. One mode of refusal to acceptance of compensation is when it is tendered, it is refused. Another mode is of filing a litigation to question the very land acquisition, filing application for an interim

www.taxcode.in

stay and contesting it for decades reflects clear conduct of nonacceptance of acquisition/compensation. State authorities cannot retain the money in their own hands in such circumstances and are bound to deposit the Government money where it is supposed to be *i.e.* in the treasury as provided in rules. Thus, by conduct also, there can be non-acceptance of compensation. Once compensation is accepted, right to challenge acquisition would vanish. State authorities are not expected to retain the money with them and run after the landowners and match with their dilatory tactics with vigil to find out that one ultimate day, the litigation would attain finality. Once by their conduct, there is refusal to accept the land acquisition itself, much less compensation, in such circumstances such landowners have to inform the authorities about the outcome of the litigation and in case they have lost, to ask for compensation. Authorities are not supposed to be on vigil so as to ascertain after lapse of so much time even after decades in new generation, who has received the compensation and who has not received the compensation. There is no such data readily available to them. Thus once by conduct, such landowners refuse to accept the land acquisition/compensation, so as to saddle liability

www.taxcode.in

on authority, they have to inform the outcome/ willingness to the concerned authorities to apply for payment and to show their readiness to accept. Same would be the position in case amount is deposited in court. They have to apply for its withdrawal. The obligation of authorities is at initial stage. At subsequent stage, unless and until there is willingness shown by landowners/interested persons to accept the compensation, authorities cannot presume that they would accept it and that landowners are not going to question acquisition in the higher forum and it is not open to the authorities to offer to them compensation time and again, once amount is deposited in treasury during the pendency of litigation. In case of landowner interdict, initial offer/ tender by refusal or otherwise by questioning the land acquisition itself would mean they do not want to accept the compensation, is reflected by their conduct in the litigation. In case of interim stay also authorities cannot offer the compensation as that would tantamount to violation of court's order and after interim stay ceases to operate, it is for the landowners to apprise the authorities of their intention not to take the litigation further and their willingness to accept compensation. Section 24(2) does

not provide cover to such litigation. The intent of 2013 Act has been discussed in *DDA v. Sukhbir Singh* (supra) thus:

> "13. The picture that therefore emerges on a reading of Section 24(2) is that the State has no business to expropriate from a citizen his property if an award has been made and the necessary steps to complete acquisition have not been taken for a period of five years or more. These steps include the taking of physical possession of land and payment of compensation. What the legislature is in effect telling the executive is that they ought to have put their house in order and completed the acquisition proceedings within a reasonable time after pronouncement of award. Not having done so even after a leeway of five years is given, would cross the limits of legislative tolerance, after which the whole proceeding would be deemed to have lapsed. It is important to notice that the Section gets attracted if the acquisition proceeding is not completed within five years after pronouncement of the award."

The intent is that authority to complete acquisition within five years, the legislature frowns upon delay of more than five years.

65. In case it is held in spite of refusal to receive payment, it is necessary to deposit in Court, most of the acquisition would lapse. The acquisition of Raisina Hills in Lutyen's zone of Delhi made in 1913 was questioned in said case but this Court never intended such misuse of the provision. There is no dearth of ingenuity left in misusing the provisions of section 24 of the 2013 Act whereas it is meant to beneficial legislation. Its intention is to resettle the incumbents to offer better compensation as compared to the 1894

www.taxcode.in

Act. In the various ways, the provision has been sought to be blatantly misused. The law never envisages such absurd results as is being sought to be achieved. The beneficial provisions of 2013 Act are put to misuse that tantamounts to grossest abuse of the provisions of law to reopen such acquisitions and court has to thwart all such attempts at threshold and not to receive such cases even for consideration for a moment. We see development has taken place in the area that has been acquired, there have been several rounds of litigation which have been lost by landowners even up to this Court; thereafter some persons are filing cases on the basis of power of attorneys or sale deeds which are not permissible after land has vested in the State and purchase after issuance of notification under section 4 is illegal and void and no such right is given to such incumbents to re-open the whole gamut of issues and to even contend that acquisition has lapsed under the provisions of the 2013 Act.

66. The law as prevailed under the Act of 1894 never invalidated any land acquisition in the absence of amount being deposited in court since the time immemorial in most cases where reference is not sought, amount had been invariably deposited in the Treasury

www.taxcode.in

as provided in statutory rules framed under section 55 of Act of 1894 and other standing order issued by State Governments, and there were decisions of this Court which have simply laid down that in case landowner is not responsible for delay in payment, at the most he may be entitled to interest on such amount, in case it has not been tendered/paid to him when possession has been taken. Similar provisions are made under sections 77 and 80 of the Act of 2013. All of a sudden it would not be appropriate considering the statutory rules which have been framed under section 55 of the Act of 1894 and order to invalidate all such land acquisitions which have taken place in various States in the country by laying down that once amount has not been deposited in the court but in treasury, acquisitions would lapse under section 24. It will be a very harsh operation of law as old Act never provided for such a consequence since 1894 the Act was enacted till new 2013 Act came into force. Same is not consequence in case acquisition is made under Act of 2013 is apparent from conjoint reading of sections 77 and 80 thereof. When there were such anomalous situation, the statutory rules and statutory orders issued by various State Governments dealing how the Government money has to be

dealt with, it would not be appropriate to unsettle the legal position. The 1894 Act never contemplated such result and by and large, it was not the practice to deposit in court. Only in those cases the amount used to be deposited in court, where reference was sought under sections 18 or 30, as provided under rules also and there was dispute as to person entitled to it or apportionment thereof between the claimants. Primarily it is for the Land Acquisition Collector to distribute the compensation and poor farmers are not supposed to know the court and place where the reference would be made, if it was not sought person would not know a place where it would not be submitted to court, the question of deposit in court would not arise. The court is not disbursing authority of compensation when reference is not sought. Farmers/ claimants are primarily concerned with the Land Acquisition Collector and for more than one century this procedure of deposit in treasury was prevailing and by and large amounts had been deposited in the treasury only and thus it would not be appropriate to make the operation of law to be such as to invalidate land acquisition when deposit is made in Treasury. Such an interpretation is not permissible as per the intendment of the Act of 2013. Though it is a

beneficial law to benefit the incumbents it cannot be interpreted to be a law which would be to invalidate concluded transaction as per prevailing law and divest the land which has vested in State, development has taken place, possession taken, awards passed, after litigation/several rounds of litigation lost and then land cannot be ordered to revert back. The law does not intend that effect, as it may be termed as arbitrary and beyond legislative competence. We have to prevent the misuse of provisions and avoid anomalous results.

67. The court has to be cautious and duty-bound to prevent such misuse of the provisions of law and to make the purposive interpretation, considering the experience and after-effect of decisions. At the same time we have to forward the intendment and spirit of the provisions of the Act of 2013 to benefit farmers, at the same time, not to thwart the entire development which has taken place or to burden the Exchequer with such liability which is not contemplated in the Act of 2013 and invalidate acquisitions that have taken place in 1912, 1950s and 1960s onwards and have attained finality, as are sought to be reopened under the guise of 2013 Act taking advantage of the aforesaid technical aspect. Courts

are duty-bound to thwart all such attempts as the land which has been acquired long back, it would not be possible to make payment of compensation as of the rate as provided in the Act of 2013 to undeserving persons at the cost of public revenue, and it would not be appropriate to interpret the provisions in such a manner to entertain stale and dead claims and to revive them on the ground of technical and procedural defaults, if any, and created by landowners conduct. The intendment of section 24 is that acquisition to be completed early. If authorities for no good cause fail to take steps for five years or more on their own the lapse of acquisition under section 24 to follow.

68. It would be appropriate to refer to maxim - *"Omnis Innovatio Plus Novitate Perturbat Quam Utilitate Prodest" i.e.* 'Every innovation made has to be, ultimately, adjudged from stand point of the events that follow it'; and, when we consider the after-effects of the decision in *Pune Municipal Corporation* (supra), the fact leaps out at us that, there being no dearth of unyielding 'talent' in this regard, tenacious efforts are being made at mis-utilizing the dictum contained in the said decision, by finding out ever newer and innovative methods to do so.

www.taxcode.in

PREJUDICE DUE TO NON-DEPOSIT IN COURT

69. Yet another aspect arises, as to, what prejudice or injustice would be caused in case the amount is not deposited in the court and is deposited in the treasury particularly when the provision contained in section 31 of the Act of 1894 has to be read conjointly with those in section 34. As per the provisions contained in section 34, a person can claim the interest in case amount is not deposited as envisaged under section 31(2) if authorities are at fault. Even assuming that amount is required to be deposited only in the court where reference would be made and deposit in the treasury is not a permissible mode of deposit, as per the mode prescribed by law in section 31(2) of the Act of 1894. It is trite law that in the given situation unless aggrieved party makes out a case of prejudice and injustice, every infraction of law would not vitiate the act. This court in *Jankinath Sarangi v. State of Orissa* (1969) 3 SCC 392 observed:

> "5. From this material, it is argued that the principles of natural Justice were violated because the right of the appellant to have his own evidence recorded was denied to him and further that the material which was gathered behind his back was used in determining his guilt.
>
> In support of these contentions, a number of rulings are cited chief among which are State of Bombay v. NurulLatif Khan

> 1966 2 L.L.J.595 State of Uttar Pradesh and another v. C.S. Sharma 1969 1 L.L.J. 509 and Union of India v. T.R. Varma 1958 2L.L.J.259
>
> There is no doubt that if the principles of natural Justice are violated and there is a gross case, this Court would interfere by striking down the order of dismissal; but there are cases and cases.
>
> We have to look to what actual prejudice has been caused to a person by the supposed denial to him of a particular right."

70. In *Sunil Kumar Banerjee v. State of West Bengal,* (1980) 3 SCC 304, it was observed:

> "3. .....It may be noticed straightaway that this provision is akin to Section 342 of the Criminal Procedure Code of 1898 and Section 313 of the Criminal Procedure Code of 1974. It is now well established that mere non-examination or defective examination Under Section 342 of the 1898 Code is not a ground for interference unless prejudice is established, vide, K.C. Mathew v. State of Travancore-Cochin 1956 CriLJ 444, Bibhuti Bhusan Das Gupta and Anr. v. State of West Bengal 1969 CriLJ 654....."

Similar view of the matter is taken in *State of Andhra Pradesh v. Thakkidiram Reddy*, (1998) 6 SCC 554; *Willie (William) Slaney v. State of Madhya Pradesh*, AIR 1956 SC 116; *Abdul Sayeed v. State of Madhya Pradesh*, (2010) 10 SCC 259; *State of Punjab v. DavinderPal Singh Bhullar*, AIR 2012 SC 364; and *Bahamans v. State of Karnataka*, (2012) 9 SCC 650.

<u>CONSEQUENCE OF NOT DEPOSITING THE AMOUNT UNDER SECTION 31 OF THE 1894 ACT :</u>

71. The expression used in section 31 is not "paid", it is only "tender payment" and there is obligation to pay compensation unless prevented by a cause under sub-section (2) of section 31. In case there is dispute as to person entitled to compensation or its apportionment in between person interested or person was not even competent to make alienation of property that has been acquired it would not be necessary to tender amount as it may not be so done due to said exigencies as authority may decide not to pay it till court orders then it is to be deposited in court to save further liability of exorbitant interest under section 34 of the Act of 1894. Collector need not tender the payment invariably. It can be deposited in the court in the exigencies as provided in section 31(2). Apart from that section 31(2) does not cover all the exigencies and it does not require that invariably the compensation has to be deposited with the court. it is only when reference is sought that reference court comes to picture not otherwise as provided in rules/ orders in case person refuses and seeks a reference to court it has to be deposited in court where reference would be submitted otherwise as provided in the rules it has to be deposited in treasury. It is only when court comes into play then deposit in reference court

is required in exigencies of section 31(2) read with 32 as provided in rules. Even section 31(2) comes into play to "tender payment" is obligatory provision. Tender of payment is complete when it is made unconditionally available it could not have been equated with the deposit in court under section 31(2) or 24(2) of old and new Acts respectively as these are two different exigencies and consequence of non-payment of compensation is clearly culled out in section 34. There is a liability for payment of interest. This court in *Delhi Development Authority v. Sukhbir Singh & Ors*. [(2016) 16 SCC 258], has considered modes of payment in section 31(1) and has held in Para 18 quoted above that deposit in the treasury is residuary mode of payment under section 31(1) of Act of 1894.

72. This court has considered the question of effect of non-deposit in *Hissar Improvement v. Smt. Rukmani Devi & Anr*., AIR 1990 SC 2033 and observed that in case of compensation is not being paid or deposited in time in court before taking possession of the land, Collector has to deposit the amount awarded in section 31 failing which he is liable to pay interest as provided in section 34. The Court has observed:

"5. It cannot be gainsaid that interest is due and payable to

> the landowner in the event of the compensation not being paid or deposited in time in court. Before taking possession of the land, the Collector has to pay or deposit the amount awarded, as stated in Section 31, failing which he is liable to pay interest as provided in Section 34.
>
> 6. In the circumstances, the High Court was right in stating that interest was due and payable to the landowner. The High Court was justified in directing the necessary parties to appear in the executing court for determination of the amount."

73. In *Kishan Das & Ors. v. State of U.P. & Ors*. (1995) 6 SCC 240 this Court has laid down that in case the landowners have themselves delayed in disposal of acquisition proceedings, cannot claim higher rate of interest as that would amount to payment of premium for dilatory tactics. Even the interest under section 34 cannot be claimed as a matter of right. In case a person is indulging in litigation for adopting dilatory tactics, no divesting of land is provided under the Act of 1894 in case it is not deposited in court. Neither it is so provided in section 24(1) of the 2013 Act. The obligation to pay is discharged as soon as it is tendered unconditionally and made available to the landowners. Thereafter there is no further obligation to deposit it in court so as to save the acquisition. Only to save acquiring body from liability to pay interest at exorbitant rates, it may be deposited in court in certain cases where reference court comes into picture to discharge

www.taxcode.in

obligation by State but deposit in Court would not be payment to landowners. In case there is failure on the part of the State authorities in depositing the compensation in court in the given exigencies then only the provisions of section 34 would be attracted and it would be then for the court to examine in each case whether it would make order for the higher rate of interest and examine if it was due to failure of the State authorities and in case possession has been taken then liability may arise to make payment of interest it cannot be premium for dilatory tactics of landowners that they can claim even higher rate of interest.

74. In *Seshan & Ors. v. Special Tehsildar & Land Acquisition Officer, SPICOT, Pudukkottai* (1996) 8 SCC 89 this Court laid down that in case compensation is not deposited after expiry of one year, the provisions of section 34 would be attracted so as to claim the interest @ 15%, it shall be interest payable on compensation not paid or deposited after expiry of one year, and 9% for first year both from the date of taking possession till date of payment or deposit in court.

www.taxcode.in

75. In *D Block Ashok Nagar (Sahibabad) Plot Holders' Association (Regd.) v. State of U.P. & Ors*. (1997) 10 SCC 77, this Court has held that liability to pay interest under section 34 arises from the date of taking possession.

76. Thus, when the Act of 1894 provides the consequence of non-deposit in the in Court. In our opinion deposit in Treasury is permissible mode of deposit under the proviso to section 24(2) and within the purview of main section 24(2), the word "paid" could not have been taken to include the "deposit", it is contemplated in proviso only, and in case with respect to the "majority of holding" the amount is not deposited in the account of beneficiary/landowner in case award has been passed before five year or more then acquisition would not lapse however all beneficiary/landowners would become entitled to higher compensation as provided in the Act of 2013. The expression "deposited in the account of landowners" would not mean deposited in the court as envisaged in Section 31(2) of the old Act, action as permissible as per the financial instructions having statutory or administrative orders having force of law as well as under the Rules framed by various State Governments in exercise of power under

www.taxcode.in

section 55 of Act of 1894 can always be taken. In various States, Financial Code/Order/Rules deals with Government money and as such amount is required to be deposited in the Treasury by opening separate accounts of landowners/beneficiaries/claimants that would be full compliance of the proviso of section 24(2) of new Act. In *Delhi Development Authority v. Sukhbir Singh & Ors*. also, this court has rightly held that deposit in treasury by Land Acquisition Collector is permissible mode of deposit under section 31(1).

77. In *Mahavir & Ors. v. Union of India*, [SLP [C] No. 26281/2017] this Court has held:

> "9. Section 31(1) of the Act requires tender of compensation which is tendered in terms of section 12 of the Act. Section 12 provides a mode of informing claimants as to compensation. Section 31(2) of the Act requires Collector to deposit amount in court in case it is not received by the persons interested or there is some dispute. Under the Act, the deposit is required only with a view to avoiding liability to pay interest. Deposit in the Court is not a payment made to the owner. It is only to avoid liability to pay interest that too at higher rates on the failure of deposit. Once it is deposited the liability to pay interest ceases. Section 34 of the Act makes it clear that if the compensation is not deposited on or before taking the possession of the land, interest at the rate of nine percent shall follow from the time of so taking the possession until compensation so paid or deposited in the court. The proviso to section 34 makes it clear that in case it is not so deposited in court as per section 31(1) within a period of one year from the date of taking possession interest at the rate of 15 percent per annum shall be payable. Thus, it is clearly provided under section 34 that interest at the rate of

> 15 percent per annum shall be payable from the date of expiry of the said period of one year till it is so paid or deposited. As soon as the deposit is made under Section 31(2) of the Act, liability ceases to make the payment of interest on the compensation amount so deposited."

78. Reliance was placed by landowners on the decision in *Nazir Ahmed v. King Emperor*, AIR 1936 PC 253 (2), wherein the court observed, 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". There is no dispute with the said proposition, and the same has been followed by this Court umpteen number of times. However, the consistent practice that has been followed in land acquisition cases is that it is only when reference is sought, and the amount has not been paid for one or other reason as per section 31(2), that the amount is deposited in the court to which the reference would be submitted, and not otherwise. The action is as per rules. The amount of compensation, qua the incumbents/landowners who have not sought the reference, is ordinarily deposited in treasury, by opening accounts in their separate names; the same is apparent from the forms, rules framed under section 55 of 1894 Act and various statutory orders issued by various State Governments. Section

www.taxcode.in

31(2) cannot be said to be covering all the exigencies of depositing amount. It was not necessary for various other exigencies to deposit the amount in the Court. Particularly in view of the Government rules and instructions in financial matters which were binding and consistently followed by making the deposit in treasury for more than 100 years since 1894.

WHETHER SECTION 24(2) DIVESTS THE STATE OF LAND

79. The question arises when there is absolute vesting of the land in the State under the provisions of the Act of 1894 whether it can be divested by virtue of the provisions made in section 24 of 2013 Act. The concept of absolute vesting in the State under Act of 1894 is well settled and on award being passed, possession being taken, compensation being offered but refused, section 24 would not apply in such a situation to divest the State if the land is acquired. No different intention appears from section 24 to divest the land once it has absolutely vested in the State in accordance with the provisions of the Act of 1894. Merely by obtaining interim order or keeping the litigation pending or filing it afresh that too by way of stale and belated claim after the Act of 2013 has come into force, no divesting

of land is contemplated. It is only in exigencies provided deemed lapse take place either when possession not taken or compensation not paid as provided in Section 24(2) and where award has not been passed, the provisions of section 24 of Act of 2013 applies. In a catena of decisions, this Court has laid down that as provided in section 16 of the Act of 1894, when an award is passed and possession is taken, the land vests absolutely in the Government free from all encumbrances the only legality of procedure is open to being questioned. The provision contained in section 17(1) also provides absolute vesting in the Government free from all encumbrances in the case of urgency even before passing of an award.

80. The vested right cannot be taken away. In Black's Law Dictionary "vested" is defined thus:

> "vested, adj. (18c) Having become a completed, consummated right for present or future enjoyment; not contingent; unconditional; absolute a vested interest in the estate.
>
> > "Unfortunately, the word 'vested' is used in two senses. Firstly, an interest may be vested in possession, when there is a right to present enjoyment, e.g. when I own and occupy Blackacre. But an interest may be vested, even where it does not carry a right to immediate possession if it does confer a fixed right of taking possession in the future." George Whitecross

> Paton, A Textbook of Jurisprudence 305 (CW. Paton & David P. Derham eds., 4th ed. 1972).
>
> "A future interest is vested if it meets two requirements: first, that there be no condition precedent to the interest's becoming a present estate other than the natural expiration of those estates that are prior to it in possession; and second, that it be theoretically possible to identify who would get the right to possession if the interest should become a present estate at any time." Thomas F. Bergin 8. Paul C. Haskell, Preface to Estates in Land and Future Interests 66-67 (2d ed. 1984)."

In Webster's Dictionary, it is defined as:

> "**vested** adj. [pp. of *vest*] 1. Clothed; robed, especially in church vestments. 2. in*law*, fixed; settled; absolute; not contingent upon anything: as, a *vested* interest."

81(a). In *State of Punjab v. Sadhu Ram,* 1996 (7) JT 118, this Court has laid down that when possession is taken by the Government after passing of the award and compensation has been paid, right, title and interest of the owner stand extinguished. Government becomes absolute owner of the said land. No one can claim any title/equitable title by remaining in possession thereafter. This Court has observed:

> "3. The learned Judge having noticed the procedure prescribed in disposal of the land acquired by the Government for public purposes has held that the said procedure was not followed for surrendering the land to the erstwhile owners. The respondent had purchased the land had improved upon the land and is, therefore, entitled to be an equitable owner of the land. We wholly fail to appreciate the view taken by the

> High Court. The learned Judge had net referred to the relevant provisions of the Act and law. It is an undisputed fact that consequent upon the passing of the award under Section 11 and took possession of the land, by operation of Section 16 of the Act, the right, title and interest of the erstwhile owner stood extinguished and the Government became absolute owner of the property free from all encumbrances. Thereby, no one has nor claimed any right, title and interest in respect of the acquired land. Before the possession could be taken, the Government have power under Section 48(1) of the Act to denotify the land. In that event, land is required to be surrendered to the erstwhile owners. That is not the case on the facts of this case. Under these circumstances, the Government has become the absolute owner of the property free from all encumbrances, unless the title is conferred on any person in accordance with a procedure known to law, no one can claim any title much less equitable title by remaining in possession. The trial Court as well as the appellate Court negatived the plea of the respondent that he was inducted into possession as a lessee for a period of 20 years. On the other hand, the finding was that he was in possession as a lessee on yearly basis. Having lawfully come into possession as a lessee of the Government, Session 116 of Evidence Act estops him from denying title of the Government and set it up in the third party. By disclaiming Government title, he forfeited even the annual lease. Under these circumstances, having come into possession as a lessee, after expiry and forfeiture of the lease, he has no right. Illegal and unlawful possession of the land entails payment of damages to the Government." (emphasis supplied)

81(b). In *Star Wire (India) Ltd. v. State of Haryana & Ors*. (1996) 11 SCC 698, this Court has laid down that when award has been passed, possession has been taken, land vests in the State free from all encumbrances. Any encumbrance created by erstwhile owner after publication of notification under section 4 has no valid title and is not binding on the State. Subsequent purchaser has no right

www.taxcode.in

to challenge the legality of acquisition proceedings. This Court has laid down thus:

> "2. Shri P.P. Rao, learned senior counsel for the petitioner, contends that the petitioner had no knowledge of the acquisition proceedings; as soon as it came to know of the acquisition, it had challenged the validity of the acquisition proceedings and, therefore, it furnishes cause of action to the petitioner. He further contends that the writ petition could not be dismissed on the ground of laches but was required to be considered on merits. We find no force in the contention. Any encumbrance created by the erstwhile owner of the land after publication of the notification under Section 4(1) does not bind the State if the possession of the land is already taken over after the award came to be passed. The land stood vested in the State free from all encumbrances under Section 16. In Gunnukh Singh and Ors. v. The State of Haryana JT (1995) 8 SC 208, this Court has held that a subsequent purchaser is not entitled to challenge the legality of the acquisition proceedings on the ground of lack of publication of the notification. In Y.N. Garg v. State of Rajasthan [1996] 1 SCC 284 and SnehPrabha v. State of U.P. [1996] 7 SCC 325, this Court had held the alienations made by the erstwhile owner of the land after publication of the notification under Section 4(1), do not bind either the State Government or the beneficiary for whose benefit the land was acquired. The purchaser does not acquire any valid title. Even the colour of title claimed by the purchaser was void. The beneficiary is entitled to have absolute possession free from encumbrances. In *U.P. Jal Nigam, Lucknow through its Chairman and Anr. v. M/s. Kalra Properties (P) Ltd., Lucknow, and Ors.* [1996] 1 SCC 124, this Court had further held that the purchaser of the property, after the notification under Section 4(1) was published, is devoid of right to challenge the validity of the notification or irregularity in taking possession of the land before publication of the declaration under Section 6. As regards laches in approaching the Court, this Court has been consistently taking the view starting from State of Madhya Pradesh and Anr. v. Bhailal Bhai and Ors. [1964]6SCR261 wherein a Constitution Bench had held that it is not either desirable or expedient to lay down a rule of universal application but the unreasonable delay denies to the petitioner, the discretionary extraordinary remedy

of mandamus, certiorari or any other relief. The same was view reiterated in catena of decisions, viz.,

Rabindranath Bose and Ors. v. The Union of India and Ors. [1970]2SCR697 ;
State of Mysore and Ors. v. Narsimha Ram Naik, [1976]1SCR369 ;
Aflatoon and Anr. v. Lt. Governor of Delhi [1975]1SCR802 ;
M/s. TilokchandMotichand and Ors. v. H.B. Munshi, Commissioner of Sales Tax, Bombay, and Anr. [1969]2SCR824 ;
State of Tamil Nadu and Ors. Etc. v. L. Krishnan and Ors. Etc., (1996)1SCC250 ;
Improvement Trust, Faridkot, and Ors. v. Jagjit Singh and Ors. ;
State of Punjab and Ors. v. Hari Om Co-operative House Building Society Ltd., Amritsar; Market Committee, Hodal v. KrishanMurari and Ors. , (1996)1SCC311 and;
State of Haryana v. Dewan Singh AIR1996SC675

wherein this Court had held that the High Court was not justified in interfering with the acquisition proceedings. This Court in the latest judgment in *Municipal Corporation of Great Bombay v. The Industrial Development & Investment Co. Pvt. Ltd. and Ors.*, AIR1997SC482 , reviewed the entire case law and held that the person who approaches the Court belatedly will be told that laches close the gates of the Court for him to question the legality of the notification under Section 4(1), declaration under Section 6 and the award of the Collector under Section 11." (emphasis supplied)

81(c). In *Market Committee v. Krishan Murari* (1996) 1 SCC 311 award was passed, possession was taken; it was observed that the land vests in the Government free from all encumbrances. In *PuttuLal (dead) by LRs. v. State of U.P. & Anr.* (1996) 3 SCC 99, possession had been taken and compensation paid to the owner. It was held that land vests in the State free from all encumbrances.

Consequently, State becomes absolute owner and is entitled to file suit for possession.

81(d). The word "vest" has been considered by this Court in *Fruit and Vegetable Merchants Union v. Delhi Improvement Trust*, AIR 1957 SC 344, to mean that the property acquired becomes the property of the Government without any condition or limitation either as to title or possession. Thus when there is absolute vesting in the State it is vesting along with possession and thereafter a person who remains in possession is only a trespasser not in rightful possession. Vesting cannot be considered with any rider as to title or possession. Vesting contemplates absolute title, possession in the State as laid down in the aforesaid decisions. Of course, the procedure of vesting can be looked by court if questioned and once entry is handful, it vests absolutely in State and the Act of 2013 does not reopen and divest State Government of the land. 2013 Act would come only in the cases where vesting of land has not taken place in the State Government. In *Fruit and Vegetable Merchants Union v. Delhi Improvement Trust*, AIR 1957 SC 344, this Court has observed thus:

www.taxcode.in

> "25. That the word "vest" is a word of variable import is shown by provisions of Indian statutes also. For example, s. 56 of the Provincial Insolvency Act (5 of 1920) empowers the court at the time of the making of the order of adjudication or thereafter to appoint a receiver for the property of the insolvent and further provides that "such property shall thereupon vest in the receiver." The property vests in the receiver for the purpose of administering the estate of the insolvent for the payment of his debts after realising his assets. The property of the insolvent vests in the receiver not for all purposes but only for the purpose of the Insolvency Act and the receiver has no interest of his own in the property. On the other hand, Sections 16 and 17 of the Land Acquisition Act (Act I of 1894), provide that the property so acquired, upon the happening of certain events, shall "vest absolutely in the Government free from all encumbrances". In the cases contemplated by Sections, 16 and 17 the property acquired becomes the property of Government without any conditions or limitations either as to title or possessions. The legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration. It would thus appear that the word "vest" has not got a fixed connotation, meaning in all cases that the property is owned by the person or the authority in whom it vests. It may vest in title, or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation. The provisions of the Improvement Act, particularly Sections 45 to 49 and 54 and 54A when they speak of a certain building or street or square or other land vesting in a municipality or other local body or in a trust, do not necessarily mean that ownership has passed to any of them."

81(e). In *Mosammat Bibi Sayeeda v. State of Bihar* (1996) 9 SCC 516, the concept of "vest" has been discussed thus:

> "17. The word 'vested' is defined in *Black's Law Dictionary* (6th Edn.) at p. 1563 as:
>
> "Vested; fixed; accrued; settled; absolute; complete. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent."

Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights. In *Webster's Comprehensive Dictionary*, (International Edn.) at p. 1397 'vested' is defined as:

"[L]aw held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interests."

In *State of W.B.* v. *Suburban Agriculture Dairy & Fisheries (P) Ltd.*, the question was whether after the abolition of the estate under the West Bengal Estates Acquisition Act, 1953 (1 of 1954) the fishery right of the intermediary was saved by that Act? A Bench of three Judges had held in paragraphs 9 and 11 that the pre-existing rights of the intermediary in the estate to which the declaration applied, shall stand vested in the State free from all encumbrances. Section 6 does not have the effect of divesting the State of the vested right, title and interest of the intermediary. One of the rights is the right to take possession of the land held by the intermediary. The section excluded the operation of Sections 4 and 5, viz., the interest of the respondent to retain khas possession was saved subject to his making the application in the prescribed form. It was held that the fishery rights stood vested in the State.

18. In *Brighu Nath Sahay Singh* v. *Mohd. Khalilur Rahman* the appellants were proprietors of certain lands in Touzi (new) No. 8655 in Saraunja village in District Begusarai in Bihar which was sought to be declared as private lands in a civil suit. The courts granted the decree but the High Court reversed the decree. On appeal, this Court had held that on publication of the notification under Section 3, the lands stood vested in the State. The pre-existing right, title, and interest held by the appellants stood ceased. They cannot, therefore, claim khas possession of the lands in occupation of the tenants.

19. In *Labanya Bala Devi* v. *State of Bihar Patna Secretariat*, the tank and tankail settled by the intermediary were held to have been vested in the State after the Act had come into force. Therefore, the pre-existing rights of the tenure-holder

> in the tank stood ceased since they were not saved under Section 6(1)(*b*) of the Act.
>
> 20. It would thus be clear that on and with effect from the date of the publication of the notification under Section 3, the totality of the right, title and interest held by an intermediary stands abolished. The consequences thereof, as enumerated in Section 4(*a*), is extinguishment of the pre-existing right, title and interest over the entire estate including the enumerated items in Section 4(*a*) which include hats and bazars in the State and the pre-existing right, title and interest held by the intermediary/tenure-holder stood divested."

"Vest" means an absolute or indefeasible right. Thus, the provisions contained under the Act of 2013 have not taken vested rights away.

81(f). In *J. S. Yadav v. State of Uttar Pradesh* (2011) 6 SCC 570, this Court has observed:

> "20. "The word 'vested' is defined in *Black's Law Dictionary* (6th Edition) at page 1563, as:
>
> > vested; fixed; accrued; settled; absolute; complete. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent.'
>
> Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights. In Webster's Comprehensive Dictionary (International Edition) at page 1397, 'vested' is defined as :

> Law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest."

(See Mosammat Bibi Sayeeda and Ors. etc. v. State of Bihar and Ors. etc. AIR 1996 SC 1936 at SCC p.527, para 17)

21. The word "vest" is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage, the said word "vest" has also acquired a meaning as "an absolute or indefeasible right". It had a "legitimate" or "settled expectation" to obtain right to enjoy the property etc. Such "settled expectation" can be rendered impossible of fulfillment due to change in law by the Legislature. Besides this, such a "settled expectation" or the so-called "vested right" cannot be countenanced against public interest and convenience which are sought to be served by amendment of the law. (Vide: Howrah Municipal Corpn. and Ors. v. Ganges Rope Co. Ltd. and Ors. (2004) 1 SCC 663.

22. Thus, "vested right" is a right independent of any contingency. Such a right can arise from a contract, statute or by operation of law. A vested right can be taken away only if the law specifically or by necessary implication provide for such a course."

82. On proper reading of section 24, it is clear that no divesting is contemplated under the provision. Provisions of section 24 when award is passed, possession is taken, compensation has been tendered, vesting takes place. There is no deemed lapse under section 24 in such a case. In case of urgency also before award is passed as provided in section 17(1), 17(3A) vesting takes place on fulfillment of conditions.

83. It is settled law that accrued rights cannot be taken away by repealing statutory provisions. The repealing law must provide for taking away such rights expressly or by necessary implications. There is no such express provision or necessary implication. The beneficial intendment of proviso to section 24(2) is that acquiring body must have arrangement of money for payment of compensation with respect to majority of holding. It never envisages misuse of the provision. Law does not contemplate or permit a litigant to misuse of the provisions. Law does not permit court cover to be used as shield when there is no legality in the claim and one cannot be permitted to reap the fruits of one's own dilatory tactics, money power to litigate till eternity. The Act nowhere intends that only litigating incumbents who are not accepting acquisition have to be given the benefit of Act of 2013. Those who have obtained interim orders under guise of prima facie case anyhow or somehow without any basis, without merit in their claim, cannot be protected by providing shelter under the protective umbrella of section 24(2) of the Act of 2013.

84. There are various decisions which have been rendered inter se parties declining the challenge to land acquisition. It has been held

www.taxcode.in

in the previous judgments that the land is vested in the State and acquisition has been legally made and possession has been taken and such incumbents are responsible for not receiving compensation. Now those judgments are sought to be get rid of under the subsequent legislation, particularly under section 24 of the Act of 2013.

85. In relation to the maxim *'nemo debet bis vexari pro una et eadem causa'*, which means that it is a rule of law that a man should not be twice vexed for one and the same cause, Broom, in Legal Maxims, has discussed thus:

> "When a party to litigation seeks improperly to raise again the identical question which has been decided by a competent Court, a summary remedy may be found in the inherent jurisdiction which our Courts possess of preventing an abuse of process."

Thus, the provisions of section 24 cannot be interpreted by ignoring and overlooking the previous verdicts. What has been held in them is binding and rights cannot be taken away. When issues raised within section 24 have already been decided and vesting has already taken place it is final. Exception as carved out in section 24 when award has not been passed under section 24(1)(a) for

determination of compensation only the provisions of the Act of 2013 would apply. Once possession has been taken Compensation tendered but not accepted under section 17(1) of the Act or section 16 of Act of 1894 vesting takes place.

IN RE: QUESTION NO.II: MODE OF TAKING PHYSICAL POSSESSION AS CONTEMPLATED UNDER SECTION 24(2) OF ACT OF 2013 AND THE ACT OF 1894:

86. Intrinsically connected with Question No.1 is the question of taking physical possession as contained in section 24(2) of Act of 2013 when it can be said that possession has been taken. When we consider the same, question arises what is the meaning of "physical possession not taken" in section 24(2) when the State is involved in taking possession of the property acquired it can take possession by drawing a Panchnama. The normal rule of State possessing the land through some persons would not be applicable in such cases. On open land, possession is deemed to be of owner. When the State acquired the land and has drawn memorandum of taking possession that in the way the State take possession of large chunk of property acquired as State is not going to put other persons in possession or its police force or going to cultivate it or start residing

or physically occupy it after displacing who were physically in possession as in the case of certain private persons, in case they re-enter in possession of open land, start cultivation or residing in the house. Lawful possession is deemed to be of the State. This Court in a number of decisions has accepted the mode of drawing Panchnama by State consistently to be a mode of taking possession.

87(a). In *Balwant Narayan Bhagde v. M.D. Bhagwat & Ors.*, (1976) 1 SCC 700 in the majority view, it was held that the act of Tehsildar in going on the spot and inspecting the land was sufficient to constitute taking of possession. Neither the Government nor the Commissioner could withdraw from the acquisition of the land under section 48(1) of the Act. This Court observed thus:

> "28. We agree with the conclusion reached by our brother Untwalia, J., as also with the reasoning on which the conclusion is based. But we are writing a separate judgment as we feel that the discussion in the judgment of our learned brother Untwalia, J., in regard to delivery of 'symbolical' and 'actual' possession under Rules 35, 36, 95 and 96 of Order XXI of the CPC, is not necessary for the disposal of the present appeals' and we do not wish to subscribe to what has been said by our learned brother Untwalia, J., in that connection, nor do we wish to express our assent with the discussion of the various authorities made by him in his judgment. We think it is enough to state that when the Government proceeds to take possession of the land acquired by it under the Land Acquisition Act, 1894, it must take actual possession of the land since all interests in the land are sought to be acquired by it. There can be no question of taking 'symbolical' possession in the sense understood by judicial decisions under the CPC.

> Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land. How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of. There can be no hard and fast rule laying down what, act would be sufficient to constitute taking of possession of land. We should not, therefore, be taken as laying down an absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise would be sufficient to constitute taking of possession of land in every case. But here, in our opinion, since the land was lying fallow and there was no crop on it at the material time, the act of the Tehsildar in going on the spot and inspecting the land for the purpose of determining what part was waste and arable and should, therefore, be taken possession of and determining its extent, was sufficient to constitute taking of possession. It appears that the appellant was not present when this was done by the Tehsildar, but the presence of the owner or the occupant of the land is not necessary to effectuate the taking of possession. It is also not strictly necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken at a particular time, though it may be desirable where possible, to give such notice before possession is taken by the authorities, as that would eliminate the possibility of any fraudulent or collusive transaction of taking of mere paper possession, without the occupant or the owner ever coming to know of it."

87(b). In *Tamil Nadu Housing Board v. A.Viswam (Dead) by LRs.*, (1996) 8 SCC 259, this Court has held that recording of memorandum/ Panchnama by Land Acquisition Officer in the presence of witnesses signed by them would constitute taking possession of land. This Court observed:

> "8. It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the

> acquired land is recording of a memorandum or Panchnama by the LAO in the presence of witnesses winged by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common Knowledge that in some cases the owner/interested person may not co-operate in taking possession of the land."

87(c). In *Banda Development Authority, Banda v. Moti Lal Agarwal & Ors.* (2011) 5 SCC 394 this Court observed that preparing a Panchnama is sufficient to constitute taking of possession. If acquisition is of a large tract of land, it may not be possible to take physical possession of each and every parcel of the land and it would be sufficient that symbolic possession is taken by preparing an appropriate document in the presence of independent witnesses and getting their signatures. Even subsequent utilization of a portion of acquired land for public purpose was still sufficient to prove taking possession. This Court in *Banda Development Authority* (supra) has considered various decisions and laid down thus:

> "37. The principles which can be culled out from the above-noted judgments are:
>
> > i) No hard and fast rule can be laid down as to what act would constitute taking of possession of the acquired land.
> >
> > ii) If the acquired land is vacant, the act of the concerned State authority to go to the

> spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.
>
> iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the concerned authority will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the concerned authority will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.
>
> iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.
>
> v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3A) and substantial portion of the acquired land has been utilized in furtherance of the particular public purpose, then the Court may reasonably presume that possession of the acquired land has been taken."

87(d). In *State of Tamil Nadu & Anr. v. Mahalakshmi Ammal & Ors.* (1996) 7 SCC 269, this Court has held: "Possession of the acquired land would be taken only by way of memorandum, Panchnama which is a legally accepted form." This Court observed:

> "9. It is well settled law that publication of the declaration under Section 6 gives conclusiveness to public purpose.

> Award was made on September 26, 1986 and for Survey No. 2/11 award was made on August 31, 1990. Possession having already been undertaken on November 24, 1981, it stands vested in the State under Section 16 of the Act free from all encumbrances and thereby the Government acquired absolute title to the land. The initial award having been made within two years under Section 11 of the Act, the fact that subsequent award was made on 31st August, 1990 does not render the initial award invalid. It is also to be seen that there is stay of dispossession. Once there is stay of dispossession, all further proceedings necessarily could not be proceeded with as laid down by this Court. Therefore, the limitation also does not stand as an impediment as provided in the proviso to Section 11A of the Act. Equally, even if there is an irregularity in service of notice under Sections 9 and 10, it would be a curable irregularity and on account thereof, award made under Section 11 does not become invalid. Award is only an offer on behalf of the State. If compensation was accepted without protest, it binds such party but subject to Section 28A. Possession of the acquired land would be taken only by way of a memorandum, Panchanama, which is a legally accepted norm. It would not be possible to take any physical possession. Therefore, subsequent continuation, if any, had by the erstwhile owner is only illegal or unlawful possession which does not bind the Government nor vested under Section 16 divested in the illegal occupant. Considered from this perspective, we hold that the High Court was not justified in interfering with the award."

87(e). In *Balmokand Khatri Educational and Industrial Trust v. State of Punjab* (1996) 4 SCC 212 it was observed that it is difficult to take physical possession of land under compulsory acquisition. The normal rule of taking possession is drafting the Panchnama in the presence of Panchas, is accepted mode of taking possession of land. This Court observed:

> "4. It is seen that the entire gamut of the acquisition proceedings stood completed by April 17, 1976, by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the Panchanama in the presence of Panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession.
>
> 5. Under these circumstances, merely because the appellant retained possession of the acquired land, the acquisition cannot be said to be bad in law. It is then contended by Shri Parekh that the appellant-Institution is running an educational institution and intends to establish a public school and that since other land was available, the Government would have acquired some other land leaving the acquired land for the appellant. In the counter-affidavit filed in the High Court, it was stated that apart from the acquired land, appellant also owned 482 canals 19 marlas of land. Thereby, it is seen that the appellant is not disabled to proceed with the continuation of the educational institution which it seeks to establish. It is then contended that an opportunity may be given to the appellant to make a representation to the State Government. We find that it is not necessary for us to give any such liberty since acquisition process has already been completed."
> (emphasis supplied)

87(f). In *P. K. Kalburqi v. State of Karnataka & Ors*. (2005) 12 SCC 489, this Court held that if land were vacant and unoccupied, taking symbolical possession would be enough. This Court held that in case land was vacant only symbolical possession could be taken and such possession would amount to vesting the land in the Government. Thus power under section 48 could not be exercised.

87(g). In *Raghbir Singh Sehrawat v. State of Haryana & Ors*. (2012) 1 SCC 792, it was observed:

> "28. If the Appellant's case is examined in the light of the propositions culled out in *Banda Development Authority, Banda v. MotiLalAgarwal and Ors*. we have no hesitation to hold that possession of the acquired land had not been taken from the Appellant on 28.11.2008, i.e. the day on which the award was declared by the Land Acquisition Collector because crops were standing on several parcels of land including the Appellant's land and possession thereof could not have been taken without giving notice to the landowners. That apart, it was humanly impossible to give notice to large number of persons on the same day and take actual possession of land comprised in various survey numbers (total measuring 214 Acres 5 Kanals and 2 Marlas)."

This Court has laid down that since the land was lying fallow with no crop on it, the Tehsildar going on the spot and inspecting the land was enough to constitute taking possession. No notice was required to be given to the occupant of the land.

87(h). In *Sita Ram Bhandar Society, New Delhi v. Lieutenant Governor, Government of NCT, Delhi & Ors*. (2009) 10 SCC 501, this Court observed that when possession is to be taken of large tract of land then it is permissible to have possession by drawing Panchnama.

87(i). In *Om Prakash Verma & Ors. v. State of Andhra Pradesh & Ors.* (2010) 13 SCC 158, this Court observed:

> "85. As pointed out earlier, the expression `civil appeals are allowed' carry only one meaning, i.e., the judgment of the High Court is set aside and the writ petitions are dismissed. Moreover, the determination of surplus land based on the declaration of owners has become final long back. The notifications issued under Section 10 of the Act and the panchanama taken possession are also final. On behalf of the State, it was asserted that the possession of surplus land was taken on 20.07.1993 and the Panchanama was executed showing that the possession has been taken. It is signed by witnesses. We have perused the details which are available in the paper book. It is settled law that where possession is to be taken of a large tract of land then it is permissible to take possession by a properly executed Panchanama. [videSita Ram Bhandar Society, New Delhi v. Lieutenant Governor, Govt. of NCT, Delhi (2009) 10 SCC 501].
>
> 86. It is not in dispute that the Panchnama has not been questioned in any proceedings by any of the appellants. Though it is stated that Chanakyapuri Cooperative Society is in possession at one stage and ShriVenkateshawar Enterprises was given possession by the owners and possession was also given to Golden Hill Construction Corporation and thereafter it was given to the purchasers, the fact remains that the owners are not in possession. In view of the same, the finding of the High Court that the possession was taken by the State legally and validly through a Panchnama is absolutely correct and deserves to be upheld."

87(j). In *M. Venkatesh & Ors. v. Commissioner, Bangalore Development Authority etc.* (2015) 17 SCC 1, a three-Judge Bench of this Court has opined:

> "17. To the same effect are the decisions of this Court in *Ajay Krishan Shinghal v. Union of India, Mahavir v. Rural Institute*, *Gian Chand v. Gopala*, *Meera Sahni v. Lt. Governor*

> *of Delhi* and *Tika Ram v. State of U.P.* More importantly, as on the date of the suit, the respondents had not completed 12 years in possession of the suit property so as to entitle them to claim adverse possession against BDA, the true owner. The argument that possession of the land was never taken also needs notice only to be rejected for it is settled that one of the modes of taking possession is by drawing a panchnama which part has been done to perfection according to the evidence led by the defendant BDA. Decisions of this Court in *T.N. Housing Board v. A. Viswam* and *Larsen & Toubro Ltd. v. State of Gujarat*, sufficiently support BDA that the mode of taking possession adopted by it was a permissible mode."
>
> (emphasis supplied)

87(k). However, view has been taken in *Velaxan Kumar v. Union of India & Ors.* (2015) 4 SCC 325 that actual physical possession is required to be taken and the court has seen the photographs to hold that possession was not taken. The view taken in *Velaxan Kumar* (supra) cannot be said to be correct and in accordance with law. Drawing of Panchnama is the accepted mode of taking possession and once Panchnama has been drawn in the presence of witnesses, in case Panchnama has been signed by official witnesses as to its correctness as there is presumption of correctness of the official act under section 114 of the Act of 2013. A photograph cannot show actual/ legal possession much less proof of possession as person may enter/re-enter by committing trespass to have

photographed. That would not negate the proceedings held for taking possession and drawing panchnama.

87(l). In *Raghbir Singh Sehrawat* (supra) also the observations have been made that it was not possible to take possession of the entire land in a day, cannot be accepted. The State is not going to put their own persons/ police/ or other officials to possess the land. Thus the mode of taking possession by drawing Panchnama has been accepted in a large number of decisions, which appears to be the consistent view of this Court, and must prevail.

87(m). In *Narmada Bachao Andolan v. State of Madhya Pradesh & Anr.* AIR 2011 SC 1989, this Court has observed that it would depend upon the facts of individual case whether possession has been taken or not. However, this Court had appointed a Commissioner in the said case to find out the possession on the spot and DVDs. and CDs were seen to hold that landowners were in possession. District Judge, Indore, recorded the statements of the tenure-holders, which were referred to by this Court in the said judgment. Said decision has to be treated as confined to its own facts, as the mode adopted for determining the possession by the

www.taxcode.in

help of Commissioner is doubtful. The Commissioner could not have determined the factum of possession. It is the function of the court and this cannot abdicate to Commissioner its function. Even under Order XXVII CPC function of Commissioner is not to determine possession and once possession has been taken, whether there was re-entry or trespass had not been examined in the said case. However, statements recorded by the District Judge were also taken into consideration in *Narmada Bachao Andolan* (supra). The decision in said case is to be taken as confined to the facts and cannot be said to be of universal application. Subsequent DVD/CD are not going to establish whether possession, in fact, was taken earlier. Such mode of determining the possession by subsequent material is not of much value as there can be re-entry in possession after possession had been taken. In the decision of *Banda Development Authority* (supra), it appears that the law laid down has been properly discussed and propositions have been laid down properly.

88. We find that while this Court examined several aspects of the matter in *Banda Development Authority, Banda versus Moti Lal Agarwal* [(2011) 5 SCC 394], contrary view has been taken in some

www.taxcode.in

subsequent judgments. In Banda Development Authority (supra), this Court has held that if land was vacant, going to the spot and preparing a panchnama by a state authority would ordinarily be treated as sufficient to constitute the taking of possession. If crop is standing, notice was required to be given to the occupier of building or structure and thereafter taking possession in presence of independent witnesses and in spite of refusal by the owner did not mean that possession of the has not been taken. If acquisition is of a large tract of land, it would not be possible to take physical possession of each and every parcel of such land. Taking 'symbolic' possession, by preparing an appropriate document, in presence of independent witnesses, was sufficient. Where urgency clause was invoked and substantial portion of land was acquired or utilized in furtherance of the particular public purpose, taking of possession was presumed. Utilization of a major portion of acquired land for public purpose was itself sufficient to prove taking over possession.

89. We find that in *Velaxan Kumar versus Union of India* [(2015) 4 SCC 325], the Court held that Section 24(2) of the 2013 Act being a benevolent provision, even though possession had been taken, but if due procedure was not followed and, the photographs showed

www.taxcode.in

that the landowners were in possession, the proceedings would lapse. Such a view, in our opinion, is contrary to the settled law as referred to in *Banda Development Authority* (supra). The same will, accordingly, stand overruled.

In Re: Question No.III :

WHETHER SECTION 24 OF THE ACT OF 2013 REVIVES STALE/ BARREDCLAIMS?

90. In several cases, the challenge to the acquisition has become stale and otherwise barred. The question arises whether a beneficial provision of section 24 of the Act of 2013 revives such claims and the Courts can entertain them.

91. Arguments to the effect, that section 24 of the Act of 2013 does have the effect of re-opening claims of the beneficiaries, qua acquisitions that had, in certain instances, been made as far back as the first and the second decade of the 20th century or decades before, are being routinely urged before various courts, including this Court and is involved in several instant cases. To that end, proceedings are being filed anew, even though everything appertaining the concerned acquisition proceedings, including several rounds of legal challenge to the same, has attained finality

www.taxcode.in

decades ago. The question is whether it is permissible to assert for resuscitation of such claims, placing them under the umbrella of the provisions of Section 24.

92. An instance of such a claim, put forth before this Court, was argued and decided within the confines of the case titled as *Mahavir & Ors. v. Union of India & Anr.,* numbered as SLP (C) No. 26281/2017, decided on 8.9.2017. This was a petition filed with respect to an area known as the 'Raisina Hills', located in the 'Lutyens Zone' of New Delhi.

93. The question arose as to whether the court can interfere in such cases? The Court's discussion on the legal aspects involved in *Mahavir's* case (supra), and its decision thereon, is summarized hereunder. The petition was dismissed on the ground of delay and laches, holding that it destroyed the remedy. It was further held that section 24 does not revive non-existing or dead claims; it only ensures that claims, which were alive, would be examined.

94. In *Mahavir's* case (supra), this Court has also referred to the decision in *Tamil Nadu Housing Board, Chennai v. M. Meiyappan & Ors.* [(2010) 14 SCC 309], and in *Jasveer Singh v. State of U.P. & Ors.* [(2017) 6 SCC 787]. The delay and laches are enough to destroy

www.taxcode.in

the remedy.

Mahavir's case (supra) also contains the observation to the effect that, if the conduct and neglect of the landowner or his successor is allowed to prevail, permitting them to assert their claim at this belated juncture, it would place the Estate Authority in a position in which it would not be reasonable to place them; and that in such cases, lapse of time and delay are one of the most material considerations. The Court's observations in *Mahavir's* case (supra) are extracted hereunder:

> "15. In *U.P. State Jal Nigam & Anr. v. Jaswant Singh & Anr*. (2006) 11 SCC 464 this court has observed that in determining whether there has been delay so as to amount to laches in case petitioner/claimant is aware of the violation of the right, where a remedy by his conduct tantamount to waiver of it or where, by his conduct or neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches.
>
> 16. The Constitution Bench of this court in *Rabindranath Bose &Ors. v. Union of India &Ors.* (1970) 1 SCC 84 has observed:
>
>> "32 …we are of the view that no relief should be given to petitioners who, without any reasonable explanation, approach this Court under Article 32 of the Constitution after inordinate delay. The highest Court in this land has been given Original Jurisdiction to entertain petitions under Article 32 of the Constitution. <u>It could not have been the intention that this Court would go into stale demands after a lapse of</u>

> years. It is said that Article 32 is itself a guaranteed right. So it is, but it does not follow from this that it was the intention of the Constitution makers that this Court should discard all principles and grant relief in petitions filed after inordinate delay."
>
> (emphasis supplied)"

95. This Court, in *Dharappa v. Bijapur Co-operative Milk Producers Societies Union Ltd.* [(2007) 9 SCC 109], had an occasion to consider the effect and operation of section 10(4A) of the Industrial Disputes Act, 1947; the section had been inserted via an amendment made to the Act. With regard to the same, the Court observed that delay, if has resulted in material evidence relevant to adjudication being lost or rendered unavailable, would be fatal. It was held that the time limit of 6 months, prescribed by section 10(4A), should be interpreted so as not to revive stale and dead claims, for it would not be possible to defend such claims due to lapse of time and due to material evidence having been lost or rendered unavailable. In *Dharappa* (supra), it was observed;

> "29. This Court while dealing with Section 10(1)(c) and (d) of the ID Act, has repeatedly held that though the Act does not provide a period of limitation for raising a dispute under Section 10(1)(c) or (d), if on account of delay, a dispute has become stale or ceases to exist, the reference should be rejected. It has also held that lapse of time results in losing the remedy and the right as well. The delay would be fatal if it has resulted in material evidence relevant to adjudication being lost or rendered unavailable [vide - *Nedungadi Bank*

Ltd. v. K.P. Madhavan Kutty (2000) I LLJ 561 SC; *Balbir Singh v. Punjab Roadways* 2000 (8) SCALE 180; *Asst. Executive Engineer v. Shivalinga* (2002) I LLJ 457 SC; and *S.M. Nilajkar v. Telecom DT. Manager* (2003) II LLJ 359 SC. When belated claims are considered as stale and non-existing for the purpose of refusing or rejecting a reference under Section 10(1)(c) or (d), in spite of no period of limitation being prescribed, it will be illogical to hold that the amendment to the Act inserting Section 10(4A) prescribing a time limit of six months, should be interpreted as reviving all stale and dead claims.

30. The object of Section 10(4A) is to enable workmen to apply directly to the Labour Court for adjudication of disputes relating to termination, without going through the laborious process of seeking a reference under Section 10(1) of ID Act. The Legislative intent was not to revive stale or non-existing claims. Section 10(4A) clearly requires that a workman who wants to directly approach the Labour Court should do so within six months from the date of communication of the order. Then come the words "or the date of commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987, whichever is later". The reason for these words is obvious. In cases where the cause of action arose prior to 7.4.1988, some additional time had to be provided to make the provisions effective. Let us take the example of a workman who had received the termination order on 10-10-1987. If Section 10(4A), which come into effect on 7.4.1988, had merely stated that the application had to be filed within six months from the date of communication, he had to file the application before 10-4-1988, that is hardly three days from the date when the amendment came into effect. The Legislature thought that workmen should be given some reasonable time to know about the new provision and take steps to approach the Labour Court. Therefore, all workmen who were communicated orders of termination within six months prior to 7-4-1988 were given the benefit of uniform six months time from 7-4-1988, irrespective of the date of expiry of six months. When a new remedy or relief is provided by a statute, such a transitional provision is made to ensure that persons who are given a special right, do not lose it for want of adequate time to enforce it, though they have a cause of action or right as on the date when the new remedy or relief comes into effect.

> 31. Section 10(4A) does not, therefore, revive non-existing or stale or dead claims but only ensures that claims which were live, by applying the six month rule in Section 10(4A) as on the date when the Section came into effect, have a minimum of six months time to approach the Labour Court. That is ensured by adding the words "or the date of commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987, which is later" to the words "within six months from, the date of communication to him of the order of discharge, dismissal, retrenchment or termination." In other words all those who were communicated orders of termination during a period of six months prior to 7-4-1988 were deemed to have been communicated such orders of termination as on 7-4-1988 for the purpose of seeking remedy. Therefore, the words "within six months from the date of commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987, whichever is later" only enables those who had been communicated order of termination within six months prior to 7-4-1988, to apply under Section 10(4A)."

96. The stale claims cannot be entertained even though no time limit is prescribed, it was observed in State of *Karnataka v. Laxuman* [(2005) 8 SCC 709] thus:

> "9. As can be seen, no time for applying to the court in terms of sub-section (3) is fixed by the statute. But since the application is to the court, though under a special enactment, Article 137, the residuary article of the Limitation Act, 1963, would be attracted and the application has to be made within three years of the application for making a reference or the expiry of 90 days after the application. The position is settled by the decision of this Court in The Addl. Spl. Land Acquisition Officer, Bangalore v. Thakoredas, Major and Ors., AIR 1994 SC 2227 It was held:
>
> > "3. Admittedly, the cause of action for seeking a reference had arisen on the date of service of the award under Section 12(2) of the Act. Within 90 days from the date of the service of notice, the respondents made the application requesting the Deputy Commissioner to refer the cases to the Civil Court under Section 18.

> Under the amended sub-section 3(a)of the Act, the Deputy Commissioner shall, within 90 days from September 1, 1970 make reference under Section 18 to the Civil Court which he failed to do . Consequently, by operation of subsection 3(b) with the expiry of the aforestated 90 days, the cause of action had accrued to the respondents to make an application to the Civil Court with a prayer to direct the Deputy Commissioner to make a reference. There is no period of limitation prescribed in subsection 3(b) to make that application but it should be done within limitation prescribed by the Schedule to the Limitation Act. Since no Article expressly prescribed the limitation to make such application, the residuary article under Article 137 of the Schedule to the Limitation Act gets attracted. Thus, it could be seen that in the absence of any special period of limitation prescribed by clause (b) of subsection (3) of Section 18 of the Act, the application should have been made within three years from the date of expiry of 90 days prescribed in Section 18(3)(b) i.e. the date on which cause of action had accrued to the respondent-claimant. Since the applications had been admittedly made beyond three years, it was clearly barred by limitation. Since, the High Court relied upon the case in Municipal Corporation of Athani,(1969) IILLJ651SC, which has stood overruled, the order of the High Court is unsustainable."

This position is also supported by the reasoning in *Kerala State Electricity Board v. T.P. Kunhaliumma*, 1977] 1 SCR 996. It may be seen that under the Central Act sans the Karnataka amendment there was no right to approach the principal civil court of original jurisdiction to compel a reference and no time limit was also fixed for making such an approach. All that was required of a claimant was to make an application for reference within six weeks of the award or the notice of the award, as the case may be. But obviously the State Legislature thought it necessary to provide a time frame for the claimant to make his claim for enhanced compensation and for ensuring an expeditious disposal of the application for reference by the authority under the Act fixing a time within which he is to act and conferring an additional right on the claimant to approach the civil court on satisfying the condition precedent of having made an application for reference within

> the time prescribed.
>
> 10. A statute can, even while conferring a right, provide also for a repose. The Limitation Act is not an equitable piece of legislation but is a statute of repose. The right undoubtedly available to a litigant becomes unenforceable if the litigant does not approach the court within the time prescribed. It is in this context that it has been said that the law is for the diligent. The law expects a litigant to seek the enforcement of a right available to him within a reasonable time of the arising of the cause of action and that reasonable time is reflected by the various articles of the Limitation Act."

97. Thus, when we ponder as to the instant case, qua the re-opening of stale claims under section 24 of the 2013 Act, no 'Johnny come lately' can be permitted to assert that he is in possession (claiming that physical possession has not been taken away from him), when such assertion has not been made for decades together. Such claims would not be revived after the person has slept over them; the courts must not condone sudden wakefulness from such slumber, especially in relation to claims over open pieces of land, and even houses/structures, when the person may have illegally reentered into the possession or may have committed trespass. Thus, for the aforesaid reasons, such claims cannot be entertained or adjudicated under section 24 of the 2013 Act.

98. In our considered opinion section 24 cannot be used to revive

the dead or stale claims and the matters, which have been contested up to this Court or even in the High Court having lost the cases or where reference has been sought for enhancement of the compensation. Compensation obtained and still it is urged that physical possession has not been taken from them, such claims cannot be entertained under the guise of section 24(2). We have come across the cases in which findings have been recorded that by which of drawing a Panchnama, possession has been taken, now again under Section 24(2) it is asserted again that physical possession is still with them. Such claims cannot be entertained in view of the previous decisions in which such plea ought to have been raised and such decisions would operate as *res judicata* or constructive *res judicata*. As either the plea raised is negatived or such plea ought to have been raised or was not raised in the previous round of litigation. Section 24 of the Act of 2013 does not supersede or annul the court's decision and the provisions cannot be misused to reassert such claims once over again. Once Panchnama has been drawn and by way of drawing the Panchnama physical possession has been taken, the case cannot be reopened under the guise of section 24 of Act of 2013.

99. Section 24 is not intended to come to the aid of those who first deliberately refuse to accept the compensation, and then indulge in ill-advised litigation, and often ill-motivated dilatory tactics, for decades together. On the contrary, the section is intended to help those who have not been offered or paid the compensation despite it being the legal obligation of the acquiring body so to do, and/or who have been illegally deprived of their possession for five years or more; in both the scenarios, fault/cause not being attributable to the landowners/claimants.

100. We are of the view that stale or dead claims cannot be the subject-matter of judicial probing under section 24 of the Act of 2013. The provisions of section 24 do not invalidate those judgment/orders of the courts where under rights/claims have been lost/negatived, neither do they revive those rights which have come barred, either due to inaction or otherwise by operation of law. Fraudulent and stale claims are not at all to be raised under the guise of section 24. Misuse of provisions of section 24(2) cannot be permitted. Protection by the courts in cases of such blatant misuse of the provisions of law could never have been the intention behind

enacting the provisions of section 24 (2) of the 2013 Act; and, by the decision laid down in *Pune Municipal Corporation* (supra), and this Court never, even for a moment, intended that such cases would be received or entertained by the courts.

IN RE: QUESTION NOS. IV AND V

101. Question Nos. IV and V have been referred to in *Yogesh Neema & Ors. v. State of M.P. & Ors*. (supra) by this Court relating to correctness of the decision in *Shree Balaji Nagar Residential Association v. State of Tamil Nadu* (supra) and conscious omission referred in para 11 of the said judgment makes any substantial difference to the legal position with regard to the exclusion or inclusion of the period covered by an interim order of the Court and applicability of the principle of "*actus curiae neminem gravabit*" and its effect on Section 24(3) of Act of 2013.

102. In *Yogesh Kumar & Ors. v. State of M.P.*, this Court has doubted the correctness of decision in *Shree Balaji Nagar Residential Association* (supra) in which this Court has observed:

> "11. From a plain reading of Section 24 of the 2013 Act, it is clear that Section 24(2) of the 2013 Act does not exclude any period during which the land acquisition proceedings might have remained stayed on account of stay or injunction granted by any Court. In the same Act, the proviso to Section 19(7) in

> the context of limitation for publication of declaration under Section 19(1) and the Explanation to Section 69(2) for working out the market value of the land in the context of delay between preliminary notification under Section 11 and the date of the award, specifically provide that the period or periods during which the acquisition proceedings were held up on account of any stay or injunction by the order of any Court be excluded in computing the relevant period. In that view of the matter, it can be safely concluded that the legislature has consciously omitted to extend the period of five years indicated in Section 24(2) even if the proceedings had been delayed on account of an order of stay or injunction granted by a Court of law or for any reason. Such *casus omissus* cannot be supplied by the Court in view of law on the subject elaborately discussed by this Court in *Padma Sundara Rao v. State of T.N.* (2002) 3 SCC 533.
>
> 12. Even in the Land Acquisition Act of 1894, the legislature had brought about amendment in Section 6 through an Amendment Act of 1984 to add Explanation I for the purpose of excluding the period when the proceeding suffered stay by an order of the Court, in the context of limitation provided for publishing the declaration under Section 6(1) of the Act. To a similar effect was the Explanation to Section 11-A which was added by Amendment Act 68 of 1984. Clearly, the legislature has, in its wisdom, made the period of five years under Section 24(2) of the 2013 Act absolute and unaffected by any delay in the proceedings on account of any order of stay by a Court. The plain wording used by the legislature are clear and do not create any ambiguity or conflict. In such a situation, the Court is not required to depart from the literal rule of interpretation."

In *Shree Balaji* (supra) a Division Bench of this Court has opined that their conscious omission made by the legislature in section 24(2) of Act, 2013 to exclude the period covered by the interim order of the Court staying the acquisition proceedings, this Court has observed that in the Act of 1894 by making amendment

www.taxcode.in

of the provisions contained in sections 6 and 11A by providing extension of period of limitation the period during which interim order of the court has operated has been excluded. It has not been so provided in Section 24(2), reference has also been made in Shree Balaji, to the decision of a 3-Judge Bench of this Court in *Union of India v. Shiv Raj* (2014) 6 SCC 564. The Division Bench in *Yogesh Kumar & Ors. v. State of Madhya Pradesh and Ors*. while referring the matter to the larger Bench has observed that in *Union of India & Anr. v. Shiv Raj* (supra), there is no view expressed on the question whether the period during which the award had remained stayed, should be excluded for the purpose of consideration of the provisions of section 24(2) of the Act of 1894. A doubt has been expressed as to the correctness of the decision in *Shree Balaji* (supra) on the ground that it is an established principle of law that the act of court cannot be construed to cause prejudice to any of the contesting parties in litigation which is expressed in the maxim '***actus curiae neminem gravabit***'.

EFFECT OF INTERIM ORDER OF A COURT

103. It was contended on behalf of the landowners that there was interim stay only with respect to obtaining the possession and not

www.taxcode.in

with respect to payment of compensation. Thus compensation ought to have been paid. While raising aforesaid submission the basic concept of acquisition under 1894 Act is ignored and overlooked as right to receive compensation is a statutory right and that comes into being only when the Government takes possession of the property acquired. It is a '*right in debitum in praesenti*', and not dependent on the quantum of the compensation, either by the Land Acquisition Officer under section 11 of the Act or by Court under section 26 of the Act of 1894. Section 17(1) also provides that compensation has to be offered when the possession is taken and in case interim stay on possession is obtained in any litigation or orders of status quo and or such other order is passed, it is not open to such persons to contend that they ought to have been paid the compensation notwithstanding that they have been resisting the acquisition and taking of possession.

104. In our opinion, when there is interim stay with respect to possession or order of status quo or stay on further proceedings etc., there is no justification for authorities to proceed any further with respect to payment of compensation or otherwise as these obligations are intertwined in the scheme of land acquisition.

Everything stands still till the interim order is vacated. There are cases also in which we have come across that the High Court in writ petition has illegally set aside the acquisition on impermissible reasons and during the pendency of the writ appeal or matter before this Court, the provisions of Act of 2013 have come into force. Such matters have to be decided on their own merits and the benefit of any illegal quashment of land acquisition by the High Court cannot come in the way of adjudication of the dispute on merits considering situation when it was filed as Act does not cover cause of illegal order, in view of the provisions contained in repeal and saving in section 114 of the Act of 2013 read with and section 6(e) of the General Clauses Act and no different intention appears in such matters in view of provisions contained in section 24 of the Act of 2013.

105(a). In *Abhey Ram (Dead) by LRs. & Ors. v. Union of India & Ors*. (1997) 5 SCC 421, this Court considered the extended meaning of words "stay of the action or proceedings" and referring to various decisions observed that any type of the orders passed by this Court would be an inhibitive action on the part of the authorities to proceed further. In said decision this Court has observed thus :

"9. Therefore, the reason given in B.R. Gupta v. U.O.I. and Ors. 37(1989) DLT 150 are obvious with reference to the quashing of the publication of the declaration under Section 6 vis-a-vis the writ petitioners therein. The question thus arise for consideration is: whether the stay obtained by some of the persons who prohibited the respondents from publication of the declaration under Section 6 would equally be extendible to the cases relating to the appellants? We proceed on the premise that the appellants had not obtained any stay of the publication of the declaration but since the High Court in some of the cases has, in fact, prohibited them as extracted hereinbefore, from publication of the declaration, necessarily, when the Court has not restricted the declaration in the impugned orders in support of the petitioners therein, the officers had to hold back their hands till the matters are disposed of. In fact, this Court has given extended meaning to the orders of stay or proceeding in various cases, namely, Yusufbhai Noormohmed Nendoliya v. State of Gujarat and Anr. AIR1991SC2153;Hansraj Jain v. State of Maharashtra and Ors. (1993) 4 JT 360; Sangappa Gurulingappa Sajjan v. State of Kamataka and Ors. (1994) 4 SCC 145; Gandhi Grah Nirman Sahkari Samiti Ltd. Etc. Etc. v. State of Rajasthan and Ors.JT(1993) 3 194; G. Narayanaswamy Reddy (dead) by Lrs. and Anr. v. Govt. of Karnataka and Anr. JT (1991) 312 and Roshnara Begum Etc. v. U.O.I. and Ors.(1986) 1 apex Dec 6.<u>The words "stay of the action or proceeding" have been widely interpreted by this Court and mean that any type of the orders passed by this Court would be an inhibitive action on the part of the authorities to proceed further</u>. When the action of conducting an enquiry under Section 5-A was put in issue and the declaration under Section 6 was questioned, necessarily unless the Court holds that enquiry under Section 5-A was properly conducted and the declaration published under Section 6 to be valid, it would not be open to the officers to proceed further into the matter. As a consequence, the stay granted in respect of some would be applicable to others also who had not obtained stay in that behalf. We are not concerned with the correctness of the earlier direction with regard to Section 5-A enquiry and consideration of objections as it was not challenged by the respondent union. We express no opinion on its correctness, though it is open to doubt."

(emphasis supplied)

105(b). In *Om Parkash v. Union of India & Ors*. (2010) 4 SCC 17, this Court observed thus :

> "72. Thus, in other words, the interim order of stay granted in one of the matters of the landowners would put complete restraint on the respondents to have proceeded further to issue notification under Section 6 of the Act. Had they issued the said notification during the period when the stay was operative, then obviously they may have been hauled up for committing contempt of court. The language employed in the interim orders of stay is also such that it had completely restrained the respondents from proceeding further in the matter by issuing declaration/ notification under Section 6 of the Act."
>
> (emphasis supplied)

105(c). In *Shiv Raj* (supra), it was noted by this Court that there was stay of dispossession when the writ petition was pending but this Court passed no interim order. There was no stay for the last 7 years and thereafter respondent took no action in pursuance of the award. That was also one of the distinguishing features of *Shiv Raj*'s case (supra) and it was largely based upon circular issued on the basis of the opinion of the Solicitor General.

105(d). A Three-Judge Bench of this Court in *Suresh Chand v. Gulam Chisti* (1990) 1 SCC 593, while referring to *Atma Ram Mittal v. Ishwar Singh Punia* (1988) 4 SCC 284, had observed:

> "17. It was argued that the words 'commencement of this Act' should be construed to mean the date on which the moratorium period expired and the Act became applicable to the demised buildings. Such a view would require this Court to give different meanings to the same expression appearing at two places in the same section. The words 'on the date of commencement of this Act' in relation to the pendency of the suit would mean 15th July 1972 as held in Om Prakash Gupta (supra) but the words 'from such date of commencement' appearing immediately thereafter in relation to the deposit to be made would have to be construed as the date of actual application of the act at a date subsequent to 15th July 1972. Ordinarily the rule of construction is that the same expression where it appears more than once in the same statute, more so in the same provision, must receive the same meaning unless the context suggests otherwise Besides, such an interpretation would render the use of prefix 'such' before the word 'commencement' redundant. Thirdly such an interpretation would run counter to the view taken by this Court in Atma Ram Mittal's case (supra) wherein it was held that no man can be made to suffer because of the court's fault or court's delay in the disposal of the suit. To put it differently if the suit could be disposed of within the period of ten years, the tenant would not be entitled to the protection of Section 39 but if the suit is prolonged beyond ten years the tenant would be entitled to such protection. Such an interpretation would encourage the tenant to protract the litigation and if he succeeds in delaying the disposal of the suit till the expiry of ten years he would secure the benefit of Section 39, otherwise not. We are, therefore, of the opinion that it is not possible to uphold the argument."
>
> (emphasis supplied)

105(e). A Constitution Bench of this Court in *Shyam Sunder & Ors. v. Ram Kumar & Anr.* (2001) 8 SCC 24, held that substantive rights of the parties are to be examined on the date of the suit unless the legislature makes such rights retrospective. This Court observed:

"28. From the aforesaid decisions the legal position that emerges is that when a repeal of an enactment is followed by a fresh legislation such legislation does not affect the substantive rights of the parties on the date of suit or adjudication of suit unless such a legislation is retrospective and a court of appeal cannot take into consideration a new law brought into existence after the judgment appealed from has been rendered because the rights of the parties in an appeal are determined under the law in force on the date of suit. However, the position in law would be different in the matters which relate to procedural law but so far as substantive rights of parties are concerned they remain unaffected by the amendment in the enactment. We are, therefore, of the view that where a repeal of provisions of an enactment is followed by fresh legislation by an amending Act such legislation is prospective in operation and does not affect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment. We are further of the view that there is a presumption against the retrospective operation of a statue and further a statute is not to be construed to have a greater retrospective operation than its language renders necessary, but an amending act which affects the procedure is presumed to be retrospective unless amending act provides otherwise. We have carefully looked into new substituted section 15 brought in the parent Act by Amendment Act 1995 but do not find it either expressly or by necessary implication retrospective in operation which may affect the right of the parties on the date of adjudication of suit and the same is required to be taken into consideration by the appellate Court. In Shanti Devi (Smt) and another vs. Hukum Chand AIR 1996 SC 3525 this Court had occasion to interpret the substituted section 15 with which we are concerned and held that on a plain reading of section 15 it is clear that it has been introduced prospectively and there is no question of such section affecting in any manner the judgment and decree passed in the suit for pre-emption affirmed by the High Court in the second appeal. We are respectfully in agreement with the view expressed in the said decision and hold that the substituted Section 15 in the absence of anything in it to show that it is retrospective, does not affect the right of the parties which accrued to them on the date of suit or on the date of passing of the decree by the Court of the first instance. We are also of the view that present appeals are unaffected by change in law in so far it related to determination of the

> substantive rights of the parties and the same are required to be decided in light of law of preemption as it existed on the date of passing of the decree."
>
> (emphasis supplied)

105(f). In *Dau Dayal v. State of Uttar Pradesh*, AIR 1959 SC 433, it was observed that in case complaint has been filed within time and in case issue of process is permitted by the court, it was held that it would be an unfortunate state of the law if the trader whose rights had been infringed and who takes up the matter promptly before the criminal court, is nevertheless denied redress owing to the delay in the issue of process which occurs in court. The Court observed:

> "6.It will be noticed that the complainant is required to resort to the Court within one year of the discovery of the offence if he is to have the benefit of proceeding under the Act. That means that if the complaint is presented within one year of such discovery, the requirements of Section 15 are satisfied. The period of limitation, it should be remembered, is intended to operate against the complainant and to ensure diligence on his part in prosecuting his rights, and not against the Court. Now, it will defeat the object of the enactment and deprive traders of the protection which the law intended to give them if we were to hold that unless process is issued on their complaint within one year of the discovery of the offence, it should be thrown out. <u>It will be an unfortunate state of the law if the trader whose rights had been infringed and who takes up the matter promptly before the Criminal Court is, nevertheless, denied redress owing to the delay in the issue of process which occurs in Court</u>." (emphasis supplied)

105(g). This Court in *Sarah Mathew v. Institute of Cardio Vascular Diseases*, (2014) 2 SCC 62, relied upon decision in *DauDayal* (supra) and observed:

> "29. Section 473 reads as under:
>
> > 473. Extension of period of limitation in certain cases. - Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.
>
> 37. We are inclined to take this view also because there has to be some amount of certainty or definiteness in matters of limitation relating to criminal offences. If, as stated by this Court, taking cognizance is application of mind by the Magistrate to the suspected offence, the subjective element comes in. Whether a Magistrate has taken cognizance or not will depend on facts and circumstances of each case. A diligent complainant or the prosecuting agency which promptly files the complaint or initiates prosecution would be severely prejudiced if it is held that the relevant point for computing limitation would be the date on which the Magistrate takes cognizance. The complainant or the prosecuting agency would be entirely left at the mercy of the Magistrate, who may take cognizance after the limitation period because of several reasons; systemic or otherwise. It cannot be the intention of the legislature to throw a diligent complainant out of the court in this manner. Besides it must be noted that the complainant approaches the court for redressal of his grievance. He wants action to be taken against the perpetrators of crime. The courts functioning under the criminal justice system are created for this purpose. <u>It would be unreasonable to take a view that delay caused by the court in taking cognizance of a case would deny justice to a diligent complainant</u>. Such an interpretation of Section 468 of the Code of Criminal Procedure would be unsustainable and would render it unconstitutional. <u>It is well settled that a court of law would interpret a provision which would help</u>

> sustaining the validity of the law by applying the doctrine of reasonable construction rather than applying a doctrine which would make the provision unsustainable and ultra vires the Constitution. (U.P. Power Corporation Ltd. v. Ayodhaya Prasad Mishra)."
>
> (emphasis supplied)

106. When once the court has restrained the State authorities to take possession, or to maintain status quo they cannot pay the amount or do anything further, as such the consequences of interim orders cannot be used against the State. It is basic principle that when a party is disabled to perform a duty and it is not possible for him to perform a duty, is a good excuse. It is a settled proposition that one cannot be permitted to take advantage of his own wrong. The doctrine ***"commodum ex-injuria sua Nemo habere debet***" means convenience cannot accrue to a party from his own wrong. No person ought to have advantage of his own wrong. A litigant may be right or wrong. Normally merit of lis is to be seen on date of institution. One cannot be permitted to obtain unjust injunction or stay orders and take advantage of own actions. Law intends to give redress to the just causes; at the same time, it is not its policy to foment litigation and enable to reap the fruits owing to the delay caused by unscrupulous persons by their own actions by misusing the process of law and dilatory tactics.

107. In *Suresh Chandra v. Gulam Chisti* (supra), it has been laid down that no man can be made to suffer because of court's faults or court's delay in disposal of suits. It was held that in case it could not be the argument that if the suit prolonged beyond 10 years, tenant would be entitled to protection and if disposed of within 10 years, tenant would not be entitled to the protection. The argument on the rights based on gains of delay of litigation was rejected and such party could not take the benefit of change in law.

CASUS OMISSUS:

108. It was urged that there was *casus omissus* while not excluding the period of interim stay in the provisions of section 24. While Parliamentary Committee discussed the matter, Delhi Government has put forward its case that the period spent during the stay should be excluded and such provision be inserted in section 24. Later on, by way of Ordinance it was to be incorporated as the second proviso, the Ordinance has lapsed. It was also urged that it is a case of *casus omissus* as wherever the legislature wanted exclusion of stay period in section 19(7) of the Act of 2013, specific provision has been made for exclusion of the period spent during

the currency of stay and injunction order. Section 19 of the new Act corresponds to section 6 of the Act of 1894. It was also urged that there is also a provision made in the Explanation appended to section 69(2) to exclude the period spent during the stay/injunction. Section 69 deals with determination of amount of compensation to be awarded and interest thereupon.

109. We have gone through the Minutes of the Parliamentary Committee; it has simply noted the views of the concerned Government/authorities. The report of the Standing Committee on rural development simply mentions in the recommendations that the Committee would like the Government to re-examine the issue as the acquisition, which has been made, should not lapse. Committee has noted the suggestions. Whether it was necessary to incorporate such a provision was not gone into by the Committee. Its recommendation is bald. Though the Ordinance had been promulgated, the second proviso was to be added for exclusion of the time of stay. Proviso also wanted to validate deposit in treasury to remove the basis of decision of *Pune Municipal Corporation* (supra). That would not mean that in the absence of addition of proviso, the actual legal position could be ignored. The position of

www.taxcode.in

law discussed by us makes it clear that it cannot be said to be a *casus omissus* and merely because certain provisions have been made in sections 19 and 69 excluding the period of stay, it would not mean that in the provisions of section 24, there is *casus omissus* it is not to be readily inferred. In the provisions contained in section 19 of the Act of 2013 there is prescription of the period of limitation in which a declaration has to be issued, it was equivalent to section 6 of the Act of 1894, as such the provision of exclusion has been made alike the previous provision, so also in section 69. Section 24 as couched did not contemplate providing cover to the litigation and its fruits to be reaped. The absence of provision for excluding the period of stay/ injunction of a Court order does not at all affect the provision of section 24(2) of the Act of 2013. It intended that authority should not keep pending acquisition due to laxity on their part for five years or more. It never intended to apply in case they were not able to perform obligation due to court order or conduct of landowners. Obviously the legal provisions have to be interpreted in the light of the settled principles of common law unless they are excluded, and in case a person is litigating for several decades, non-acceptance of compensation and questioning

the acquisition, cannot be permitted to ask for compensation or claim lapse under 2013 Act.

110. In *Shivraj* (supra), this court did not consider the question of exclusion of the time. In *Karnail Kaur* (supra), and in *Balaji Nagar Residential Association* (supra), various aspects, having a bearing on the issue, were not considered. Thus, they cannot be said to be laying down the correct law.

111. The landowners placed reliance on a decision of this Court, rendered in *Padma Sundara Rao (Dead) & Ors. v. State of Tamil Nadu & Ors.*, (2002) 3 SCC 533, in which this court considered casus omissus and observed:

> "12. The rival pleas regarding re-writing of statute and casus omissus need careful consideration. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the Legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lehigh Valley Coal Co. v. Yensavage 218 FR 547). The view was reiterated in Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama (1990)1SCC277 .
>
> 13. In Dr. R. Venkatchalam and Ors. etc. v. Dv. Transport

Commissioner and Ors. etc. [1977] 2 SCR 392 it was observed that Courts must avoid the danger of apriority determination of the meaning of a provision based on their own pre-conceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

14. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary.

[See Rishabh Agro Industries Ltd. v. P.N.B Capital Services Ltd. (2000)5SCC515]. The legislative casus omissus cannot be supplied by judicial interpretative process. Language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in Narasimhaiah's case (supra). In Nanjudaiah's case (supra), the period was further stretched to have the time period run from date of service of High Court's order. Such a view cannot reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only Clauses (i) and/or (ii) of the proviso to Section 6(1), but also by a non-prescribed period. Same can never be the legislative intent.

15. Two principles of construction - one relating to casus omissus and the other in regard to reading the statute as a whole - appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute.

This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous

results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in Artemiou v. Procopiou (1966 1 QB 878), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in Luke v. I.R.C. 1966 AC 557 where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".]

16. The plea relating to applicability of the stare decisis principles is clearly unacceptable. The decision in K. Chinnathambi Gounder (supra) was rendered on 22.6.1979 i.e. much prior to the amendment by 1984 Act. If the Legislature intended to give a new lease of life in those cases where the declaration under Section 6 is quashed, there is no reason why it could not have done so by specifically providing for it. The fact that legislature specifically provided for periods covered by orders of stay or injunction clearly shows that no other period was intended to be excluded and that there is no scope for providing any other period of limitation. The maxim 'actus curiae neminem gravabit' highlighted by the Full Bench of the Madras High Court has no application to the fact situation of this case.
17. The view expressed in Narasimhaiah's case (supra) and Nanjudaiah's case (supra), is not correct and is over-ruled while that expressed in A.S. Naidu's case (supra) and Oxford's case (supra) is affirmed."

In *Padma Sundara Rao* (supra), this court considered the period of limitation for issuance of declaration under section 6 of the Act of 1894. It was observed that the language of section 6 was plain and unambiguous; there was no scope for reading something into it, as had been done in *N. Narasimhaiah v. State of Karnataka*,

www.taxcode.in

(1996) 3 SCC 88. In *State of Karnataka v. D.C. Nanjudaiah*, (1996) 10 SCC 619, the period had been stretched further, so as to have the time period run from date of service of the High Court's order. This Court, in *Padma SundaraRao* (supra), held that such a view could not be reconciled with the language of section 6(1), and in this regard, further observed, that explanation to section 6 excluded only that period during which any action or proceeding, initiated in pursuance of the notification issued under section 4 (1), had been stayed by an order of a court. When the legislature has specifically provided for the periods covered by the order of stay and injunction, the Court observed no other period could be said to be intended to be excluded, by providing time period to run from date of service of the High Court's order; in that, it was not open to the court to add to that period.

112. The question for consideration in *Padma Sunder Rao* (supra) was entirely different from what we are concerned with. In the instant case, the question is not of the exclusion of period, but is of the application of the Common Law maxims, and of what it is that section 24 of the Act of 2013 intends; the issue before us is not as to add to the period of limitation, with which the Court in the case

of *Padma Sunder Rao* (supra) was concerned. Thus, the ratio of the said decision has a different field to operate on, and consequently, renders no support to the submission raised on behalf of the landowners.

113. Reliance has been placed by land owners in *Rana Girders Ltd. v. Union of India* (2013) 10 SCC 746 which is relied upon in *Union of India v. Sicom Limited & Ors.* (2009) 2 SCC 121. This court has observed that the statutory provision would prevail upon the common law principles thus:

> "9. Generally, the rights of the crown to recover the debt would prevail over the right of a subject. Crown debt means the debts due to the State or the king; debts which a prerogative entitles the Crown to claim priority for before all other creditors. [See Advanced Law Lexicon by P. Ramanatha Aiyar (3rd Edn.) p. 1147]. Such creditors, however, must be held to mean unsecured creditors. Principle of Crown debt as such pertains to the common law principle. A common law which is a law within the meaning of Article 13 of the Constitution is saved in terms of Article 372 thereof. Those principles of common law, thus, which were existing at the time of coming into force of the Constitution of India are saved by reason of the aforementioned provision. A debt which is secured or which by reason of the provisions of a statute becomes the first charge over the property having regard to the plain meaning of Article 372 of the Constitution of India must be held to prevail over the Crown debt which is an unsecured one.
>
> 10. It is trite that when a Parliament or State Legislature makes an enactment, the same would prevail over the common law. <u>Thus, the common law principle which was existing on the date of coming into force of the Constitution</u>

> of India must yield to a statutory provision. To achieve the same purpose, the Parliament as also the State Legislatures inserted provisions in various statutes, some of which have been referred to hereinbefore providing that the statutory dues shall be the first charge over the properties of the tax-payer. This aspect of the matter has been considered by this Court in a series of judgments." (Emphasis supplied)

114. There is no dispute with the aforesaid proposition; and, in our opinion, the statutory provisions, contained in section 24 of the Act of 2013, do not exclude the principles of common law which we have held applicable. The principles that can be excluded are only those in respect to which, provision has been made in the statute itself or the applicability is ousted by implication.

115. The afore-extracted observations in respect of the principle of interpretation that if something is expressed in a provision, anything contrary is impliedly excluded, are themselves based on the maxim "***expressio unius est exclusio alterius***". This maxim has been held to have limit of operation and is not of universal application in *Mary Angel v. State of Tamil Nadu* (1999) 5 SCC 209. Thus, mere fact that in some of the provisions there is a mention about period of stay being excluded, cannot be taken to be conclusive that in other provisions with respect to the effect of stay not to be considered or common law maxims have no applicability

in the context of Section 24(2) of the 2013 Act. The Court in *Mary Angel* has observed :

> "19. Further, for the rule of interpretation on the basis of the maxim "expressio unius est exclusio alterius", it has been considered in the decision rendered by the Queen's Bench in the case of Dean v. Wiesengrund (1955) 2 QBD 120. The Court considered the said maxim and held that after all it is more than an aid to construction and has little, if any, weight where it is possible, to account for the "exclusiounius" on grounds other than intention to effect the "exclusioalterius". Thereafter, the Court referred to the following passage from the case of Colquhoon v. Brooks (1887) 19 QBD 400 wherein the Court called for its approval-"the maxim" 'expressiouniusestexclusioalterius' has been pressed upon us. I agree with what is said in the Court below by Wills J, about this maxim. It is often a valuable servant, but a dangerous master to follow in the construction of statutes of documents. The exclusio is often the result of inadvertence or accident, and the maxim ought not to be applied, when its application having regard to the subject matter to which it is to be applied, leads to inconsistency or injustice. In my opinion, the application of the maxim here would lead to inconsistency and injustice, and would make Section 14(1) of the Act of 1920 uncertain and capricious in its operation."(emphasis supplied)

116. In *Assistant A.C.E., Calcutta versus National Tobacco Co. Ltd. of India Ltd*, (1972) 2 SCC 560, it was held:

> "30. The question whether there was or was not an implied power to hold an enquiry in the circumstances of the case before us, in view of the provisions of Section 4 of the Act read with Rule 10-A of the Central Excise Rule, was not examined by the Calcutta High Court because it erroneously shut out consideration of the meaning and applicability of Rule 10A. The High Court's view was based on an application of the rule of construction that where a mode of performing a duty is laid down by law it must be performed in that mode or

> not at all. This rule flows from the maxim : "Expressio unius est exclusion alterius." But, as we pointed out by Wills, J., in Colquohoun v. Brooks (1888) 2 1. Q.B. D. 52 this maxim "is often a valuable servant, but a dangerous master ...." The rule is subservient to the basic principle that Courts must endeavour to ascertain the legislative intent and purpose, and then adopt a rule of construction which effectuates rather than one that may defeat these. Moreover the rule of prohibition by necessary implication could be applied only where a specified procedure is laid down for the performance of a duty. Although Rule 52 makes an assessment obligatory before goods are removed by a manufacturer, yet, neither that rule nor any other, rule, as already indicated above, has specified the detailed procedure for an assessment. There is no express prohibition anywhere against an assessment at any other time in the circumstances of a case like the one before us where no "assessment", as it is understood in Jaw, took place at all. On the other hand, Rule 10A indicates that there are residuary powers of making a demand in special circumstances not foreseen by the framers of the Act or the rules. If the assessee disputes the correctness of the demand an assessment becomes necessary to protect the interests of the assessee. A case like the one before us falls more properly within the residuary class of unforeseen cases. We think that, from the provisions of Section 4 of the Act read with Rule 10A, an implied power to carry out or complete an assessment, not specifically provided for by the rules, can be inferred. No writs of prohibition or mandamus were, therefore, called for in the circumstances of the case."

Thus, the Common Law principles, as discussed by us, cannot be ousted, to do complete justice to parties and to prevent miscarriage of justice, within purview of section 24 of the Act of 2013.

DOCTRINE OF IMPOSSIBILITY

117. In several cases it is often seen that the landowners are not

ready to accept the compensation even though they have been offered the same; they have either refused to accept or have filed writ applications questioning the land acquisitions. Further, it is also observed, that repeatedly, successive writ applications have also been filed by the persons who have purchased the property after issuance of notification under section 4 and, in some instances, even after passing of the award, possession taken and when the land has absolutely vested in the State Government, that such persons are calling into question the land acquisition. We have come across several cases when the challenges to acquisition have been negatived right up to this court but, undeterred by the same, fresh round of litigation is, thereafter, started again, with the cause again being agitated either by the same persons or by some other such purchasers. It has come to our notice that now, after the coming into force of the Act of 2013, unsavory attempts are being made to grossly misuse the process of law by moving such petitions, and asserting therein that though they themselves might not have accepted the compensation, and have refused to accept the same, but, since it has 'not been paid to them', by making deposit in court, or they have remained in the actual possession of

the land, though Panchnama of taking possession might have been drawn, as such, land acquisition has lapsed. The aforementioned assertions are being made; notwithstanding even earlier judicial finding that possession had been taken by drawing Panchnama etc. If section 24 is interpreted in the method and manner so as to reopen all the cases, notwithstanding the fact that the land owners, or as the case may be their successors-in-interest are themselves responsible for not accepting or illegally refusing to accept the compensation, or that they have, in an illegal manner, re-entered into possession of land, then it becomes, and it has, in fact, become, virtually impossible for the State Governments to save and carry into effect the much-needed acquisition of the land, at the cost of public interest, leaving it with no viable legal defense with which to save the acquisition in such proceedings made decades before.

118. Shri Patwalia has pressed into service the doctrine of '***lax non cogit ad impossibilia'*** and has urged us to consider the scope and application of the same. He argued that a law does not expect the State authorities to do what cannot possibly be performed by owing to the adamant attitude and conduct of such landowners; it

is a settled proposition of law that law does not expect a party to do the impossible. It was urged that the maxim '*impossibilium nullaobligatio est*' would come to the rescue of State authorities in such cases. The doctrine has been dealt with by this Court in *Chander Kishore Jha v. Mahabir Prasad* (1999) 8 SCC 266 thus:

> "13. In our opinion insofar as an election petition is concerned, proper presentation of an election petition in the Patna High Court can only be made in the manner prescribed by Rule 6 of Chapter XXI-E. No other mode of presentation of an election petition is envisaged under the Act or the Rules thereunder and therefore, an election petition could, under no circumstances, be presented to the Registrar to save the period of limitation. It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. [See with advantage: Nazir Ahmad v. King Emperor; Rao Shiv Bahadur Singh and Anr. v. State of Vindhya Pradesh 1954 CriLJ 910 State of Uttar Pradesh v. Singhara Singh and Ors. [1964] 4 SCR 485. An election petition under the Rules could only have been presented in the open Court upto 16.5.1995 till 4.15 P.M. (working hours of the Court) in the manner prescribed by Rule 6 (supra) either to the Judge or the Bench as the case may be to save the period of limitation. That, however, was not done. However, we cannot ignore that the situation in the present case was not of the making of the appellant. Neither the designated election Judge before whom the election petition could be formally presented in the open Court nor the Bench hearing civil applications and motions was admittedly available on 16.5.1995 after 3.15 P.M., after the Obituary Reference since admittedly the Chief Justice of the High Court had declared that "the Court shall not sit for the rest of the day" after 3.15 P.M. Law does not expect a party to do the impossible-Impossible nulla obligation est--As in the instant case, the election petition could not be filed on 16.5.1995 during the Court hours, as far all intent and purposes, the Court was closed on 16.5.1995 after 3.15 P.M."

119. In *Mohd Gazi v. State of Madhya Pradesh* (2000) 4 SCC 342 this court has laid down thus:

> "6. In the facts and circumstances of the case the maxim of equity, namely, actus curiae neminem gravabit - an act of the Court shall prejudice no man, shall be applicable. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other maxim is, lex non cogit ad impossibilia - the law does not compel a man to do which he cannot possibly perform. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases. The applicability of the aforesaid maxims has been approved by this Court in Raj Kumar Day and Ors. v. Tarapada Day and Ors. [1988] 1 SCR 118 and Gursharan Singh and Ors. v. NDMC and Ors. [1996] 1 SCR 1154."

120. Shri Patwalia has also pressed into service the maxim of Roman Law namely, '***Nemo Tenetur ad Impossibilia***' (no one is bound to do an impossibility). Claimants/ landowners are filing successive applications/ litigations for obtaining interim stay that has been granted. There is no way to make them ready to accept the compensation as once they accept the compensation their right to question the acquisition would stand wiped off. They could not even claim higher compensation in Reference Court, in case they accept the compensation without protest. It is only after accepting the compensation under protest that they can seek reference under section 18 of the Act of 1894.

www.taxcode.in

121. Learned Counsel has relied upon decision in *Industrial Finance Corporation of India Ltd. v. Cannanore Spinning and Weaving Mills Ltd.* (2002) 5 SCC 54 in which the Court observed:

> "30. The Latin Maxim referred to the English judgment "lax non cogit ad impossibilia" also expressed as "impotentia excusat legem" in common English acceptation means, the law does not compel a man to do that which he cannot possibly perform. There ought always thus to be an invincible disability to perform the obligation and the same is akin to the Roman Maxim "nemo tenetur ad impossibilia" In Broom's Legal Maxims the state of the situation has been described as below:-
>
>> "It is, then, a general rule which admits of ample practical illustration, that impotentiaexcusatlegem; where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over, there the law will in general excuse him (t) : and though impossibility of performance is, in general, no excuse for not performing an obligation which a party has expressly undertaken by contract, yet when the obligation is one implied by law, impossibility of performance is a good excuse. **Thus in a case in which consignees of a cargo were prevented from unloading a ship promptly by reason of a dock strike**, the Court, after holding that in the absence of an express agreement to unload in a specified time there was implied obligation to unload within a reasonable time, held that the maxim lax non cogit ad impossibilia applied, and Lindley, L.J., said: "We have to do with implied obligations, and I am not aware of any case in which an obligation to pay damages is ever cast by implication upon a person for not doing that which is rendered impossible by causes beyond his control". (emphasis supplied)

122. In *HUDA v. Babeswar Kanhar* (2005) 1 SCC 191 this court has

held:

> "5. What is stipulated in Clause-4 of the letter dated 30.10.2001 is a communication regarding refusal to accept the allotment. This was done on 28.11.2001. Respondent No. 1 cannot be put to loss for the closure of the office of HUDA on 01.12.2001 and 02.12.2001 and the postal holiday on 30.11.2001. In fact he had no control over these matters. Even the logic of Section 10 of the General Clauses Act, 1897 can be pressed into service. Apart from the said Section and various provisions in various other Acts, there is the general principle that a party prevented from doing an act by some circumstances beyond his control, can do so at the first subsequent opportunity (see Sambasiva Chari v. Ramaswami Reddi (1898) (8) Madras Law Journal 265). The underlying object of the principle is to enable a person to do what he could have done on a holiday, on the next working day. Where, therefore, a period is prescribed for the performance of an act in a court or office, and that period expires on a holiday, then the act should be considered to have been done within that period if it is done on the next day on which the court or office is open. The reason is that law does not compel the performance of an impossibility. (See Hossein Ally v. Donzelle) ILR 5 Cal 906. Every consideration of justice and expediency would require that the accepted principle which underlies Section 10 of the General Clauses Act should be applied in cases where it does not otherwise in terms apply. The principles underlying are lex non cogit ad impossibilia (the law does not compel a man to do the impossible) and actus curiae neminem gravabit (the act of Court shall prejudice no man). Above being the position, there is nothing infirm in the orders passed by the Forums below. However, the rate of interest fixed appears to be slightly on the higher side and is reduced to 9% to be paid with effect from 03.12.2001, i.e., the date on which the letter was received by HUDA."
>
> (emphasis supplied)

123. In *Re: Presidential Poll*, (1974) 2 SCC 33 this court has observed:

> "……
> (v) The maxim of law impotentia excusat legem is intimately connected with another maxim of law lex non cogit ad impossibilia. Impotentia excusat legem is that when there is a necessary or invincible disability to perform the mandatory part of the law that impotentia excuses, The law does not compel one to do that which one cannot possibly perform. "Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over it, there the law will in general excuse him." Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like the act of God, the circumstances will be taken as a valid excuse. Where the act of God prevents the compliance of the words of a statute, the statutory provision is not denuded of its mandatory character because of supervening impossibility caused by the act of God. (Sec Broom's Legal Maxims 10th Edition at pp. 1962-63 and Craies on Statute Law 6th Ed. p. 268)".
>
> (emphasis supplied)

124. In *Standard Chartered Bank v. Directorate of Enforcement,* AIR 2005 (2) SC 2622, this court held that there is an acceptable legal maxim that law does not compel a man to do that which cannot possibly be performed ***"impotentia excusat legem"***. Basic principle of law is that law compels no impossibility. It was urged that in case the landowners create such circumstances, which renders impossible performance of the statutorily prescribed formalities, such landowners couldn't take advantage of their own act or wrong.

125. In our opinion, the maxims regarding the impossibility of performance of an act may not be strictly applicable, as acts, under section 31 or 24, were capable of being performed but authorities were disabled to perform them as no fault on their part. However, the effect of Court orders, or the conduct of the landowners/claimants/ beneficiaries, is required to be considered, it was not an 'impossibility' to perform the acts in question by their very nature but the aforesaid aspect is relevant and underlying principle of inability to perform has to be considered in the backdrop of fact whether it was in the control or capacity of authority to perform actions which were possible to be performed but when it was not possible to perform or were incapacitated to perform. In such event person responsible for interdicting cannot ask him to be put in advantageous position for non-compliance of an act, which possibly would have been performed, but for such action.

The maxim ***"nullus commodum capere potest de injuria sua propria"*** i.e. 'No man can take advantage of his own wrong'.

126. The author Broom, in Legal Maxims, has discussed the maxim, and observed:

> "Tender: Again, where a creditor refuses a tender sufficient in amount, and duly made, he cannot afterwards, for purposes of oppression or extortion, avail himself of such refusal; for, although the debtor still remains liable to pay whenever required so to do, yet the tender operates in bar of any claim for damages and interest for not paying or for detaining the debt, and also of the costs of an action brought to recover the demand (y)."

A "tender" of the amount to be paid operates as a bar upon any claim for damages and interest.

127. Thus, in the context of the factual and legal scenario of the land acquisition proceedings, and of the conduct of the landowners/claimants, with which we are presently concerned, when once "tender" of the amount had been made, in any of the prescribed modes, which met with refusal to accept it and/or by the conduct of indulging in incessant litigation which, in some instances, culminated into a stay/interim order, the party which thus refused to accept the amount, indulging instead in the 'theater of the absurd', cannot turn around and contend that the other party should now be visited with the penalty for non-payment. The

author Broom, in regard to the maxim, has remarked thus:

> "Further, we may remark that the maxim which precludes a man from taking advantage of his own wrong is, in principle, closely allied to the maxim, ex dolo malo non oritur action, which is likewise of general application, and will be treated of hereafter in Chapter IX. The latter maxim is, indeed, included in that above noticed; for it is clear, that since a man cannot be permitted to take advantage of his own wrong, he will not be allowed to found a claim upon his own iniquity: nemo ex proprio dolo consequitur actionem; and, as before observed, frustra legis auxilium quaerit qui in legem committit (g)"

DOCTRINE OF *ACTUS CURIAE NEMINEM GRAVABIT.*

128. Coupled with aforesaid maxim we have to consider applicability of maxim '***actus curiae neminem gravabit'*** to the question.

In the book titled "*Selection of Legal Maxims*" by Herbert Broom, the author about the said maxim has observed:

> "This maxim "is founded upon justice and good sense; and affords a safe and certain guide for the administration of the law" (b). In virtue of it, where a case stands over for argument on account of the multiplicity of business in the Court, or for judgment from the intricacy of the question, the party ought not to be prejudiced by that delay, but should be allowed to enter up his judgment retrospectively to meet the justice of the case (c); and, therefore, if one party to an action die during a *curia advisari vult*, judgment may be entered *nunc pro tunc*, for the delay is the act of the Court, for which neither party should suffer(*d*)."

129. It is settled proposition of law that no litigant can derive the

benefit of pendency of a case in a court of law. In case any interim order is passed during the pendency of litigation it merges in the final order. In case the case is dismissed the interim order passed during its pendency is nullified automatically. It is also settled that a party cannot be allowed to take benefit of his own wrong as '***commodum ex injuria sua nemo habere debet***' *i.e.* convenience cannot accrue to a party from his own wrong. "No person ought to have advantage of his own wrong." In case litigation has been filed without any basis and interim order is passed it would be giving illegal benefit or wrongful gain for filing untenable claim. This Court in *Mrutunjay Pan v. Narmada Bala Sasmal & Anr*. AIR 1961 SC 1353 has observed :

> "…….The following three conditions shall be satisfied before S.90 of the Indian Trusts Act can be applied to a case: (1) the mortgage shall avail himself of his position as mortgagee; (2) he shall gain an advantage; and (3) the gaining should be in derogation of the right of the other persons interested in the property. The section, read with illustration ©, clearly lays down that where an obligation is cast on the mortgagee and in breach of the said obligation he purchases the property for himself, he stands in a fiduciary relationship in respect of the property so purchased for the benefit of the owner of the property. This is only another illustration of the well-settled principle that a trustee ought not to be permitted to make a profit out of the trust. <u>The same principle is comprised in the latin maxim commodum convenience cannot accrue to a party from his own wrong. To put it in other words, no one can be allowed to benefit from his own wrongful act……..</u>"
>
> (emphasis supplied)

130. It was submitted on behalf of the landowners that once the court finds prima facie case and interim order is granted, the litigant couldn't be said to be at fault. A merit ultimately examined finally in the case and is found to be meritless. In such circumstances the maxim '***actus curiae neminem gravabit***' comes to the rescue of the opposite party who has suffered due to interim order and was unable to take steps. The principle that the act of the court shall prejudice no one is clearly applicable in such a case. The court is under an obligation to undo a wrong done to a party by the act of the court and to make restitution under inherent powers. Thus any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralized, as institution of litigation cannot be permitted to confer any advantage on a suitor from the delayed action by the act of the court. Nor it was so contemplated by Section 24 of Act of 2013. It is not the policy of law that those who are litigating, obtained interim orders though ultimately their claim may not be tenable. Gain due to delay or tainted act is not permissible and sufferance of person who has abided by law is not permissible. The provisions of section 24 aim only at expeditious disposal of acquisition authorities, lethargy

of authorities for five years or more is not tolerated by legislature the provision does not provide cover or protect such situation of pendency at litigation and does not confer rights on litigants.

131(a). This Court in *GTC Industries Ltd. v. Union of India* (1998) 3 SCC 376 has observed that while vacating stay it is court's duty to account for the period of delay and to settle equities, the court observed:

> "16. Section 11AA of the Central Excises and Salt Act, 1944 was added on 26th of May, 1995 by the Finance Act, 1995. This section provides, inter alia, for interest on delayed payment of duty. Where a person chargeable with duty determined under sub-section (2) of Section 11A fails to pay such duty within three months from the date of such determination, he shall pay, in addition to the duty, interest at such rate not below 10% and not exceeding 30% per annum as is for the time being fixed by the board on such duty from the date immediately after the expiry of the said period of three months till the date of payment of such duty. Prior to the insertion of Section 11AA, there was no specific provision in the Central Excises and Salt Act, 1944 under which the department could recover interest on delayed payment of duty. But this Court had, in suitable cases, directed payment of interest. Two such decisions have been brought to our notice. In the case of *KashyapZip Ind vs. Union of India & Ors.* 1993 (64) ELT 161(SC), the recovery of disputed duty had been stayed by an interim order of the High Court in the writ petition. While dismissing the writ petition and revoking the Stay order, the High Court directed the appellant to pay interest at 17.5% per annum from the date of the order of Stay till recovery. This Court reduced the rate of interest to 12% per annum and on the facts and circumstances directed that this amount should be recovered from 1st of January, 1985 till payment, this being the year in which the matter was Finally decided by this Court as a result of which the writ petition

www.taxcode.in

came to be dismissed by the High Court." (emphasis supplied)

131(b). This Court in *Jaipur Municipal Corpn. v. C.L. Mishra (2005) 8 SCC 423* has observed that interim order merges in final order, it cannot have independent existence, cannot survive beyond is. Thus, no benefit of interim order can be taken.

131(c). This Court in *Ram Krishna Verma v. State of U.P.* (1992) 2 SCC 620, relying upon earlier decision in *Grindlays Bank Ltd. v. Income Tax Officer, Calcutta* (1980) 2 SCC 191, held that no one can suffer from the act of the court and in case an interim order has been passed and petitioner takes advantage thereof and ultimately petition is found to be without merit and is dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralized.

131(d). This Court in *Mahadeo Savlaram Shelke v. Pune Municipal Corporation* (1995) 3 SCC 33 has observed that the court can under inherent jurisdiction '***ex debito justitiae'*** has a duty to mitigate the damage suffered by the defendants by the act of the court. Such action is necessary to put a check on abuse of process of court.

131(e). In *Amarjeet Singh v. Devi Ratan & Ors.* (2010) 1 SCC 417 this Court in Ramakrishna Verma has held that no person can suffer from the act of court and unfair advantage of interim order must be neutralized, the court observed:

> "In *Ram Krishna Verma v. State of U.P.*, this Court examined the similar issue while placing reliance upon its earlier judgment in *Grindlays Bank Ltd. v. ITO,* (1980) 2 SCC 191, and held that no person can suffer from the act of the Court and in case an interim order has been passed and the Petitioner *takes advantage thereof and ultimately the petition is found to be without any merit and is dismissed, the interest of justice requires that any underserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralized*."
>
> (emphasis supplied)

131(f). This Court has considered the maxim of '***actus curiae neminem gravabit***' in *Karnataka Rare Earth & Anr. v. Senior Geologist, Department of Mines & Geology & Anr.* (2004) 2 SCC 783, it was emphasized that parties should be placed in the same position they would have been but for courts order and observed :

> "10. ….the doctrine of *actus curiae neminem gravabit* and held that the doctrine was not confined in its application only to such acts of the Court which were erroneous; the doctrine is applicable to all such acts as to which it can be held that the Court would not have so acted had it been correctly apprised of the facts and the law. It is the principle of restitution which is attracted. When on account of an act of the party, persuading the Court to pass an order, which at the end is held as not sustainable, has resulted in one party gaining advantage which it would not have otherwise earned, or the other party has suffered an improvement which it would not have suffered but

for the order of the Court and the act of such party, then the successful party finally held entitled to a relief, assessable in terms of money at the end of the litigation, is entitled to be compensated in the same manner in which the parties would have been if the interim order of the Court would not have been passed. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the Court, or (b) to make restitution for what it has lost.

11. In the facts of this case, in spite of the judgment of the High Court, if the appellants would not have persuaded this Court to pass the interim orders, they would not have been entitled to operate the mining leases and to raise and remove and disposed of the minerals extracted. But for the interim orders passed by this Court, there is no difference between the appellants and any person raising, without any lawful authority, any mineral from any land, attracting applicability of Sub-section (5) of Section 21. As the appellants have lost from the Court they cannot be allowed to retain the benefit earned by them under the interim orders of the Court. *The High Court has rightly held the appellants liable to be placed in the same position in which they would have been if this Court would not have protected them by issuing interim orders*. All that the State Government is demanding from the appellants is the price of the minor minerals. Rent, royalty or tax has already been recovered by the State Government and, therefore, there is no demand under that Head. No penal proceedings, much less any criminal proceedings, have been initiated against the appellants. It is absolutely incorrect to contend that the appellants are being asked to pay any penalty or are being subjected to any penal action. It is not the case of the appellants that they are being asked to pay a price more than what they have realised from the exports or that the price appointed by the respondent State is in any manner arbitrary or unreasonable……..”

(emphasis supplied)

131(g). The principle “***Actus Curia Neminem Gravabit***” is essence of administration of law and good sense. It has been considered in *A.R. Antulay v. R.S. Nayak and Ors.*, AIR 1988 SC

1531 thus:

> "83. This case has caused us considerable anxiety. The appellant-accused has held an important position in this country, being the Chief Minister of a premier State of the country. He has been charged with serious criminal offences. His trial in accordance with law and the procedure established by law would have to be in accordance with the 1952 Act. That could not possibly be done because of the directions of this Court dated 16th February 1984, as indicated above. It has not yet been found whether the appellant is guilty or innocent. It is unfortunate, unfortunate for the people of the State, unfortunate for the country as a whole, unfortunate for the future working of democracy in this country which, though is not a plant of an easy growth yet is with deep root in the Indian polity that delay has occurred due to procedural wrangles. The appellant may be guilty of grave offences alleged against him or he may be completely or if not completely to a large extent, innocent. Values in public life and perspective of these values in public life have undergone serious changes and erosion during the last few decades. What was unheard of before is common place today. A new value orientation is being undergone in our life and in our culture. We are at the threshold of the cross-roads of values. It is, for the sovereign people of the country to settle those conflicts yet the Courts have vital roles to play in such matters. With the avowed object of speedier trial the case of the appellant had been transferred to the High Court but on grounds of expediency of trial, he cannot be subjected to a procedure unwarranted by law, and contrary to the constitutional provisions. The appellant may or may not be an ideal politician. It is a fact, however, that the allegations have been brought against him by a person belonging to a political party opposed to his but that is not the decisive factor. If the appellant Shri Abdul Rehman Antulay has infringed law, he must be dealt with in accordance with the law. We proclaim and pronounce that no man is above the law, but at the same time reiterate and declare that no man can be denied his rights under the Constitution and the laws. He has a right to be dealt with in accordance with the law and not in derogation of it. this Court, in its anxiety to facilitate the parties to have a speedy trial gave directions on 16th February 1984 as mentioned hereinbefore without conscious awareness of the exclusive jurisdiction of the Special Courts under the 1952

Act and that being the only procedure established by law, there can be no deviation from the terms of Article 21 of the Constitution of India. That is the only procedure under which it should have been guided. By reason of giving the directions on 16th February 1984 this Court had also unintentionally caused the appellant the denial of rights under Article 14 of the Constitution by denying him the equal protection of law by being singled out for a special procedure not provided for by law. When these factors are brought to the notice of this Court, even if there are any technicalities this Court should not feel shackled and decline to rectify that injustice or otherwise the injustice noticed will remain forever a blot on justice. It has been said long time ago that "Actus Curiae Neminem Gravabit"- an act of the Court shall prejudice no man. This maxim is founded upon justice and good sense and affords a safe and certain guide for the administration of the law.

104. This being the apex Court, no litigant has any opportunity of approaching any higher forum to question its decisions. Lord Buck-master in 1917 A.C. 170 stated:

All rules of court are nothing but provisions intended to secure proper administration of justice. It is, therefore, essential that they should be made to serve and be subordinate to that purpose.

this Court in Gujarat v. Ram Prakash [1970]2SCR875 reiterated the position by saying:

Procedure is the handmaid and not a mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it, like all rules of procedure, this rule demands a construction which would promote this cause.

Once judicial satisfaction is reached that the direction was not open to be made and it is accepted as a mistake of the court, it is not only appropriate but also the duty of the Court to rectify the mistake by exercising inherent powers. Judicial opinion heavily leans in favour of this view that a mistake of the Court can be corrected by the Court itself without any fetters. This is on the principle as indicated in Alexander Rodger's case (supra). I am of the view that in the present situation, the Court's inherent powers can be exercised to remedy the

> mistake. Mahajan, J. speaking for a four-Judge Bench in Kishan Deo v. Radha Kissen [1953]4SCR136 stated:
>
> The Judge had jurisdiction to correct his own error without entering into a discussion of the grounds taken by the decree-holder or the objections raised by the judgment-debtors."

131(h).The Constitution Bench in *Sarah Mathew v. Institute of Cardio Vascular Diseases*, (2014) 2 SCC 62, has considered the aforesaid maxim; it observed:

> "39. As we have already noted in reaching this conclusion, light can be drawn from legal maxims. Legal maxims are referred to in Bharat Kale, Japani Sahoo and Vanka Radhamanohari (Smt.). The object of the criminal law is to punish perpetrators of crime. This is in tune with the well known legal maxim 'nullum tempus aut locus occurritregi', which means that a crime never dies. At the same time, it is also the policy of law to assist the vigilant and not the sleepy. This is expressed in the Latin maxim 'vigilantibus et non dormientibus, jura subveniunt'. Chapter XXXVI of the Code of Criminal Procedure which provides limitation period for certain types of offences for which lesser sentence is provided draws support from this maxim. But, even certain offences such as Section 384 or 465 of the Indian Penal Code, which have lesser punishment may have serious social consequences. Provision is, therefore, made for condonation of delay. Treating date of filing of complaint or date of initiation of proceedings as the relevant date for computing limitation under Section 468 of the Code is supported by the legal maxim 'actus curiae neminem gravabit' which means that the act of court shall prejudice no man. It bears repetition to state that the court's inaction in taking cognizance i.e. court's inaction in applying mind to the suspected offence should not be allowed to cause prejudice to a diligent complainant. Chapter XXXVI thus presents the interplay of these three legal maxims. Provisions of this Chapter, however, are not interpreted solely on the basis of these maxims. They only serve as guiding principles."
>
> (emphasis supplied)

132. Landowners have also placed reliance *on Suptd. of Taxes, Dhubri & Ors. v. Assam Jute Supply Ltd & Ors.* (1976) 1 SCC 766:

> "17. The first contention on behalf of the State that it became impossible for the State to issue notice under Section 7(2) of the New Act within two years of the expiry of the period of return is unsound on principle and facts. The maxim lex non cogit ad impossibilia means that the law does not compel a man to do that which he cannot possibly perform. In the present appeals, the applications were moved in the High Court for stay of proceedings. The respondents challenged the validity of the Act, and, therefore, asked for an injunction restraining the State from taking proceedings under the Act. At no stage, did the State ask for variation or modification of the order of injunction. It is well known that if it is brought to the notice of a court that proceedings are likely to be barred by time by reason of any order of injunction or stay the court passes such suitable or appropriate orders as will protect the interest of the parties and will not prejudice either party. Even when certificate to appeal to this Court was granted on 1 August 1963, the State did not ask for any order for stay of operation of the judgment. That is quite often done. For the first time, on 10 August 1964 the State filed an application for stay of operation of the judgment of the High Court. The State did not take steps at the appropriate time. This Court on 28 October 1964 granted an interim order staying the operation of the High Court judgment. The interim order was made absolute on 28 January 1965 with certain conditions. The State cannot take advantage of its own wrong and lack of diligence. The State cannot contend that it was impossible to issue any notice within the period mentioned in Section 7(2) of the New Act. The State did not endeavour to obtain appropriate orders to surmount the difficulties by reason of the injunction against taking steps within the time contemplated in Section 7(2) of the New Act. The State is guilty of default. The State had remedies open to take steps by asking for modification of the order. The State had to assert the right that the State was entitled to demand taxes and the respondent was liable to pay the same. The State followed the policy of inactivity. Inactivity is not impossibility. The order injunction is not to be equated with an act of God or an action

of the enemy of the State or a general strike."

In the aforesaid case, there was the fault on part of the State. The State failed to assert rights. The State was guilty of defaults and did not take steps within time contemplated under section 7(2) of the said Act. The case turned on its own facts.

133. Reliance has also been placed in this regard on *Neeraj Kumar Sainy & Ors. v. State of UP & Ors.*, (2017) SCC Online SC 258, wherein this court has observed:

> "31. It is noticeable from the aforesaid passage that the interpretation was made in accordance with the Code and the legal maxim was taken as a guiding principle. Needless to say, it is well settled in law that no one should suffer any prejudice because of the act of the court. The authorities that we have referred to dealt with the different factual expositions. The legal maxim that has been taken recourse to cannot operate in a vacuum. It has to get the sustenance from the facts. As is manifest, after the admissions were over as per the direction of this Court, the Appellants, who seemed to have resigned to their fate, woke up to have control over the events forgetting that the law does not assist the non-vigilant. One cannot indulge in luxury of lethargy, possibly nurturing the feeling that forgetting is a virtue, and thereafter, when the time has slipped through, for it waits for none, wake up and take shelter under the maxim *"actus curiae neminem gravabit"*. It is completely unacceptable."

The case pertains to lethargy that would depend on facts of a case to what extent benefit can be derived from legal principles.

www.taxcode.in

134. An incumbent must succeed or fail in final decision in a pending litigation on what case he has set up in the petition. In case of possession has continued under the cover of the court's order or compensation could not be disbursed due to the courts order in our considered opinion the provision contained in Section 24 (2) cannot be invoked in such a situation, as such a situation is not covered under the provisions of section 24(2), as holding otherwise would amount to giving a litigant premium for his dilatory tactics in spite of there is no merit in his challenge to acquisition. In such an event no incumbents can be permitted to urge though I might have obtained stay restraining you from taking possession, though I might have refused to receive compensation or otherwise due to the court's proceedings, it was not paid/accepted. Now you must suffer due to said act of mine. This would be against all canons of justice and settled propositions of law in *Uma Devi v. State of Karnataka* (2006) 6 SCC 1 where this court has directed as one-time measure regularization of those incumbents only, those who have served for more than ten years without cover of the court's order. It was also based upon aforesaid principles that no one can be permitted to take advantage of the courts cover to put

the other party in disadvantageous position.

135. The common law principles are in fact rules of equity, justice, and sound logic. In the absence of there being prohibition in the law, these principles would be attracted. The efficacy and binding nature of such common law principles cannot be diminished or whittled down in the absence of any express prohibition in law. They are interpretation of section 24 of Act of 2013.

136. The question then arises as to what the position would be in case State authorities were, by an order of the court, restrained from taking possession, though they would have otherwise taken the possession in the absence of such an order; and, ultimately, there is no merit found in the *lis* in which challenge to acquisition had been raised and interim order had been passed. The question is whether the provisions of Section 24 (2) contemplate such a situation, and whether such period is to be excluded from within the purview of Section 24 of the Act of 2013, where the authorities have been, during the interregnum of a litigation, brought at the instance of landowner/beneficiary, restrained by the act of the

www.taxcode.in

court, interdicting the steps which would have been taken by the authorities but for such an interim order or conduct of the litigant.

137. In case of possession could not be taken, or compensation could not be paid or deposited, due to cover of courts' order or conduct of landowner, such cases provision of lapse cannot be invoked. Section 24(2), a policy of the law is not to benefit a litigant or confer undeserving benefit by involving in the *lis* and to reap fruits on the basis of possession on illegal basis without any right and often *lis* is filed in land acquisition cases one after the other and intendment of law is not to treat law-abiding incumbents differently. Operation of law and beneficial provisions of law in the Act of 2013 are not meant to benefit litigants and to permit them to reap the fruits of unworthy or frivolous litigation; and, if there is any merit in such a *lis,* the challenge therein must stand or fall on its own footing, irrespective of, and apart from, the coming into force of the 2013 Act. Litigation cannot be permitted to become lucrative industry for the unworthy litigant; it cannot be permitted to be device providing for fruits in respect of a meritless *lis*.

138. The maxims *nullus commodum capere potest de injuria sua propria* and *actus curiae neminem gravabit* etc. come into play while interpreting the provisions of section 24 including the principle of restitution. They are not excluded from the purview of section 24 of the Act of 2013.

PRINCIPLE OF RESTITUTION

139. While construing provisions of section 24(2) applicable in case of *lis*, we have to keep in consideration the principle of restitution which enjoins a duty upon the courts to do complete justice to the party at the time of final decision. Successful party at the end of the litigation has to be placed as far as possible at the same place unless it would have been had the interim order not being passed. In doing away the effect of interim order by resorting to fact of restitution is in fact obligation of the court.

140(a). In *South Eastern Coal Field Ltd. v. State of Madhya Pradesh & Ors.* (2003) 8 SCC 648 this court held that no party can take advantage of litigation; it has to disgorge the advantage gained due to delay in case *lis* is lost, the court has observed:

> "26. In our opinion, the principle of restitution takes care of this submission. The word 'restitution' in its etymological

sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in execution or decree or order or the court or indirect consequence of a decree or order (See Zafar Khan and Ors. v. Board of Revenue, U.P., and Ors., : [1985] 1 SCR 287. In law, the term 'restitution' is used in three senses; (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits derived from a wrong done to another; (iii) compensation or reparation for the loss caused to another.

(See Black's Law Dictionary, Seventh Edition, p.1315).
The Law of Contracts by John D. Calamari & Joseph M. Perillo has been quoted by Black to say that 'restitution' is an ambiguous term, sometimes referring to the disgorging of something which has been taken and at times referring to compensation for injury done. "Often, the result in either meaning of the term would be the same. ..... Unjust impoverishment, as well as unjust enrichment, is a ground for restitution. If the defendant is guilty of a non-tortuous misrepresentation, the measure of recovery is not rigid but, as in other cases of restitution, such factors as relative fault, the agreed upon risks, and the fairness of alternative risk allocations not agreed upon and not attributable to the fault of either party need to be weighed."

The principle of restitution has been statutorily recognized in Section 144 of the Code of Civil Procedure, 1908. Section 144 of the C.P.C. speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. ***The interim order passed by the Court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of final decision going against the party successful at the interim stage***. Unless otherwise ordered by the Court, the successful party at the end would be justified with all expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it. The successful party can demand (a) the delivery of benefit earned by the opposite party under the

interim order of the court, or (b) to make restitution for what it has lost; and it is the duty of the court to do so unless it feels that in the facts and on the circumstances of the case, the restitution would far from meeting the ends of justice, would rather defeat the same. Undoing the effect of an interim order by resorting to principles of restitution is an obligation of the party, who has gained by the interim order of the Court, so as to wipe out the effect of the interim order passed which, in view of the reasoning adopted by the court at the stage of final decision, the court earlier would not or ought not to have passed. There is nothing, wrong in an effort being made to restore the parties to the same position in which they would have been if the interim order would not have existed.

27. Section 144 of the C.P.C. is not the fountain source of restitution; it is rather a statutory recognition of a pre-existing rule of justice, equity and fair play. That is why it is often held that even away from Section 144 the Court has inherent jurisdiction to order restitution so as to do complete justice between the parties.

In Jai Berham v. Kedar Nath Marwari (1923) 25 BOMLR 643, their Lordships of the Privy council said: "It is the duty of the Court under Section 144 of the Civil Procedure Code to place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed. Nor indeed does this duty or jurisdiction arise merely under the said section. It is inherent in the general jurisdiction of the Court to act rightly and fairly according to the circumstances towards all parties involved. Cairns, L.C., said in Rodger v. Comptoir d'Escompte de Paris, (1871) L.R. 3: "One of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the suitors and when the expression, the act of the Court is used, it does not mean merely the act of the primary Court, or of any intermediate Court of appeal, but the act of the Court as a whole from the lowest court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case". This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it, A.A. Nadar v. S.P. Rathinasami, (1971) 1 MLJ 220 . In the exercise of such inherent power the Courts have applied the principles of restitution to myriad situations not strictly falling within the terms of Section 144.

28. That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the 'act of the court' embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. The factor attracting applicability of restitution is not the act of the Court being wrongful or a mistake or error committed by the Court; the test is whether on account of an act of the party persuading the Court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise corned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the set of such party.

The quantum of restitution, depending on the facts and circumstances of a given case, may take into consideration not only what the party excluded would have made but also what the party under obligation has or might reasonably have made. There is nothing wrong in the parties demanding being placed in the same position in which they would have been had the court not intervened by its interim order when at the end of the proceedings the court pronounces its judicial verdict which does not match with and countenance its own interim verdict. Whenever called upon to adjudicate, the court would act in conjunction with what is the real and substantial justice. The injury, if any, caused by the act of the court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences. Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the Courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced, we are, therefore, or the opinion that the successful party

> finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation."
>
> (emphasis supplied)

140(b). The doctrine of restitution in common law principle lies in conscience of court, it had also been discussed in *State of Gujarat v. Essar Oil Ltd.*, (2012) 3 SCC 522; it was held that:

> "61. The concept of restitution is virtually a common law principle and it is a remedy against unjust enrichment or unjust benefit. The core of the concept lies in the conscience of the Court which prevents a party from retaining money or some benefit derived from another which he has received by way of an erroneous decree of Court. Such remedy in English Law is generally different from a remedy in contract or in tort and falls within a third category of common law remedy which is called quasi-contract or restitution.
>
> 62. If we analyze the concept of restitution one thing emerges clearly that the obligation to restitute lies on the person or the authority that has received unjust enrichment or unjust benefit (See Halsbury's Laws of England, Fourth Edition, Volume 9, page 434).
>
> 63. If we look at Restatement of the Law of Restitution by American Law Institute (1937 American Law Institute Publishers, St. Paul) we get that a person is enriched if he has received a benefit and similarly a person is unjustly enriched if the retention of the benefit would be unjust. Now the question is what constitutes a benefit. A person confers benefit upon another if he gives to the other possession of or some other interest in money, land, chattels, or performs services beneficial to or at the request of the other, satisfies a debt or a duty of the other or in a way adds to the other's security or advantage. He confers a benefit not only where he adds to the property of another but also where he saves the other from expense or loss. Thus the word "benefit" therefore denotes any form of advantage (page 12 of the Restatement of the Law of Restitution by American Law Institute).

> 64. Ordinarily in cases of restitution, if there is a benefit to one, there is a corresponding loss to other and in such cases; the benefiting party is also under a duty to give to the losing party, the amount by which he has been enriched."
>
> (emphasis supplied)

140(c). In *A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam*, (2012) 6 SCC 430, by relying upon the decision rendered in *Indian Council for Enviro-Legal Action v. Union of India* [(2011) 8 SCC 161]. The jurisdiction to restitution is inherent in every court. Court has to neutralize advantage of litigation. The person on right side of law should not be frustrated. The wrongful gain of frivolous litigation has to be eradicated if faith of people in judiciary has to be sustained Court has to adopt pragmatic approach. The doctrine of restitution has been considered thus:

> "37. This Court in another important case in Indian Council for Indian Council for Enviro-Legal Action v. Union of India and Ors. (2011) 8 SCC 161 (of which one of us, Bhandari, J. was the author of the judgment) had an occasion to deal with the concept of restitution. The relevant paragraphs of that judgment dealing with relevant judgments are reproduced hereunder:
>
> > 170. This Court in Grindlays Bank Limited v. Income Tax Officer, Calcutta (1980) 2 SCC 191 observed as under:
> >
> > When passing such orders the High Court draws on its inherent power to make all such orders as are necessary for doing complete justice between the

parties. The interests of justice require that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court, by the mere circumstance that it has initiated a proceeding in the court, must be neutralised. The simple fact of the institution of litigation by itself should not be permitted to confer an advantage on the party responsible for it.

171. In Ram Krishna Verma and Ors. v. State of U.P. and Ors. (1992) 2 SCC 620 this Court observed as under:

The 50 operators including the Appellants/ private operators have been running their stage carriages by blatant abuse of the process of the court by delaying the hearing as directed in JeevanNathBahl's case and the High Court earlier thereto. As a fact, on the expiry of the initial period of grant after Sept. 29, 1959, they lost the right to obtain renewal or to ply their vehicles, as this Court declared the scheme to be operative. However, by sheer abuse of the process of law, they are continuing to ply their vehicles pending hearing of the objections. This Court in Grindlays Bank Ltd. v. Income-tax Officer - [1990] 2 SCC 191 held that the High Court while exercising its power under Article 226 the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised. It was further held that the institution of the litigation by it should not be permitted to confer an unfair advantage on the party responsible for it. In the light of that law and in view of the power under Article 142(1) of the Constitution this Court, while exercising its jurisdiction would do complete justice and neutralise the unfair advantage gained by the 50 operators including the Appellants in dragging the litigation to run the stage carriages on the approved route or area or portion thereof and forfeited their right to hearing of the objections filed by them to the draft scheme dated Feb. 26, 1959.

172. This Court in Kavita Trehan v. Balsara Hygiene Products (1994) 5 SCC 380 observed as under:

The jurisdiction to make restitution is inherent in every court and will be exercised whenever the justice of the case demands. It will be exercised under inherent powers where the case did not strictly fall within the ambit of Section 144. Section 144 opens with the words "Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose,.". The instant case may not strictly fall within the terms of Section 144, but the aggrieved party in such a case can appeal to the larger and general powers of restitution inherent in every court.

173. This Court in Marshall Sons and Company (I) Ltd. v. Sahi Oretrans (P) Ltd. and Anr. (1999) 2 SCC 325 observed as under:

From the narration of the facts, though it appears to us, prima facie, that a decree in favour of the Appellant is not being executed for some reason or the other, we do not think it proper at this stage to direct the Respondent to deliver the possession to the Appellant since the suit filed by the Respondent is still pending. It is true that proceedings are dragged for a long time on one count or the other and on occasion become highly technical accompanied by unending prolixity, at every stage providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage and person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also known fact that after obtaining a decree for possession of immovable property, its execution takes long time. In such a situation for protecting the interest of judgment creditor, it is necessary to pass appropriate order so that reasonable mesneprofit which may be equivalent to the market rent is paid by a person who is holding over the property. In appropriate cases, Court may appoint Receiver and direct the person who is holding over the property to act as an agent of the Receiver with a direction to deposit the royalty amount fixed by

the Receiver or pass such other order which may meet the interest of justice. This may prevent further injury to the Plaintiff in whose favour decree is passed and to protect the property including further alienation.

174. In Padmawati v. Harijan Sewak Sangh CM (Main) No. 449 of 2002 decided by the Delhi High Court on 6.11.2008, the court held as under:

'6. The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Court. One of the aims of every judicial system has to be to discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person.'

We approve the findings of the High Court of Delhi in the aforementioned case.

175. The High Court also stated: (Padmavati case [(2008) 154 DLT 411], DLT pp. 414-415, para 9)

"9. Before parting with this case, we consider it necessary to observe that one of the main reasons for over-flowing of court dockets is the frivolous litigation in which the Courts are engaged by the litigants and which is dragged as long as possible. Even if these litigants ultimately loose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them

as costs to the person deprived of his right and also must be burdened with exemplary costs. Faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrongdoer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrongdoers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years-long litigation. Despite settled legal positions, the obvious wrongdoers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts".

184. In Ouseph Mathai and Ors. v. M. Abdul Khadir (2002) 1 SCC 319 this Court reiterated the legal position that: (SCC p.328, para 13)

'13. …[the] stay granted by the Court does not confer a right upon a party and it is granted always subject to the final result of the matter in the Court and at the risk and costs of the party obtaining the stay. After the dismissal, of the lis, the party concerned is relegated to the position which existed prior to the filing of the petition in the Court which had granted the stay. Grant of stay does not automatically amount to extension of a statutory protection.

188. In a relatively recent judgment of this Court in Amarjeet Singh and Ors. v. Devi Ratan and Ors. (2010) 1 SCC 417 the Court in para 17 of the judgment observed as under: (SCC pp.422-23)

'17. No litigant can derive any benefit from mere pendency of case in a court of law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the

interim order stands nullified automatically. A party cannot be allowed to take any benefit of its own wrongs by getting an interim order and thereafter blame the court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim actus curiae neminem gravabit, which means that the act of the court shall prejudice no one, becomes applicable in such a case. In such a fact situation the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the court...'

190. In consonance with the concept of restitution, it was observed that courts should be careful and pass an order neutralizing the effect of all consequential orders passed in pursuance of the interim orders passed by the court. Such express directions may be necessary to check the rising trend among the litigants to secure the relief as an interim measure and then avoid adjudication on merits.

191. In consonance with the principle of equity, justice, and good conscience judges should ensure that the legal process is not abused by the litigants in any manner. The court should never permit a litigant to perpetuate illegality by abusing the legal process. It is the bounden duty of the court to ensure that dishonesty and any attempt to abuse the legal process must be effectively curbed and the court must ensure that there is no wrongful, unauthorized or unjust gain for anyone by the abuse of the process of the court. One way to curb this tendency is to impose realistic costs, which the Respondent or the Defendant has in fact incurred in order to defend himself in the legal proceedings. The courts would be fully justified even imposing punitive costs where legal process has been abused. No one should be permitted to use the judicial process for earning undeserved gains or unjust profits. The court must effectively discourage fraudulent, unscrupulous

and dishonest litigation.

192. The court's constant endeavour must be to ensure that everyone gets just and fair treatment. The court while rendering justice must adopt a pragmatic approach and in appropriate cases realistic costs and compensation be ordered in order to discourage dishonest litigation. The object and true meaning of the concept of restitution cannot be achieved or accomplished unless the courts adopt a pragmatic approach in dealing with the cases."

(emphasis supplied)

140(d). In *Krishnaswamy S. Pd. & Anr v. Union of India & Ors.*, Civil Appeal Nos.3376-3377 of 2000 decided on 21.02.2006 this Court has considered the question of restitution. This court has relied upon *Eastern Coalfield*'s case (supra) and observed:

"*The maxim 'actus curiae neminem gravabit*' i.e. an act of Court shall prejudice no man is an important one. The maxim "is founded upon justice and good sense, and affords a safe and certain guide for the administration of the law", said Cresswell J. in Freeman v. Tranah (12 C.B. 406). An unintentional mistake of the Court which may prejudice the cause of any party must and alone could be rectified.

The *maxim of equity, namely, actus curiae neminem gravabit*: an act of court shall prejudice no man, is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other relevant maxim is, lex non cogit ad impossibilia: the law does not compel a man to do what he cannot possibly perform. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases. (See: *M/s U.P.S.R.T.C. v. lmtiaz Hussein* (2006 (1) 800 380), *ShaikhSalim Haji Abdul Khayumsab v. Kumar and Ors.* (2006 (1) SCC 46), *Mohammod Gazi v. State of M.P. and others*

> (2000(4) SCC 342) and *Gursharan Singh v. New Delhi Municipal Committee* (1996 (2) SCC 459)."
>
> (emphasis supplied)

141. The aforesaid legal exposition also makes it incumbent upon court not to confer benefit upon an unscrupulous litigant, not to confer undeserved gain, administration of land does not control performance of Act which is not possible, attempt to abuse legal provisions must be thwarted, prolonging of litigation by money power, dilatory tactics or otherwise not to confer benefit, person with merits in the case cannot succeed, perpetuation of illegality cannot be provided shelter by court to unjust enrichment to be saved, the doctrine of restitution compels court to not to provide benefit to such litigants of provisions of section 24 of Act of 2013.

EFFECT OF REPEAL:

142. The Act of 2013 has repealed the Act of 1894. The repealing and saving is provided in section 114 of the Act of 2013. The provisions of section 114, is extracted hereunder:

> "114. Repeal and saving.- (1) The Land Acquisition Act, 1894 (1 of 1894) is hereby repealed.
>
> (2) Save as otherwise provided in this Act the repeal under sub-section (1) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals."

143. The repeal of the Act of 1894 has been made without prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect such repealing provision we have to consider provisions in Section 6 of the General Clauses Act. It is extracted hereunder:

> "6. Effect of repeal. —Where this Act, or any 1 [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not —
>
> (a) revive anything not in force or existing at the time at which the repeal takes effect; or
> (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
> (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
> (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
> (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,
>
> and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

144. Thus, section 6 of the General Clauses Act provides that unless a different intention appears, the repeal shall not revive

anything not in force. Section 6(b) provides that it would not affect any previous operation of any enactment so repealed or anything duly done or suffered thereunder. Section 6(e) provides that it will not affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment unless different intention appears, and any such investigation, legal proceeding or remedy may be instituted, or continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed. The provisions of section 6 clearly save such proceedings and pending litigation has to be decided only on the basis of 1894 Act except as provided specifically in Act of 2013.

VARIOUS DECISIONS:

145(a). In *Pune Municipal Corporation* (supra), the High Court had quashed the notification issued under section 4 on 30.9.2004. Award was passed on 31.1.2008. Writ petitions were filed in the High Court which was allowed on the ground that for development of "forest garden" acquisition proceedings could not have been initiated without resolution of the General Body of the Corporation,

not on the ground of section 24(2) of Act of 2013. There was non-compliance with section 7 and other statutory breaches. The special leave petitions were filed in this Court in the year 2008. During pendency, the Act of 2013 came into force and this Court has taken the view that expression "paid" used in section 24(2) shall carry dual meaning, *i.e.*it has been offered to the person interested and also that such compensation has been deposited in court. The compensation is paid within the meaning of section 24(2) when the Collector has offered and in case of refusal deposited the amount of compensation in court and has discharged his obligation under Section 31(2). The Court has also laid down that amount of deposit of compensation in Government Treasury is not equivalent to the amount of compensation paid to landowners/persons interested. This Court held that deposit of the amount of compensation in State revenue is of no avail relying on *Ivo Agnelo Santimano Fernandes v. State of Goa* (2011) 11 SCC 506 and *Prem Nath Kapur v. National Fertilizers Corporation of India Ltd*. (1996) 2 SCC 71.

145(b). In the decision in *Ivo Agnelo* (supra) it was held that liability to pay interest subsists until amount is paid to the owner

or deposited in court. Whether the State has deposited the amount in revenue account and utilized the same as it, was impermissible hence it could not be said that the amount was deposited as required under Section 31(2) of the Act of 1894. Reliance was also placed on the decision in *Prem Nath Kapur* (supra) wherein this Court had observed :

> "13. Thus we hold that the liability to pay interest on the amount of compensation determined under Section 23(1) continues to subsist until it is paid to the owner or interested person or deposited into court under Section 34 read with Section 31. Equally, the liability to pay interest on the excess amount of compensation determined by the Civil Court under Section 26 over and above the compensation determined by the Collector/Land Acquisition Officer under Section 11 subsists until it is deposited into court. *Propriovigore* in case of further enhancement of the compensation on appeal under Section 54 to the extent of the said enhanced excess amount or part thereof, the liability subsists until it is deposited into court. The liability to pay interest ceases on the date on which the deposit into court is made with the amount of compensation so deposited. As held earlier, the computation of the interest should be calculated from the date of taking possession till date of payment or deposit in terms of Section 34 or deposit into court in terms of Section 28, as the case may be."

145(c). The question in aforesaid decisions was only with respect to liability to pay interest from the date of taking possession till the amount is paid or deposited. The decisions are only authority with respect to payment of interest under section 34 read with section

31. In *Prem Nath Kapur* (supra), the main question was how the appropriation of amount deposited towards cost price, an additional amount of interest has to be made. In that context a three-Judge Bench of this Court had made the discussion. This Court also dealt with debtor's right to specify how appropriation to be made of money paid under section 60 of the Contract Act, 1872. The questions involved in the said cases were different. There was no such issue involved with regard to the meaning of the word “paid”. The decision is only on liability to pay interest and is of no utility for interpretation of section 24(2) as to what is the meaning of the word "paid" did not arise for consideration in the said decisions. The provisions of section 24(2) used expression "paid" and "deposited" in different contexts at different places "paid" in the main section and "deposited" in proviso. Both are to be given the plain meanings and it is not open to the court to add or substitute any word in statute.

As a matter of fact, the High Court had quashed acquisition in Pune Municipal Corporation in 2008 as such Act of 2013 was not attractive. There was no question of complying with section 24 of Act of 2013.

www.taxcode.in

145(d). The landowners have relied on the decision in *Bharat Kumar v. State of Haryana & Anr*. (2014) 6 SCC 586. What is the meaning of "paid" did not arise for consideration. It was not a case where amount was tendered or paid under Section 31(1) of the Act of 1894 and there was refusal and in that case possession had also not been taken. There was no vesting of the land. The case is distinguishable. In the said decision various aspects were not urged for consideration. Thus, it cannot be said to be laying down the law as to what has not been decided.

145(e). Reliance has also been placed on *Bimla Devi & Ors. v. State of Haryana & Ors*. (2014) 6 SCC 583 in which, similarly the decision in *Pune Municipal Corporation* (supra) has been followed. Thus the decision is of no avail in view of the aforesaid discussion.

145(f). In *Union of India & Ors. v. Shiv Raj & Ors*. (2014) 6 SCC 564, decision in *Pune Municipal Corpn.* (supra) has been followed. A Circular of Government of India, Ministry of Urban Development has also been quoted to clarify the statutory provisions of the Act of 2013. A Circular issued by the Government on advice of its law officer cannot be said to have force of law. It was based on certain

legal opinion. The circular issued cannot be said to have any binding force with respect to actual legal position. As already discussed there is no discussion in said case with respect to the impact of the interim order of stay or litigation which has prevented the authorities from taking action in *Shiv Raj* (supra).

145(g). In *Magnum Promoters Pvt. Ltd. v. Union of India &Ors*. (2015) 3 SCC 327, *Shree Balaji Nagar Residential Association* (supra) and *Pune Municipal Corpn*. (supra) had been followed, for the reasons mentioned above, and apart from that, it was found by the court that possession of the building was not taken and the record did not indicate that it was ever taken.

145(h). In *Karnail Kaur & Ors. v. State of Punjab & Ors*. (2015) 3 SCC 206 the Amendment Ordinance to amend the Act of 2013 came up for consideration. The second proviso to section 24(2) to be introduced in Act was held to be prospective in operation. The correctness of the decision need not be further examined as the Ordinance itself has lapsed and for various other reason, we are of opinion that law, as it stands, has to be examined. In *Karnail Kaur* (supra), reliance was mainly placed upon *Shree Balaji Nagar*

Residential Association (supra), *Pune Municipal Corpn.* (supra), *Bharat Kumar* (supra) and *Bimla Devi* (supra), we have already discussed the matter following *Pune Municipal Corporation* (supra). *Radiance Fincap Pvt. Ltd. & Ors. v. Union of India & Ors.* (2015) 8 SCC 544 has also been pressed into service, it considered the second proviso to section 24(2) of the Ordinance that has lapsed.

145(i). In *Working Friends Cooperative House Building Society Ltd. v. State of Punjab & Ors*. (2016) 15 SCC 464 again the other decisions based on *Pune Municipal Corporation* (supra) referred to above have been followed. In *Working Friends Cooperative House Building Society Ltd*. (supra) compensation was not tendered to the appellant. When compensation was not tendered as per section 31, it could not be said that it was paid. To that extent there is no dispute with respect to applicability of section 24(2). Mere deposit in treasury or in court was not going to help the authorities as it was obligatory on them to have tendered the amount unless saved by three out of four exigencies provided in section 31(2) as discussed above.

www.taxcode.in

145(j). In *Delhi Development Authority v. Sukhbir Singh & Ors.* (2016) 16 SCC 258, *Pune Municipal Corpn.* (supra) has been followed and deposit in treasury has been held, referable to section 31(1) of the Act of 1894 and not under section 31(2). We agree with discussion made with respect to section 31(1). In view of the discussion made with respect to the expressions "paid" and "tendered" the decision of *Pune Municipal Corpn.* (supra) cannot be said to be laying down the correct law. It suffers to that extent from the same malady as it has simply followed *Pune Municipal Corpn.* (supra). *In State of Haryana & Anr. v. Devander Sagar & Ors*. (2016) 14 SCC 746, this Court has held that the compensation had been paid; HUDA had taken possession. As per requirement of section 24, award was also passed. The acquisition had been allowed to become final. Thus challenge to acquisition under the Act of 2013 was repelled.

145(k). In *Aligarh Development Authority v. Megh Singh & Ors*. (2016) 12 SCC 504, the award was not passed when the Act of 2013 came into force. Thus, it was rightly held by this Court that the acquisition proceedings would continue but with a rider that the award will have to be passed and compensation determined under

the provisions of the 2013 Act. This Court has passed the aforesaid orders in view of the provisions contained in section 24(1)(a) of the Act of 2013. There is no dispute with the proposition.

145(l). In *Sharma Agro Industries v. State of Haryana & Ors.*, (2015) 3 SCC 341, decisions of this Court in *Pune Municipal Corpn.* (supra), *Bimla Devi* (supra), *Shree Balaji Residential Association* (supra) and *Shiv Raj* (supra) have been followed. It proceeds on the same reasoning as that of *Pune Municipal Corpn.* (supra).

145(m). In *Pawan Kumar Aggarwal v. State of Punjab & Ors.* (2016) 7 SCC 614, decision in *Karnail Kaur* (supra) has been followed. In that case, there is not much discussion. Only the fact has been mentioned that the appellant has not been dispossessed, as such protection under section 24(2) was available.

PRINCIPLE OF '*PER INCURIAM*':

146. The concept of "***per incuriam***" signifies those decisions rendered in ignorance or forgetfulness of some inconsistent statutory provisions, or of some authority binding on the Court concerned. In order words, the concept means that a given decision

www.taxcode.in

is in disregard of the previous decisions of the Court itself, or that it was rendered in ignorance of the terms of an applicable statute or of a rule having the force of law.

147(a). In practice, *per incuriam,* is taken to mean *per ignoratium,* as observed by this Court in *Mamleshwar Prasad v. Kanahaiya Lal*, (1975) 2 SCC 232, thus:

> "5. A litigant cannot play fast and loose with the Court. His word to the Court is as good as his bond and we must, without more ado, negative the present shift in stand by an astute discovery of a plea that the earlier judgment was rendered per incuriam.
>
> 6. The wisdom which has fallen from Bowen, L.J. in Ex Parte Pratt 52 Q.B. 334, though delivered in a different context, has wider relevance to include the present position. The learned Lord Justice observed :
>
>> "There is a good old-fashioned rule that no one has a right to conduct himself before a tribunal as if he accepted its jurisdiction, and then afterwards, when he finds that it has decided against him, to turn round and say, "You have no jurisdiction".
>
> 7. Certainty of the law, consistency of rulings and comity of courts- all flowering from the same principle-coverage to the conclusion that a decision once rendered must later bind like cases. We do not intend to detract from the rule that, in exceptional instances, whereby obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may not have the sway of binding precedents. It should be a glaring case, an obtrusive omission. No such situation presents itself here and we do not embark on the principle of judgment per incuriam."

147(b). In *A.R. Anutulay v. R.S. Nayak*, (1988) 2 SCC 602, this Court has observed:

> "42. It appears that when this Court gave the aforesaid directions on 16th February 1984, for the disposal of the case against the appellant by the High Court, the directions were given oblivious of the relevant provisions of law and the decision in Anwar Ali Sarkar's case (supra). See Halsbury's Laws of England, 4th End, Vol. 26, page 297, para 578 and page 300, the relevant notes 8, 11 and 15; Dias on Jurisprudence, 5th Edn., pages 128 and 130; Young v. Bristol Aeroplane Co. Ltd. [1944] 2 AER 293. Also see the observations of Lord Goddard in Moore v. Hewitt [1947] 2 A.E.R. 270-A and Penny v. Nicholas [1950] 2 A.E.R. 89. "per incuriam" are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the Court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong. See *Morelle v. Wakeling* [1955] 1 All E.R. 708. Also, see State of Orissa v. The Titaghur Paper Mills Co. Ltd. [1985]3SCR26 . We are of the opinion that in view of the clear provisions of Section 7(2) of the Criminal Law Amendment Act, 1952 and Articles 14 and 21 of the Constitution, these directions were legally wrong."
>
> 47. In support of the contention that a direction to delete wholly the impugned direction of this Court be given, reliance was placed on *Satyadhvan Ghoshal v. Deorajini Devi* [1960] 3 SCR 590 . The ratio of the decision as it appears from pages 601 to 603 is that the judgment which does not terminate the proceedings, can be challenged in an appeal from final proceedings. It may be otherwise if subsequent proceedings were independent ones."
>
> (emphasis supplied)

147(c). In *State of Uttar Pradesh v. Synthetics and Chemicals Ltd.*, (1991) 4 SCC 139, as to *per incuriam* this court has observed:

> "40. 'Incuria literally means 'carelessness'. In practice per in curium appears to mean per ignoratium.' English Courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, in ignoratium of a statute or other binding authority'. 1944 1KB 718 Young v. Bristol Aeroplane Ltd.. Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In *Jaisri Sahu v. Rajdewan Dubey* AIR (1962) SC 83 this Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench extracted a passed from *Halsbury's Laws of England* incorporating one of the exceptions when the decisions of an appellate court is not binding."

147(d). In *Municipal Corporation of Delhi v. Gurnam Kaur*, (1989) 1 SCC 101, it was held that decision of ignorance of rule is *per incuriam,*the court has observed:

> "11. ....A decision should be treated as given per incur am when it is given in ignorance of the terms of a statute or of a rule having the force of a statute....."

147(e). In *Narmada Bachao Andolan (III) v. State of Madhya Pradesh*, AIR 2011 SC 1989, this court has observed:

> "61. Thus, "per incuriam" are those decisions given in <u>ignorance or forgetfulness of some statutory provision or authority binding on the Court concerned</u>, or a statement of law caused by inadvertence or conclusion that has been arrived at without application of mind or proceeded without any reason so that in such a case some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong."
>
> (emphasis supplied)

148. To refer the case to larger Bench, reliance was placed by the landowners on *Sant Lal Gupta v. Modern Coop. Societies Ltd*. 2010 13 SCC 336 laying down thus:

> "17. A coordinate bench cannot comment upon the discretion exercised or judgment rendered by another coordinate bench of the same court. The rule of precedent is binding for the reason that there is a desire to secure uniformity and certainty in law. Thus, in judicial administration precedents which enunciate rules of law form the foundation of the administration of justice under our system. Therefore, it has always been insisted that the decision of a coordinate bench must be followed. (Vide: *Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel and Ors*. AIR 1968 SC 372; *Sub-Committee of Judicial Accountability v. Union of India and Ors*. (1992) 4 SCC 97; and *State of Tripura v. Tripura Bar Association and Ors*. (1998) 5 SCC 637).
>
> 18. In Rajasthan Public Service Commission and Anr. v. Harish Kumar Purohit and Ors. (2003) 5 SCC 480, this Court held that a bench must follow the decision of a coordinate bench and take the same view as has been taken earlier. The earlier decision of the coordinate bench is binding upon any latter coordinate bench deciding the same or similar issues. If the latter bench wants to take a different view than that taken by the earlier bench, the proper course is for it to refer the matter to a larger bench."

149. It was contended on behalf of the landowners that since the decisions of *Pune Municipal Corporation* as well as of *Shivraj* case (supra) are of Three Judges bench then propriety requires that the case should be referred to a Larger Bench. With respect to *Shivraj* (supra) it is apparent that no view has been expressed by the

Division Bench making reference itself, as observed that upon reading the decision of this court in *Union of India & Ors. v. Shivraj & Ors.* (2014) 6 SCC 564, they have not found any view on the question arising namely whether the period during which interim stay has been enjoyed should be extended while considering the provisions of Section 24(2) of the Act of 2013. Division Bench of this court in order dated 12.1.2016, while making reference has rightly observed thus:

> "We have considered the views expressed in Sree Balaji Nagar Residential Association (supra) and Union of India &Ors. v. Shiv Raj and others (supra). At the outset, we clarify that upon reading the decision of the three Judge Bench of this Court in Union of India and other versus Shiv Raj and others, we do not find any view of the bench on the question arising, namely, whether the period during which the award had remained stayed should be excluded for the purposes of consideration of the provisions of Section 24(2) of the Act of 2013. Insofar as the decision of the coordinate bench of this Court in Sree Balaji Nagar Residential Association (supra) is concerned, having read and considered paragraphs 11 and 12 thereof, as extracted above, it is our considered view that the legal effect of the absence of any specific exclusion of the period covered by an interim order in Section 24(2) of the Act of 2013 requires serious reconsideration having regard to the fact that it is an established principle of law that the act of the court cannot be understood to cause prejudice to any of the contesting parties in a litigation which is expressed in the maxim *"actus curiae neminem gravabit"*.

150. In *Pune Municipal Corporation* (supra) the land acquisition had been quashed by the High Court in the year 2008. Most of the special leave petitions were filed in this court in the year

2008. The High Court has quashed the acquisition proceedings and has directed restoration of the possession. When the High Court has quashed the acquisition, there was no room for this court to entertain the submissions based upon section 24(2) of the Act of 2013. There was no question of payment of compensation to the owners or depositing it in the court as land acquisition itself had been quashed in 2008. There was no subsisting acquisition and award. When Act of 2013 came into force thus no question could have been raised as to non-compliance with section 24 for five years or more. Thus, there was no question of taking possession or payment of compensation as per provisions contained in section 24(2). The provisions contained in section 24 could not be said to be applicable after quashing/lapse of the proceedings. Thus, when the provisions of section 24 were not attracted to the fact situation of the case in *Pune Municipal Corporation* (supra), the decision cannot be said to be an authority on a question which, in fact, did not arise for consideration of this court. Thus, the decision rendered on a question which was not germane to the case cannot be said to be a binding precedent it is *obiter dicta* and thus has to be ignored.

151. When the High Court has quashed the land acquisition in *Pune Municipal Corporation* (supra), as we have held that period of interim stay has to be excluded once the High Court has quashed the land acquisition in case it was illegally quashed, the maxim ***actus curiae neminem gravabit*** would come to the rescue for the acquiring body and it could not have said that acquisition had lapsed, thus there was no lapse under section 24(2). There was no question of taking possession or payment of compensation once the acquisition had been quashed. This court in *Pune Municipal Corporation* (supra) had not dwelled upon the merit of the decision of the High Court quashing the land acquisition and has outrightly decided the case on the basis of section 24(2). It obviously had no application to the fact situation of the case. As such a decision cannot be said to be an authority on the aforesaid.

152. With respect to the decision of this court in *Pune Municipal Corporation* (supra) we have given deep thinking whether to refer it to further Larger Bench but it was not considered necessary as we are of the opinion that *Pune Municipal Corporation* (supra) has to be held *per incuriam, inter alia* for the following reasons:

www.taxcode.in

1. The High Court has quashed land acquisition, in *Pune Municipal Corporation case* (supra), as such provisions of section 24(2) of the Act of 2013 could not be said to be applicable. It was not surviving acquisition then compliance of section 24(2) by taking possession or by payment of compensation for five years or more did not arise as acquisition had been quashed by the High Court in 2008.

2. It was not held in *Pune Municipal Corporation* (supra) that High Court has illegally set aside the acquisition. In case, High Court had set aside the acquisition in an illegal manner then also maxim ***'actus curiae neminum gravabit'*** would have come to the rescue to save acquisition from being lapsed and a period spent in appeal in this Court was to be excluded.

3. The provisions of Section 24(2) could not be said to be applicable to the case once acquisition stood quashed in 2008 by the High Court. Thus, there was no occasion for this court to decide the case on aforesaid aspect envisaged under section 24(2) of the Act of 2013.

4. That statutory rules framed under section 55 of Act of 1894

and orders having statutory force issued under, constitutional provisions or otherwise by various State Governments were not placed for consideration before this court in *Pune Municipal Corporation* case (supra)

5. Provisions of section 34 prevailing practice of deposit, and binding decisions thereunder section 34 of the Act of 1894 were not placed for consideration of this court while deciding the case.

6. The proviso to section 24(2) was not placed for consideration which uses different expression 'deposited' than 'paid' in main section 24(2) which carry a different meaning.

7. What is the meaning of expression 'paid' as per various binding decisions of this court when the obligation to pay is complete as held in *Straw Board Manufacturing Co. Ltd., Saharanpur v. Gobind* (supra), *Management of Delhi Transport Undertaking v. The Industrial Tribunal, Delhi & Anr*. (supra), *Indian Oxygen Ltd. v. Narayan Bhoumik* (supra) *and the Benares State Bank Ltd. v. The Commissioner of Income Tax, Lucknow,* (supra) and other decisions were not placed for consideration.

8. The binding decisions of the court as to the consequence of non-deposit in *Hissar Improvement v. Smt. Rukmani Devi & Anr.* (supra), *Kishan Das & Ors. v. State of U.P. & Ors.* (supra) and *Seshan & Ors. v. Special Tehsildar & Land Acquisition Officer, SPICOT, Pudukkottai* (supra) etc. were not placed for consideration while deciding the case.

9. The maxim ***"nullus commodum capere potest de injuria sua propria"*** *i.e.* no man can take advantage of his own wrong of filing litigation and effect of refusal to receive compensation was not placed for consideration while deciding the aforesaid case.

10. There is no lapse of acquisition due to the non deposit of amount under the provisions of Act of 1894 or Act of 2013. In this regard, the provision of section 77 and 80 relating to payment and deposit under Act of 2013 which corresponds to section 31 and 34 were not placed for consideration of this court while rendering the aforesaid decision.

11. The past practice for more than a century, of deposit in treasury, as per rules/ orders and decisions were not placed for consideration. It was not open to invalidate such deposits

made in treasury without consideration of the provisions, prevailing practice, and decisions under the Act of 1894.

The decision rendered in *Pune Municipal Corporation* (supra), which is related to Question No.1 and other decisions following, the view taken in *Pune Municipal Corporation* (supra) are *per incuriam*. The decision in *Shree Balaji* (supra) cannot be said to be laying down good law, is overruled and other decisions following the said decision to the extent they are in conflict with this decision, stand overruled. The decision in *DDA v. Sukhbir Singh* (supra) is partially overruled to the extent it is contrary to this decision. The decisions rendered on the basis of *Pune Municipal Corporation* (supra) are open to be reviewed in appropriate cases on the basis of this decision.

CONCLUSIONS :

153. Our answers to the questions are as follows:

Q. No. I :- The word 'paid' in section 24 of the Act of 2013 has the same meaning as 'tender of payment' in section 31(1) of the Act of 1894. They carry the same meaning and the expression 'deposited' in section 31(2) is not included in the expressions 'paid' in section 24 of the Act of 2013 or in 'tender of payment' used in section 31(1)

of the Act of 1894. The words 'paid'/tender' and 'deposited' are different expressions and carry different meanings within their fold.

In section 24(2) of the Act of 2013 in the expression 'paid,' it is not necessary that the amount should be deposited in court as provided in section 31(2) of the Act of 1894. Non-deposit of compensation in court under section 31(2) of the Act of 1894 does not result in a lapse of acquisition under section 24(2) of the Act of 2013. Due to the failure of deposit in court, the only consequence at the most in appropriate cases may be of a higher rate of interest on compensation as envisaged under section 34 of the Act of 1894 and not lapse of acquisition.

Once the amount of compensation has been unconditionally tendered and it is refused, that would amount to payment and the obligation under section 31(1) stands discharged and that amounts to discharge of obligation of payment under section 24(2) of the Act of 2013 also and it is not open to the person who has refused to accept compensation, to urge that since it has not been deposited in court, acquisition has lapsed. Claimants/landowners after refusal, cannot take advantage of their own wrong and seek protection under the provisions of section 24(2).

Q. No. II :- The normal mode of taking physical possession under the land acquisition cases is drawing of Panchnama as held in *Banda Development Authority* (supra).

Q. No. III :- The provisions of section 24 of the Act of 2013, do not revive barred or stale claims such claims cannot be entertained.

Q. No. IV :- Provisions of section 24(2) do not intend to cover the period spent during litigation and when the authorities have been disabled to act under section 24(2) due to the final or interim order of a court or otherwise, such period has to be excluded from the period of five years as provided in section 24(2) of the Act of 2013. There is no conscious omission in section 24(2) for the exclusion of a period of the interim order. There was no necessity to insert such a provision. The omission does not make any substantial difference as to legal position.

Q. No. V :- The principle of *actus curiae neminem gravabit* is applicable including the other common law principles for determining the questions under section 24 of the Act of 2013. The period covered by the final/ interim order by which the authorities

have been deprived of taking possession has to be excluded. Section 24(2) has no application where Court has quashed acquisition.

The questions referred to are answered accordingly.

.....J.
(ARUN MISHRA)

.....J.
(ADARSH KUMAR GOEL)

NEW DELHI;
FEBRUARY 8, 2018.

O R D E R

We unanimously agree to the answers given to all the questions i.e. Nos.I to V, except to the aspect decided by majority whether *Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki,* 2014 (3) SCC 183, is *per incuriam* or not. As the majority has taken the view that it is *per incuriam*, it is declared to be *per incuriam*. The questions referred stand answered in terms of majority judgment. Hence, ordered accordingly.

Mattes may now be listed on 16.2.2018 for orders before an appropriate Bench, subject to the orders of the Hon'ble the Chief Justice of India.

.....J.
[ARUN MISHRA]

.....J.
[ADARSH KUMAR GOEL]

.....J.
[MOHAN M. SHANTANAGOUDAR]

New Delhi;
8th February, 2018.

(Reportable)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.20982 OF 2017

INDORE DEVELOPMENT AUTHORITY **...APPELLANT (S)**

VERSUS

SHAILENDRA (DEAD)
THROUGH LRS. & ORS. **...RESPONDENT (S)**

WITH

SPECIAL LEAVE PETITION (C) No.10742 OF 2008

YOGESH KUMAR & ORS. **...PETITIONER (S)**

VERSUS

STATE OF MADHYA PRADESH & ORS. **...RESPONDENT (S)**

WITH

SPECIAL LEAVE PETITION (C) No.20920 OF 2011

SPECIAL LEAVE PETITION (C) Nos.26574-26575 OF 2011

SPECIAL LEAVE PETITION (C) No.28993 OF 2011

SPECIAL LEAVE PETITION (C) No.30198 OF 2015

SPECIAL LEAVE PETITION (C) No.30192 OF 2015

SPECIAL LEAVE PETITION (C) No.30142 OF 2015

SPECIAL LEAVE PETITION (C) No.30128 OF 2015

SPECIAL LEAVE PETITION (C) No.30203 OF 2015

CIVIL APPEAL No.4835 OF 2015

SPECIAL LEAVE PETITION (C) No.25289 OF 2015

SPECIAL LEAVE PETITION (C)……CC No.9842 OF 2016

SPECIAL LEAVE PETITION (C) No.22356 OF 2015

SPECIAL LEAVE PETITION (C) No.31678 OF 2015

CIVIL APPEAL NO.4836 OF 2015

SPECIAL LEAVE PETITION (C) No.22527 OF 2015

SPECIAL LEAVE PETITION (C) No.4705 OF 2016

SPECIAL LEAVE PETITION (C) No.30577-30580 OF 2015

SPECIAL LEAVE PETITION (C) No.27389 OF 2015

SPECIAL LEAVE PETITION (C) No.27383 OF 2015

SPECIAL LEAVE PETITION (C) No.34787 OF 2015

SPECIAL LEAVE PETITION (C) No.10190-10200 OF 2017

SPECIAL LEAVE PETITION (C) No.38290 OF 2016

SPECIAL LEAVE PETITION (C) No.9571 OF 2016

SPECIAL LEAVE PETITION (C) No.15127 OF 2016

SPECIAL LEAVE PETITION (C) No.15144 OF 2016

SPECIAL LEAVE PETITION (C) No.15131 OF 2016

SPECIAL LEAVE PETITION (C) No.15139 OF 2016

SPECIAL LEAVE PETITION (C) No.16425 OF 2016

SPECIAL LEAVE PETITION (C) No.15117 OF 2016

SPECIAL LEAVE PETITION (C) No.15140 OF 2016

SPECIAL LEAVE PETITION (C) No.9570 OF 2016

SPECIAL LEAVE PETITION (C) No.15113 OF 2016

SPECIAL LEAVE PETITION (C) No.16438 OF 2016

SPECIAL LEAVE PETITION (C) No.15119 OF 2016

SPECIAL LEAVE PETITION (C) No.15126 OF 2016

SPECIAL LEAVE PETITION (C) No.15125 OF 2016

SPECIAL LEAVE PETITION (C) No.15118 OF 2016

SPECIAL LEAVE PETITION (C) No.15124 OF 2016

SPECIAL LEAVE PETITION (C) No.15112 OF 2016

SPECIAL LEAVE PETITION (C) No.11824 OF 2016

SPECIAL LEAVE PETITION (C) No.15143 OF 2016

SPECIAL LEAVE PETITION (C) No.15141 OF 2016

SPECIAL LEAVE PETITION (C) No.15142 OF 2016

SPECIAL LEAVE PETITION (C) No.15213-15217 OF 2017

SPECIAL LEAVE PETITION (C) No.17324 OF 2016

SPECIAL LEAVE PETITION (C) No.38368 OF 2016

SPECIAL LEAVE PETITION (C) No.5182-5184 OF 2017

SPECIAL LEAVE PETITION (C) No.23846 OF 2016

SPECIAL LEAVE PETITION (C) No.23097 OF 2016

SPECIAL LEAVE PETITION (C) No.19804-19805 OF 2016

SPECIAL LEAVE PETITION (C) No.22127-22128 OF 2016

SPECIAL LEAVE PETITION (C) No.21997-21998 OF 2016

W.P.(C) No.602 OF 2017

SPECIAL LEAVE PETITION (C) Diary No.24901 OF 2017

J U D G M E N T

Mohan M.Shantanagoudar, J.

1. The matter is referred to our Bench to answer the following questions:

I. Whether a deposit in the Treasury or with the Collector amounts to a payment of compensation under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the '2013 Act'), especially when the landowners have refused to accept compensation? ("Question No. 1")

II. Whether the conscious omission referred to in paragraph 11 of the judgment in **Sree Balaji Nagar Residential Association v. State of Tamil Nadu, (2015) 3 SCC 353** makes any substantial difference to the legal position with regard to the exclusion or inclusion of the period covered by an interim order of the Court for the purpose of determination of the applicability of Section 24(2) of the 2013 Act? ("Question No. 2")

III. Whether the principle of "actus curiae neminemgravabit", namely act of the court should not prejudice any parties would be applicable in the present case to exclude the period covered by an interim order for the purpose of determining the question with regard to taking of possession as contemplated in Section 24(2) of the 2013 Act? ("Question No. 3")

I. RE: QUESTION NO. 1

2. I agree with the conclusions reached by my learned brothers on the question referred to us while differing with them on their conclusion that **Pune Municipal Corporation &Anr. v. HarakchandMisirimal Solanki &Anr., (2014) 3 SCC 183**is *per incuriam*. However, I wish to place my reasons and views on the subject.

3. This question arises in Civil Appeal No. 20982/17 (Indore Development Authority v. Shailendra (dead) through LRs. &Ors.). To understand the real controversy to be determined in this question, it is better to have the facts set out in brief, as hereunder:

The Indore Development Authority ("the IDA"), acquired land for the purpose of constructing a Ring Road and Link Road on the outskirts of Indore city.

A notification under Section 4 (1) read with Section 17 (1) of the Land Acquisition Act, of 1894 (for brevity '1894 Act') was issued on 23.12.1994. The compensation was deposited by the IDA with the Land Acquisition Collector. The landowners were informed to collect it, but they refused and did not take the compensation. Enquiry under section 5A was dispensed with. Declaration under section 6 was published on 17.3.1995 under the 1894 Act. Award was passed by the LAO on 14.03.1997. W.P. No.1182 of 1997 was filed seeking quashing of the acquisition proceedings. It was allowed on 28.8.1998 holding that the scheme lapsed on expiry of three years, and that enquiry under section 5A was illegally dispensed with. Letters Patent Appeal No.480 of 1998 was preferred before the Division Bench and on 29.01.2000 an order of status quo was passed. The LPA was dismissed as not maintainable. However, this Court in a Special Leave Petition

remitted the matter to the High Court to file writ appeal under the provisions of the Madhya Pradesh UchchaNyayalaya (Khand NyaypeethKo Appeal) Adhiniyam, 2005.

On 04.04.2007 the High Court again directed maintenance of status quo. The respondent therein filed an application raising the grounds for quashing acquisition proceedings under Section 24(2) of the 2013 Act. It was resisted by the IDA on the ground that the acquisition had been completed and the amount has been deposited with the Land Acquisition Collector; that the construction is substantially complete; if it is not completed in the remaining area, it will cause great hardship to the citizens and widening of road was necessary for smooth flow of traffic.

The High Court by an order dated 03.11.2014 held that the acquisition proceedings had lapsed in view of the decisions of this Court in **Pune Municipal Corporation (supra)** and **Sree Balaji (supra)**. On appeal to this Court, the matter has been referred to this Bench by an order of 07.12.2017 to consider the Question No. 1 as mentioned in paragraph 1 of this judgment.

4. It was submitted by the learned counsel for the State that there is a distinction between the words “payment” and “deposit”, and that the acquisition does not lapse on a failure to “deposit” in Court; this Court in **Pune Municipal Corporation (supra)** did not consider certain Rules framed by various States under Section 55 of the Land Acquisition Act, 1894 which direct the deposit of compensation in the accounts of landowners in the Treasury.

5. On the other hand, it was contended by the learned counsel for the landowners that a deposit must necessarily be made in Court under Section 31(2) of the 1894 Act,

else the proceedings lapse under Section 24(2) of the 2013 Act; the converse contention was also taken with respect to the Rules of various States, with the argument that the Rules cannot override the express provision in Section 31(2) of the 1894 Act to deposit the compensation in Court.

6. In order to consider the question at hand, a reproduction of the relevant Sections is necessary.

Sections 24(1) and (2) of the 2013 Act read as follows,

> "24. (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 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:
>
> Provided that where an award has been made and compensation in respect of a majority of land holding 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."

This Court's interpretation of Section 24(2) of the 2013 Act has proceeded in the past by referring to certain provisions of the 1894 Act, including Sections 31 to 34 of the said Act

which deal with payment of compensation & interest. Sections 31 to 34 read as follows:

"**31. Payment of compensation or deposit of same in Court**. - (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of the appropriate Government instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties
concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

32. Investment of money deposited in respect of lands belonging to person incompetent to alternate. - (1) If any money shall be deposited in Court under sub-section (2) of the last preceding section and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall-

(a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited, was held, or

(b) if such purchase cannot be effected forthwith, then in such Government or other approved securities as the Court shall think fit;

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied-

(i) in the purchase of such other lands as aforesaid; or
(ii) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of moneys deposited to which this section applies, the Court shall order the costs of the following matters, including therein all reasonable charges and expenses incident thereon, to be paid by the Collector, namely: -

(a) the costs of such investments as aforesaid;
(b) the costs of the orders for the payment of the interest or other proceeds, of the securities upon which such moneys are for the time being invested, and for the payment out of Court of the principal of such moneys, and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

33. Investment of money deposited in other cases. -When any money shall have been deposited in Court under this Act for any cause other than mentioned in the last proceeding section, the Court may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider will give the parties interested therein the same benefit thereform as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

34. Payment of interest - When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited:

> Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry."

7. In **Pune Municipal Corporation (supra)**, a Coordinate bench of this Court decided the question as to, "whether a deposit in the Treasury amounts to compensation being "paid" under Section 24(2) of the 2013 Act?" In that case, the landowners challenged the acquisition proceedings under Section 24(2) of the 2013 Act on the ground that the award was made over five years prior to the commencement of the 2013 Act, and that no compensation was paid to the landowners or deposited in Court. The State contended that as the landowners did not appear on the notified date to accept compensation and did not file an application for a reference under Section 18 of the 1894 Act, the State deposited the compensation amount in the Treasury. The Court, on examining the rival contentions, interpreted Section 24(2) of the 2013 Act in light of Section 31 of the 1894 Act to hold that where the landowners do not accept compensation pursuant to the Collector's award, the compensation is "paid" only when it is deposited "in Court". If compensation is not deposited in Court in such a case, it will not be considered as having been "paid" as per Section 24(2) of the 2013 Act, and the acquisition proceedings lapse (provided that the award was made five years or more prior to the commencement of the 2013 Act). The relevant paragraphs are extracted hereunder,

> "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."

Pune Municipal Corporation (supra)relied on **Prem Nath Kapur v. National Fertilizers Corporation of India Ltd., (1996) 2 SCC 71**, wherein it was observed that if compensation had been enhanced, but the enhanced amount was not deposited in Court, Section 34 would be attracted. It held that Section 34 mandates payment of interest if the amount is not deposited "in Court" as per Section 31, and proceeded to conclude as follows,

> "13. Thus we hold that the liability to pay interest on the amount of compensation determined under Section 23(1) continues to subsist until it is paid to the owner or interested person or deposited into court under Section 34 read with Section 31. Equally, the liability to pay interest on the excess amount of compensation determined by the Civil Court under Section 26 over and above the compensation determined by the Collector/Land Acquisition Officer under Section 11 subsists until it is deposited into court. Propriovigore in case of further enhancement of the compensation on appeal under Section 54 to the extent of the said enhanced excess amount or part thereof, the liability subsists until it is deposited into court. The liability to pay interest ceases on the date on which the deposit into court is made with the amount of compensation so deposited….."

Pune Municipal Corporation (supra) also relied on **Ivo AgneloSantiamo Fernandes v. Government of Goa, (2011) 11 SCC 506**, which interpreted Section 34 of the 1894 Act in light of **Prem Nath (supra)** to hold that interest accrues on a deposit in the revenue account of the State until such compensation amount is deposited in Court. It held thus,

> "22. In the light of the abovesaid principle, we are of the view that the contentions of the respondents cannot be accepted. The Act requires that the interest be deposited in court, and the same has been upheld in Prem Nath Kapur (supra).
>
> 23. In the present case, the respondents did not deposit the amount in court, but in their revenue account and utilized the same. Even if the respondent State does pay the compensation to the claimants directly, and the same is not collected, the respondent State cannot then keep the said money with itself and utilize it. In such cases, after a reasonable period, if the claimants do not come forward to collect compensation, then it should be deposited in court by the State. Allowing the State to keep the compensation with itself and utilizing it cannot possibly be permitted being contrary to the provisions of the Act and the law laid down in Prem Nath Kapur (supra). Hence, the judgment of the High Court is clearly erroneous and deserves to be set side."

Pune Municipal Corporation (supra)has been followed in several subsequent cases, including the cases of **Union of India v. Shiv Raj**, **(2014) 6 SCC 564**, **Karnail Kaur v. State of Punjab, (2015) 3 SCC 206**, and**Radiance Fincap (P) Ltd. v. Union of India, (2015) 8 SCC 544**, wherein it has been held that the acquisition proceedings lapse when the compensation has been deposited with the Treasury or with the Revenue Department instead of deposited in Court.

8. This Court in **Delhi Development Authority v. Sukhbir Singh, (2016) 16 SCC 258** conducted an incisive analysis of the Punjab Standing Order No. 28 of 1909, which directs that a deposit should be made in the Treasury in certain instances (discussed later in Paragraphs 13, 14 and 15). It held that a deposit in the Treasury is meant to

satisfy Section 31(1), but Section 31(2) cannot be satisfied without a deposit in Court. If such deposit is not made in Court, the proceedings must necessarily lapse. The observation of the Court was,

> "In any case, such deposit in the treasury is referable only to Section 31(1) and cannot ever be a substitute for deposit before the reference court as provided under Section 31(2) of the Land Acquisition Act, which applies in the circumstances mentioned in the aforesaid sub-section. We are, therefore, of the opinion that no distinction between the facts of this case and the facts in Pune Municipal Corporation can be drawn on this ground, and the ratio of Pune Municipal Corporation will apply on all fours to the facts of the present case."

9. In **The Working Friends Cooperative House Building Society Ltd. v. State of Punjab, (2016) 15 SCC 464**,the deposit of compensation was made in the Treasury and not in the Court. This compensation was subsequently deposited in the Court after 01.01.2014, i.e., after the commencement of the 2013 Act. However, the Court held that the acquisition proceedings lapsed, after the coming into force of the 2013 Act.

10. In fact, this Court in **Bharat Kumar v. State of Haryana, (2014) 6 SCC 586**, applied Section 24(2) of the 2013 Act in a case where the possession was not taken and compensation had neither been paid nor deposited before the appropriate forum. It stated as follows,

> "7. In our opinion though the award has been passed by the Land Acquisition Collector, they have not taken the physical possession of the land and have not paid the compensation to the appellant or had deposited the said compensation before an appropriate forum."

The same rationale was adopted in **Bimla Devi &Ors. v. State of Haryana, (2014) 6 SCC 583**. In **Vijay Latka v. State of Haryana, (2016) 12 SCC 487**, this Court extended the ratio of **Pune Municipal Corporation (supra)** to mean that the land owner is not required to come and receive the payment in cases of compulsory acquisition. It held as

follows,

> "5. The contention of the learned counsel appearing for the respondents is that whoever approached the Haryana Urban Development Authority or the competent authority has been paid compensation and since the appellants failed to approach the quarters concerned for the compensation, they cannot be granted any relief. We find this contention difficult to appreciate. When a land is compulsorily acquired, it is for the requisitioning authority to make the payment and does not require the landowner to come and receive the payment.
>
> 6. As and when land is taken over by way of acquisition, the landowner has to be compensated with the amount of compensation duly determined under the Act. In case there is any dispute as to who is to be paid the amount, the same is to be deposited in Court in terms of Section 31 of the 1894 Act. In this case before us, the stand of the requisitioning authority, namely, Haryana Development Authority is that the money is ready with them and it is for the landowner to come and receive the payment. This stand is not permissible under the law. It is for the authorities concerned to pay the money and take the land and in case there is any dispute as to whom the money should be paid, then the same has to be deposited in Court."

11. Various High Courts have followed **Pune Municipal Corporation (supra)**. The High Court of Punjab and Haryana in **Maharana Partap Charitable Trust v. State of Haryana (CWP No. 6860 of 2007)** held that Section 24(2) applied even where landowners have refused to accept compensation.

12. As per Section 24(2) of the 2013 Act, the proceedings lapse in one of the following situations: **(i)** when possession is not taken (even if compensation is paid), *or***(ii)** when compensation is not paid (even if possession is taken), *or* **(iii)** when neither compensation is paid, nor possession is taken. This leads me to the issue of how to interpret the "payment" of compensation: i.e. whether, deposit into the Treasury and not in the Court, can constitute "payment."

13. To resolve this issue, it is necessary to first look into the meanings of "tender", "deposit" and "payment."

A tender is defined in **Black's Law Dictionary** (**p. 1606**) as follows:

> "A valid and sufficient offer of performance; specif., an unconditional offer of money or performance to satisfy a debt or obligation."

Deposit is defined in **Black's Law Dictionary** (**p. 504**) as follows:

> "The act of giving money or other property to another who promises to preserve it or to use it and return it in kind; esp., the act of placing money in a bank for safety and convenience.

Payment is defined in **Black's Law Dictionary** (**p. 1243**) as follows:

> "The performance of an obligation by the delivery of money or some other valuable thing accepted in partial or full discharge of the obligation."

The definition of "tender" has been outlined by this Court in **Tata Cellular v. Union of India, (1994) 6 SCC 651** as follows,

> "69. A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated, the following are the requisites of a valid tender:
>
> 1. It must be unconditional.
>
> 2. Must be made at the proper place.
>
> 3. Must conform to the terms of obligation.
>
> 4. Must be made at the proper time.
>
> 5. Must be made in the proper form.
>
> 6. The person by whom the tender is made must be able and willing to perform his obligations.

7. There must be reasonable opportunity for inspection.

8. Tender must be made to the proper person.

9. It must be of full amount."

14. We are not entitled to read the words into an Act of Parliament unless clear reason for it is to be formed within the four corners of the Act itself. However, a statute is to be read as a whole. A statute has to be understood by making construction on all the parts together and not of one part only by itself. Every clause in a statute is to be construed with reference to the context and other clauses of the Act,as far as possible, to make a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. An intention to produce unreasonable result is not be imputed to a statute if there is some other construction available. Where, to apply words literally would defeat the obvious intention of the legislation and produce a wholly unreasonable result, we must feed something to the provision so as to achieve the obvious intention and produce rational construction.

15. The 2013 Act as well as the 1894 Act use "tender", "payment", and "deposit" at different places in the enactments. Section 31(1) of the 1894 Act directs that the Collector "…shall tender payment…" and "…shall pay it to [the beneficiaries] unless prevented by some one or more of the contingencies mentioned in the next sub-section." Clearly, tender and payment are two different terms. However, "payment" has been treated similarly to "deposit" within Section 24(2) itself, as well as in other provisions. A plain reading of sub-section 2 of Section 24 of the 2013 Act discloses that

in case either the physical possession of the land has not been taken, or the compensation has not been paid, the acquisition proceedings shall be deemed to have lapsed. However, the proviso to sub-section 2 of Section 24 emphasizes that after the award is made, if compensation in respect of majority of the land holdings has not been deposited in the account of the beneficiary, then the owners of minority of the land holdings will be entitled to compensation under the 2013 Act, which means that under the proviso, though the owners of a minority of the land holdings have received compensation under the 1894 Act, they would be getting higher compensation under the 2013 Act in case compensation has not been deposited in the account of the beneficiaries in respect of a majority of the land holdings. The word "deposit" in the account of beneficiaries as contained in proviso to section 24(2) of the 2013 Act would mean deposit in the account of beneficiaries in the Treasury. The proviso does not refer to the word "payment", as is referred to in the main provision, i.e., sub-section 2 of Section 24 of the 2013 Act. The proviso to sub-section 2 of Section 24 does not require the State to pay the compensation in respect of minority holdings for saving acquisition. It would be sufficient if the compensation is deposited in respect of minimum holdings in the account for saving the acquisition. Since the proviso to sub-section 2 of Section 24 does not envisage lapsing of acquisition, even if the payment is not made but is deposited that too with regard to the beneficiaries of a minority of holdings, the same would lead to the inevitable conclusion that the word "payment" as found in sub-section 2 of Section 24 has a strong link or co-relation with the word "deposit". A reading of sub-section 2 of Section 24 along with the proviso would make it clear that even if the compensation in respect of minority of the land holdings is deposited in the account of such minority beneficiaries, the acquisition does not lapse. At the most, every

land-loser is entitled to the higher compensation as per the provisions of the 2013 Act. Since the proviso does not refer to the words "payment of compensation" and as the main provision i.e. sub-section 2 of Section 24 does not refer to the word "deposit", the only interpretation that is possible is that, if either deposit is made in the Treasury in the name of minority holders or payment is made at least to minority holders, the acquisition does not lapse. If the word "paid" as found in sub-section 2 of Section 24 is not treated as "deposited" in the account of beneficiaries, then the proviso to sub-section 2 of Section 24 would become otiose. It is well settled that no provision under the act can be rendered nugatory or otiose.

16. Section 31 of the 1894 Act is akin to Section 77 of the 2013 Act. Of course, under Section 77 of the 2013 Act, the legislature has gone a step further and has mandated the Collector to pay the compensation awarded by him to the persons interested by depositing the amount in their bank accounts unless prevented by some or more contingencies provided under sub-section 2. Under Section 80 of the 2013 Act, which is akin to Section 34 of the 1894 Act, the Collector shall pay the amount awarded with interest thereon at the rate of 9% or 15%, as the case may be, in case the amount of such compensation is not paid or deposited on or before taking possession of the land. Thus, it is clear that Section 80 also recognises deposit of compensation as being equivalent to payment of compensation. Even under Section 34 of the 1894 Act, the land loser will be entitled to compensation with interest at the rate of 9% or 15%, as the case may be, in case the compensation is not paid or deposited on or before taking possession of the land. Thus, the word "deposit" is treated synonymous with the word "payment".

17. However, Section 31 of the 1894 Act states that the Collector at the first instance shall tender payment of compensation to the persons interested and pay the compensation to such interested persons unless prevented by some or more contingencies mentioned in sub-section 2 of Section 31 of the 1894 Act. Three contingencies are found in sub-section 2 of Section 31 wherein the Collector will not pay the compensation to the persons interested, viz., (a) persons interested do not give consent to receive the compensation; (b) if there is no person competent to alienate the land; (c) if there is any dispute as to the title or as to the apportionment of compensation. In case any such contingencies arise, the Collector shall deposit the amount of compensation in Court to which a reference under Section 18 would be submitted. If Section 31 is to be read with Section 34 harmoniously, the same would make it clear that non-deposit or non-payment of compensation will make State liable to pay interest as prescribed. In other words, in case the Collector does not deposit the amount of compensation in Court as contemplated under Section 31(2) of the 1894 Act, at the most the persons interested may be entitled to interest of 9% or 15% as the case may be. Such act of Collector depositing the amount in the Treasury and such act of Collector in not depositing the amount in Court as mandated in sub-section 2 of Section 31 may not result in extreme consequence of lapsing of acquisition.

18. Article 283(1) of the Constitution of India mandates that matters pertaining to custody of the Consolidated Fund of India and the Contingency Fund of India, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by the Government of India etc. shall be regulated by law made by the Parliament.Article 283(2) of the Constitution of India mandates that similar matters of the States' Consolidated funds

etc. are to be regulated by law made by the State Legislatures. States have framed rules pursuant to Article 283(2) of the Constitution of India as to how the public moneys are to be handled. Section 55 of the 1894 Act empowers the State to make rules for guidance of officers. Pursuant to Article 283(2) of the Constitution of India and Section 55 of the 1894 Act, various States, such as, Assam, Bihar, Orissa, Kerala, West Bengal, Delhi and Punjab have framed rules to govern the mode of payment of compensation. All of them provide for deposit into the Treasury in case the landowners are not present to receive the compensation, along with the notice to such landowners apprising them of such deposits. It appears that the Court in the case of **Pune Municipal Corporation(supra)** did not consider such rules passed by the States that direct the deposit of unclaimed compensation in the Treasury. Extracts from these rules that permit deposit in the Treasury, along with the requirement of notice of such deposits are furnished below:

19. The Assam Govt. Notification No.1211-R., dated April 19, 1932, reads as follows,

> "9. In giving notice of the award under Section 12(2) and tendering payment under section 31(1), to such of the persons interested as were not present personally or by their representatives when the award was made, the Collector shall require them to appear personally or by representatives by a certain date, to receive payment of the compensation awarded to them intimating also that no interest will be allowed to them, if they fail to appear. If they do not appear, and do not apply for a reference to the Civil Court under section 18, he shall, after any further endeavour to secure their attendance or make payment that may seem desirable, cause the amounts due to be paid into the Treasury as revenue deposits payable to the persons to whom they are respectively due and vouched for in the form prescribed or approved by Government from time to time. He shall also give notice to the payees of such deposits, specifying the Treasury in which the deposits have been made."

The Land Acquisition (Bihar & Orissa) Rules, 1894 read as follows,

> "10. In giving notice of the award under Section 12(2) and tendering

> payment under Section 31(1), to such of the persons interested as were not present personally or by their representatives when the award was made, the officer shall require them to appear personally or by representatives by a certain date to receive payment of the compensation awarded to them, intimating also that no interest will be allowed, to them if they fail to appear. If they do not appear, and do not apply for reference to the Civil Court under Section 18, the officer shall after any further endeavour to secure their attendance that may seem desirable, cause the amounts due to be paid into the Treasury as Revenue deposits payable to the persons to whom they are respectively due and vouched for in the accompanying form (marked E). The officer shall also give notice to the payees of such deposits, the Treasury in which the deposits specifying have been made. ……"

The Uttar Pradesh Rules for the Payment of Compensation for Land Taken Up Under the Land Acquisition Act I of 1894 read as follows,

> "6. In giving notice of the award under section 12(2) and tendering payment under section 31(1) to such of the persons interested as were not present personally or by their representatives when the award was made, the special officer shall require them to appear personally or by representatives by a certain date, to receive payment of the compensation awarded to them intimating also that no interest will be allowed to them if they fail to appear. If they do not appear, and do not apply for a reference to the Civil Court under section 18, the officer shall after any further endeavour to secure their attendance that may seem desirable, cause the amounts due to be paid in the Treasury as revenue deposits payable to the persons to whom they are respectively due, and vouched for in form E. The officer shall also give notice to the payees of such deposits, specifying the Treasury in which the deposits have been made. ……."

The West Bengal Notification No.29 T.R., dated April 24, 1895 reads as follows:

> "10. In giving notice of the award under Section 31(1) to such of the persons interested as were not present personally or by their representatives when the award was made, the officer shall require them to appear personally or by representatives by a certain date, to receive payment of the compensation awarded to them, intimating also that no interest will be allowed to them, if they fail to appear. If they do not appear and do not apply for reference to the Civil Court under Section 18, the officer shall, after any further endeavour to secure their attendance that may seem desirable, cause the amounts due to be paid into the Treasury as revenue deposits payable to the persons to whom they are respectively due, and vouched for in the accompanying form (not given here). The officer shall also give notice to the payees of such deposits, specifying the Treasury in which the deposits have been made."

The Land Acquisition (Kerala) Rules, 1990 read as follows,

> "13. (2) In case the awardees or their authorised agents fail to appear and accept the award or fail to apply for a reference to court under Section 18, the amount due shall be paid into the treasury as Revenue Deposit payable to the persons to whom it is respectively due and vouched for in Form E. A notice intimating the deposit of the amount into the Treasury shall also be served on all the awardees and interested persons in Form No.11."

The Punjab Standing Order No. 28 of 1909, applied to Delhi and Punjab reads as follows,

> "75. (V) In giving notice of the award Under Section 12(2) and tendering payment Under Section 31(1) to such of the persons interested as were not present personally or by their representatives when the award was made, the officer shall require them to appear personally or by representatives by a certain date to receive payment of the compensation awarded to them, intimating also that no interest will be allowed to them if they fail to appear, if they do not appear and do not apply for a reference to the civil court Under Section 18, the officer shall after any further endeavours to secure their attendance that may seem desirable, cause the amounts due to be paid to the treasury as revenue deposited payable to the persons to whom they are respectively due and vouched for in the Form marked E below. The officer shall also give notice to the payees of such deposits, specifying the treasury in which the deposit has been made. ….."

20. The Punjab Standing Order No. 28 of 1909 was considered by this Court in the case of **Sukhbir Singh (supra)**, wherein it was observed that the said Standing Order provides for five modes of payment of compensation. The last one, namely, the payment of compensation into the Treasury, is for cases where the landowners fail to appear to receive their compensation. When such payment is made into the Treasury, the landowners for whom the deposits are made are required to be served with a notice of the deposits as well as the Treasury in which such deposits are made. The same provision with respect to issuing of notice to non-appearing landowners is made in the

State Rules for Bihar, Orissa, Assam, West Bengal and Kerala.

21. It is clear that as per these State Rules, payment into the Treasury is nothing but a residuary mode of payment after efforts as per Rules have been made by the authorities to secure the attendance of the person entitled to compensation. The existence of such express provision in the rules, and the fact that this Court did not consider any of these rules in **Pune Municipal Corporation (supra)**, had led to a unique situation where the rules are seemingly not in conformity with the meaning given to Section 24(2) of the 2013 Act and Section 31(2) of the 1894 Act by this Court in **Pune Municipal Corporation (supra)**. While **Pune Municipal Corporation (supra)** held that all unaccepted compensation must necessarily be deposited in Court for the acquisition to remain valid, the States have made rules for unaccepted compensation to be deposited in the Treasury as revenue deposits. On a combined reading of the two statutes and the State Rules, it is clear that a deposit in the Treasury is not made illegal or impermissible. In fact, deposits in the Treasury are allowed as a valid means of payment by these State Rules. The State Rules provide for deposits in the Treasury as revenue deposits when the landowners do not appear on the notified date to collect their compensation.

22. It is merely a matter of procedure as to where the deposit is made. It is also relevant to note that certain High Court Rules viz. Punjab & Haryana and Delhi, provide that a deposit in Court under Section 31 of the 1894 Act must be lodged into the Treasury as a Revenue or Civil Court deposit. Rule 1 of Chapter 8-C of the Punjab and Haryana High Court Rules reads as under:

> "1. Money paid into the District Court under section 31 of the Land Acquisition Act must be lodged into the Treasury as a Revenue or Civil

> Court deposit under the rules applicable to such deposits, untilits investment as required by section 32 ibid."

23. Rule 10 of the Uttar Pradesh Rules for the Payment of Compensation for Land Taken Up Under the Land Acquisition Act I of 1894 provides for the money paid in Court to be credited as Civil Court Deposits, the accounts of which are ultimately kept by the Treasury (according to paragraph 355 of Chapter XV of the Financial Handbook issued by the Government of U.P.). Rule 10 of the above Rules states that:

> "10. All payments into Court for deposit under the Act should be made by means of cheques in favour of the presiding officer of the Court, payable by order of the Court to credit of Civil Court Deposits. The cheques should be accompanied by receipts in triplicate in form D, duly filled up, of which one will be retained by the Court for record, and the other two returned duly signed to the Collector. The amounts deposited in the Court will be charged off as expenditure in the public works accounts of the Collector, and the ultimate payments to the persons interested under the award shall be arranged for by the Court under the rules for the payment of Civil Court Deposits."

Thus, it is not the position that a deposit in Court is the only legal form of deposit under the 1894 Act. Compensation was being credited to the Treasury in the past, even after the same was deposited in Court. Thus, the issue where the compensation is deposited is a matter of procedure.

24. When the State Rules and High Court rules permit deposits in the Treasury, it falls to reason that under the scheme of the 1894 Act, failure to pay or deposit in Court under Section 31(2) only had the effect of attracting interest payment as per Section 34 of the 1894 Act.

25. In **Hissar Improvement Trust v. Rukmani Devi and Anr. (1990) Supp. 1 SCC 806**, this Court held that where compensation has not been paid or deposited on time in Court, the Collector is liable to pay interest to the landowners as per Section 34. It stated thus,

> "5. It cannot be gainsaid that interest is due and payable to the landowner in the event of the compensation not being paid or deposited in time in Court. Before taking possession of the land, the Collector has to pay or deposit the amount awarded, as stated in Section 31, failing which he is liable to pay interest as provided in Section 34.
>
> xxx xxx xxx
>
> 7. We make it clear that insofar as the landowner is concerned, his right to be compensated is enforceable against the State. It is the liability of the Collector in terms of the relevant provisions to pay the amount awarded, together with interest in the event of the amount not being paid in time. The liability of the appellant-Trust arising under its agreement with the Government for payment in respect of the property acquired is a matter on which we express no view."

26. In **Jogesh Chandra v. Yakub Ali, 29 IC 111 (Cal)**, where there was a dispute of title over the land between a landlord and his alleged tenant, the Collector mistakenly paid the entire land acquisition compensation amount to the tenant, even though the dispute was apparent on the face of the record and the compensation should have been deposited in Court as per Section 31(2) of the 1894 Act. The Calcutta High Court held that the Collector's mistaken payment to the tenant, and the failure of the Collector to deposit in Court, does not bar a reference under Section 18 of the 1894 Act. That Court allowed the acquisition proceedings to stand despite procedural lapses in the payment and deposit of compensation.

27. The case of **Damadilal v. Parashram, AIR 1976 SC 2229 : (1976) 4 SCC 855,** relied upon by the learned counsel for the IDA in arguments before the referring Bench,

is not relevant to the determination of the issue at hand as it is a case of tenancy rights and merely reaffirms that the payment by cheque is a valid tender.

28. To summarize, it must be emphasized that "payment" of compensation and "deposit" of compensation have been used to describe the instance where the State gives landowners their compensation. Both signify an obligation of the State. As per Section 31(1), compensation must be paid to the landowners. As per Section 31(2), if the landowners do not consent to receive compensation, the State shall deposit it in Court. It is often that when a beneficiary does not appear to collect compensation, the State has to depositthe compensation in the Treasury as per the relevant State Rules. But that does not mean that the State has shirked its obligation to compensate the affected persons. It may not always be the case that persons who do not appear on the appointed date are refusing to accept compensation. It may also be that such affected persons had consented to receive compensation, but simply could not appear or could not be traced for some reason or the other. There may be thousands of such beneficiaries. In such a case, the Collector cannot hand over compensation to each beneficiary in person, but also cannot keep the money with him. He has to keep it in the Treasury. In fact, the State Rules have been framed to give notice to the landowners that their compensation has been deposited in the Treasury instead of the Court. In light of this, there is no harm done or prejudice caused if the State deposits compensation in the Treasury when landowners do not appear. In fact, as mentioned supra the compensation deposited in Courts is often kept in the Treasury. It is merely a matter of procedure as to where the landowners who do not appear on the appointed date, or the landowners who refuse to receive compensation, shall take their compensation from the Treasury.

29. The objective of directing a deposit of compensation in Court in the 1894 Actwas to prevent unnecessary prolongation of the proceedings, and accumulation of the Collector's liability to pay interest under Section 34, when compensation is not paid or deposited on or before taking possession. The landowners cannot take advantage of their own act of refusing to receive compensation, and contend that compensation has never been paid to them, when it has actually been deposited in the Treasury. Once the State deposits the money in the Treasury, it has shown its bona fide intention to go through with the acquisition and give the beneficiaries their due compensation. In such a case, it can hardly be punished with a lapse, except that it is liable to pay interest as prescribed under the Act. Moreover, as discussed in the preceding paragraph, practical considerations make it clear that the Collector may not be able to individually reach out to thousands of claimants and pay them the compensation in person at the earliest. It is only reasonable that the Collector be allowed to deposit the compensation in the accounts of individual claimants in the Treasury, and to inform the claimants to get the same released.

30. I am thus of the opinion that from both a legal and a practical standpoint, a deposit in the accounts of individual landowners in the Treasury, and informing them about such deposit for getting the same released in their favour where they do not appear to accept compensation as under the State Rules, does not result in the lapse of acquisition proceedings.

31. However, with great respect, I may not subscribe to the views of my learned Brothers on their conclusion that judgment in **Pune Municipal Corporation(supra)** was rendered *per incuriam*inasmuch as the judgment cannot be said to have been through

lack of care, or out of ignorance of certain important factors.

32. *Per incuriam* is a Latin term which means "through lack of care" or through inadvertence (of a judicial decision) wrongly decided, mainly because the judges were ill-informed about the applicable law.The word "*incuria*"literally means "carelessness". A decision is rendered*per incuriam*if it is made through some mistake, or under a misapprehension as to a decision or a dictum of a judge, which is the result of a material oversight. A decision, judgment or verdict can be rendered*per incuriam*if given without considering any provisionin a statute which was not brought to the notice of the court or if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger bench; or if the decision of a High Court is not in consonance with the views of the Supreme Court. A judgment that was decided *perincuriam* does not have to be followed as precedent by a court.

33. The doctrine has been examined at length by us. As per **A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602**, the doctrine of *per incuriam* is defined as follows:

> "42. ……"per incuriam" are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong."

34. In **SiddharamSatlingappaMhetre v. State of Maharashtra,(2011) 1 *SCC* 694**,this Courtdid not follow the decision of co-ordinate Benches which were opposed to the decision of an earlier Constitution Bench. The doctrine of *per incuriam* was explained as follows:

> "128. Now we deem it imperative to examine the issue of per incuriam raised by the learned counsel for the parties. In Young v. Bristol Aeroplane

> Company Limited (1944) All ER 293 the House of Lords observed that 'incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered in ignoratium of a statute or other binding authority. The same has been accepted, approved and adopted by this court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law."

35. In my considered opinion, the judgment in **Pune Municipal Corporation (supra)** was not rendered *per incuriam*, as the conclusion is reached by proceeding in detail on the interpretation of relevant statutory provisions. However, we may not agree with the reasons assigned and conclusions arrived at by the Court in the said judgment. It is no doubt true that the Court in**Pune Municipal Corporation (supra)** was not informed about the Rules of certain States framed under Section 55 of the 1894 Act and certain Rules of High Courts on the point regarding deposit to be made in the Treasury. Though the Rules are not adverted to in the case of **Pune Municipal Corporation (supra)**, the discussion as a whole, if looked into, would make it clear that the Court while deciding the said judgment, discussed in detail about the failure to deposit in the Court, so also, about the effect of deposit in Treasury. Hence, in my considered opinion, merely because the Rules of certain States are not considered, the judgment in**Pune Municipal Corporation (supra)** cannot be termed as *per incuriam*. In other words, merely because the Rules are not referred to specifically in the judgment, it cannot be said that there is non-consideration of the effect of the Rules.

36. I may hasten to add here that in the case of **Sukhbir Singh (supra)**, the Court did consider the effect of the Rules framed by Delhi, Punjab and Haryana Governments. But the conclusion rendered in **Sukhbir Singh (supra)** was in conformity with the judgment in **Pune Municipal Corporation (supra)**.

37. The judgment in **Pune Municipal Corporation (supra)** is the first judgment on the issue in question by a three-Judge Bench of this Court. Hence, it cannot also be concluded that the decision in **Pune Municipal Corporation (supra)** is not in consonance with the relevant line of decisions rendered by this Court earlier.Having gone through the judgment in **Pune Municipal Corporation (supra)**, it cannot be said that the said judgment is through want of care or inadvertence.

38. In view of the discussion made supra, I conclude that I respectfully differ with the judgment in **Pune Municipal Corporation (supra)** and agree with the conclusion reached by my learned brothers. However, I may not subscribe to the views of my learned brothers that the judgment in **Pune Municipal Corporation (supra)** is rendered *per incuriam*.

39. Hence, the proper course for me in light of my reasoning and opinion is to refer the matter to a larger Bench. In **Sant Lal Gupta v. Modern Cooperative Group Housing Society Ltd., (2010) 13 SCC 336** this Court observed as under:

> "17. A coordinate bench cannot comment upon the discretion exercised or judgment rendered by another coordinate bench of the same court. The rule of precedent is binding for the reason that there is a desire to secure uniformity and certainty in law. Thus, in judicial administration precedents which enunciate the rules of law form the foundation of the administration of justice under our system. Therefore, it has always been insisted that the decision of a coordinate bench must be followed. (Vide: TribhovandasPurshottamdas Thakkar v. Ratilal Motilal Patel. AIR 1968 SC 372, Sub-Committee of Judicial Accountability v Union of India. (1992) 4 SCC 97, and State of Tripura v. Tripura Bar Association (1998) 5 SCC 637.
>
> 18. In Rajasthan Public Services Commission v. Harish Kumar Purohit (2003) 5 SCC 480, this Court held that a Bench must follow the decision of a coordinate Bench and take the same view as has been taken earlier. The earlier decision of the coordinate Bench is binding upon any latter coordinate Bench deciding the same or similar issues. If the latter Bench wants to take a different view that that taken by the earlier Bench,

the proper course is for it to refer the matter to a larger Bench."

For this reason, the Question No. 1 may be referred to a larger bench.

II. RE: QUESTION NO. 2 AND QUESTION NO. 3

Since Question No. 2 and Question No. 3 are interrelated, they are dealt with by me jointly.

40. I agree with the conclusions reached by my learned brothers on the abovementioned questions referred to us, so also that **Sree Balaji (supra)** will stand overruled. However, I wish to place my views on the subject which may be in addition to the views of my brothers.

41. These questions arise together in SLP (Civil) No. 10742/08 (Yogesh Neema&Ors. v. State of M.P. &Ors.). To understand the real controversy to be determined in this question, the facts may be set out in brief as follows:

The lands of several villagers were acquired for the Onkareshwar Dam in Madhya Pradesh. Certain lands were acquired for the establishment of rehabilitation sites. However, additional land of 31.70 hectares was required to extend the Inpun rehabilitation site. Section 4 notification was issued on 07.11.2007 for 17.52 hectares of land, but the remaining land could not be acquired due to the objections of the land owners (appellants therein). By an order of the Commissioner on 15.11.2007, permission was granted to the Collector to invoke urgency clause under Section 17 of the 1894 Act for 11.04 hectares of land and the properties thereon. A declaration for this land was issued on 26.11.2007.

The landowners filed writ petitions questioning the acquisition of the lands. The Single Judge dismissed these writ petitions on 14.01.2008. The High Court held that rehabilitation of displaced persons was a prerequisite to submerging any of the villages in the dam. Thus, such a situation did indeed warrant urgency under Section 17 (1); further, there was an apprehension that the acquisition of land would get delayed by the operation of S. 5A; that there was clear application of mind to the invocation of the urgency clause. The High Court thus dismissed the writ appeals. Being aggrieved, the landowners appealed to this Court. Pending appeal, the 2013 Act came into force.

42. A two-judge bench of this Court on 12.01.2016 referred the matter to a larger bench, on the abovementioned Question Nos. 2 and 3.

43. On one hand, it was contended by the learned counsel on behalf of the landowners that periodof interim stay could not be excluded from the calculation of the period of five years or more under Section 24(2) of the 2013 Act. The statute is a beneficial legislation. The Court could not supply *casus omissus*, as the intention of the Legislature in omitting it was evident. While it amended other provisions to exclude stay period, it did not amend Section 24(2) of the 2013 Act.

44. On the other, it was submitted by the learned counsel on behalf of the State that period of interim stay ought to be excluded from the calculation of five years under Section 24(2) of the 2013 Act. As it was not an intentional omission of the Legislature, the Court could supply meaning to the provision to make it consistent with the rest of the statute.

www.taxcode.in

45. A two-Judge bench of this Court in **Sree Balaji (supra)**held that *casus omissus* could not be supplied to Section 24(2) of the 2013 Act, as the Legislature has amended other Sections in the same Act to exclude period of stay by the Court, while leaving Section 24(2) intact. It observed as follows:

> "11. From a plain reading of Section 24 of the 2013 Act it is clear that Section 24(2) of the 2013 Act does not exclude any period during which the land acquisition proceeding might have remained stayed on account of stay or injunction granted by any court. In the same Act, the proviso to Section 19(7) in the context of limitation for publication of declaration under Section 19(1) and the Explanation to Section 69(2) for working out the market value of the land in the context of delay between preliminary notification under Section 11 and the date of the award, specifically provide that the period or periods during which the acquisition proceedings were held up on account of any stay or injunction by the order of any court be excluded in computing the relevant period. In that view of the matter it can be safely concluded that the Legislature has consciously omitted to extend the period of five years indicated in Section 24(2) even if the proceedings had been delayed on account of an order of stay or injunction granted by a court of law or for any reason. Such *casus omissus* cannot be supplied by the court in view of law on the subject elaborately discussed by this Court in the case of Padma Sundara Rao v. State of T.N. [(2002) 3 SCC 533].
>
> 12. Even in the Land Acquisition Act of 1894, the Legislature had brought about amendment in Section 6 through an Amendment Act of 1984 to add Explanation 1 for the purpose of excluding the period when the proceeding suffered stay by an order of the court, in the context of limitation provided for publishing the declaration under Section 6(1) of the Act. To a similar effect was Explanation to Section 11A which was added by Amendment Act 68 of 1984. Clearly the Legislature has, in its wisdom, made the period of five years under Section 24(2) of the 2013 Act absolute and unaffected by any delay in the proceedings on account of any order of stay by a court. The plain wordings used by the Legislature are clear and do not create any ambiguity or conflict. In such a situation, the court is not required to depart from the literal rule of interpretation."

46. In **Padma Sundara Rao v. State of Tamil Nadu,(2002) 3 SCC 533** this Court held that a Court cannot supply *casus omissus* into Section 6 of the 1894 Act. After the High Court quashes a declaration made under Section 6, there is no provision for a further limitation period of one year for a fresh Section 6 declaration to run from the date

of receipt of the High Court order. It stated that the limitation period must necessarily run from the date of the Section 4 notification as per clause (i) of the proviso to Section 6. The reasoning of this Court was as follows,

> "12. The rival pleas regarding re-writing of statute and casus omissus need careful consideration. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the Legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. v. Yensavage 218 FR 547). The view was reiterated in Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama (AIR 1990 SC 981).
>
> 13. In Dr. R Venkatchalam vs. Dy. Transport Commissioner (1977) 2 SCC 273 it was observed that Courts must avoid the danger of apriori determination of the meaning of a provision based on their own pre-conceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.
>
> 14. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. [See Rishabh Agro Industries Ltd. vs. P.N.B. Capital Services Ltd. [(2000) 5 SCC 515]. `The legislative casus omissus cannot be supplied by judicial interpretative process. Language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in N. Narasimhaiah v. State of Karnataka [(1996) 3 SCC 88]. In State of Karnataka v. D.C. Nanjudaiah[(1996) 10 SCC 619], the period was further stretched to have the time period run from date of service of High Court's order. <u>Such a view cannot be reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only clauses (i) and/or Clause (ii) of the proviso to Section 6(1), but also by a non-prescribed period. Same can never be the legislative intent.</u>
>
> 15. Two principles of construction one relating to casus omissus and the other in regard to reading the statute as a whole appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of <u>clear necessity and when reason for it is</u>

found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in Artemiou v. Procopiou (1966 1 QB 878), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result", we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in Luke v. I.R.C. (1963 AC 557) where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".]

16. The plea relating to applicability of the stare decisis principles is clearly unacceptable. The decision in K ChinnathambiGounder v. State of Tamil Nadu [AIR 1980 MAD 251]was rendered on 22.6.1979 i.e. much prior to the amendment by the 1984 Act. If the Legislature intended to give a new lease of life in those cases where the declaration under Section 6 is quashed, there is no reason why it could not have done so by specifically providing for it. The fact that legislature specifically provided for periods covered by orders of stay or injunction clearly shows that no other period was intended to be excluded and that there is no scope for providing any other period of limitation. The maxim *'actus curia neminemgravibit'* highlighted by the Full Bench of the Madras High Court has no application to the fact situation of this case." (emphasis supplied)

The reasoning in **Padma Sundara Rao (supra)** regarding *casus omissus* was followed verbatim in a catena of cases, including **Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers and Ors., (2003) 6 SCC 659, Union of India v. Dharamendra Textile Processors, (2008) 13 SCC 369** and recently in**Eera through Dr. Manjula Krippendorf v. State (Govt. of NCT of Delhi) &Anr, 2017 (8) SCALE 112.**

47. In **Union of India v. Shiv Raj**, **(2014) 6 SCC 564** a Coordinate bench of this Court held that the period of litigation cannot be excluded, as per a clarification issued

by the Government of India. It did not, however, decide whether a stay period should be excluded from the calculation of 5 years under Section 24(2) of the 2013 Act. It observed as follows,

> "25. In order to clarify the statutory provisions of the 2013 Act with respect to such lapsing, the Government of India, Ministry of Urban Development, Delhi Division, came up with a circular dated 14.3.2014 wherein on the basis of the legal opinion of the Solicitor General of India, it has been clarified as under:
>
> "***3. Interpretation of five years period:***
>
> "With regard to this issue viz. interpretation of five years' period two situations have been envisaged in cases where the acquisition has been initiated under the Land Acquisition Act, 1894 viz., (1) parties whose lands have been acquired have refused to accept the compensation and (2) parties whose lands have been acquired having just parted with physical possession of the land. However, in both the above situations, as on 1.1.2014, the period of 5 years would not have ended and in such cases, the advisory seeks to clarify that the new law shall apply only if the situation of pendency continues unchanged for a period that equals to or exceeds five years. In my view, it should be further clarified that in none of the cases the period of five years would have elapsed pursuant to an award made under Section 11 from the date of commencement of the Act and that the benefit of Section 24(2) will be available to those cases which are pending and where during pendency, the situation has remained unchanged with physical possession not being handed over or compensation not having been accepted and the period equals to or exceeds five years.
>
> **4. *Limitation:***
>
> As regards this item relating to the period spent during litigation would also be accounted for the purpose of determining whether the period of five years has to be counted or not, it should be clarified that it will apply only to cases where awards were passed under Section 11 of the Land Acquisition Act, 1894, 5 years or more prior to 1.1.2014 as specified in Section 24(2) of the Act, to avoid any ambiguity.Since this legislation has been passed with the objective of benefiting the land-losers, this interpretation is consistent with that objective and also added as a matter of abundant caution that the period spent in litigation challenging an award cannot be excluded for the purpose of determining whether the period of five years has elapsed or not. If the possession has not been taken or compensation has not been paid due to the challenge to the land acquisition proceedings, the pendente lite

> period will be included to determine the five year period and including such period if the award was made five years or more prior to the commencement of the Act, then the said acquisition proceedings will be deemed to have elapsed and fresh proceedings, if so desired, will have to be initiated in accordance with the new Act."
>
> 26. The objects and reasons of the 2013 Act and particularly Clause 18 thereof fortify the view taken by this Court in the judgments referred to hereinabove. Clause 18 thereof reads as under:
>
> "18. The benefits under the new law would be available in all the cases of land acquisition under the Land Acquisition Act, 1894 where award has not been made or possession of land has not been taken."

This has led to a unique situation in cases such as **Magnum Promoters v. Union of India, (2015) 3 SCC 327** wherein the Court has faulted the State for contending that they took possession as that would be in violation of the interim stay order, but has however held that acquisition proceedings lapse for not taking possession within 5 years because of the time lost in the interim order. This decision was followed in **Radiance Fincap(supra).**

48. Stay period was also not excluded in the case of **Karnail Kaur (supra)** wherein a two-Judge bench of this Court relied on the above discussed cases to reject the contention of the Solicitor General that the State was being prejudiced. It did so as follows,

> "20. The learned Solicitor General has also placed reliance upon A.R. Antulay v. R.S. Nayak [(1988) 2 SCC 602] in support of his legal submission that in the said case the majority view of this Court have succinctly laid down that the elementary rule of justice is that no party should suffer by mistake/action of the Court. What the court does ought not prejudice a litigant and therefore, respondents herein shall not be made to suffer or be deprived of their right by the reliance being placed by the landowners upon Section 24(2) of the 2013 Act due to the interim orders of the High Court and this Court as they have been in possession of the acquired land. The above contentions of the learned Solicitor General cannot be accepted by us as the said principle of law laid down

by this Court in the above referred case has no application to the fact situation on hand in view of the clear statement of law laid down by this Court in the above referred cases after interpreting the provisions of the 2013 Act and therefore, the reliance placed upon the said decision is misplaced.

21. In Sree Balaji Nagar Residential Association (supra), it was opined that after adverting to the decisions of the Privy Council and this Court, that Section 24(2) of the 2013 Act does not exclude any period during which the land acquisition proceedings might have remained stayed on account of stay or injunction or "status quo" order regarding possession of the land granted by any court. It was conclusively held that the Legislature has consciously omitted to extend the period of five years indicated in Section 24(2) of the 2013 Act, even if the proceedings had been delayed on account of an order of stay or injunction granted by a court of law or for any reason."

49. Various High Courts have followed suit, such as the High Court of Punjab and Haryana in **Maharana Partap Charitable Trust (supra)** wherein it held that the principle of "actus curiae neminemgravabit" has no application to the provisions of Section 24(2) of the 2013 Act and as per the law laid down by the Supreme Court in Shiv Raj, Pune Municipal Corporation and Sree Balaji Nagar Residential Association, the period of stay granted by the Courts is not to be excluded for determining the period of 5 years under Section 24(2) of the 2013 Act.

50. In my opinion, all these cases which followed **Sree Balaji (supra)** require to be revisited.It is not a wilful decision by the State to delay taking possession – it has to abide by the interim orders of the Court. Interpreting the omission as referred to in paragraph 11 of **Sree Balaji (supra)** to mean a default inclusion of periods of stay in the calculation of 5 years will lead tofar-reaching consequences, namely that the State is faulted for something that is out of its control. Large amounts of public money will go to waste. An omission in the statute to exclude periods of stay orders should not necessarily mean by default that such periods are not excluded.

51. Prior to the 2013 Act, a Coordinate Bench of this Court in **Shri Kishan Das &Ors. v. State of U.P. &Ors., 1995 (6) SCC 240**, has considered the detrimental impact of stay orders upon the State in a different context, and held that it cannot be made to pay interest for a stay order-induced delay in making the award by observing:

> "3. Shri B.B. Sanyal, learned senior counsel for the appellants, contended that the award was made on 22.3.1983 though the acquisition was made in September 1976. Therefore, the appellants should be compensated by payment of interest @ 12 per cent per annum. In support of his contention, he placed reliance on the decision of this Court in Ram Chand v. Union of India (1994) 1 SCC 44 and in particular on paragraph 16 of the judgment. It is seen that in Ram Chander's case even after the dismissal of the writ petitions by this Court in Aflatoon v. Lt. Governor of Delhi [(1975) 4 SCC 285], no action was taken by the Land Acquisition Officer to pass the award. Thus, till 1980-81 no award was made in respect of any of the acquisitions. Under these circumstances, this Court had directed the Government to pay interest @ 12 per cent on the amount awarded to compensate the loss caused to the appellants therein. In this case, it is seen that though the notification was issued in September 1976, the writ petitions came to be filed in the High Court immediately thereafter in 1977 <u>and obviously further proceedings were stayed. Accordingly, the Land Acquisition Officer delayed the award</u>. After the dismissal of the writ petitions, the appellants came to this Court and obtained status quo. <u>Obviously, the Land Acquisition Officer was not in a position to pass the award immediately</u>. Thereafter, it would appear that he passed the award on 22.3.1983. Section 34 of the Act obligates the State to pay interest from the date of taking possession under the unamended Act @ 6 per cent and after the Amendment Act 68 of 1984 at different rates mentioned therein. The liability of the State to pay interest ceases with the deposit made as per Section 34 of the Act. Further liability would arise only when the court on reference under Section 18 enhances the compensation under Section 28 of the Act. Similarly, in an appeal under Section 54 of the Act if the appellate court further increases the compensation, then again similar obligation under Section 28 arises." (emphasis supplied)

Clearly, stay orders by the Court constrain the State from continuing with the acquisition proceedings. It may also lead to consequences of contempt, as in **Magnum Promoters (supra)**. In such a situation, the legal position on the exclusion or inclusion of the period of stay in Section 24(2) of the 2013 Act cannot be readily inferred to be against the State due to the omission of the Legislature.

52. As mentioned supra, **Sree Balaji (supra)** has ruled that *casus omissus* cannot be supplied to the provision in question. The decision in **Sree Balaji (supra)** has relied on **Padma Sundara Rao (supra)**. However, the reason for not supplying *casus omissus* was different in that case.In **Padma Sundara Rao (supra)**, the language of Section 6(1) and its proviso are such, that it would make it difficult to have any distinction between the two limitation periods in the proviso, if the starting point of the limitation period itself was changed from the Section 4 notification to another undecided starting point by supplying *casus omissus*. In the facts of **Sree Balaji (supra)** as well as in the facts of the present case, however, there is nothing in the language of Section 24(2) that would defeat the purpose of the Section if the period of interim stays were excluded. **Shiv Raj (supra)** does not specifically help the case of the landowners as it did not consider the question of orders of stay on the acquisition proceedings.

53. As already observed in the previous paragraph, if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature; where, to apply words literally would defeat the obvious intention of the legislation and produce a wholly unreasonable result, we must feed something to the provision so as to achieve the obvious intention and produce rational construction.

54. *Casus omissus* means an omitted case. When a statute or an instrument of writing undertakes to foresee and to provide for certain contingencies, and through mistake, or some other cause, a case remains to be provided for, it is said to be a *casus omissus*.

55. I do not see why *casus omissus* cannot be supplied by the Court when the parameters for supplying such *casus omissus* have been met. There is no bar much less absolute bar on the Court's jurisdiction to supply *casus omissus*. If there is necessity, such omission can be inferred. The grammatical and ordinary sense of the words in the statute must be adhered to unless it would lead to absurdity, repugnance or inconsistency with the rest of the instrument. One of the earliest cases that discussed supplying *casus omissus* in cases of necessity was **CIT v. National Taj Traders, (1980) 1 SCC 370** where a two-Judge bench of this Court held as follows,

> "10. Two principles of construction-one relating to casus omissus and the other in regard to reading the statute as a whole-appear to be well settled. In regard to the former the following statement of law appears in **Maxwell on Interpretation of Statutes** (12th Edn.) at page 33:
>
> > **Omissions not to be inferred**-"It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express. Lord Mersey said: 'It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do.' 'We are not entitled,' said Lords Loreburn L.C., 'to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself.' A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it should have been omitted, and the omission in consequence to have been unintentional."
>
> In regard to the latter principle the following statement of law appears in Maxwell at page 47:
>
> > **A statute is to be read as a whole**-"It was resolved in the case of **Lincoln College** [(1595) 3 Co. Rep. 58b, at p. 59b] that the good expositor of an Act of Parliament should 'make construction on all the parts together, and not of one part only by itself.' Every clause of a statute is to 'be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a

> consistent enactment of the whole statute.' (Per Lord Davey in Canada Sugar Refining Co., Ltd. v. R : 1898 AC 735)".
>
> In other words, under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danckwerts L.J. in Artemiou v. Procopiou [1966 1 QB 878] "is not to be imputed to a statute if there is some other construction available." Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction, (Per Lord Reid in Luke v. I.R.C.-1968 AC 557 where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges.)"

56. This was followed almost verbatim in **Padma Sundara Rao (supra)**.It must be emphasized that the Constitution Bench in **Padma Sundara Rao (supra)** held that *casus omissus* may be supplied when there is "clear necessity and when reason for it is found in the four corners of the statute itself". This means that while *casus omissus* must not be readily inferred, "all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute." This applies squarely to the facts of the case on hand. *Casus omissus* must be supplied to Section 24(2) of the 2013 Act due to the necessity and the need for consistency. Undoubtedly, the power to legislate remains with the Legislature. If a provision of the Act is inconsistent or ambiguous, the same needs to be clarified for bringing the meaning of the said

provision consistent with the rest of the Act, if need be, by supplying meaning to such provision. In the present case, there are many provisions in the 2013 Act which exclude periods of interim stay, such as Section 19(7) and the Explanation to Section 69(2) of that Act. It only makes the statute more consistent if Section 24(2) is read in light of other provisions such as Section 19(7) and the Explanation to Section 69(2), which make interim stay orders exceptions to calculating periods of time under the Act. In this way, repugnancy and inconsistency with the rest of the statute is avoided. There is a clear necessity to read the exclusion of interim stay into Section 24(2) of the 2013 Act so as to make its meaning consistent with the rest of the enactment, where in similar situations the periods of stay are excluded.

57. As has been held by this Court in **Amarjeet Singh v. Devi Ratan (2010) 1 SCC 417**, no litigant can derive any benefit from mere pendency of the case in a Court of Law, as the interim order always merges into the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take benefit of its own wrongs by getting an interim order and blame the Court. Ultimately, if the writ petition is found to be devoid of any merit, the same would be dismissed. In such a situation, the Court is under an obligation to undo the wrong done to a party by the act of the Court. Any undeserved or unfair advantage gained by the party invoking the jurisdiction of the Court must be neutralized, as the institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the Court. Nobody shall be permitted to take advantage of his own fault of delaying action. The Court should not permit a litigant to perpetuate the illegality by abusing the legal process. It is the duty of the Court to ensure that dishonesty or any attempt to abuse the legal process must be effectively

www.taxcode.in

curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain for anyone by abusing of the process of the Court. No one should be permitted to use the judicial process for earning undeserved gains for unjust profits. The Courts' constant endeavour should be to ensure that everyone gets just and fair treatment.

58. "*Actus curiae neminemgravabit*", or the principle that an act of Court cannot prejudice any of the parties, is a settled principle of law. In **A.R. Antulay v. R.S. Nayak and Anr.,** (**1988) 2 SCC 602**, by majority this Court held that the elementary rule of justice is that no party should suffer by a mistake or an action of the Court. **Shri Kishan Das (supra)** applied this principle to land acquisitions.

59. It is often the case in proceedings against land acquisitions that the affected parties seek an interim stay of the acquisition proceedings until the matter has attained finality. An interim stay prevents the State from acquiring the land and following subsequent procedure under the Act, be it the publication of notifications, making of the award, taking possession of the acquired land, or paying and depositing of compensation. If the State does not adhere to the stay order, it will be held up for contempt. In such a situation, it may take months and indeed years before the matter attains finality, during which the State is prevented from carrying out the acquisition proceedings. In a given case, it may take five to ten years or more before the case passes through the Single Judge of the High Court, the Division Bench of the High Court, and finally the Supreme Court, or even sent back to the High Court to be decided afresh on some point. It may well be years before possession is taken and compensation is paid to the landowners. As stated earlier, the State is precluded from taking possession for no fault of its own.

www.taxcode.in

60. Failing to supply *casus omissus* will lead to a situation where the acquisition proceedings will lapse solely to the detriment of the State due to an act of the party to the litigation and at the intervention of the Court, namely an order of interim stay. Large amounts of public money will go to waste in keeping the proceedings pending. While the Act is admittedly a beneficial legislation, it cannot be that the landowners cause a validly initiated acquisition to lapse by filing cases and continuously delaying acquisition or legal proceedings. Justice must be done to all parties to litigation. It will not serve the purpose of the enactment if the State is stopped from completing the acquisition for no mistake of its own, while certain opportunistic litigants seek to frustrate the State's attempts at legally acquiring the land.

61. In fact, when the Legislature has excluded interim stay orders in other provisions of the same Act, there is nothing that prevents this Court from applying these exclusions *ejusdem generis* to Section 24(2) of the 2013 Act.

Thus, the period of interim stay must necessarily be excluded for the purposes of calculation of the time period under Section 24(2) of the 2013 Act.

62. It follows then that the absence of a specific amendment by the Legislature to Section 24(2) does not make a substantial difference to the legal position on excluding the period of interim stay for the purposes of calculating five years under Section 24(2) of the 2013 Act. In other words, the period of five years must necessarily exclude such period of stay orders.

www.taxcode.in

Conclusion:

63. The questions posed by the references stand answered by me as follows:

I. **QUESTION NO. 1**: The acquisition proceedings do not lapse if the amount is deposited in the Treasury and such fact is made known to the claimants by the competent authority as required in law. Only interest is attracted, in case if the deposit is not made in Court. Consequently, I am unable to persuade myself to agree with the outcome of **Pune Municipal Corporation (supra)**. However, according to me the judgment in **Pune Municipal Corporation (supra)** is not rendered in *per incuriam*.

In view of the above, the judgment in **Pune Municipal Corporation (supra)** may have to be reconsidered by a larger bench, inasmuch as **Pune Municipal Corporation (supra)** was decided by a bench of three judges. The Registry is directed to place the papers before the Hon'ble Chief Justice of India for appropriate orders.

II. **QUESTION NO. 2 AND QUESTION NO. 3**: For the aforementioned reasons, I am unable to persuade myself to agree with **Sree Balaji (supra)**, and the same stands overruled. Question No. 2 and Question No. 3 posed by the reference stand answered as follows:

(i) The conscious omission referred to in paragraph 11 of the judgment in **Sree Balaji (supra)** does not make any substantial difference to the legal position with regard to the exclusion or inclusion of the period covered by an interim order of the Court for the purpose of determination of the applicability of Section 24(2) of the 2013 Act. In fact, excluding such periods of interim stay from the calculation

www.taxcode.in

of the time period of five years under S. 24(2) makes a reading of the Act more consistent.

(ii) The principle of "actus curiae neminemgravabit", or that the act of the court should not prejudice any parties, would be applicable in the present case to exclude the period covered by an interim order for the purpose of determining the question with regard to taking of possession as contemplated in Section 24(2) of the 2013 Act.

.....J.
[MOHAN M. SHANTANAGOUDAR]

New Delhi,
February 8, 2018

www.taxcode.in