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(2022) 17 Supreme Court Cases 580

2J

(BEFORE K.M. JOSEPH AND HRISHIKESH ROY, JJ.)

DELHI DEVELOPMENT AUTHORITY .. Appellant;

Versus

BHIM SAIN GOEL AND OTHERS .. Respondents.

Civil Appeal No. 3151 of 2022†, decided on April 25, 2022

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — S. 24(2) — Deemed lapse of the 1894 Act acquisition proceedings — Whether could be occasioned when vesting has already taken place under S. 16 of the 1894 Act; however, due to conduct of respondents in filing writ petition and orders being passed by courts that possession could not be taken and further, during pendency of challenge against impugned judgment in Supreme Court, proceedings under the National Highways Act, 1956 launched for land in question and proceedings under S. 3-A were taken up, followed up by declaration under S. 3-D of the 1956 Act — Held, respondent landowners cannot be permitted to take advantage of interim stay order obtained by them from court and then set up a case under S. 24(2) of the 2013 Act and subsequent vesting attributed to S. 3-D of the 1956 Act must pale into insignificance

— A Notification dt. 21-3-2003 was issued under S. 4 of the 1894 Act purporting to acquire lands belonging to respondents — This was duly followed up by declaration under S. 6 of the 1894 Act on 18-3-2004 — On 22-8-2005, an award was passed — Writ petition came to be filed before High Court laying challenge to declaration under S. 6 — High Court directed that status quo with regard to nature, title and possession of land in question be maintained — Authority could not take possession of land as a result of interim order passed by High Court — Writ petition came to be dismissed — However, on application of respondents High Court extended stay order by a week — Respondents approached Supreme Court and again an interim order of stay was passed — In meantime, the 2013 Act came into force with effect from 1-1-2014

— In present case award was made more than five years prior to commencement of the 2013 Act and compensation has also not been paid — However respondents launched litigation, obtained orders and it clearly prevented appellant from taking possession and therefore, respondents cannot take shelter under S. 24(2) of the 2013 Act

— However in a subsequent development during pendency of appeal in Supreme Court a notification came to be issued under S. 3-A of the 1956 Act also — After calling for objections, declaration was made under S. 3-D of the 1956 Act — Legal effect of declaration under S. 3-D of the 1956 Act is that property would vest there upon

† Arising out of SLP (C) No. 17367 of 2016. Arising from the impugned Final Judgment and Order in *Bhim Sain Goel* v. *State (NCT of Delhi)*, 2016 SCC OnLine Del 798 [Delhi High Court, WP (C) No. 3209 of 2015, dt. 2-2-2016] **[Reversed]**

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— In present case there is a situation where, on one hand, vesting has already taken place under S. 16 of the 1894 Act — No doubt, under S. 16, possession is to be taken on passing of award — But solely on account of conduct of respondents in filing a writ petition and orders being passed by courts that possession could not be taken — Land in question was needed for a public purpose — Construction of road

— Held, mere fact that proceedings were taken during pendency of case and it had reached stage of declaration under S. 3-D of the 1956 Act cannot suffice to clothe the respondents with a right to claim fruits of said proceedings, when on final disposal of appeal by Supreme Court land already would stand vested under the 1894 Act and there cannot be vesting twice over i.e. again under the 1956 Act — In view of fact that interim orders cannot survive final disposal of cases, land would have stood vested with Government under earlier regime — Subsequent vesting which is attributed to S. 3-D of the 1956 Act, must pale into insignificance and cannot estop appellant from contending that in law land would vest under notification/award issued under the 1894 Act

— However, in facts of present case respondents directed to file application under S. 18 of the 1894 Act if they have not filed any such application seeking reference and claiming enhanced compensation pursuant to award passed under the 1894 Act — Further respondents should be granted an opportunity to make an application under S. 18 of the 1894 Act and matter be adjudicated under the 1894 Act — National Highways Act, 1956 — Ss. 3-A and 3-D — Land Acquisition Act, 1894, Ss. 16 and 18

Indore Development Authority (LAPSE-5 J.) v. *Manoharlal*, (2020) 8 SCC 129 : (2020) 4 SCC (Civ) 496, *applied*

Indore Development Authority (LAPSE-5 J.) v. *Manoharlal*, (2020) 8 SCC 129 : (2020) 4 SCC (Civ) 496; *V. Chandrasekaran* v. *Administrative Officer*, (2012) 12 SCC 133 : (2013) 2 SCC (Civ) 136 : (2013) 4 SCC (Cri) 587 : (2013) 3 SCC (L&S) 416; *Kalabharati Advertising* v. *Hemant Vimalnath Narichania*, (2010) 9 SCC 437 : (2010) 3 SCC (Civ) 808, *followed*

Jaipur Development Authority v. *Mahesh Sharma*, (2010) 9 SCC 782 : (2010) 3 SCC (Civ) 942; *State of Orissa* v. *Brundaban Sharma*, 1995 Supp (3) SCC 249; *Meher Rusi Dalal* v. *Union of India*, (2004) 7 SCC 362; *Collector of Bombay* v. *Nusserwanji Rattanji Mistri*, 1955 SCC OnLine SC 49; *Kiran Singh* v. *Chaman Paswan*, (1954) 1 SCC 710, *considered*

Bhim Sain Goel v. *State (NCT of Delhi)*, 2016 SCC OnLine Del 798, *reversed*

Bhim Sain Goel v. *Union of India*, 2005 SCC OnLine Del 1579; *Bhim Sain Goel* v. *Union of India*, 2007 SCC OnLine Del 2072; *Bhim Sain Goel* v. *Union of India*, 2007 SCC OnLine SC 1583; *Bhim Sain Goel* v. *Union of India*, 2016 SCC OnLine SC 1955, *referred to*

Cobbe v. *Yeoman's Row Management Ltd.*, (2008) 1 WLR 1752 (HL); *Campbell Discount Co. Ltd.* v. *Bridge*, 1962 AC 600 (HL); *Commonwealth of Australia* v. *Verwayen*, 1990 HCA 39 : (1990) 170 CLR 394 (Aust); *Thompson* v. *Palmer*, (1933) 49 CLR 507 (Aust); *Pune Municipal Corpn.* v. *Harakchand Misirimal Solanki*, (2014) 3 SCC 183 : (2014) 2 SCC (Civ) 274; *Union of India* v. *Shiv Raj*, (2014) 6 SCC 564 : (2014) 3 SCC (Civ) 607; *Sree Balaji Nagar Residential Assn.* v. *State of T.N.*, (2015) 3 SCC 353 : (2015) 2 SCC (Civ) 298; *Surender Singh* v. *Union of India*, 2014 SCC OnLine Del 4738; *Girish Chhabra* v. *State (NCT of Delhi)*, 2014 SCC OnLine Del 4739, *cited*

Spencer Bower: *Reliance-Based Estoppel*, 5th Edn.; Storey: *Commentaries on Equity Jurisprudence*, 2nd English Edn. (1892), para 1219, *referred to*

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Advocates who appeared in this case :

Ms Aishwarya Bhati, Additional Solicitor General and Sanjay Poddar, Senior Advocate [Vishnu B. Saharya, Viresh B. Saharya, M/s Saharya & Co. (Advocate-on-Record), Akshay Dhatwalia, Ms Kumud Nijhawan, Ashwani Kumar (Advocate-on-Record), Pranab Kr. Mullick (Advocate-on-Record), Ms Soma Mullick, Biswaranjan Kumar, Sebat Kr. Deuria, Siddharth Singla (Advocate-on-Record), Praveen Swarup (Advocate-on-Record), Shivam Goel, Anil Kr. Goel, Pratish Goel, Ramya Goel, Ms Payal Swarup, Manvendra Singh, Ms Shivika Mehra, Ms BLN Shivani, Aman Sharma, Ms Priyanka Das, Abhishek Sarkar, Ms Noor Rampal, Raghvendra S. Srivatsa, Atul Kumar (Advocate-on-Record), Ms Sweety Singh, Rahul Pandey and Rajiv Ranjan, Advocates], for the appearing parties.

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2. 2016 SCC OnLine SC 1955, *Bhim Sain Goel* v. *Union of India* 583*e-f*
3. 2016 SCC OnLine Del 798, *Bhim Sain Goel* v. *State (NCT of Delhi)* **(reversed)** 583*e-f*, 583*f*, 583*f-g*, 584*e*, 586*a-b*, 588*d*, 592*a-b*, 593*b-c*, 593*d-e*
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18. 1990 HCA 39 : (1990) 170 CLR 394 (Aust), *Commonwealth of Australia* v. *Verwayen* 591*e*
19. 1962 AC 600 (HL), *Campbell Discount Co. Ltd.* v. *Bridge* 591*d*
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21. (1954) 1 SCC 710, *Kiran Singh* v. *Chaman Paswan* 589*g-h*
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The Judgment of the Court was delivered by

K.M. JOSEPH, J.— Delay condoned. Applications for condonation of delay in filing substitution, setting aside abatement and substitution are allowed. Mr Pranab Kumar Mullick, learned counsel, appears for the legal representatives of deceased respondents.

2. Leave granted. A Notification dated 21-3-2003 was issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the 1894 Act") purporting to acquire lands belonging to the respondents. This was duly followed up by declaration under Section 6 of the 1894 Act on 18-3-2004. On 22-8-2005, an award was passed in the matter. Writ Petition No. 21639 of 2005 came to be filed before the High Court laying challenge to the declaration under Section 6. What is more pertinent is that, the High Court directed on 18-11-2005[1] that status quo with regard to nature, title and possession of the land in question be maintained.

3. It is the case of the appellant that the authority could not take possession of the land as a result of the interim order[1]. The writ petition came to be dismissed[2]. However, on the application of the respondents, by order dated 18-9-2007, the High Court extended the stay order by a week. The respondents approached this Court by filing SLPs (C) Nos. 17504-08 of 2007. This was later converted into Civil Appeals Nos. 4116-20 of 2009. Again, what is apposite to note is that an interim order[3] of stay was passed. In the meantime, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the 2013 Act") came into force with effect from 1-1-2014.

4. In the meantime, the respondents filed Writ Petition No. 3209 of 2015. This writ petition was premised on the lapsing of the proceedings under the 1894 Act, based on Section 24(2) of the 2013 Act. The writ petition came to be allowed by the High Court on 2-2-2016[4]. Thereafter, the respondents withdrew[5] Civil Appeals Nos. 4116-20 of 2009. It is this judgment of the High Court dated 2-2-2016[4] which is the subject-matter of the present appeal.

5. The findings of the High Court can be gleaned from the following paragraphs: (*Bhim Sain Goel case*[4], SCC OnLine Del paras 2-3)

> "2. The Land Acquisition Collector claims that possession of the said land was taken on 24-12-2008. Interestingly, they claim that immediately on taking over possession of the subject land the same was handed to the DDA. However, the affidavit filed on behalf of the DDA states that possession was not handed over by the Land Acquisition Collector to the DDA. Apart from this the learned counsel for the petitioners points out that the respondents/LAC could not have taken possession of the subject

1 *Bhim Sain Goel* v. *Union of India*, 2005 SCC OnLine Del 1579
2 *Bhim Sain Goel* v. *Union of India*, 2007 SCC OnLine Del 2072
3 *Bhim Sain Goel* v. *Union of India*, 2007 SCC OnLine SC 1583
4 *Bhim Sain Goel* v. *State (NCT of Delhi)*, 2016 SCC OnLine Del 798
5 *Bhim Sain Goel* v. *Union of India*, 2016 SCC OnLine SC 1955

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land because there was a status quo order which had been passed by a Division Bench of this Court on 18-11-2005 in *Bhim Sain Goel* v. *Union of India*[1]. That writ petition was dismissed on 20-8-2007[2]. Thereafter a special leave petition was filed before the Supreme Court being SLP (C) No. 17504 of 2007 (later the special leave petition was admitted and has now become Civil Appeals Nos. 4116-20 of 2009) in which stay was granted on 19-9-2007[3] and that has continued till date. Therefore, according to the learned counsel for the petitioners, possession of the said land has not been taken by the respondents. Insofar as the issue of compensation is concerned, it is an admitted position that the same has not been offered or paid to the petitioners.

3. Without going into the controversy of physical possession, this much is clear that the award was made more than five years prior to the commencement of the 2013 Act and the compensation has also not been paid. The necessary ingredients for the application of Section 24(2) of the 2013 Act as interpreted by the Supreme Court and this Court in the following cases stand satisfied:

(1) *Pune Municipal Corpn.* v. *Harakchand Misirimal Solanki*[6];

(2) *Union of India* v. *Shiv Raj*[7];

(3) *Sree Balaji Nagar Residential Assn.* v. *State of T.N.*[8];

(4) *Surender Singh* v. *Union of India*[9] by this Court; and

(5) *Girish Chhabra* v. *State (NCT of Delhi)*[10] by this Court."

6. We have heard the learned counsel for the appellant and the learned counsel for the respondents.

7. The learned counsel for the appellant would submit that the impugned judgment[4] will not stand scrutiny of this Court in the light of the later Constitution Bench judgment of this Court in *Indore Development Authority (LAPSE-5 J.)* v. *Manoharlal*[11] hereinafter referred to as the Constitution Bench decision. It is his case that the conduct of the respondents in filing the writ petitions we have adverted to and the special leave petition later converted into civil appeal and what is more important, obtaining interim orders prevented the appellant from taking possession of the property in question clearly, disentitles the respondents from claiming the benefit of the alleged lapsing of the proceedings under Section 24(2) of the 2013 Act.

1 2005 SCC OnLine Del 1579
2 *Bhim Sain Goel* v. *Union of India*, 2007 SCC OnLine Del 2072
3 *Bhim Sain Goel* v. *Union of India*, 2007 SCC OnLine SC 1583
6 (2014) 3 SCC 183 : (2014) 2 SCC (Civ) 274
7 (2014) 6 SCC 564 : (2014) 3 SCC (Civ) 607
8 (2015) 3 SCC 353 : (2015) 2 SCC (Civ) 298
9 2014 SCC OnLine Del 4738
10 2014 SCC OnLine Del 4739
4 *Bhim Sain Goel* v. *State (NCT of Delhi)*, 2016 SCC OnLine Del 798
11 (2020) 8 SCC 129 : (2020) 4 SCC (Civ) 496

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8. This position is clear from the perusal of the judgment of the Constitution Bench which we have adverted to. The learned counsel for the appellant would submit that the respondents cannot be permitted to take advantage of order obtained by them from the Court and then set up a case under Section 24(2) of the 2013 Act.

9. Per contra, the learned counsel for the respondents would point out that quite apart from the issues which arise from judgment of the Constitution Bench, there is another dimension which has unfolded. This later development consists of the following: The National Highways Authority of India came to notify the lands in question acting under the National Highways Act, 1956 (hereinafter referred to as "the 1956 Act" for brevity) by issuance of a Notification under Section 3-A of the said Act on 1-12-2018. The notification under Section 3-A comprehend the lands in question. What is more, the matter progressed further to the stage of declaration under Section 3-D. The declaration was published on 22-3-2019. He would, therefore, submit that whatever would be the effect of the later judgment in the facts of this case, the interest of justice demands, that the respondents are given the benefit of the compensation under the 2013 Act.

10. This is sought to be countered by the learned counsel for the appellant by pointing out that again, on the facts, the respondents are not entitled to any benefit based on the subsequent developments. He does not dispute that a Notification was indeed issued under Section 3-A of the 1956 Act on 1-12-2018 including the lands of the respondents in question in this case. He also does not dispute that the declaration under Section 3-D followed on 22-3-2019. However, he points out that the Collector, finding that the lands of the respondents which are the subject-matter of the appeal before this Court stood already vested, has excluded the lands when it made the final award on 5-11-2020. The learned counsel for the appellant would also point out that this Court has held that the State cannot acquire land which is already vested with it [see in this regard *Jaipur Development Authority* v. *Mahesh Sharma*[12]].

11. There is no dispute about certain facts. Notification came to be issued under Section 4 of the 1894 Act on 21-3-2003. This was followed up by declaration under Section 6 on 18-3-2004 which was followed up by award passed on 22-8-2005.

12. An interim order[1] is passed undoubtedly which effectively prevented the appellant from taking possession of the lands in question. Though the writ petition came to be dismissed on 20-8-2007[2], the respondents carried the lis to this Court and it is again not in dispute that the interim order continued to haunt the appellants as it prevented the appellants from taking possession of the lands which it could otherwise have taken.

12 (2010) 9 SCC 782 : (2010) 3 SCC (Civ) 942
1 *Bhim Sain Goel* v. *Union of India*, 2005 SCC OnLine Del 1579
2 *Bhim Sain Goel* v. *Union of India*, 2007 SCC OnLine Del 2072

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13. With the enactment of the 2013 Act with effect from 1-1-2014, even when the civil appeal was pending, the respondents filed a fresh round of litigation in the form of a writ petition. Therein the claim was that the earlier award has lapsed on the basis of Section 24(2) of the 2013 Act. This argument, as we have noted, has found favour with the High Court in the impugned judgment[4].

14. It is thereafter, that the civil appeal came to be withdrawn. It is the case of the appellant that except for 81 days, there was an interim order prevailing, which effectively prevented the appellant from taking possession of the lands at the instance of the respondents.

15. At this juncture, it is appropriate to take note of what this Court has laid down in the Constitution Bench decision regarding the effect of orders by Courts operating as an obstacle in the path of acquiring authority taking possession of the land which is acquired: (*Manoharlal case*[11], SCC pp. 350, 354-55 & 358-59, paras 300, 306, 309 & 314)

> "*300*. In our considered opinion, litigation which initiated by the landowners has to be decided on its own merits and the benefits of Section 24(2) should not be available to the litigants. In case there is no interim order, they can get the benefits they are entitled to, not otherwise as a result of fruit of litigation, delays and dilatory tactics and sometime it may be wholly frivolous pleas and forged documents as observed in *V. Chandrasekaran*[13] mentioned above.
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> *306*. When the authorities are disabled from performing duties due to impossibility, would be a good excuse for them to save them from rigour of provisions of Section 24(2). A litigant may be right or wrong. He cannot be permitted to take advantage of a situation created by him of interim order. The doctrine "commodum ex injuria sua nemo habere debet" that is convenience cannot accrue to a party from his own wrong. Provisions of Section 24 do not discriminate litigants or non-litigants and treat them differently with respect to the same acquisition, otherwise, anomalous results may occur and provisions may become discriminatory in itself.
>
> * * *
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> *309*. It may not be doubtful conduct to file frivolous litigation and obtain stay; but benefit of Section 24(2) should not be conferred on those who prevented the taking of possession or payment of compensation, for the period spent during the stay.
>
> * * *

4 *Bhim Sain Goel* v. *State (NCT of Delhi)*, 2016 SCC OnLine Del 798

11 *Indore Development Authority (LAPSE-5 J.)* v. *Manoharlal*, (2020) 8 SCC 129 : (2020) 4 SCC (Civ) 496

13 *V. Chandrasekaran* v. *Administrative Officer*, (2012) 12 SCC 133 : (2013) 2 SCC (Civ) 136 : (2013) 4 SCC (Cri) 587 : (2013) 3 SCC (L&S) 416

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314. The maxim "lex non cogit ad impossibilia" means that the law does not expect the performance of the impossible. Though payment is possible but the logic of payment is relevant. There are cases in which compensation was tendered, but refused and then deposited in the treasury. There was litigation in court, which was pending (or in some cases, decided); earlier references for enhancement of compensation were sought and compensation was enhanced. There was no challenge to acquisition proceedings or taking possession, etc. In pending matters in this Court or in the High Court even in proceedings relating to compensation, Section 24(2) was invoked to state that proceedings have lapsed due to non-deposit of compensation in the court or to deposit in the treasury or otherwise due to interim order of the court needful could not be done, as such proceedings should lapse."

16. We may notice further that the Court elaborately dealt with the principle of restitution and had this to say: (*Manoharlal case*[11], SCC pp. 377-78 & 393-94, paras 338 & 366)

"*338*. A wrongdoer or in the present context, a litigant who takes his chances, cannot be permitted to gain by delaying tactics. It is the duty of the judicial system to discourage undue enrichment or drawing of undue advantage, by using the court as a tool. In *Kalabharati Advertising* v. *Hemant Vimalnath Narichania*[14], it was observed that courts should be careful in neutralising the effect of consequential orders passed pursuant to interim orders. Such directions are necessary to check the rising trend among the litigants to secure reliefs as an interim measure and avoid adjudication of the case on merits. Thus, the restitutionary principle recognises and gives shape to the idea that advantages secured by a litigant, on account of orders of court, *at his behest*, should not be perpetuated; this would encourage the prolific or serial litigant, to approach courts time and again and defeat rights of others — including undermining of public purposes underlying acquisition proceedings. A different approach would mean that, for instance, where two landowners (sought to be displaced from their lands by the same notification) are awarded compensation, of whom one allows the issue to attain finality — and moves on, the other obdurately seeks to stall the public purpose underlying the acquisition, by filing one or series of litigation, during the pendency of which interim orders might inure and bind the parties, the latter would profit and be rewarded, with the deemed lapse condition under Section 24(2). Such a consequence, in the opinion of this Court, was never intended by Parliament; furthermore, the restitutionary principle requires that the advantage gained by the litigant should be suitably offset, in favour of the other party.

* * *

11 *Indore Development Authority (LAPSE-5 J.)* v. *Manoharlal*, (2020) 8 SCC 129 : (2020) 4 SCC (Civ) 496

14 (2010) 9 SCC 437 : (2010) 3 SCC (Civ) 808

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

* * *

366.8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned as on 1-1-2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years." (emphasis in original)

17. On the application of the aforesaid principles to the facts of this case, there cannot be any doubt that the respondents cannot take shelter under Section 24(2) of the 2013 Act. This is for the simple reason that it is by their conduct in approaching the Courts and obtaining interim orders that the appellant was prevented from taking possession of the lands. We are clear in our minds that this is indeed one such case where the respondents have launched litigation, obtained orders and it has clearly prevented the appellant from taking possession and therefore, the impugned judgment[4] of the High Court would have to be set aside.

18. The problem, however, is sought to be projected by the learned counsel for the respondents based on the subsequent developments which we have already noted.

19. It is true that a notification has been issued under Section 3-A of the 1956 Act also. It is equally true that acting upon the notification after calling for the objections, declaration has been made under Section 3-D of the 1956 Act.

20. The scheme of the 1956 Act essentially consists of issuance of notification under Section 3-A corresponding to Section 4 of the 1894 Act, followed up by an inquiry ordinarily and culminating in a declaration under Section 3-D. It is undoubtedly true that the legal effect of the declaration under Section 3-D of the 1956 Act is that the property would vest thereupon.

21. Here, therefore, we are presented with a situation where, on the one hand, the vesting has already taken place under Section 16 of the 1894 Act. No doubt, under Section 16, possession is to be taken on passing of the award. But here, it is only solely on account of the conduct of the respondents in filing a writ petition and orders being passed by courts that possession could not be taken. On the other hand, during the pendency of the challenge against the impugned judgment, undoubtedly, proceedings have been launched under the 1956 Act, as already noted. Here, we must bear in mind that the land in question was needed for a public purpose-construction of the road. It is apparently, no doubt,

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during the pendency of the litigation before this Court that proceedings under Section 3-A have been taken, followed up by declaration under Section 3-D.

22. At this juncture, we must notice the principles laid down in *Jaipur Development Authority* v. *Mahesh Sharma*[12]: (SCC pp. 790 & 792-94, paras 26, 32-34 & 36)

> "*26*. Despite vesting of the land with the Government under the provisions of the Jagir Act and also resumption of the said land measuring 29 bighas and 17 biswas by the Government, a notification proposing acquisition of the said land was issued by the Government under Section 4(1) of the Act followed by the notification under Section 6 of the Act. The Land Acquisition Officer even proceeded to pass an award in respect of the land, which already belonged to the Government, by determining compensation, and proceeded further in directing retention of interim compensation paid under the Jagir Act and also by directing the allotment of a plot of developed land measuring 2500 sq yd. Although there was no law supporting such action, the said action on the part of the Land Acquisition Officer directing the payment of compensation and also allotting a plot of land in favour of the respondent indicates as to how government officials, who are protectors of the government property, abuse their power and trust under the camouflage of performance of their public duty.
>
> * * *
>
> *32*. In *State of Orissa* v. *Brundaban Sharma*[15] this Court has held that the Land Acquisition Act does not contemplate or provide for the acquisition of any interest belonging to the Government in the land on acquisition. It reiterated the settled position of law that the Government being the owner of the land need not acquire its own land merely because a person mistakenly resorted to acquire the land and later on mistakenly published notifications under Sections 4 and 6 of the Act.
>
> *33*. The aforesaid position was reiterated in a subsequent decision of this Court in *Meher Rusi Dalal* v. *Union of India*[16]. In SCC para 15 of the said judgment, this Court has held that the High Court has clearly erred in setting aside the order of the Special Land Acquisition Officer declining a reference since it is settled law that in land acquisition proceedings the Government cannot and does not acquire its own interest. While laying down the aforesaid law, this Court has referred to its earlier decision in *Collector of Bombay* v. *Nusserwanji Rattanji Mistri*[17].
>
> *34*. We may at this stage appropriately refer to the decision of this Court in *Kiran Singh* v. *Chaman Paswan*[18]. In the said case this Court has held

12 (2010) 9 SCC 782 : (2010) 3 SCC (Civ) 942
15 1995 Supp (3) SCC 249
16 (2004) 7 SCC 362
17 1955 SCC OnLine SC 49 : (1955) 1 SCR 1311 : AIR 1955 SC 298
18 (1954) 1 SCC 710 : (1955) 1 SCR 117 : AIR 1954 SC 340

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that judgment passed by a court without jurisdiction is a nullity and such a judgment could be challenged even in execution or collateral proceedings. The Court at SCR p. 121 held thus: (AIR p. 342, para 6)

> '*6*. … It is a fundamental principle well-established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings.'
>
> * * *
>
> *36*. In view of the aforesaid decisions of this Court, it is crystal clear that the issuance of notifications under Sections 4 and 6 of the Act as also the award passed for acquisition of the land was a nullity and the subsequent action of the Government derequisitioning land by issuance of notification under Section 48 was just and proper as that was an action for rectification of the mistake. The subsequent Land Acquisition Officer was justified in refusing to refer to the Reference Court in view of the fact that the land was already a government land and was so described in the revenue record itself. The Land Acquisition Officer, who passed the award, committed an illegality by not only determining the compensation under the Land Acquisition Act but also directing for retention of the interim compensation paid under the Jagir Act and also in directing for allotment of a developed plot of land admeasuring 2500 sq yd."

23. We have to call into play certain principles in view of the peculiar nature of the facts.

24. On the one hand, it is a case where the so-called subsequent developments had taken place during the pendency of the appeal before this Court. On the other hand, the authority obviously realising the need to acquire the land for public purpose, that is for construction of road, resorted to the provisions of the 1956 Act. Here again, we must bear in mind the principle that the Government cannot acquire the land which has already vested in it. The other aspect we must also bear in mind is realising the fact that the lands in question are the subject-matter of the appeal and what is more, they would stand vested in terms of the Constitution Bench judgment of this Court — the lands have been excluded when the final award was passed under the 1956 Act. We may note here that the respondents do not have a case that they have laid any challenge to the exclusion of their lands in the final award. Whatever that may be, the fact remains that all these developments took place during the pendency of the appeal.

25. When the Court finally decides the lis, it is undoubtedly, open, particularly this Court, having powers as it has under Article 142, to do complete justice between the parties and we take it that the learned counsel for the respondents is seeking to invoke the said jurisdiction.

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26. If it is the principle of estoppel which can be invoked as it would appear to us from the line of argument taken by the learned counsel for the respondents, we are of the view that it is not tenable. Estoppel flows from equity.

27. In the work *Spencer Bower: Reliance-Based Estoppel*, 5th Edn., we notice the following discussions.

> "1.68. The requirement of unconscionability is that B cannot in good conscience assert that which he is estopped from asserting. Its use derives from equitable jurisprudence, '… reflecting in the word "conscience" the ecclesiastical origins of the long-departed Court of Chancery' sitting as a court of conscience. Honesty and innocence of intention will not, however, excuse B from liability to estoppel: what is material is not the state of B's morals, but the effect of his representation or silence on the mind and will of A. B's conduct need not, moreover, be shocking in any particular degree, beyond that, absent an estoppel, it would give rise to an unfair result. Lord Walker in *Cobbe* v. *Yeoman's Row Management Ltd.*[19] referred to the need for the result, without an estoppel, to 'shock the conscience of the court' but should not, it is submitted, be understood as requiring the court to find more than that B has by his representation caused A so to act (or omit to act) that the result would otherwise be unfair. The caution of Lord Radcliffe in *Campbell Discount Co. Ltd.* v. *Bridge*[20] as to its use in the context of equitable mitigation of the common law must also be exercised here. "Unconscionable" must not be taken to be a panacea for adjusting any contract between competent persons when it shows a rough edge to one side or the other…'. A flexible definition has been provided by Deane, J. in *Commonwealth of Australia* v. *Verwayen*[21]:
>
> > 'The doctrine of estoppel by conduct is founded upon good conscience… The most that can be said is that "unconscionable" should be understood in the sense of referring to what one party "ought not, in conscience, as between (the parties) to be allowed" to do [*see* Storey, *Commentaries on Equity Jurisprudence*, 2nd English Edn. (1892), para 1219; *Thompson* v. *Palmer*[22]].' "

28. No doubt it could be argued that perhaps it may be the doctrine of election which is apposite. It is in connection with the cases related to election that terms like approbate and reprobate find mention. It could be contended that it may not be fair to allow the appellant to proceed under the 1956 Act and for the proceedings to culminate in the vesting of the property under Section 3-D of the 1956 Act and having elected to take proceedings under the 1956 Act apparently on the basis of the impugned judgment, namely, that the proceeding under the 1894 Act stood lapsed, the authorities cannot be permitted to resile

19 (2008) 1 WLR 1752 (HL)
20 1962 AC 600 (HL)
21 1990 HCA 39 : (1990) 170 CLR 394 (Aust)
22 (1933) 49 CLR 507 (Aust)

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from their action. We would think that it would be wholly inequitable on facts to deprive the appellant of its rights when it is finally adjudicated in its favour in the facts of this case.

29. It is also a case where the appellant has promptly approached this Court against the impugned judgment[4]. Furthermore, in the facts the balancing of equity must be worked out in favour of the appellant. In other words, the mere fact that proceedings were taken during the pendency of the case and it had reached the stage of declaration under Section 3-D of the 1956 Act cannot suffice to clothe the respondents with a right to claim the fruits of the said proceedings, when on the final disposal of the appeal by us we only find that in law as declared by this Court in the Constitution Bench, the land already would stand vested under the 1894 Act and as already noticed there cannot be vesting twice over.

30. We would think that in the facts of this case having regard to the fact that barring 81 days the respondents succeed on the strength of interim order passed from preventing the appellant from taking possession of the lands must be the crucial aspect which we have referred to.

31. The principle which has appealed to the Constitution Bench of this Court is squarely applicable to the facts of this case. The public authority which had set the law in motion under the earlier regime cannot be put to a loss when at the end of the day or on the day of reckoning it is found that they must succeed in law. Here we have found that the appellant is fully justified in contending that but for the orders passed by the High Court and this Court, the possession would have been taken, and the land would have vested under the law. We must proceed on the basis that but for the interim orders passed which cannot survive the final disposal of the cases, the land would have stood vested with the Government under the earlier regime. The subsequent vesting which is attributed to Section 3-D of the 1956 Act, in our view must pale into insignificance and cannot estop the appellant from contending that in law the land would vest under the notification/award issued under the 1894 Act.

32. Having seen the background of the facts, we do not think that there is any right for the respondents to plead equity for they have by their acts effectively prevented the public authority from enjoying the fruits of law by which, in the exercise of power embedded in the 1894 Act, the land is vested with the appellant, and the land is one which is needed for an important public project like construction of the road for that matter.

33. It is clear as daylight that it would be completely antithetical to public interest were the Government be compelled to shell out public funds under the 2013 Act to acquire land which already belongs to it. We cannot be oblivious to the said sublime principle as well.

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34. We must again also bear in mind the restitutionary principle which has been adverted to by the Constitution Bench. As we have already noticed, realising that the lands are already vested, the lands are already excluded under the final award. The inevitable outcome of the above discussion is that the appellant must succeed.

35. However, in the facts of this case and in the interest of justice, we think it fit to direct that if the respondents have not filed any application under Section 18 of the 1894 Act seeking reference and claiming enhanced compensation pursuant to the award dated 22-8-2005, the respondents should be granted an opportunity to make an application under Section 18 and the matter be adjudicated under the earlier Act. The impugned judgment[4] came to be passed based on the law as it was laid down by this Court. Accordingly, we direct that in case, the respondents have already not filed an application within the meaning of Section 18 of the 1894 Act, they are permitted to file application under Section 18 of the 1894 Act within a period of one month from today. In case such an application is made, it will be dealt with in accordance with law as it stood under the 1894 Act.

36. The application will not be dismissed on the ground of delay. We make this order in the peculiar facts of this case and taking note of the fact that it is with our judgment rendered today that we are giving our imprimatur to the award dated 22-8-2005 under the 1894 Act.

37. The appeal is allowed. The impugned judgment[4] will stand set aside. Parties to bear their own costs.

Appeal allowed

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