(2024) 12 BOM CK 0018

Bombay High Court

Case No: Writ Petition No. 6997 Of 2021

Laxman Mahadev Katkar Decd Through Lhrs		APPELLANT
	Vs	
State Of Maharashtra Through The Secretary, Revenue Dept. And Ors		RESPONDENT

Date of Decision: Dec. 11, 2024

Acts Referred:

- Constitution of India, 1950 - Article 14, 21, 226, 300A
- Land Acquisition Act, 1894 - Section 4, 6, 6(2), 11, 11A, 48(1)
- Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 - Section 24(2)

Hon'ble Judges: G. S. Kulkarni, J; Advait M. Sethna, J

Bench: Division Bench

Advocate: Nagesh Chavan, Rahul Khot, Rajan S. Pawar

Final Decision: Allowed

Judgement

Advait M. Sethna, J

1. Rule, made returnable forthwith. The respondents waive service. By consent of the parties, heard finally.

2. This petition is filed under Article 226 of the Constitution of India.

A) Issues Before the Court:

3. The present petitioners are legal heirs/representatives of the deceased petitioner no. 1 â€" Laxman Mahadev Katkar, being the original owner of

the land in question which was subject matter of land acquisition for the purpose of Urmodi Project. They have approached this Court in the present

proceedings, being aggrieved by an order dated 28 May 2018 (â€œimpugned orderâ€ for short) passed by respondent no.4. The primary issue for

consideration, is whether the entire land acquisition proceedings initiated by the respondents qua the lands of the petitioners have lapsed, in terms of

Section 11A of Land Acquisition Act, 1894 (â€œLand Acquisition Actâ€ for short).

4. The substantive prayers in the petition read thus:-

â€œ (b) That this Honâ€™ble Court may be pleased to issue any appropriate Writ/ Order/ Direction in the like nature of Article 226 of the Constitution of India ;

(i) To hold and declared that the acquisition proceeding initiated by the Respondent No.3 dated 15.10.1999 the land acquisition award bearing No.S.R.

No.32/97 passed in respect of the Petitioners lands i.e. suit properties situated at Palashi, Tal. Maan, Dist. Satara has lapsed in view of the Provisions u/s 24(2) of

the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;

(ii) To hold and/or declared that the impugned Order dated 28.05.2018 in KR./Punarv/Kavi/432/2018 passed by the Respondent No.4 arising out of order dated

31.12.1999 in KR./ Punarv/Kavi/Review Aarj/434/1999 passed by the Respondent No.2 arising out of the impugned award dated 15.10.1999 in SR/32/97

initiated by the Respondent No.3 under the Land Acquisition Act 1894 in respect of the suit lands is illegal and bad in law;

Amendment carried out as per order dated 21.10.2024

(iii) To hold and declare that impugned acquisition proceeding in respect of petitioners notified lands Gat No.1763, 1776, 1787 situated at Palashi village Tal.

Maan, Dist. Satara has deemed to have lapsed in view of the provisions under section 11-A of Land Acquisition Act 1894; â€

(B) Factual Matrix:

The relevant facts necessary for adjudication of the present proceedings are :-

5. The land acquisition proceedings in the given case, initiated by the respondents include the lands originally owned by the deceased Laxman Katkar

â€" petitioner no. 1, admeasuring 2.79R out of gat no. 1763, 2H.21R out of gat no. 1776 and 0H.40R out of gat no. 1787, situated at Palashi Village

Tal. Maan, District â€" Satara (â€œThe Subject Landsâ€ for short) The petitioners are the legal heirs and representatives of the deceased, Laxman

Mahadev Katkar. The petitioners are Agriculturists who wholly depend upon agricultural income, as stated in the Petition.

6. Respondent no.2 being the Competent Authority under the Land Acquisition Act issued a notification dated 1 January 1998 under Section 4 of the

Land Acquisition Act, notifying lands for acquisition for public purpose being rehabilitation of project affected persons by Urmodi project.

Subsequently notification dated 11 June 1999 was issued under Section 6 of the Land Acquisition Act declaring acquisition of the larger land including

subject land for such public purpose. Respondent no.3 is the Special Land Acquisition Officer who published the land acquisition award dated 15

October 1999. Respondent no.4 is the Sub-Divisional Officer who passed the impugned order dated 28 May 2018 by which the submissions of

petitioners filed vide reply dated 17 January 2017 was rejected and directions were passed to enter name of respondents in the documents/ land

records qua the petitioners lands.

7. Pursuant to the above, the petitioners being aggrieved by the land acquisition of the subject lands, preferred review/stay application dated 8 October

1999 before respondent no. 2 u/s 48(1) of the Land Acquisition Act. The respondent no. 2 then passed an order of the same date, i.e., 8 October 1999,

granting status quo in respect of the subject lands noting the fact that petitioner no. 1 had offered alternate lands for acquisition. Further directions

were issued to respondent no. 3 to consider the documents along with the report in respect of land acquisition of the subject lands, within 4 days

therefrom.

8. Such land acquisition proceedings initiated by the respondents culminated in publishing of the said award dated 15 October 1999 passed under

Section 11 of the Land Acquisition Act. A bare perusal of the said award clearly shows that the subject lands were expressly excluded from such

award.

9. Respondent no. 2 finally heard the review, stay application dated 8 October 1999 of the petitioner no.1. Such application of the petitioner no.1 was

partly allowed by an order dated 31 December 1999 passed by respondent no.2, considering his offer for alternate land for acquisition and the

proceedings were remanded to respondent no.4 for de novo hearing and decision on petitionerâ€™s objections. The status-quo granted in favour of

the petitioner no.1 by order dated 8 December 1999, was vacated by the said order dated 31 December 1999.

10. Pursuant to the above, the respondent no. 4 issued a notice dated 26 December 2016 to the petitioner no.1 to remain present on 17 January 2017

for hearing. The late father of the petitioners accordingly submitted a detailed reply dated 17 January 2017 addressed to the respondent no.4 making

out his case against such land acquisition proceedings.

11. The respondent no. 4 by an order dated 28 May 2018 impugned in the petition, by which the submissions of petitioners filed vide reply dated 17

January 2017 was rejected and directions were passed to enter name of respondents in the documents/ land records qua the petitioners lands.

12. After demise of the petitionerâ€™s father on 30 April 2019, the petitioners have filed the present petition before this Court on 12 February 2020.

On 18 February 2021, an order was passed by a co-ordinate Bench of this Court directing parties to maintain status-quo in respect of the subject

lands, until the adjourned date of hearing, which was extended from time to time and continued to operate.

(C) Rival Contentions:-

The case of the Petitioners:-

13. At the very outset, before proceeding to record the submissions of Mr. Chavan, learned counsel for the petitioners, it is necessary to refer to our

order dated 5 December 2024. The relevant portion of the order is extracted below:-

â€œ1. Today, we have listed this petition for directions as we are in the process of delivering a judgment on this petition for seeking clarification from the

petitioner in regard to alternate plea is taken by the petitioner namely, applicability of Section 24(2) of the Right to Fair Compensation and Transparency in

Land Acquisition, Rehabilitation and Resettlement Act, 2013 (â€œthe Act of 2013â€ for short) as also a plea under Section 11A of the Land Acquisition Act,

1894.

2. Learned counsel for the petitioner, on instructions, makes a statement that the petitioner would not press the reliefs asserting its rights and contentions under

Section 24(2) of the 2013 Act. Statement as made on behalf of the petitioner is accepted.â€

From the above it is thus, clear that prayer clause b(i) in the petition, which is not pressed, reads thus :-

â€œ (b)(i) To hold and declared that the acquisition proceeding initiated by the Respondent No. 3 dated 15.10.1999 the land acquisition award bearing No. S.R.

No. 32/97 passed in respect of the Petitioners lands i.e. suit properties situated at Palashi, Tal. Maan, Dist. Satara has lapsed in view of the provisions u/s 24 (2)

of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;â€

Thus, for adjudication of this writ petition we would confine ourselves to prayers b(ii) and b(iii) of the petition and in regard to the provisions of the

Land Acquisition Act, in the context of the grounds raised and reliefs sought in the petition, which revolves around the issue on the issue of lapsing of

the land acquisition proceeding, qua the subject lands of the petitioners, under Section 11A of the said Act.

14. According to Mr. Chavan, the impugned order records no reasons, lacks the rationale and justification in rejecting the reply of the petitioner no.1

dated 17 January 2017. It straight away concludes that the names of respondent nos.3 and 4 be inserted in the documents/ land records, qua the

subject lands of the petitioners. According to him, a bare perusal of the impugned order reveals that it is passed mechanically without recording a

single submission of the petitioners, let alone any findings in support of the conclusion so reached. He would thus submit that the impugned order is

completely contrary to the well settled principles of natural justice and on such ground alone the said order deserves to be quashed and set aside.

15. Mr. Chavan would then submit that despite specific non-inclusion/exclusion of the subject lands from the award passed by the respondents dated

15 October 1999, there has been no action taken by the respondents towards acquisition of the subject lands. It was only after a prolonged delay of 17

years that the respondent no.4 issued a hearing notice dated 26 December 2016 to the petitioners. He would also point out that the status quo in

respect of the subject lands granted by an order dated 8 October 1999 was subsequently vacated by an order dated 31 December 1999 passed by

respondent no.2. Even thereafter, the respondents not taken any steps towards initiating any fresh acquisition proceedings in respect of the subject

lands. There is no explanation whatsoever from the respondents in regard to such inordinate delay and laches on part of the respondents in the given

facts and circumstances.

16. Mr. Chavan would then rely on the provisions of Section 11A of the Land Acquisition Act. He would submit that after exclusion and or non-

inclusion of the subject lands from the award dated 15 October 1999 by the respondents, there was neither any acquisition proceedings nor any fresh

award made in respect of such earlier notified subject lands. He would thus contend that in accordance with the provisions of Section 11A, the entire

proceedings for land acquisition qua the subject lands have lapsed. His submission is fortified by the fact that the respondents have not taken physical

possession of the subject lands in the manner contemplated in law. The petitioners have neither received any compensation fro the respondents, as

their lands were specifically excluded from the award furnished on 15 October 1999. He would contend that the respondents have failed to

demonstrate any fact and/or legal position to the contrary, which supports his case that the acquisition proceedings in respect of the subject lands have

lapsed, in terms of Section 11A of the Land Acquisition Act.

17. Mr. Chavan would place reliance on the judgment of the Supreme Court in Kunwar Pal Singh & Ors. vs. State of U.P. and Ors. (2007) 5 SCC

85. He would place reliance on paragraphs 16 and 17 of the said judgment, which reads thus:

â€œ16. Section 6(2), on a plain reading, deals with the various modes of publication and they are: (a) publication in the Official Gazettee, (b) publication in two

daily newspapers circulating in the locality in which the land is situate of which at lease one shall be in the regional language, and (c) causing public notice of

the substance of such declaration to be given at convenient places in the said locality. There is no option left with anyone to give up or waive any mode and all

such modes have to be strictly resorted to. The principle is well settled that where any statutory provision provides a particular manner for doing a particular act,

then, that thing or act must be done in accordance with the manner prescribed therefor in the Act.

17. The provisions of Section 11-A are intended to benefit the landowner and ensure that the award is made within a period of two years from the date of the

declaration under Section 6. In ordinary course, therefore, when the Government fails to make an award within two years of the declaration under Section 6, the

land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of

Section 11-A, the proceedings will lapse. The period of two years referred to in Section 11-A shall be computed by counting from the last of the publication dates,

as per the prescribed modes of publication.â€

He would thus submit that the decision in the above case is squarely applicable. As in the present case, there is no award published for the subject

lands within two years of its declaration under Section 6 of the Land Acquisition Act, when the subject lands were not included in the award dated 15

October 1999. Thus the subject lands have not vested in the government, the possession of which remained with the petitioners. The acquisition

proceedings qua the subject lands have accordingly lapsed, by virtue of Section 11A of the Land Acquisition Act.

18. Mr. Chavan would then refer to the affidavit-in-sur-rejoinder of petitioner No.1 dated 6 December 2022 and also to the respondentâ€™s additional

affidavit dated 19 November 2022, which is on record of this Court. Relying on petitionerâ€™s sur-rejoinder (supra) he would submit that, the

respondents have filed additional affidavit dated 22 November 2022 without annexing copy of PLA account despite directions of this Court vide order

dated 18 October 2022. He would thus submit that there is no question of any compensation amount being deposited or tendered in the account of the

petitioners particularly when the subject lands of the petitioners are not included in the award dated 15 October 1999. He would submit that there is

nothing in the pleadings on record to controvert this position.

19. Mr. Chavan would further refer to the additional affidavit of the respondents dated 19 November 2022 to rely upon a letter dated 6 February 2010

addressed by the petitioners to the respondents. He would submit that a mere reference to handing over voluntary possession of the subject lands in

the said letter of 19 November 2022, by any stretch of imagination, be construed as taking over physical possession of the subject lands by the

respondents, as contemplated in law. He would next submit that the possession of the subject lands always remained with the petitioners and thus

reliance of the respondents on the said letter of 6 February 2010 is of no assistance to them.

20. Mr. Chavan would accordingly submit, that the land acquisition proceedings in terms of Section 11A of the Land Acquisition Act have clearly

lapsed. Thus, it is urged that the impugned order is illegal and devoid of merit. He would pray that the petition be allowed.

Submissions of the Respondents:-

21. Mr. Rajan Pawar, Ld. AGP for the Respondents in response to the above, vehemently opposed the submissions of Mr. Chavan. He would place

reliance on affidavit-in-reply of one Mr. Shailesh Suryawanshi, Sub-Divisional Officer filed on behalf of respondent nos. 1 to 4 dated 18 February

2022. In support thereof, he would urge that the notice dated 26 December 2016 issued by respondent no.4 was not belated and was rightly issued

within framework of the Land Acquisition Act, which cannot be faulted with. He would support the impugned order, dated 28 May 2018. According to

him, the said order specifically refers to the petitionersâ€™ reply dated 17 January 2017. Thus, the petitioners are not correct in attributing

arbitrariness, non-application of mind, illegality as alleged and or otherwise to the impugned order. Such order is passed after duly considering the

submissions of the petitioners as set out in their reply dated 17 January 2017. Thus, according to him, there is no justification warranting interference

of the Court with the impugned order.

22. Mr. Pawar, would then submit that pursuant to passing of the award by respondent no.3 on 15 October 1999, the proceedings of acquisition of the

notified lands were initiated. According to him, the status-quo vide order of respondent no.2 dated 8 October 1999 was vacated by an order dated 31

December 1999. Pursuant thereto, a notice of hearing dated 26 December 2016 was issued to petitioner no.1. Reply to such notice dated 17 January

2017 was filed by the petitioner no.1 after which impugned order dated 28 May 2018 was passed by respondent no.4. Thus, the respondentsâ€™

decision to acquire the subject lands of the petitioners was just, legal and proper. Mr. Pawar would then refer to letter dated 6 February 2010 exhibited

to the additional affidavit dated 19 November 2022 filed by the respondent nos.1 to 4. He would contend that as per the said letter dated 6 February

2010, there is a clear inference to the effect that the respondent no.1 was ready and willing to hand over possession of subject lands to the

respondents so as to justify the acquisition proceedings qua the subject lands.

23. Mr. Pawar would then submit that reliance placed by the petitioners on the provisions of Section 11A is completely misplaced. According to him,

acquisition proceedings commenced from issuance of Notifications dated 1 January 1998, 11 June 1999 followed by an award dated 15 October 1999

which culminated in the impugned order of 28 May 2018. The petitioners were well aware of all such proceedings, which rightly culminated in the

impugned order passed by respondent no. 4. In view thereof, there is no merit in the submission of the petitioners that the entire acquisition

proceedings have lapsed. Also, Mr. Pawar would contend that the decisions cited by Mr. Chavan are under different facts and circumstances have no

application to these proceedings. He would thus submit that the said decisions do not assist the case of the petitioners in any manner, whatsoever.

24. On the other issue of payment of compensation and/or deposit in the PLA Mr. Pawar would place reliance not only on the affidavit-in-reply of the

respondents dated 18 February 2022 but also on the additional affidavit filed by Mr. Shailesh Suryawanshi, Sub Divisional Officer, on behalf of the

respondents Nos.1 to 4 dated 19 November 2022 to contend that the amount is already deposited by the respondents in the PLA account. The said

affidavit also stated that the petitioners had voluntarily given possession of the subject lands through their letter dated 6 February 2010. Thus, there is

no question of the land acquisition proceedings qua the subject lands to have lapsed under Section 11 of the Land Acquisition Act. He would thus pray

that the petition is being devoid of merit, ought to be dismissed in limine.

(D) Analysis:

25. We have heard the learned counsel for the parties at length and with their assistance, perused the record.

26. At the very outset, it appears that the subject lands of the petitioners have been expressly excluded and or not included in the award dated

15.10.1999 passed under Section 11 of the Land Acquisition Act as is evident from a perusal of such award itself. Such fact is not disputed by

respondent. Also, there is nothing from the pleadings on record pointed out by Mr. Pawar in these proceedings including the impugned order to

contradict or controvert such fact. Thus, the subject notified lands are clearly and unambiguously not a part of such award passed under Section 11 of

the Land Acquisition Act. Hence, in law, the subject lands of the petitioners cannot be held to be acquired lands.

27. In the above backdrop, we find that in the present case, the proceedings of land acquisition commenced on 1 January 1998 by issuance of

notification under Section 4 of the Land Acquisition Act. Thereafter, a notification under Section 6 of the said Act was issued declaring that the lands

including the subject lands were to be acquired for public purpose. Pursuant thereto, a review/ stay application was preferred by the petitioner no.1

under Section 48(1) of the Land Acquisition Act dated 8 October 1999, before the respondent no.2. By an order of the said date, respondent no. 2

passed orders to maintain status quo in respect of the subject land and the respondent no.3 was directed to consider all documents, report in respect of

the acquisition of the subject lands. Thereafter, by an order dated 31 December 1999 respondent no.2 partly allowed the application of the petitioner

no.1 filed under Section 48(1) of the Land Acquisition Act, remanding the proceedings for fresh consideration to respondent no.4. At this juncture, it is

important to note that only after a long gap of about 17 years from passing of the award on 15 October 1999 which does not include the subject lands,

respondent no.4 issued a notice dated 26 December 2016 to petitioner no.1 to remain present for a hearing scheduled on 12 January 2017. From the

record, it appears to us that there is no whisper of explanation let alone justification in the impugned order in regard to such inordinate delay in issuing

the said notice. Further, it appears that no steps were taken by the respondents concerned to acquire the subject lands in a manner known to law, for

this entire period and/or even thereafter. The position thus being that petitioners continued to be in both de facto and de jure possession of the subject

lands.

28. In the context of the decision in the case of Kunwar Pal Singh & Ors. [Supra], relied upon by Mr. Chavan, the Supreme Court has held that

where any statutory provision provides a particular manner for doing a particular act, then, that thing or act must be done in accordance with the

manner prescribed therefor in the Act. This is a well-settled principle laid down by the Court of Chancery in the case of Taylor v. Taylor [L.R.] 1

Ch. 426, 431, which has been time and again referred in catena of judgments and is thus no longer res integra. In view thereof, the respondents in the

given case have failed to act in a manner, as the law would require them to act in the manner so specified.

29. Adverting to the submission of Mr. Chavan on the impugned order, we find that the impugned order completely fails to consider the above factual

and legal position, despite it been duly explained by the petitioner no.1 in his reply dated 17 January 2017 to the hearing notice dated 26 December

2016 issued by the respondent no.4. We have gone through the said reply carefully. Respondent no.4 who passed the impugned order, completely

glosses over the crucial aspect of gross and inordinate delay of about 17 years in issuing the hearing notice dated 26 December 2016. Thus, perversity

and non-application of mind is writ large in the impugned order. Respondent no.4 has not even thought it appropriate to record a semblance of

reasoning in the impugned order, while rejecting the case of the petitioners who approached the respondents, initially by filing an application dated 8

October 1999 under Section 48(1) of the Land Acquisition Act. Section 48 reads as under :-

â€œ48. Completion of acquisition not compulsory, but compensation to be awarded when not completed

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

taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the

owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably

incurred by him in the prosecution of the proceedings under this Act relating to the said land.

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

Respondent no.4 has completely lost sight of such clear statutory provision under Section 48(1) of the Land Acquisition Act to the effect that this was

a case where the possession of the subject lands always remained with the petitioners as also there was no land acquisition award qua the petitioners

lands. Hence, the proceedings initiated by the petitioners under section 48(1) were legal and valid. Despite this, the respondent no.4 simply rushed to

conclude in the impugned order that the respondentsâ€™ name be entered in the document/land records qua the petitioners lands. This is nothing but

ipse dixit of Respondent no.4 who passed the impugned order.

30. It appears to us that there is no reason or finding recorded by the respondent no.4 in coming to an arbitrary conclusion. Such mechanical order

bereft of reasons, passed by the respondent no.4 completely failed to consider the reply of the petitioner no.1 dated 17 January 2017 despite being

before him, is in the teeth of the well settled legal principles of audi alteram partem.

At this juncture we may refer to the decision of the supreme court in the case UMC Technologies Private Limited v/s Food Corporation of India

and Another (2021) 2 SCC 551 dated 16 November 2022. In this case the Supreme Court noted that the first principle of civilized jurisprudence is

that a person against whom any action is sought to be taken or whose right or interest are affected, should be given a reasonable opportunity to defend

himself.

31. In the present case, the notice of hearing dated 26 December 2016 issued by the respondent no.4 that too after 17 long years not specifying any

reason, reduced hearing to an empty formality. Further, the impugned order of respondent no. 4 compounds such illegality by straight away coming to

a conclusion against the petitioner No. 1 without any findings, or setting out any reasons or grounds. We, thus, find substance in the submission of Mr.

Chavan to the effect that such hearing notice dated 26 December 2016 issued after so many years is hit by gross, inordinate delay and laches, in the

given facts and circumstances. Moreover, there is no rationale, reasoning offered by the respondents to justify the correctness or legality of the

impugned order, in a situation where the petitioners were not afforded a reasonable opportunity to defend himself.

32. From a bare perusal of the impugned order, it is clear that there is not even a remote reference to the petitionersâ€™ detailed reply dated 17

January 2017 filed in response to the hearing notice dated 26 December 2016 issued by respondent no.4. We are thus persuaded to accept that the

principles of natural justice have been clearly breached by the respondent no.4. Thus, this is a peculiar situation where though hearing was given it

was only an empty formality and the petitioners were condemned unheard.

33. We now examine the substantial submission of Mr. Chavan to the effect that the land acquisition proceedings qua the subject lands of the

petitioners would also stand lapsed under Section 11A of the Land Acquisition Act and the response of Mr. Pawar on this issue. Section 11A of the

said Act reads thus:

â€œ11A. Period shall be which an award within made. - The Collector shall make an award under section 11 within a period of two years from the date of the

publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), the

award shall be made within a period of two years from such commencement.

Explanation - In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the

said declaration is stayed by an order of a Court shall be excluded.â€

A perusal of the above provision would demonstrate that it entails two vital ingredients components. Firstly, the time stipulated in making the award

which is to be so made within a period of two years from the date of declaration under Section 6 of the Land Acquisition Act. Consequently thereto, it

provides that if no award is made within such stipulated period, the entire proceedings for acquisition of land shall lapse. Coming to the facts of this

case, the award passed by respondent no.3 dated 15 October 1999 did not include the subject lands. No steps were taken by the respondents to

publish an award qua the subject lands of the petitioners, nor were any fresh acquisition proceedings initiated qua the subject lands within the period of

two years from the declaration of section 6 notification. So also, at all material times the physical possession of the subject lands remained with the

petitioners and obviously so, as there was no award qua the subject lands. Also as there was no award there was no question of any compensation

being paid to the petitioners. It is pertinent to note that the order granting status quo dated 8 October 1999 which was an order qua the possession of

the subject lands and not any step taken towards declaration of an award, which continued at least until 31 December 1999. By an order of the said

date, respondent no.2 while partly allowing the application of the petitioner No.1 filed under Section 48(1) of the Land Acquisition Act remanded the

proceedings to respondent no.3 for de novo hearing, expressly vacating the status quo initially granted on 8 October 1999. In view of lifting of such

status quo, there was no fetter legally or otherwise on the respondents to complete the acquisition of the subject lands in the mode and manner

stipulated under the provisions of Land Acquisition Act. Thus, in the given facts and circumstances, it is discernible that the provision under Section

11A is rightly invoked by the petitioners and the legal consequences set out therein would necessarily follow more particularly in the absence of any

justification in law, by the respondents, in this regard.

34. We have also examined the judgment of the Supreme Court relied on by Mr. Chavan in the case of Kunwar Pal Singh vs. State of U.P. [Supra].

We note that the Supreme Court in the above decision, in the context of Section 11A of the Land Acquisition Act has held that the said provision is

intended to benefit the land owner. In other words, Section 11A is held to be a beneficial legislative provision by the Supreme Court to ensure that the

award is made within two years from the date of its declaration under Section 6 of the said Act. This is a case where the award dated 15 October

1999 passed by respondent no.3 expressly excluded the notified, subject lands of the petitioners. Thus, the only alternative for the respondents under

the framework of the Land Acquisition Act was to initiate fresh land acquisition proceedings in respect of the subject lands and pass specific award to

include the subject lands. This was not so done by the respondents. Thus, the decision of the Supreme Court in the case of Kunwar Pal Singh vs.

State of U.P. [Supra] becomes relevant and applicable as the subject lands have not vested in the government, title remained with the owners in the

absence of acquisition proceedings qua the subject lands of the petitioners. As a result thereof, in our opinion, the provisions of Section 11A of the

Land Acquisition Act become applicable, resulting in the lapsing of the entire land acquisition proceedings qua the subject lands of the petitioners.

35. We have noted respondentsâ€™ reliance on the letter dated 6 February 2010 annexed to their additional affidavit dated 19 November 2022 on the

aspect of respondent no.1 handing over symbolic possession of subject lands to the respondents. In this regard, we refer to a judgment of the Supreme

Court in the case of Raghbir Singh Sherawat vs. State of Haryana & Ors. (2012) 1 SCC 79 . The relevant portion is extracted below:-

â€œFurther,Â thisÂ CourtÂ heldÂ atÂ ParainÂ RaghibirÂ Singh Sehrawat case as under; (SCC pp. 800-01)

â€œ26. Bhagwati, J. (as he then was) and Gupta, J., who consituted the majority did not agree with the Untwalia, J. And observed as under: (balwant Narayan

Bhagde case, SCC p. 711, para 28)

â€˜28. 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 takeing â€œsymbolicalâ€

possession in the sense understood by judicial decisions under the Code of Civil Procedure. 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 ofâ€.

A perusal of the above decision brings to the fore the legal principle to the effect that the meaning of taking over the physical possession of the

acquired land would necessarily entail the actual and not just symbolic possession from the land owner, in the manner recognized by law. As held by

the Constitution Bench of the Supreme Court, in the case of Indore Development Authority vs. Manoharlal & Ors. (2020) 8 SCC 129 that upon

drawing up panchnama of taking possession under the land acquisition cases, the land vests in the State. In the present case, there is no material

whatsoever that any panchnama was drawn by the respondents to take over the possession of the subject lands from the petitioners. Thus, a mere

statement/assertion in the affidavit of the respondents that the possession was taken and / or making unilateral revenue entries is of no consequence.

In view thereof, mere inference of intent to hand over possession in terms of the petitionersâ€™ letter dated 6 February 2010 does not assist the

respondents. This in as much as the expression â€œpossessionâ€ has to be read, understood and applied in the manner recognized by law and not as

the respondents construe it to be.

36. In the context of Section 11A of the Land Acquisition Act, we note the expression â€œentire proceedingsâ€ as appearing in the said provision. In

this context, we refer to a judgment of this Court in Prakash Vishwanath Khute and Others vs. Special Land Acquisition Officer, Buldhana and

others 2006 SCC OnLine Bom. 679. The relevant portion is extracted below:

Â â€œ8.Â ..... It is well-settled principle of law that when a Â statutoryÂ provisionÂ forÂ exerciseÂ ofÂ powerÂ requires compliance of certain conditions

and such provision also provides for consequences for non-compliance of those conditions, then such provision of law is to be construed as mandatoryÂ one.Â

TheÂ mandateÂ underÂ suchÂ statutory provision cannot be ignored. Indeed, this aspect has been duly considered in detail in the decision delivered by this

Court to which one of us had been a party (R.M.S. Khandeparkar, J.) in Mahesh Shivaji Dighe's case (supra).

Â In the said decision, relying upon the decision of the Apex Court in Bihar State Housing Board v. State of Bihar, (2003) 10 SCC 1 it was held that:

Â â€œit is mandatory for the authorities to make an award underÂ section 11 within the period of two yearsÂ as specified under the provision of law comprised

under section 11A of the said Act and, in case of failure to make such award, the entire proceedings for acquisition stand lapsed. Secondly, it follows that the

period of two years has to be counted from the date of the last declaration of the notification under section 6. Thirdly, that for the purpose of publication and

declaration of notification all the three modes as prescribed under the law and clarified by the decision of the Apex Court are required to be followed strictly in

consonance with the provisions of law. Any failure in that regard on the part of the authority may prove fatal to the acquisition proceedings and penal

consequences may follow.

â€œ13. A feeble attempt was made to contend that the laps-ing will relate only to the land which was the subject-mat-ter of the Writ Petition No. 1372 of 2004 as

the posses-sion of the land was not taken in respect of the plot of land which was the subject-matter of the said petition and that, therefore, there was no admission

in general as such about non-publication of declaration on 5-11-2001 in Writ Peti-tion No. 1372 of 2004. The submission is totally devoid of substance. The

section 11-A clearly states that the laps-ing of the acquisition proceedings would be of â€œthe entire proceedings for the acquisition of the landâ€. The expres-

sion â€œthe entire proceedingsâ€ would relate to acquisition of the land which was the subject-matter of the declaration under section 6 read with the

Notification under section 4 of the said Act. Referring to the term â€œthe landâ€ following the expression â€œthe entire proceedings for the acquisition ofâ€ in

section 11-A of the said Act, it was sought to be con-tended that it will restrict to â€œthe landâ€ which is the sub-ject-matter of dispute and possession of which

has not been taken. No such exception can be made only in rela-tion to the land of which possession is not taken or which is the subject-matter of dispute. The

section 11-A does not make any such exception in relation to any such land. On the contrary, it relates to the entire proceeding of the ac-quisition of the land

which was the subject-matter of dec-laration under section 6 of the said Act. The period speci-fied under section 11-A specifically refers to publication of the

declaration under section 6 and the consequences con-templated under section 11-A are on account of the expiry of the specified period from the date of

publication of the declaration under section 6. Being so, the term â€œthe entire proceedingsâ€ in the said section 11-A has necessarily to re-late to the

publication of the declaration under section 6 of the said Act. The section 6 declaration being not related to only land, the possession of which is not taken, but

to the entire land which is the subject-matter of the Notification under section 4, consequently, the term â€œthe entire pro-ceedingsâ€ will relate to all such

pieces of land covered by the declaration under section 6 read with the Notification under section 4 of the said Act, unless it is shown that there are different

awards in respect of different pieces of land, some of them being within the period of limitation.

In light of the above, we note that the expression â€œthe entire proceedingsâ€ in Section 11A of the Land Acquisition Act necessarily relate to the

acquisition of the subject lands of the petitioners, which was the subject matter of declaration under Section 6 read with the notification issued under

Section 4 of the said Act. In the given facts, the subject lands though initially being part of the notified land under Section 4 read with the notification

issued under Section 6, were expressly excluded by the respondents in the award of respondent No.3 dated 15 October 1999. Thereafter, no fresh

proceedings for acquisition of the subject lands were undertaken by the respondents nor was any physical possession of the subject land taken over by

the respondents. It is nobodyâ€™s case that there were different awards in respect of different pieces of land. In fact, the award dated 15 October

1999 was a composite award which ought to have expressly included the subject lands notified under Section 4 read with the notification under Section

6. In view thereof, the above decision would clearly apply to the given facts leading to the inevitable conclusion that the entire proceedings of land

acquisition qua the petitioners lands have lapsed.

37. We have perused the affidavit-in-reply of the respondents dated 18 February 2022 along with their additional affidavit-in-reply dated 19 November

2022. In this context, we refer to our reasoning above, considering the vital factual position that the subject lands of the petitioners were not included in

the award dated 15 October 1999. In view thereof, we find no substance in the pleadings in the form of affidavit-in-reply/additional affidavit of the

respondents. As there is no award qua the subject lands of the petitioners the respondents cannot assert payment of any compensation to the

petitioners, under the scheme and framework of Land Acquisition Act. We are thus unable to accept such stand taken by the respondents.

38. We have taken note of the averment in the petition that the petitioners are agriculturists who wholly depend upon the income from such

agricultural lands. Such fact has not been denied by the respondents in anywhere in their pleadings filed. In view thereof, we need to be extremely

circumspect when we are dealing with the subject lands being the property of the petitioners, falling within the purview and domain of constitutional

rights guaranteed under Article 300A of the Constitution of India. As a sequitur, the petitioners ought not to be deprived of such property in a manner

unknown or contrary to law. We are equally mindful of the fact that in such cases where the petitioners wholly depend upon such agricultural land for

their survival, the salutary mandate of Article 21 of the Constitution cannot be overlooked. In view thereof, deprivation of such rights of the petitioners

contrary to the manner prescribed by law would result in infringement of the petitioners right to livelihood being the fundamental right guaranteed

under Article 21 of the Constitution. We also find that the manner in which the impugned order is passed completely relegating the principles of natural

justice to thin air, as discussed above, is arbitrary, unreasonable, non-speaking and discriminatory. Thus, the action of the respondents coupled with the

impugned order not only mitigates against the letter and spirit of Section 11A of the Land Acquisition Act but infringes upon the fundamental right of

the petitioners guaranteed under Article 14 of the Constitution of India. Thus, this is a case where the mandate under Section 11A in regard to lapsing

of the subject lands of the petitioner, would come into play and the impugned order of Respondent no. 4 has to be set aside.

E. Conclusion:-

39. In light of the above discussion, we find merit in the case of the petitioners. We hold that the entire land acquisition proceedings qua the subject

lands of the petitioners have lapsed. The petition is allowed in terms of prayer clause (b)(ii) and amended prayer clause b(iii). No order as to costs.