

**IN THE HIGH COURT OF TELANGANA AT HYDERABAD**

**W.P.Nos.1245, 1294, 6577 & 6501 OF 2012**

**Between:**

AL Sadanandam & others

... **Petitioners**

**And**

The Government of Andhra Pradesh & others

... **Respondents**

**JUDGMENT PRONOUNCED ON: 03.06.2024**

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

- 1. Whether Reporters of Local newspapers may be allowed to see the Judgment? : Yes**
- 2. Whether the copies of judgment may be marked to Law Reporters/Journals? : Yes**
- 3. Whether Their Lordships wish to see the fair copy of the Judgment? : Yes**

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**MRS. JUSTICE SUREPALLI NANDA**

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

**W.P.Nos.1245, 1294, 6577 & 6501 OF 2012**

**03.06.2024**

**Between:**

# AL Sadanandam & others

... **Petitioner**

And

\$ The Government of Andhra Pradesh & others

... **Respondents**

< **Gist:**

> **Head Note:**

! Counsel for the Petitioners : Sri B.Chandrasen Reddy

^ Counsel for Respondents : Ld.Advocate General for R1 to  
R3 and R7,  
Sri L.Prabhakar Reddy for R4  
Sri P. Ravicharan, for R8

**? Cases Referred:**

- (1) (2020) 8 SCC 129
- (2) (2023) Livelaw (SC) 302
- (3) (2011) 10 SCC 608
- (4) (2023) Livelaw (SC) 632
- (5) (1995) Suppl (1) SCC 596
- (6) 2007 (10) SCC 448
- (7) 2010 (10) SCC 43
- (8) 2011 (7) SCC 639
- (9) 2011 (10) SCC 404
- (10) 2011 (9) SCC 354
- (11) (2013) 1 SCC 353
- (12) (2017) SCC Online Hyd 426
- (13) 2021 SCC Online SC 3422
- (14) 2022 SCC Online SC 232
- (15) (2022) 7 SCC 508
- (16) 2005 (7) SCC 627

**HON'BLE MRS JUSTICE SUREPALLI NANDA**

**WRIT PETITION No.1245 OF 2012**

**WRIT PETITION No.1294 of 2012**

**WRIT PETITION No. 6577 of 2012**

**AND**

**WRIT PETITION No. 6501 of 2012**

**COMMON ORDER:**

Heard learned senior designate counsel Sri B. Chandrasen Reddy, representing learned counsel appearing on behalf of the Petitioners and learned standing counsel Mr. L. Prabhakar Reddy appearing on behalf of TSIIC Respondent No.4 and learned counsel Mr. P. Ravicharan, Link Legal Advocate appearing on behalf of Respondent No.8, learned Advocate General appearing on behalf of Respondent Nos.1 to 3 and 7.

2. **The petitioner approached the court in W.P.No. No.1245 of 2012 seeking prayer as under:**

"to issue a writ or order/s more particularly one in the nature of Writ of Mandamus setting aside the registration of lease and conveyance deeds bearing document no. 20560/2005 and 20562/2005 both dated 28-12-2005 on the file of the seventh respondent, by declaring the action of the respondents no. 4, 5 and 6 of the diversification of the acquired land in survey no. 48

of Nanakramguda village, Serilingampalli mandal, Ranga Reddy district, as illegal, arbitrary, unconstitutional and without jurisdiction; and be pleased to pass such other order/s as this Hon'ble court may deem fit and proper in the circumstances of the case."

**3. The petitioners approached the court in W.P.No. No.1294 of 2012 seeking prayer as under:**

"to issue a writ or order/s more particularly one in the nature of Writ of Mandamus setting aside the registration of lease and conveyance deeds bearing document no. 20560/2006 and 20562/2006 both dated 28-12-2005 on the file of the seventh respondent, by declaring the action of the respondents no. 4, 5 and 6 of the diversification of the acquired land in survey no. 49 of Nanakramguda village, Serilingampalli mandal, Ranga Reddy district, as illegal, arbitrary, unconstitutional and without jurisdiction; and be pleased to pass such other order/s as this hon'ble court may deem fit and proper in the circumstances of the case."

**4. The petitioners approached the court in W.P.No. No.6577 of 2012 seeking prayer as under:**

"a) declaring that the diversification of the severed land in survey no.49 of Nanakramguda village, Serilingampalli mandal, Ranga Reddy district falling to the east of the outer ring road in favour of the sixth respondent as being illegal, arbitrary, unconstitutional and without jurisdiction, by holding that the said land stands reverted to the petitioner.

b) setting aside the award dated 30-11-2005 in file no. B/245/2000 on the file of the third respondent, by deleting the severed land in Survey No.49 of Nanakramguda village, Serilingampalli mandal, Ranga Reddy district to the eastern side of the outer ring road, and to re-conduct award enquiry, and to pass award afresh, and affording an opportunity to the petitioners of being heard."

**5. The petitioner approached the court in W.P.No. No.6501 of 2012 seeking prayer as under:**

"(a) declaring that the diversification of the severed land in survey no.48 of Nanakramguda village, Serilingampalli mandal, Ranga Reddy district falling to the east of the outer ring road in favour of the sixth respondent as being illegal, arbitrary, unconstitutional and without jurisdiction, by holding that the said land stands reverted to the petitioner.

(b) setting aside the award dated 30-11-2005 in file no. B/245/2000 on the file of the third respondent, by deleting the area of 1 acre 3 guntas which is already part of the award bearing no.04/2006 in file no.LA/Unit.V/ORR/08/2006 dated 27-5-2006, and the severed land falling to the eastern side of the outer ring road, and to re-conduct award enquiry, and to pass award afresh after deducting the said extent, and affording an opportunity to the petitioner of being heard."

**PERUSED THE RECORD :**

**6. The case of the Petitioner A.L. Sadanandam in W.P.No.1245/2012 and W.P.No.6501/2012 in brief as per the averments made in the affidavits filed by the**

**Petitioner in support of the said two (02) writ petitions**

**is as under :**

i. The Writ Petitioner i.e., A.L.Sadanandam in W.P.No.1245/2012 who is also writ petitioner in W.P.No.6501/2012 is the owner of land admeasuring Ac.14.25 gts., in Sy.No.48 of Nanakramguda Village, Serilingampally Mandal, Ranga Reddy District, which had been notified for acquisition for public purpose i.e., for developing into integrated projects by invoking the provisions of the Land Acquisition Act, Section 4(1) of the Land Acquisition Act was Gazetted on 17.07.2002 and Draft Declaration under Section 6(1) of the Land Acquisition Act was Gazetted on 18.07.2002, invoking the urgency clause and dispensing with the enquiry under Section 5-A of the Land Acquisition Act. The same was questioned by the Petitioner in W.P.No.19560 of 2002 and this Court by order dated 04.11.2004 set aside the urgency clause while sustaining the Section 4(1) Notification and directed for conduct of Section 5-A enquiry. Even though Section 5-A enquiry was held the same was without any notice to the Petitioner without there being any valid enquiry and draft declaration under Section 6(1) of the Land Acquisition Act was

published on 27.04.2005 and the same was questioned by the Petitioner by filing W.P.No.11619 of 2005 and the same was dismissed by the Court on 25.10.2005 and the matter landed before the Supreme Court by way of SLP (C) No.2902 of 2006. The said SLP along with connected Appeals preferred by other private land holders of the adjoining lands was heard and disposed of vide **common judgment rendered by the Supreme Court on 05.09.2008 which was reported in (2008) 9 SCC 552.** But when the very purpose of acquisition proceedings which was intended initially for establishing and developing infrastructure project was not proceeded with in respect of the Petitioner's subject land, petitioner made an application dated 24.11.2008 before the Government to denotify the land from acquisition under Section 48(1) of the Land Acquisition Act but when there was no response to the said application of the petitioner, petitioner filed W.P.No.26787 of 2008 and the same was disposed of by the order dated 06.04.2009 directing the Government to consider and dispose of Petitioner's representation dated 24.11.2008 within a period of 2 weeks from the date of receipt of the order. Petitioner filed an application dated 06.05.2009 before the Government enclosing the copy of the order dated

06.04.2009 passed in W.P.No.26787 of 2008 and the Petitioner also gave an application to the Chief Minister on 13.11.2010, when a third party was trying to make construction in the Petitioner's subject land, Petitioner filed W.P.No.33229 of 2011 and sought a direction to the 1<sup>st</sup> Respondent to de-notify land admeasuring Ac.9.00 in Sy.No.48 of Nanakramguda Village lying on eastern side of the express Highway Road leading to the outer ring road because of the severance or in the alternative direct the 1<sup>st</sup> Respondent to consider and dispose off the application filed by the Petitioner in accordance to the order dated 06.04.2009 passed in W.P.No.26787 of 2008. The said W.P.No.33229/2011 was disposed of at the admission stage directing the 1<sup>st</sup> Respondent to consider Petitioner's application in accordance with the order dated 06.04.2009 passed in W.P.No.26787 of 2008 within a period of two (02) months.

ii. It is further the case of the Petitioner that when the 6<sup>th</sup> Respondent was digging Petitioner's land, Petitioner filed Suit in O.S.No.878 of 2011 on the file of 1<sup>st</sup> Addl. District Judge, Ranga Reddy District at L.B.Nagar and sought for interim



injunction order in I.A.No.2723 of 2011 and **only through the documents filed by the 6<sup>th</sup> Respondent before the Court it came to the knowledge of the Petitioner that a part of Petitioner's land in Sy.No.48 which had been notified for acquisition for the purpose of the 4<sup>th</sup> Respondent had been vide Deed of Conveyance dated 28.12.2005 transferred in favour of the 5<sup>th</sup> Respondent.**

iii) It is further the case of the Petitioner that the 4<sup>th</sup> Respondent had executed a Registered Sale Deed and also Registered Deeds of Conveyance on 28.12.2005 vide Document Nos.20560/2005 and 20562/2005, but the registration of both the documents had been done only on 12.10.2006. When the Petitioner came to know that Petitioner's acquired land was sought to be diversified by the beneficiary of the acquisition i.e., the 5<sup>th</sup> Respondent in favour of the 6<sup>th</sup> Respondent by executing a Lease Deed dated 21.01.2010 on a mere stamp duty of Rs.100/- and without any registration, the Petitioner was constrained to file W.P.No.1245 of 2012 seeking a writ of mandamus setting aside the registration of lease and conveyance deeds bearing Doc.No.20560/2006 and 20562/2006 both dated 28.12.2005

on the file of the 7<sup>th</sup> Respondent by declaring the action of the Respondents No.4, 5 and 6 of the diversification of the acquired land in Sy.No.48 of Nanakramguda Village, Serilingampally Mandal, Ranga Reddy District. It is further the specific case of the Petitioner that no notice was given to the Petitioner prior to passing of the Award and the Petitioner came to know about the passing of the Award in respect of Petitioner's subject lands only when the matter was referred to the Civil Court in O.P.No.969 of 2010 which is presently pending on the file of II Addl. District Judge, Ranga Reddy District at L.B.Nagar.

iv) The petitioner A.L.Sadanandam in W.P.No.1245/2012 also filed W.P.No.6501 of 2012 declaring the diversification of severed land in Sy.No.48 of Nanakramguda Village, Serilingampally Mandal, Ranga Reddy District, falling to the east of the outer ring road in favour of the 6<sup>th</sup> Respondent as illegal and to set aside the Award dated 30.11.2005 in File No.B/245/2000 on the file of the 3<sup>rd</sup> Respondent, by deleting the area of One acre three guntas which is already part of the Award bearing No.04/2006 in File No.LA/Unit.V/ORR/08/2006 dated 27.05.2006 and the severed land falling to the eastern

side of the outer ring road and to re-conduct Award enquiry and to pass Award afresh after deducting the said extent and affording an opportunity to the Petitioner of being heard.

**7. The case of the Petitioners in W.P.No.1294/2012 as per the averments made by the Petitioners in support of the present Writ Petition is as under :**

i) Petitioners are agriculturists owning land in Sy.No.49 admeasuring Ac.7.36 gts., situated at Nanakramguda Village, Serilingampally Mandal, Ranga Reddy District being co-percenary property of Petitioners and they had been cultivating the land, and agriculture had been the only source of their livelihood. The Petitioner's subject land had been notified for acquisition by the APIIC on the ground of public purpose for setting up of new projects and notification U/s.4(1) of the Land Acquisition Act was gazetted on 17.07.2002 followed by Sec.6(1) of the Land Acquisition Act which was gazetted on 18.07.2002 by invoking the urgency clause and dispensing with the enquiry U/s.5-A of the Land Acquisition Act, Petitioners questioned the said proceedings but by retaining Sec.4(1) Notification urgency clause was struck down by the Court directing Sec. 5-A enquiry. The said

enquiry was colourable and again a Notification under 6(i) of Land Acquisition Act was published on 27.04.2005. The Petitioners however did not hear anything about an Award Enquiry or passing of an Order. The Petitioners had not been paid any compensation and no Notice had been issued to the Petitioners to deliver possession of the acquired land.

ii) It is further the case of the Petitioners that assailing the fresh Notification U/s.6(i) of the Land Acquisition Act, which was issued on 27.04.2005, the Petitioners had filed Writ Petition before this Court and the same was dismissed against which Petitioners preferred SLP (C) No.2239 of 2006 before the Supreme Court. The said Appeal was heard along with other similar cases filed questioning the very same Notification and after hearing of the parties the Supreme Court had dismissed all the Civil Appeals and the said Judgment was reported in 2008 (9) SCC 532. On 02.01.2012 the Petitioners had filed an application before the 1<sup>st</sup> Respondent to withdraw the above said land from acquisition and to issue a Notification to that effect U/s.48(1) of the Land Acquisition Act and the 6<sup>th</sup> Respondent tried to encroach a

portion of the Petitioners land by constructing a compound wall.

iii) It is further the case of the Petitioners that though the Petitioners initially filed a suit in O.S.No.9/2012 on the file of Ist Additional District Judge, Ranga Reddy District at L.B.Nagar, and sought for interim injunction order, subsequently, however on 18.01.2012 Petitioners filed a Memo seeking to withdraw suit O.S.No.9/2012 on the file of Ist Additional District Judge, Ranga Reddy District at L.B.Nagar. It is only when the 6<sup>th</sup> Respondent appeared and filed a Counter on 03.01.2012 in Suit O.S.No.878/2011 filed by the owner, A.L. Sadanandam, pertaining to land in Sy.No.78 of Nanakramguda Village who had been similarly effected and who had sought for interim orders in I.A.No.2723/2011 it came to light for the first time that Petitioners land is being diversified as it is no more required for the public purpose originally notified for the sake of 5<sup>th</sup> Respondent.

(iv) It is further the case of the Petitioners that a Registered Lease Deed bearing Document No.20560/2006 and a Registered Conveyance Deed bearing Document

No.20562/2006 are said to have been executed by the 4<sup>th</sup> Respondent i.e., APIIC Corporation in favour of the 5<sup>th</sup> Respondent on 28.12.2005 and the same had been presented for registration on 12.10.2006. The said documents are very vague in so far as Petitioners lands are concerned as it is not stated with any precision as to how much area is covered by the lease deed and how much under the conveyance deed. U/s.23 of the Indian Registration Act, 1908 any document for registration shall be presented within 4 months of its execution but in the instant case it was after 10 months of its execution and even as per Sec.25 of the Indian Registration Act, condonation could be only for a further period of 4 months in addition to the original period of 4 months and hence there is no jurisdiction to register the aforesaid documents beyond 28.08.2006.

**(v) It is further the specific case of the Petitioners that the land acquired for a specific purpose should be utilized for the said purpose only and it cannot be diversified in respect of any other purpose. In view of the fact that original public purpose for which the Petitioners subject land had been notified having been**

**diversified it is contended by the Petitioners that the Petitioners are entitled for the relief as prayed for in the present writ petition. Hence W.P.No.1294/2012 had been filed by the Petitioners there under.**

8. The very same petitioners in W.P.No.1294 of 2012 filed W.P.No.6577 of 2012 seeking a writ of mandamus declaring that the diversification of severed land in Sy.No.49 of Nanakramguda Village, Serilingampally Mandal, Ranga Reddy District, falling to the east of the outer ring road in favour of the 6<sup>th</sup> Respondent as illegal and to set aside the Award dated 30.11.2005 in File No.B/245/2000 on the file of the 3<sup>rd</sup> Respondent, by deleting the severed land in Sy.No.49 of Nanakramguda Village, Serilingampally Mandal, Ranga Reddy District, to the eastern side of the outer ring road and to re-conduct Award enquiry and to pass Award afresh after deducting the said extent and affording an opportunity to the Petitioners on being heard.

9. **The Counter affidavit has been filed by the Special Deputy Collector, Land Acquisition, Industries, Hyderabad, present Industries/I.A.P., Ranga Reddy**

**District, in W.P.No. 1245 of 2012 and the relevant paragraph No.9, reads as under :**

**Para 9** : It is further submitted that regarding issuing of notification U/s 4(1) and declaration U/s 6 of the Act, and about the Court cases, has already been discussed in above paras. The petitioner herein should have filed any claim and objection before the L.A.O. at the time of publication of notification and declaration and also at the time of award enquiry but as seen from the award no such claim was filed before the then L.A.O. That after passing the award on 30-11-2005 in the S.L.P. (Civil) No2902 of 2006 the status quo orders stated to have been issued on 10-2-2006, in respect of possession, but the possession of the land was already taken before the above date. That the Civil Appeal No.5512 of 2008 and batch stated to were disposed by the Hon'ble Supreme Court which was reported in 2008(9)SCC 552. But the petitioner herein has not mentioned about the orders passed in these cases. That the Hon'ble Supreme Court dismissed the cases as "The action of the state in initiating acquisition proceedings for establishing and developing infrastructure project cannot be held contrary to law or objectionable. The High Court was, therefore, right in dismissing the writ petitions and also writ appeals and we find no infirmity therein and therefore all the appeals are liable to be dismissed and are accordingly dismissed".



**Para 11** : It is respectfully submitted that the petitioner herein stated that he has filed an application before the Government on 24-11-2008 to de-notify the land from acquisition under section 48(1) of the L.A. Act, but there was no response from the Government he filed W.P.No.26787 of 2008 before this Hon'ble Court, and the same was disposed on 6-4-2009 while directing the Government to consider and dispose off his representation dated: 24-11-2008 within a period of four weeks for the date of receipt of the said order. The petitioner stated that he has filed petition on 6-5-2009 and also on 13-11-2010 before the Hon'ble Chief Minister. In this regard it is submitted that once the possession of the lands acquired has been taken over by the Government, there is no provision to de-notify the land. The section 48 of the L.A. Act, speaks that *"(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"*. **In this case the possession of the acquired lands have already been taken over as such the Government cannot de-notify the land as requested by him.**

**Para 12** : It is further submitted that in respect of the subject land the same is attracted by the provisions of Urban Land (Ceiling & Regulation) Act, 1976, as such it was referred to the Civil Court U/s 30 of the L.A. Act and compensation was deposited before the Court U/s

30 & 31 of the Act, and said case was numbered as O.P.No.969/2010, and is pending before the IInd Additional District Judge, Ranga Reddy District, as admitted by the petitioner herein in these paras. The petitioner is at liberty to file relevant documents before the above Civil Court and claim the compensation. As the petitioner has not filed any claim petition at the time of award enquiry. The petitioner is at liberty to file petition before this respondent and obtain the certified copy of the Award. That the contention of the petitioner that he is unaware of the award, but as evident from the averments made in these paras the petitioner is well aware of the passing the award, referring the matter to Civil Court and O.P. number and also the quantum of compensation amount to Rs.73.00 lakhs.

**10. The Counter affidavit filed by the 4<sup>th</sup> Respondent in W.P.No.1245 of 2012, APIIC, presently Telangana State Industrial Infrastructure Corporation, Basheerbagh, Hyderabad, and in particular, para Nos. 6, 12, 13 and 15, read as follows :**

**Para 6** : It is submitted that the allegation there is frustration of public purpose in view of the alignment of outer ring road resulting split of Sy No. 48 into two pieces and Ac 9-00 out of Sy.no. 48 falling to the eastern side of the road leaving small extent of Ac. 1-00

in compact block etc., are totally vague, incorrect and untenable and unsustainable.

**Para 12 :** **It is submitted that the allegation that the acquisition is for one purpose and after acquisition, the acquired land cannot be diversified for any other purpose is also vague and incorrect allegation invented by the petitioner for the purpose of filing this Writ Petition. Once the land is acquired under the provisions of L.A. Act and after passing the award by L.A.O., the acquired land vests with the Government, who is free to utilize the acquired land for any public purpose. Constructions of electric sub- station cannot be found fault by the writ petitioner.**

**Para 13 :** It is submitted that the allegation that fraud has been played by the respondents to deprive the petitioner from making the payment of compensation and facilitating unjust enrichment etc., under the guise of acquisition of more than Ac. 500-00 of land, CBI investigation and prosecution of officials which are incorrect and the same is concerned to the other respondents and the petitioner is called upon to put to strict proof of the same.

**Para 15 :** It is submitted that the acquisition of the lands by 4<sup>th</sup> respondent Corporation is not with any malafide purpose. As per the policy of the Government

and in the interest of development of industries, projects, tourism in the State for development of integrated projects, gulf courts, townships, hotels under private partnership/joint venture it has become inevitable for acquiring surrounding lands of Hyderabad. As a matter of fact, the development works have been taken up in the lands and various activities have taken place including Convention Centre, Business Hotels, Township Projects, Gulf Course etc. Thus the acquisition of the lands are in the larger interest of public and also as per the policy of the Government. Thus the acquisition of the lands cannot be found fault by the petitioners, though the same are compulsory in nature. Already when the land acquisition for public purpose is upheld by the Hon'ble Supreme Court. Hence, the present writ petition is not maintainable.

**11. The counter affidavit filed by 4<sup>th</sup> Respondent in W.P.No.1294 of 2012, APIIC, presently Telangana State Industrial Infrastructure Corporation, Basheerbagh, Hyderabad, and in particular, the relavant para Nos.4, 9, 14, 16, read as follows :**

**Para 4 :** It is submitted that the writ petition as filed by the petitioners to set aside Registration of Lease and Conveyance Deeds bearing document No. 20560 of 2006 and 20562 of 2006 both dated 28-12-2005 and for declaration of diversification of the acquired land in

Sy.o.49 of Nanakramguda village, Sherilingampally mandal, Ranga Reddy district is not maintainable in law.

**Para 9:** It is submitted that in pursuance of the requisition of the then APIIC, proposals were initiated for acquisition of Ac. 541-00 in a compact block by the revenue authorities and initiated proceedings of acquisition and the award has been made in respect of Ac. 77-02 Gts. of patta land under Land Acquisition Act. It is submitted that Government of Andhra Pradesh granted exemption from payment of stamp duty and registration for conveyance deeds and lease deeds, payment of transfer duty and thereafter respondent No. 4 herein executed Registered Deed of conveyance and lease deeds in favour of Respondent Nos. 7 and 8. Therefore, the allegation that the documents were executed without exemption of stamp duty and registration and powers to exempt the same will not stand to the legal scrutiny etc., are totally untenable. As per the policy of the Government the said documents were executed by respondent No. 4 as stated supra, which is in public interest.

**Para 14 :** It is submitted that a policy decision was taken by the Government to develop the State by providing physical and social infrastructure by attracting and facilitating private investment in infrastructure. As per the said policy decision the Andhra Pradesh Infrastructure Development Enabling Act, 2001 (Act 36

of 2001) has been enacted. The main object of the said Act, is to provide rapid development of physical and social infrastructure in the State and attract private sector participation in designing, financing, construction, operation and maintenance of infrastructure projects. The Government also prepared a document as early as in the year 1990 called "Vision - 2000 document" highlighting need for Tourism as an important factor and initiated constructive development of projects from the year 2000-2001.

**Para 16** : It is submitted that the acquisition of the lands by 4th respondent Corporation is not with any malafide purpose. As per the policy of the Government and in the interest of development of industries, projects, tourism in the State for development of integrated projects, gulf courts, townships, hotels under private partnership/joint venture it has become inevitable for acquiring surround lands of Hyderabad. As a matter of fact, the development works have been taken up and various developed projects have come up including Convention Centre, Business Hotels, Township Projects, Gulf Course etc. Thus the acquisition of the lands are in the larger interest of people and also as per the policy of the Government. Thus the acquisition of the lands cannot be found fault by the petitioners, though the same are compulsory in nature.

**12. Counter affidavit filed by 8<sup>th</sup> Respondent i.e. M/s. Boulder Hills Leisure Private Limited in W.P.No.1294 of 2012, para Nos. 14, 15, 19, 25 and 27 reads as follows :**

"14. It is further submitted that in terms of the Memorandum of Understanding and Collaboration Agreement, the then APIIC transferred land admeasuring 258.36 acres comprised in Sy. Nos. 210(P) & 211(P) of Manikonda Village, Rajendra Nagar Mandal, Sy. No. 91(P) of Gachibowli Village, Serilingampally Mandal, Sy. Nos. 4 to 26(P), 27 (4) to 35(P), 37, 38, 40, 41, 43 to 46(P) 47, 48(P) and 49(P) of Nanakramguda, Serilingampally Mandal to EHTPL i.e. Respondent No. 9 vide Registered Conveyance Deed dated 28.12.2005. It is further submitted that similarly the then APIIC has also leased land admeasuring 235 acres situated in survey numbers 210(P) 211 (P) of Manikonda village, 91(P) of Gachibowli village and survey numbers 6 to 11, 19 to 24 (P), 37, 38, 40, 41, 47 to 49(P) of Nanakramguda village, Serilingampally Mandal to BHLPL i.e. Respondent No.8 herein vide Registered Lease Deed dated 28.12.2005. The copy of the Lease Deed dated 28.12.2015 is annexed herewith as Annexure No. 5.

15. The Answering Respondent submits that, APIIC has handed over the physical possession of the lands admeasuring 531.98 acres in (Sy No.203(P), 210 (P) & 211(P) of Manikonda (V), Rajendranagar (M), Sy. No.

91/P of Gachibowli Village and Sy. No. 36, 37, 38, 39, 40, 42 and 47 of Nanakramguda (V), Serilingampally (M), Sy No. 4 to 26, 27/4 to 35, 43 to 46, 48 and 49 of Nanakramguda (V), Serilingampally (M) Ranga Reddy District to EHTPL and BHLPL i.e Respondent No.8 vide possession certificate dated 18.06.2005 and 29.11.2005. The copies of possession certificates dated 18.06.2005 and 29.11.2005 are annexed herewith as Annexure No.6(Colly). Since then, the EHTPL and the Answering Respondent have been in the lawful possession of lands and the said factum is well known to the public at large and is within the public domain.

**19.** The Answering Respondent submits that the original landowners had approached the Hon'ble Supreme Court of India by way of various Special Leave Petitions viz. SLP (C) No. 1135 of 2006, SLP (C) No. 2239 of 2006, SLP (C) No. 3387 of 2006, SLP (C) No. 3388 of 2006, SLP (C) No. 3389 of 2006, SLP (C) No. 3390 of 2006, SLP (C) No. 2902 of 2006, which were heard together and the Hon'ble Supreme Court vide its common judgment dated 05.09.2008, has dismissed the said petitions and upheld the acquisition of lands in question. The writ petitioners having admitted about the filing of Special Leave Petitions have cleverly stated that what is being agitated is a totally different cause of action and filed the present petition giving it the colour of diversification which is nothing but abuse of process of



law. On this ground alone, the present Writ Petition is liable to be dismissed.

**25.** In reply to the averments made in Paras 4 and 5 of the affidavit under reply, Answering Respondent submits that the Hon'ble Supreme Court as reported in 2008(9) SCC 552 has upheld the action of the State in initiating acquisition proceedings for establishing and developing infrastructure project cannot be held contrary to law or objectionable. The High Court was, therefore, right in dismissing the writ petitions as also writ appeals and we find no infirmity therein. All the appeals, therefore, are liable to be dismissed and are accordingly dismissed, however, leaving the parties to bear their own costs. The copy of judgement passed by Hon'ble Supreme Court in Civil Appeal No.5512/2008 dated 05.09.2008 is annexed herewith as Annexure No.8. Therefore, it is crystal clear that Petitioners though being fully aware about the land acquisition proceedings having been initiated during the period of 2002-2005 (including upholding of the acquisition of lands by the Hon'ble Supreme Court as public purpose), taking over of the possession of lands way back in the year 2005 and passing of award has filed the present petition frivolously with regards to the subject lands, suppressing the material facts for wrongful gains.

**27.** In reply to the averments made in Para 7 of the affidavit under reply, the Answering Respondent denies

the same as false and the Petitioners is put to strict proof of the same. **The Answering Respondent submits that the possession of lands in question was taken long back i.e. in the year 2005 after passing of the award under the Land Acquisition Act, 1894.** As mentioned above, the then APIIC acquired the subject lands and consequently transferred the same to the Answering Respondent through a Registered Lease Deed dated 28.12.2005 and it has already attained finality and has been in public domain since 2005. It is settled position in law that after passing the award, and taking possession under section 16 of the Land Acquisition Act, 1894, the acquired land vests with the Government free from all encumbrances. Even if the land is not used for the purpose of which it is acquired, the original land owner/land looser does not have any right to seek for re-vesting the land in him and to seek for restitution of the possession. The present writ petition is nothing but an after-thought and an abuse of process of law in order to deprive the Answering Respondent of its legal and lawful rights accrued to it under the said registered lease deed over the subject lands.

**13. Counter affidavit filed on behalf of 9<sup>th</sup> Respondent in W.P.No.1294 of 2012 and in particular, para Nos. 27, 28, 29, and 33 reads as under :**

**27.** In respect of averments made in Para 1 of the affidavit under reply, it is respectfully submitted that the Petitioners have no locus standi to file present writ petition as the lands in question are the properties of the Answering Respondent which were validly acquired under the provisions of the Land Acquisition Act, 1894 by the then Government of Andhra Pradesh through the then APIIC and conveyed the same to Answering Respondent vide registered conveyance deed dated 28.12.2005. All challenges to the acquisition process have been completed and rejected by the Courts. A second round of litigation on the decided issues is not permissible.

**28.** In reply to the averments made in Para 2 of the affidavit under reply, the Answering Respondent denies the same as false for want of knowledge. It is submitted that the APIIC has transferred land admeasuring 258.36 acres vide registered conveyance deed dated 28.12.2005 in favour of Answering Respondent and since then the Answering Respondent is in the lawful possession of the said lands.

**29.** In reply to the averments made in Para 3 of the affidavit under reply, the Answering Respondent submits that the contents of the paragraph under reply in so far being a matter of record needs no reply. The Answering Respondent denies that that the Petitioners have not heard anything about the award enquiry or passing of award and the Petitioners are put to strict proof the same. The Answering Respondent further

denies that that the Petitioners have not been paid any compensation and that no notice was issued for delivery of possession of the acquired land and the Petitioners are put to strict proof of the same. **In fact, an Award bearing B/245/2000 dated 30.12.2005 was passed by Special Deputy Collector, Land Acquisition (Industries), Hyderabad wherein land admeasuring Ac. 7.36 guntas in survey number 49 were acquired for the integrated project.**

33. In reply to the averments made in Para 8 of the affidavit under reply, the Answering Respondent denies the same as false and the Petitioner is put to strict proof of the same. The Answering Respondent further submits that it is also a settled principle of law that after passing of award, taking of possession and delivery of said land to the beneficiary, the retention of the possession by the Petitioner is far from truth and such possession if any would tantamount to unlawful.

14. **Counter affidavit has been filed on behalf of 4<sup>th</sup> Respondent in W.P.No.6577 of 2012, and in particular, para Nos. 11, 13, and 16 read as follows :**

"11. It is submitted that Government of Andhra Pradesh in their Memo No. 13268/LA/2/96-1 Revenue (LA) Dept. dated 04-06-1996 has accorded permission to the District Collector to acquire land for APIIC Ltd. even belongs to small and marginal farmers. The

Executive Director (Estate) APIIC Ltd., in his letter No. 2710A3/Lands/APIIC/2000 dated 18-11-2000 has filed a requisition before the District Collector, R.R. District to acquire the lands in Sy.Nos. 4 to 35, 41, 43 to 46,48 and 49 extent of Ac. 92.19 Gts. for development of new projects and requested to invoke urgency clause under LA under LA Act as the above lands are urgently required by the APIIC Ltd. The above proposals were forwarded by the District Collector, R.R. District vide letter No.G1/7180/00 dated 07-12-2000 with an instructions to the Special Deputy Collector, LA (Inds.) Hyderabad to initiate land acquisition proceedings as per LA Act and send DN and DD proposals duly invoking urgency clause under LA Act. Accordingly, LA process were initiated invoking the urgency clause.

13. It is submitted that the allegation against the corporation with regard to the negligence and collusion, failed to safeguard the interest of the State and its subject etc., vague and incorrect. The further allegations are not related to this respondent, and the petitioners are called upon to put to strict proof of the same. The allegation that there is a rank discrimination causing loss to the persons like petitioners and wrongful gain to the 5<sup>th</sup> respondent is also vague and incorrect. It is submitted that the payment of compensation etc., are totally under the provisions of Land Acquisition Act and as per the award of Land Acquisition Officer. It is always open to the aggrieved persons for taking steps for

enhancement of compensation under the provisions of Land Acquisition Act, in the event of dissatisfaction about the compensation amount. The remaining allegations are not related to this respondent, and the petitioners are called upon to put to strict proof of the same.

**16. It is submitted that a policy decision was taken by the Government to develop the State by providing physical and social infrastructure by attracting and facilitating private investment in infrastructure. As per the said policy decision the Andhra Pradesh Infrastructure Development Enabling Act, 2001 (Act 36 of 2001) has been enacted. The main object of the said Act, is to provide rapid development of physical and social infrastructure in the State and attract private sector participation in designing, financing, construction, operation and maintenance of infrastructure projects. The Government also prepared a document as early as in the year 1990 called "Vision - 2000 document" highlighting need for Tourism as an important factor and initiated constructive development of projects from the year 2000-2001.**

**15. The Petitioner A.L. Sadanandam filed reply affidavit in W.P.No.1245 of 2012, and in particular, para Nos. 22, 24, 26, 27, and 28 read as under :**

"22. It is submitted that fraud has been played by the Respondents to deprive the petitioner and his family members of due compensation while facilitating unjust enrichment of the respondents. Under the guise of acquisition, more than 500 acres of government land which is worth thousands of crores of rupees have been allotted for a farthing in favour of the fifth respondent, and the share of the fourth respondent which was originally 26% is now reduced to 5%. Even a modest estimate by the Central Bureau of Investigation (CBI) of the wrongful loss to the fourth respondent caused by the agents of the fifth respondent is to the tune of Rs 108 crores, while thousands of crores of rupees have been pocketed by the said persons by selling the plots at the market value which is now not less than Rs 2,50,000/- per sq. yard. Even according to the CBI, the fifth respondent and its agents have sold the plots several times beyond the official price, and even the official price @ Rs 5,000/- per sq. yard comes to Rs 2.5 crores per acre while the price of only Rs 5 lakhs per acre is being offered to the petitioner. The CBI has prosecuted the officials and the private individuals in connection with the Emaar Properties, and the prosecution is pending in the CBI court at Hyderabad. While for a total land of 10 acres 25 guntas I am being offered Rs 54 lakhs towards market price, the fifth respondent is fetching the same price for a mere extent of 200 sq. yards. There cannot be any greater fraud than this, and this itself is sufficient to nullify all the

acquisition proceedings and the subsequent acts. It is not out of place to mention that at a remote place as compared to my land in question, the Hyderabad Urban Development Authority (HUDA) has fetched Rs 14 crores per acre for land in Kokapet village in the open auction conducted by it in the year 2006.

**24.** It is submitted that Respondent no.4 has played a key role in transferring the land to Respondent nos. 5 and 6 and cannot now claim that it is not concerned with the land. It is submitted that respondent no. 6 is relying on lease deed dated 21/01/2010 executed by respondent no. 5. Respondent no. 5 is in turn relying on the registered lease deed and deeds of conveyance on 28/12/2005 vide document nos. 20560/2005 and 20562/2005 which was executed by Respondent no.4. It is submitted that the registration for deeds of conveyance document nos. 20560/2005 and 20562/2005 dated 28/12/2005 executed by Respondent no.4 in favour of Respondent no.5 was done on 12/10/2006 which is contrary to **section 23 of the Indian Registration Act, 1908 which stipulates that a document executed has to be presented for registration within 4 months from date of execution. However, in the present case, the document has been presented for registration after 10 months from the date of execution.** Moreso, under section 25 of the Indian Registration Act, 1908 even if the Registrar has to condone the delay



which has not been done in the instant case, the registering authority cannot condone the delay beyond a period of 8 months. As such, registration of both documents is illegal, void and non-est in law.

26. In reply to para 12 it is submitted that the Petitioner is not aware of the award being passed with respect to his land nor of the contents of the award. The Petitioner has not received any notice to deliver possession, neither has possession been taken from him in accordance with the provisions of the LA Act, 1894 nor has he participated in the award enquiry. Such usurpation of land by the authorities does not amount to dispossession as mandatory provisions of the LA Act, 1894 have not been followed and without following mandatory provisions, no authority can claim valid title or possession.

27. The allegation that the requisitioning department is not concerned with any allotment or development in respect to matters concerned with other departments is untenable especially when Respondent no.4 has played a key role in transferring the land to Respondent nos. 5 and 6. It is pertinent to mention that the government throughout the proceedings has stated that smaller extents of private lands were notified for developing integrated projects consisting of Emaar Hills Township Pvt Ltd even though larger extents of government lands were available to maintain a compact block. **When the**

**land of the petitioner is claimed to be acquired for the purpose of developing an integrated township and the purpose of an integrated township is as the land in survey number 48 has been split into two after the ORR has been laid, the land use cannot now be diversified for an altogether different purpose i.e., for constructing an electricity substation.**

28. However, pending the above WP when H.M.D.A. proposed to lay a 30 m wide road as per the revised road development plan from ORR service road to Khajaguda lake via Urdu University through the petitioner's property approximately admeasuring Ac. 9. 14 guntas gts in sy. no. 48 situated at Nanakramguda village, Sherilingampally Mandal, Ranga Reddy District, which is the subject matter of the present writ petition. The petitioner filed objections on 22/07/2021, and was compelled to file writ petition 17268 of 2021 challenging the proposed road. Pending the said writ petition HMDA officials have approached the petitioners and both have entered into an understanding by virtue of the same, proceeding dated 9.11.2021 were issued, where the HMDA agreed to acquire an extent of 1680.35 sq. yards of land instead of the earlier proposed extent. Accordingly, the writ petition 17268/2021 was withdrawn as dismissed. Further, the Hon'ble court observed that the EMAAR properties are entitled to agitate the settlement reached between the petitioner

and HMDA officials vide dated 9.11.2021. A copy of the consent letter and proceedings of the GHMC along with the sketch plan is filed herewith and given by the writ petitioner. Subsequently, the petitioner was brought to notice that EMAAR properties have filed a writ petition bearing W.P. No. 8148/2022 challenging the proceedings and the same is pending. **Nevertheless, as per section 24 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 the land acquisition proceedings gets lapsed if the physical possession of the land has not been taken after passing of award under section 11 within 5 years or more prior to the commencement of the LARR Act 2013. In the present case, the physical and lawful possession has not been taken by the official respondent from the petitioner and also the petitioner has not taken any compensation. As per the petitioner physical possession was taken earlier by invoking the urgency clause which was set aside in WP 19560/2002. Thereafter, no physical possession was taken by officials from the petitioner, after passing the award and award enquiry. The lease agreement executed between the officials and EMAAR properties is only a sham transaction and no physical possession was handed over to them at any point in time and the petitioner is in physical possession as of this date. This is without**

**prejudice to the other contentions raised in the writ affidavit. The petitioner reserves his right to file additional reply if necessary.**

**16. Counter affidavit filed by the 8<sup>th</sup> Respondent – BHLPL in W.P.No.1245 of 2012 and in particular, para Nos. 28, 30 and 31 read as follows :**

"28. That the urgency clause was set aside by this Hon'ble Court, the Government could not take possession of the notified land and it is not known to us (Petitioner) as to when the award was passed as there was no notice issued to us (Petitioner) to participate in the award enquiry and that till this day Petitioner had not been served with any award, is wrong and denied by the answering Respondent.

30. In reply to the averments made in para 9 of the affidavit that till today Petitioner is not aware of the content of the award as it has not been served upon Petitioner and Petitioner have not been paid the compensation and a paltry compensation was awarded and odd is in the court deposit and Petitioner has not received any notice of delivery possession and no possession has been taken over from Petitioner in accordance with the provisions of the L.A. Act, the answering Respondent denies the same as false. The answering Respondent further submits that the petitioners on one hand contend that they do not know as to when award was passed and on the other hand

contend that a paltry compensation was awarded and is in court deposit. From the above, it is crystal clear that the Petitioner is fully aware that an award was passed and that he has made false claim that he is still in possession of the lands in question only with a mala-fide intention. It is settled position in law that after passing the award, and taking possession under section 16 of the Land Acquisition Act, 1894, the acquired land vests with the Government free from all encumbrances. Even if the land is not used for the purpose of which it is acquired, the land owner does not have any right to ask for re-vesting the land in him and to ask for restitution of the possession. The answering Respondent further submits that it is also a settled principle of law that after passing of award, taking of possession and delivery of said land to the beneficiary, the retention of the possession would tantamount only to illegal or unlawful possession.

31. In reply to the averments made in para 10 of the affidavit the answering Respondent denies the same as false. The answering Respondent further submits that the petitioners claiming to be in possession of the land which have been acquired pursuant to provisions of the Land Acquisition Act, 1984 is nothing but illegal and unlawful possession. Therefore, **there is no merit in the contention of the writ petitioner that under law he continues to be the legal owner and possessors of the land and that the Respondents have no right to interfere with the same.**

**DISCUSSION AND CONCLUSION:**

**17. There are three modes of taking possession of the land under the Land Acquisition Act (prior to acquisition and post acquisition):**

**When Section 5A enquiry is dispensed with and there upon by invoking urgency clause under Section 17 of the Land Acquisition Act, 1894**

- (a) When the urgency clause is invoked by the Land Acquisition Officer under Section 17 of the Land Acquisition Act, 1894, there is no necessity to conduct the enquiry under Section 5-A of the Land Acquisition Act, 1894; Possession can be taken under Sections 17(2) and 17(4) of the LA Act by dispensing with the enquiry to be conducted as per Section 5-A of the LA Act. Section 5-A ensures that the principles of natural justice are upheld and fair opportunity is to be given to the land owners to raise their objections for acquiring their land and the Rules of natural justice have been ingrained in the scheme of Section 5A with a view to ensure that before any person is deprived of his land by way of compulsory acquisition, he must get an opportunity to oppose the decision of

the State Government and/or its agencies/instrumentalities to acquire the particular parcel of land. In the present case, though the Land Acquisition Officer had issued notification under Section 4 to acquire the land by invoking urgency clause under Section 17 of the LA Act, the urgency clause was set aside by this High Court in W.P. No. 19560 of 2002 and the Court directed the respondents to issue notice for an enquiry under Section 5A of the LA Act.

- (b) Further, only when the urgency clause is invoked and it is in subsistence, the possession could be taken by the Government without conducting enquiry as contemplated under Section 5A of the Act and the award could be passed, subsequent to taking possession. In the present case, since the urgency clause has been set aside, the award has to be made under Section 11 of the LA Act on 30.11.2005 and only after passing of the award, the possession has to be taken under Section 16.

OR

- (c) After the award is made under Section 11(2) of the Land Acquisition Act, 1894, the possession could be taken.

18. The Land Acquisition Officer should follow the due procedure contemplated as per the provisions of the Land Acquisition Act. Enquiry has to be conducted for the parties whose land is to be acquired after issuing notices to them. The parties objections (if any) have to be recorded and the award may be passed and then possession of the land may be taken. The Scheme of the Land Acquisition Act with regard to payment of compensation is that, the Collector after enquiry as per Section 11 has to make award and when award is made, notice has to be issued under Section 12(2). The Collector must be armed with the amount of compensation payable to interested persons and only when payment is refused or no person is competent to alienate the land or there is any dispute as to title, the Collector shall deposit compensation in reference Court. Only after these steps, the Collector shall take possession of the land which shall vest absolutely in the Government free from all encumbrances.

19. It is the specific case of the Petitioner's in the present Writ Petition that the Petitioners are not aware



of the Award being passed with respect to Petitioner's land nor the contents of the Award. The Petitioner's had not received any notice to deliver the possession nor has the possession been taken from the Petitioner's in accordance to the Provisions of Land Acquisition Act, 1894. Neither the Petitioner's had participated in the Award enquiry nor had the Petitioner's received the notice as mandated under Section 12(2) of the Land Acquisition Act, 1894.

20. Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, reads as under :

**"24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.**

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, - (a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or (b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed. (2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the

commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

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

**21. A bare perusal of the above provision clearly indicates that the Land Acquisition proceedings lapse if the physical possession of the land has not been taken after passing of the Award under Section 11 within 5 years or more prior to the commencement of the Act No.30 of 2013. The counter affidavits filed by the Respondents do not indicate the date when the notice had been issued and served upon the Petitioner informing the Petitioner to participate in the Award enquiry and when Notice under Section 12(2) had been issued and served upon the Petitioner. It is the specific case of the Petitioner that even as per the averments made at Para No.28 of the reply affidavit filed in W.P.No.1245 of 2012, that as on date physical and**

**lawful possession had not been taken by the official Respondents from the Petitioner and the Petitioner had not taken any compensation. It is further the specific case of the Petitioner that physical possession has been taken earlier by invoking the urgency clause which was set aside in W.P.No.19560 of 2002, thereafter no physical possession was taken by officials from the Petitioner after passing of the Award and no physical possession was handed over to the Respondents at any point of time and the Petitioner is in physical possession of the Petitioner's subject land as on date.**

**22. The Constitution Bench of the Apex Court in the Judgment reported in Indore Development Authority vs. Manohar Lal and Others reported in (2020) 8 SCC 129 at paragraphs 362 and 366 observed as under :**

""362. Resultantly, the decision rendered in Pune Municipal Corporation & Anr. (supra) is hereby overruled and all other decisions in which Pune Municipal Corporation (supra) has been followed, are also overruled. ... ..

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

366.1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014, the date of commencement of the 2013 Act, there is no lapse of

proceedings. Compensation has to be determined under the provisions of the 2013 Act.

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

366.3. The word "or" used in Section 24(2) between possession and compensation has to be read as "nor" or as "and". The deemed lapse of land acquisition proceedings under Section 24(2) of the 2013 Act takes place where due to inaction of authorities for five years **or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.**

366.4. The expression "paid" in the main part of Section 24(2) of the 2013 Act does not include a deposit of compensation in court. The consequence of non deposit is provided in the proviso to Section 24(2) in case it has not been deposited with respect to majority of landholdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation under Section 31 of the Land Acquisition Act, 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non deposit with respect to the majority of holdings for five years or more, compensation under the 2013 Act has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the 1894 Act.

366.5. In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to nonpayment or non deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). The landowners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the 2013 Act.

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

366.7. The mode of taking possession under the 1894 Act and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).

366.8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned as on 01.01.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

366.9. Section 24(2) of the 2013 Act does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the 2013 Act i.e. 01.01.2014. It does not revive stale and time barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to

reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition."

**In the present case neither possession of the subject lands had been taken nor compensation paid.**

**The Constitution Bench of the Apex Court in its recent judgment reported in (2020) 8 SCC 129 in Indore Development Authority Vs. Manohar Lal and Others opined that compliance of either of the two conditions i.e., taking over of possession of the land or payment of compensation is good enough to sustain the acquisition. In the present case, from the material available on record, it is not evident and clear that the possession of land in dispute was taken after the acquisition was complete. The counter affidavit filed on behalf of the Respondent No.3 i.e., Special Deputy Collector, Land Acquisition, Hyderabad, present Industries/IAP Ranga Reddy District, filed in W.P.No.1245 of 2012 on 22.12.2022 states that the possession of the Petitioner's subject land had been taken over by the Government, however, it does not give the details nor any documents are filed before the**

Court evidencing taking over possession of the subject lands by way of panchanama nor any report of possession proceedings had been placed by the Respondents on record.

23. A bare perusal of the counter affidavit filed on behalf of the Andhra Pradesh Industrial Infrastructure Corporation presently Telangana State Industrial Infrastructure Corporation, Basheerbagh, Hyderabad, filed on 10.02.2018 in W.P.No.1294 of 2012 is also silent in so far as the particulars pertaining to the date when physical possession of the Petitioner's subject lands had been taken and para No. 8 of the said affidavit only states that the allegation that the possession had not been taken from the Petitioners, is incorrect. It is also surprising to note that the counter affidavit filed in February 2018 on oath states that the possession of the subject lands was taken, the material document filed by the Petitioner along with reply affidavit in February 2023 in W.P.No.1245 of 2012 refers to letter dated 09.11.2021 of the Commissioner, GHMC, addressed to the Petitioner herein vide Letter

No.13/KU/TPS/CIR-20/GHMC/ 2021, which contradicts the same and a bare perusal of the contents of the said letter dated 09.11.2021 in fact call upon the Petitioner and request the Petitioner to handover the possession of the subject land. A bare perusal of material document dated 10.11.2021 filed along with the reply affidavit which in fact is the response of the Petitioner in W.P.No.1245 of 2012 to the letter dated 09.11.2021 of the Commissioner, Greater Hyderabad Municipal Corporation, indicates that the Petitioner's reply in relation to the request of the Deputy Commissioner, GHMC, Serilingampally, Hyderabad, that the Petitioner gives his consent to hand over the possession of the subject land bearing Sy.No.48 of Nanakramguda Village, Serilingampally Mandal, Ranga Reddy District, admeasuring 1680.34 sq. yards for the purpose of widening of the road from Khajaguda Lake to Nanakramguda ORR along Urdu University Compound Wall subject to the condition that all benefits should be extended to the Petitioner as per G.O.Ms.No.168 MA, dated 07.04.2012 amended with G.O.Ms.No.330, MA, dated 28.12.2017 for the development of the balance



land. If that being the position as on 09.11.2021, the plea of the 4<sup>th</sup> Respondent (TSIIC) in W.P.No.1294 of 2012 that the possession has been taken over way back in February 2018 as borne on record is factually incorrect.

24. A bare perusal of the contents of the letters dated 09.11.2021 and 10.11.2021 referred to above also clearly prove that the averments in the counter affidavit filed by 8<sup>th</sup> Respondent BHLPL at Para Nos. 28, 30, 31 and 38 are factually incorrect and the plea of the 8<sup>th</sup> Respondent that possession of the Petitioners subject lands had been taken over by the Government is false since the said counter affidavit of the 8<sup>th</sup> Respondent had been filed into the Registry in November 2015 and the Petitioner was requested to handover possession in respect of the subject lands vide letter dated 09.11.2021. The 8<sup>th</sup> Respondent Counter failed to neither provide any details pertaining to report of the alleged possession proceedings nor any copy of the panchanama and the date when the notice had been issued to the Petitioner after passing of the

**Award under Section 12(2) of Land Acquisition Act, 1894.**

**This court opines that the respondents herein must comply with the procedure for acquisition and the respondents herein are governed by the rule of law and cannot arrogate to itself a status beyond what is provided by the constitution.**

25. **In the counter affidavit filed by the 8<sup>th</sup> Respondent in W.P.No.1294 of 2012 at para No. 34 a specific plea is taken contending that the Petitioners are not in possession of the subject land, strangely no report of the possession proceedings evidencing the said fact is brought on record by any of the Respondents in any of the writ petitions except stating that possession of the subject land is not with the Petitioners.**

26. In the counter affidavit filed by the 9<sup>th</sup> Respondent i.e., Emaar Hills Township Pvt. Ltd., filed in March 2022 it is specifically denied at para No.29 that the Petitioners have not been paid any compensation and that no notice was issued for delivery of possession of acquired land and the Petitioners are put to strict proof of the same and at para No.33 it is

specifically contended that it is settled principle of law that after passing of Award, taking of possession and delivery of the said land to the beneficiary, the retention of the possession by the Petitioner is far from truth and such possession if any would tantamount to being unlawful, however, none of the documents filed on behalf of all the Respondents nor the counter affidavits filed on behalf of all the Respondents give **specific details and evidence pertaining to Petitioner receiving compensation and evidence pertaining to Petitioner having received the notice for delivery of possession of acquired land and the details of the date of taking of possession and delivery of said land to the beneficiary nor evidence of petitioner having received the notice under Section 12(2) of the Land Acquisition Act, 1894. The plea of the respondents that the Apex Court upheld the Acquisition of lands in question and hence, the present writ petition is not maintainable is not tenable since the respondents admittedly as borne on record did not resort to a procedure prescribed by a statute in the present case.** This Court opines that forcible dispossession of Petitioners of their private properties

without following due process of law tantamount to violation of Petitioners human rights and also their Constitutional rights under Article 300-A of the Constitution of India.

27. The Apex Court in the judgment reported in (2023) Livelaw (SC) 302 in its judgment dated 11.04.2023 in Land and Building Department, through Secretary and Another Vs. Attro Devi & Others at para 12 observed as under :

"12. The issue as to what is meant by "possession of the land by the State after its acquisition" has also been considered by Constitution Bench of Hon'ble Supreme Court in *Indore Development Authority's* case (supra). It is opined therein that after the acquisition of land and passing of award, the land vests in the State free from all encumbrances. The vesting of land with the State is with possession. Any person retaining the possession thereafter has to be treated trespasser. When large chunk of land is acquired, the State is not supposed to put some person or police force to retain the possession and start cultivating on the land till it is utilized. The Government is also not supposed to start residing or physically occupying the same once process of the acquisition is complete. If after the process of acquisition is complete and land vest in the State free from all encumbrances with possession, any person retaining the land or any reentry made by any person is nothing else but trespass on the State land. Relevant paragraphs 244, 245 and 256 are extracted below:

"244. Section 16 of the Act of 1894 provided that possession of land may be taken by the State Government after passing of an award and

thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of urgency in Section 17(1). The word "possession" has been used in the Act of 1894, whereas in Section 24(2) of Act of 2013, the expression "physical possession" is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and **Section 24(2) requires actual physical possession to be taken, not the possession in any other form. When the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances.**

245. The question which arises whether there is any difference between taking possession under the Act of 1894 and the expression "physical possession" used in Section 24(2). As a matter of fact, what was contemplated under the Act of 1894, by taking the possession meant only physical possession of the land. Taking over the possession under the Act of 2013 always amounted to taking over physical possession of the land. When the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any

further retaining of land or any reentry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc., is deemed to be the trespasser on land which in possession of the State. The possession of trespasser always inures for the benefit of the real owner that is the State Government in the case.

**256. Thus, it is apparent that vesting is with possession and the statute has provided under Sections 16 and 17 of the Act of 1894 that once possession is taken, absolute vesting occurred. It is an indefeasible right and vesting is with possession thereafter. The vesting specified under Section 16, takes place after various steps, such as, notification under Section 4, declaration under Section 6, notice under Section 9, award under Section 11 and then possession.**

The statutory provision of vesting of property absolutely free from all encumbrances has to be accorded full effect. Not only the possession vests in the State but all other encumbrances are also removed forthwith. The title of the landholder ceases and the state becomes the absolute owner and in possession of the property. Thereafter there is no control of the landowner over the property. He cannot have any animus to take the property and to control it. Even if he has retained the possession or otherwise trespassed upon it after possession has been taken by the State, he is a trespasser and such possession of trespasser ensures for his benefit and on behalf of the owner."

**In the present case however land vests with the petitioners as on date and there is no material on record to indicate that possession of the petitioners subject lands had been taken over by the Government**

and to that effect the contents of the letters dated 09.11.2021 and 10.11.2021 are self explanatory. It is pertinent to note that in Section 24(2) of Act of 2013, 'the expression physical possession' is used and Section 24(2) requires actual physical possession to be taken, not the possession in any other form.

28. This Court also takes note of the fact that the purpose for which the subject land was notified initially was diversified for an all together different purpose i.e., for constructing an electricity sub-station. The counter affidavit filed by Respondent No.4 in W.P.No.1245 of 2012 at paragraph No.12 simply justifies the action of the 4<sup>th</sup> Respondent in one sentence stating that once the land is acquired under the provisions of Land Acquisition Act and after passing of the Award by LAO, the acquired land vests with the Government, who is free to utilize the acquired land for any public purpose and the construction of electricity sub-station cannot be found fault by the Petitioner.

This court in the judgment reported in (2011) 10 SCC 608 in Royal Orchid Hotels Ltd., & Another Vs. G.

**Jayarami Reddy & Others at para Nos. 36 to 40****observed as under :**

"36. The next question which merits examination is whether the High Court was justified in directing restoration of land to respondent No.1. In Mrs. Behroze Ramyar Batha and others v. Land Acquisition Officer, the Division Bench of the High Court categorically held that the exercise undertaken for the acquisition of land was vitiated due to fraud. The Division Bench was also of the view that the acquisition cannot be valid in part and invalid in other parts, but did not nullify all the transfers on the premise that other writ petitions and a writ appeal involving challenge to the acquisition proceedings were pending. **In Annaiah and others v. State of Karnataka and others (supra), the same Division Bench specifically adverted to the issue of diversification of purpose and held that where the landowners are deprived of their land under the cover of public purpose and there is diversification of land for a private purpose, it amounts to fraudulent exercise of the power of eminent domain.**

37. The pleadings and documents filed by the parties in these cases clearly show that the Corporation had made a false projection to the State Government that land was needed for execution of tourism related projects. In the meeting of officers held on 13.1.1987, i.e. after almost four years of the issue of declaration under Section 6, the Managing Director of the Corporation candidly admitted that the Corporation did not have the requisite finances to pay for the acquisition of land and that Dayananda Pai, who had already entered into agreements with some of the landowners for purchase of land, was prepared to provide funds subject to certain conditions including transfer of 12 acres 34 guntas land to him for house building project. After 8 months, the Corporation passed resolution for transfer of over 12 acres land to Dayananda Pai. The Corporation also transferred two other parcels of land in favour of Bangalore International Centre and M/s.



Universal Resorts Limited. These transactions reveal the true design of the officers of the Corporation, who first succeeded in persuading the State Government to acquire huge chunk of land for a public purpose and then transferred major portion of the acquired land to private individual and corporate entities by citing poor financial health of the Corporation as the cause for doing so.

38. The Courts have repeatedly held that in exercise of its power of eminent domain, the State can compulsorily acquire land of the private persons but this proposition cannot be over-stretched to legitimize a patently illegal and fraudulent exercise undertaken for depriving the landowners of their constitutional right to property with a view to favour private persons. It needs no emphasis that if land is to be acquired for a company, the State Government and the company is bound to comply with the mandate of the provisions contained in Part VII of the Act. Therefore, the Corporation did not have the jurisdiction to transfer the land acquired for a public purpose to the companies and thereby allow them to bypass the provisions of Part VII. The diversification of the purpose for which land was acquired under Section 4(1) read with Section 6 clearly amounted to a fraud on the power of eminent domain. This is precisely what the High Court has held in the judgment under appeal and we do not find any valid ground to interfere with the same more so because in *Annaiah and others v. State of Karnataka and others* (supra), the High Court had quashed the notifications issued under Sections 4(1) and 6 in their entirety and that judgment has become final.

39. The judgment in *Om Parkash v. Union of India* (supra) on which reliance has been placed by Shri Naganand is clearly distinguishable. What has been held in that case is that quashing of the acquisition proceedings would ensure to the benefit of only those who had approached the Court within reasonable time and not to those who remained silent. In this case, respondent No.1 independently questioned the acquisition proceedings and transfer of the acquired

land to M/s. Universal Resorts Ltd. In other words, he approached the High Court for vindication of his right and succeeded in convincing the Division Bench that the action taken by the Corporation to transfer his land to M/s. Universal Resorts Limited was wholly illegal, arbitrary and unjustified.

**40. In the result, the appeals are dismissed. Respondent No.1 shall, if he has already not done so, fulfil his obligation in terms of the impugned judgment within a period of 8 weeks from today. The appellant shall fulfil their obligation, i.e. return of land to respondent No.1 within next 8 weeks."**

29. **This Court as observed by the Apex Court in its various judgements opines that when land is notified for acquisition purpose by the Government, the Collector is obligated to hold an enquiry on certain relevant aspects including the objections submitted by the interested persons and pass an Award concerning (a) the exact area of the acquired land, (b) the compensation as may be determined under the Act, (c) the apportionment of the said compensation among all the persons known or believed to be interested in the land. The very object of issuing the notice under the Act is to give a fair and reasonable opportunity to the interested persons to submit their claim with respect to the compensation for the acquired land, such**

compensation can be claimed on the basis of various factors that may be relevant in the context of acquisition and the interested persons are further entitled to make a statement before the Collector, whereupon the Collector is obligated to hold an enquiry on the objections submitted by the interested persons and pass an Award. For a fair and just determination of compensation within the statutory scheme of the Act, it is imperative that a fair opportunity of hearing is given to the persons whose rights are affected. This requires that the interested person is given an effective opportunity to put-forth his or her claim. Any deviation to the prescribed procedure especially when it has seemingly effected the interested person would militate with the very object of the legislative mandate. This procedure admittedly had not been followed in the present case and there has been a diversification of petitioners subject land for a private purpose, which is totally unjustified .

30. The Apex Court in its recent judgment dated 07.08.2023 reported in (2023) Livelaw (SC) 632 in M/s.

Tirupati Developers Vs. The Union Territory of Dadra and Nagar Haveli & Others, set aside the award passed on the ground that fair opportunity of hearing had not been given to the claimant and the Award dated 04.05.2020 passed in respect of the acquired land of the Appellant there under was set aside together with the impugned judgment and the order of the High Court and the Collector was directed to issue fresh notice to the Appellant under Section 21 of the 2013 Act, within two (02) weeks from the date of receipt of the copy of the order and further the Respondent/Collector there under was directed to consider the objections if any within the stipulated period and the Collector shall thereafter hear the Appellant's representative and pass award afresh after conducting enquiry in accordance with the scheme of 2013 Act with a clear stipulation that the Collector shall pass the Award as early as possible, but not later than three (03) months from the date of receipt of the copy of the order.

This Court opines that the above referred verdict applies in principle to the facts of the present case as well.

31. The Apex Court in the judgment reported in *Jilubhai Nanbhai Khachar Vs. State of Gujarat* reported in (1995) Suppl. (1) SCC 596 at para No. 48 observed as under :

Para 48 : In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation.

32. The right to property is now considered to be not only a constitutional or a statutory right, but also a human right, though it is not a basic feature of the Constitution or a Fundamental Right. Human Rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment, etc., now however human rights are gaining an ever greater multifaceted dimension. The right to property is considered very much to be a part of such new dimension. (*Lachman Dass vs. Jagat Ram*, 2007 (10) SCC 448, *Amarjith Singh*

vs. State of Punjab 2010 (10) SCC 43, State of M.P. vs. Narmada Bachao Andolan 2011 (7) SCC 639, State of Haryana vs. Mukesh Kumar, 2011 (10) SCC 404, Delhi Airtech Services Pvt. Ltd., vs. State of U.P., 2011 (9) SCC 354).

33. The Apex Court in the judgment reported in (2013) 1 SCC 353 in Tukaram Kana Joshi Vs. Maharashtra Industrial Development Corporation at para 8 observed as under :

“The Apex court held that the claimants were deprived of immovable property in 1964, when Article 31 of the Constitution was still intact and the right to property was a part of Fundamental Rights under Article 19 of the Constitution. It is pertinent to note that even after the right to property ceased to be a fundamental right, taking possession of or acquiring the property of the citizen most certainly tantamount to deprivation and **such deprivation can take place only in accordance to 'law', as the said word as specifically being used in Article 300-A of the Constitution. Such deprivation can only be by resorting to a procedure prescribed by a statute. The same cannot be done by way of exclusive fiat or order or administration caprice.**

**34. It is settled law when a statute describes or requires a thing to be done in a particular manner it should be done in that manner or not at all.**

**A) (M.Shankara Reddy Vs. Amara Ramakoteswara Rao reported in (2017) SCC Online Hyd 426).**

**B) The Division Bench of Apex Court in its judgment dated 04.10.2021 in Supertech Ltd., Vs. Emerald Court Owner Resident Welfare Association and Ors., reported in 2021 SCC Online SC 3422, referring to Taylor Vs. Taylor, 1875 (1) Ch D426, Nazir Ahmed Vs. King Emperor reported in (1936) L.R.63 Ind Ap372 and Parbhani Transport Co-operative Society Ltd., Vs. The Regional Transport Authority, Aurangabad & Ors., reported in AIR 1960 SC 801 at para No.13 observed as under :**

“It is 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 and that other methods of performance are necessarily forbidden. Hence when a statute requires a particular thing to be done in a particular manner, it must be done in that manner or not at all and other methods of performance are necessarily

forbidden. This Court too, has adopted this maxim. This rule provides that an expressly laid down mode of doing something necessarily implies a prohibition on doing it in any other way.

**35. In so far as the plea of delay is concerned as raised by the Respondents, this Court opines that delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors. Continuity of cause of action etc., that apart if the whole thing shocks the judicial conscience, this Court opines that the Court should necessarily exercise its discretion. This Court opines that the present writ petition is not hit by the doctrine of delay and laches since the cause of action is continuous and further the situation certainly shocks judicial conscience, since plea of physical possession of the subject lands having been taken over by the Respondent Authority in the counter affidavits filed on oath before this Court on behalf of the Respondents is unsupported by any evidence and is in fact contrary to the contents in the letters dated 09.11.2021 and 10.11.2021. In the present case, this Court opines that**



**the Petitioners are entitled for the relief as prayed for in the present writ petition.**

**36. The Apex Court in the judgment reported in 2022 SCC Online SC 232 in Sunil Kumar Rai & Others Vs. State of Bihar & Others dated 21.02.2022 at Paras 7, 8, 10, and 11 observed as under :**

**Para 7:** Article 32 of the Constitution provides for a Fundamental Right to approach the Supreme Court for enforcement of the Fundamental Rights. The founding fathers contemplated that the very right to approach this Court when there is a violation of Fundamental Rights, should be declared as beyond the reach of Parliament and, therefore, it is as a part of judicial review that the right under Article 32 has been put in place and invoked from time to time. That in a given case, the Court may refuse to entertain a petition under Article 32 of the Constitution is solely a part of self-restraint which is exercised by the Court having regard to various considerations which are germane to the interest of justice as also the appropriateness of the Court to interfere in a particular case. The right under Article 32 of the Constitution remains a Fundamental Right and it is always open to a person complaining of violation of Fundamental Rights to approach this Court. This is, no doubt, subject to the power of the Court to relegate the party to other proceedings.

**Para 8 :** At the heart of the Constitution lies certain principles which have, in fact, been recognised as part of the basic structure. Article 14 of the Constitution proclaims right to equality. The right against unfair State action is part of Article 14. Unequals being treated equally is tabooed under Article 14 of the Constitution. A person entitled to be treated as a member of Scheduled Tribe under Article 342, cannot be treated on par with a person who is brought in by an incompetent Body, viz., the State in the manner done. Article 21 of the Constitution again is the fountain head of many rights which are part of the grand mandate which has been from time to time unravelled by this Court giving rise to the theory of unenumerated rights under the Constitution. While liberty is a dynamic concept capable of encompassing within it a variety of Rights, the irreducible minimum and at the very core of liberty, is freedom from unjustifiable custody.

10. We may take up the first preliminary objection by the State, namely, that the petitioners have approached this Court with considerable delay. The impugned Notification is issued in August, 2016. A person cannot be said to be aggrieved merely upon the issuance of an instrument or of a law by itself. In fact, the Court may refuse to examine the legality or the validity of a law or

order on the basis that he may have no locus standi or that he is not an aggrieved person. No doubt, the Courts have recognized challenge to even a legislation at the hands of a public interest litigant. However, we may only indicate, ordinarily, the Court may insist on a cause of action and therefore, a person must be an aggrieved party to maintain a challenge. We must not be oblivious to the fact that based on the Notification, it appears that FIRs came to be lodged by persons claiming to be members of the Scheduled Tribe community and seeking to invoke the 1989 Act. The FIRs lodged in the year 2020 occasioned the petitioners to approach Courts seeking protection under Section 438 of the Cr.P.C. Two of the petitioners have not secured such protection. Petitioner No. 1, it appears was not arrested. But even assuming for a moment, that the petitioners have come with some delay, we find reassurance from the opinion of this Court in the judgment reported in Assam Sanmilita Mahasangha v. Union of India (2015) 3 SCC 1, wherein this Court has inter alia held as follows:—

32. **".....Further, in Olga Tellis v. Bombay Municipal Corpn., it has now been conclusively held that all fundamental rights cannot be waived (at para 29). Given these important developments in the law, the time has come for this Court to say that at least when it comes to violations of the fundamental right to life and personal liberty, delay or laches by itself without more would not be sufficient to shut the doors of the court on any petitioner."**

**11. Therefore, we do not think we should be detained by the objection. We would think that delay by itself cannot be used as a weapon to Veto an action under Article 32 when violation of Fundamental Rights is clearly at stake.**

**37. Section 12 of the Act does not prescribe any particular form of the notice. Section 45 of the Act prescribes the manner of service of any of the notices under the Act and the same reads as under:-**

**45. Service of notices** (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed in the case of a notice under section 4, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in

the court-house, and also in some conspicuous part of the land to be acquired:

Provided that if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and [registered under section 28 and 29 of the Indian Post Office Act, 1898 (6 of 1898)], and service of it may be proved by the production of, the addressees receipt."

Sub-section (1) of Section 45 of the Act states that service of any notice under the Act shall be made by delivering or tendering a signed copy thereof. Sub-section (2) says that whenever it may be practicable, the service shall be made on the person named therein. Sub-section (3) says that when the person named cannot be found, the service may be made on any adult member of his family residing with him and if no such adult member can be found, the notice may be served by affixing a copy on the outer door of the house in which the person therein named ordinarily resides or carries on business or by affixing a copy thereof at some conspicuous place in the office of the Collector or in the court-house as the case may be and also in some conspicuous part of the land to be acquired. Proviso to sub-section (3) of section 45 states that the Collector or a Judge may direct that the notice may be sent by post in a letter addressed to the person named therein at his last known residence, address, or place of business by post is to be made by a registered post. Bare perusal of

Section 45 would show that a notice is required to be served, when practicable, on the person to whom the notice is issued. When the person is not found, the service may be made on any other male member of his family residing with him. The service cannot be made on a female member whether adult or minor of the family. In the present case admittedly the notice was not served on the petitioners nor was it served on any adult member in Petitioner's family. **This Court opines though a specific averment has been made by the Petitioners in the affidavit filed in support of the writ petitions with regard to non service of notice under Section 12(2), the Counter affidavit filed by the respondents does not answer the same nor does it explain when notice under Section 12(2) was issued to the petitioners and served upon the petitioners.**

**38. The Apex Court in its recent judgment dated 06.04.2022 reported in 2022(7) SCC 508 in Sukh Dutt Ratra and another Vs. State of Himachal Pradesh and others referring to the judgment reported in 2020(2) SCC 69 in Vidya Devi Vs. State of Himachal Pradesh observed as under:-**

"12.9. In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in Tukaram Kana Joshi v.

MIDC [Tukaram Kana Joshi v. MIDC, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.

12.10. This Court in State of Haryana v. Mukesh Kumar [State of Haryana v. Mukesh Kumar, (2011) 10 SCC 404 : (2012) 3 SCC (Civ) 769] held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-faceted dimension."

**39. The Apex Court in the judgment reported in 2005 (7) SCC, page 627 in "Hindustan Petroleum Corporation Limited Vs. DARIUS Shapur, Chennai and Others, vide its Judgment dated 20.09.2005 at para No.29 observed as under:**

**"29. The Act is an expropriatory legislation. This Court in State of M.P. v. Vishnu Prasad Sharma observed that in such a case the provisions of the statute should be strictly construed as it deprives a person of his land without consent. [See also Khub Chand v. State of Rajasthan and CCE v. Orient Fabrics (P) Ltd.]**

There cannot, therefore, be any doubt that in a case of this nature due application of mind on the part of the statutory authority was imperative."

**40. This court opines that the pleas put-forth by all the learned counsel appearing on behalf of Respondents and the judgments relied upon by the Respondents do not have application to the facts of the case i.e.**

1. Raghbir Singh Sehrawat Vs. State of Haryana and Others, 2012 (1) SCC 792 (Para 28, 29, 39).
2. Raunaq Education Foundation Vs. State of Haryana and Others, 2015 (1) SCC 767 (Para 11 and 2).
3. Royal Orchid Hotels Limited and another Vs. G. Jayarama Reddy and Others, 2011 (10) SCC 608 (Para 25, 32 and 33)
4. Delhi Development Authority Vs. Suhbir Singh and Others, 2016 (16) SCC 258 (Para 9, 19, 20 and 21).
5. Budhinath Jha Vs. State of Bihar, 2020 SCC Online Pat 2682 (Para 8 and 9)
6. Hatigor Tea Estate Vs. Union of India (Para 26)
7. Opto Circuit India Limited Vs. Axis Bank and Others, 2021 (6) SCC 707 (Para 14)

**41. Taking into consideration :**

- a) **The aforesaid facts and circumstances of the case,**
- b) **Taking into consideration the contents of the letter dated 09.11.2021 of the Commissioner, GHMC addressed to the petitioner vide Letter No.13/KU/TPS/CIR-20/GHMC/2021,**



c) The contents of the response of the petitioner dated 10.11.2021, to the letter dated 09.11.2021 of the Commissioner GHMC addressed to the petitioner,

d) Duly considering the averments made at para Nos. 28, 30, 31 and 38 of the counter affidavit filed on behalf of the 8<sup>th</sup> respondent (referred to and extracted above),

e) Duly considering the interim orders of this Court dated, 20.01.2012 passed in W.P.No.1245 of 2012 and 24.0.12012 passed in W.P.No.1294 of 2012,

f) The observations in the judgments of the Apex Court referred to and extracted above,

g) The averments made in the counter affidavit filed on behalf of the Respondents in W.P.No. 1294 of 2012, W.P.No.6501 of 2012, W.P.No.1245 of 2012 and W.P.No.6577 of 2012 (referred to and extracted above),

h) In the light of the discussion and conclusion as arrived at as above,

W.P.No. 1294 of 2012, W.P.No.6501 of 2012, W.P.No.1245 of 2012 and W.P.No.6577 of 2012 are allowed. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

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**MRS. JUSTICE SUREPALLI NANDA**

Dated: 03.06.2024

**Note:** L.R. copy to be marked  
(b/o) yvkr/ktm

**HON'BLE MRS JUSTICE SUREPALLI NANDA**

**WRIT PETITION No.1245 OF 2012**  
**WRIT PETITION No. 1294 of 2012**  
**WRIT PETITION No. 6577 of 2012**  
**AND**  
**WRIT PETITION No. 6501 of 2012**

Dated: 03.06.2024

**Note: L.R. copy to be marked**  
**(b/o) yvkr/ktm**