

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

WRIT PETITION No.34951 OF 2015

Between:

S.Krishna Reddy and others

... Petitioners

And

The State of Telangana and others

... Respondents

JUDGMENT PRONOUNCED ON: 03.06.2024

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA

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

MRS. JUSTICE SUREPALLI NANDA

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S.Krishna Reddy and others

... Petitioners**And**

\$ The State of Telangana and others

... Respondents**< Gist:****> Head Note:**

! Counsel for the Petitioners : Mr S.Srinivas Reddy

^ Counsel for the Respondents 1 to 5 : G.P. for Revenue

^Counsel for respondents 6 and 7: P.Ramakrishna

? Cases Referred:

1. (1995) Suppl.(1) SCC 596
2. 2007 (10) SCC 448
3. 2010 (10) SCC 43
4. 2011(7) SCC 639
5. 2011(10) SC 404
6. 2011(9) SCC 354
7. 2013(1) SCC 353
8. (2017) SCC Online Hyd 426
9. 2021 SCC Online SC 3422
10. (1936) L.R.63 Ind.AP 372
11. AIR 1960 SC 801
12. (2022) 7 SCC 508
13. (2020) 2 SCC 69
14. (2023) Livelaw (SC) 302
15. (2020) 8 SCC 129
16. 2005 (7) SCC 67

HON'BLE MRS. JUSTICE SUREPALLI NANDA**WRIT PETITION No.34951 OF 2015****ORDER:**

Heard learned Senior Designate Counsel Sri S.Srinivas Reddy, appearing on behalf of the petitioner, and the learned Government Pleader appearing on behalf of the respondent No.1 to 5 and Sri P.Ramakrishna, learned counsel appearing on behalf of unofficial respondent Nos.6 to 8.

2. **The petitioners approached the Court seeking the prayer as under:**

"to issue an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus declaring the land acquisition proceedings, if any, said to have been initiated against part of the land admeasuring Acres 15-84 Cents in Survey Nos. 435 and 436 situated Kaukuntla at Village, Devarakadra Mandal, Mahabubnagar District belonging to the petitioners, as void and lapsed, contrary to law and further declaring the action of the respondents in seeking to dispossess the petitioners from the said land, as highhanded, arbitrary, illegal, unjust, malafide, without jurisdiction, violative of the Fundamental and Constitutional Rights guaranteed to us under the Constitution of India as well as in violation of principles of natural justice and consequently direct the Respondents

not to interfere with our peaceful possession and enjoyment over the aforesaid extent of land and pass such other order or orders as are deemed fit and proper in the circumstances of the case and pass."

3. PERUSED THE RECORD.

A) The counter affidavit filed by respondent Nos.1 to 5, in particular, paras 3 and 5, read as under:

"3. In reply to Paras 2 to 4 of the affidavit, it is humbly submitted that, as per the Khasra Pahani 1954-55 the lands bearing Sy. No. s 435 & 436 of Koukuntla (V) of Devarakadra (M) stands Patta in the name of Sri. Raja Rameshwar Rao. As per the 1979 Old ROR of Koukuntla (V), Devarakadra (M), the writ petitioners /their predecessors were having the land as detailed below.

1) Sri. Santhamgari Hanmi Reddy S/o Sri. Thimma Reddy had an extent of Ac. (5-20) Gts in Sy. No. 435/AA, 2) Sri. Santhamgari Pedda Kondanna & Sri. Chinna Kondanna both S/o Sri. Sunkappa and Sri. Pedda Venkat Reddy & Sri. Chinna Venkat Reddy both S/o Sri. Laxmaiah have an extent of Ac. (1-36) Gts & Ac. (3-24) Gts in Sy. No. 435/E & 436/A, respectively and 3) Sri. Santhamgari Chinna Reddy S/o Shanker Reddy had an extent of Ac. (2-31) Gts in Sy. No. 436/AA, Koukuntla (V), Devarakadra Mandal.

Out of the above lands, the Government has acquired an extent of Ac. (04- 00) Gts in Sy. No. 435/AA, Ac. (1-36) Gts in Sy. No. 435/E, Ac. (3-24) Gts in Sy No. 436/A and an extent of Ac. (3-14) Cents in Sy. No. 436/AA

to an total extent of Ac. (12-64) Cents, Koukuntla (V), Devarakadra (M) for providing house sites to the needy weaker section people of Koukuntla (V), Devarakadra (M) vide the Tahsildar, Atmakur file No. D2/3006/1984 and the writ petitioners / their predecessors had received the payment of compensation vide the Land Acquisition Officer & Tahsildar, Atmakur Form C No. D2/3006/1984, Dt: -06-1985. Since then the above lands are vested in Government and the same were allotted to (206) beneficiaries of Koukuntla (V), Devarakadra (M). Therefore the contention of the writ petitioners that they continued possession over the suit lands is not correct and not supported by any documentary evidence. The writ petitioner No. 1 & 2, only having an extent of Ac. (0-30) Gts each (i.e.) total to an extent of Ac. (01-20) Gts in Sy. No. 435/AA and the remaining suit land has been acquired by the Government long back and they are not in possession and enjoyment over suit land. Further, it is submitted that, the details of acquisition of the above lands were not carried out in the connected Revenue Records by oversight and taking the advantage of the same the writ petitioners herein suppressing the acquisition of their lands with a malafide intention affected the mutation to grab the land which belonged to the Government.

5. It is submitted that, the above suit lands, except Ac. (1-20) Gts in Sy. No. 435/AA have been acquired by the Government for the purpose of providing House sites to the weaker section people of Koukuntla (V), Devarakadra

(M). The writ petitioners have been never in possession of the above lands at any point of time after 1984.

B) The Reply affidavit filed by the petitioner, in particular, para 5 is extracted hereunder:

"5. I submit that the allegations made in un-numbered Paragraph 1 Page No.3 of the Counter Affidavit are not true and correct. The allegation that the Government has acquired part of the land out of the land belonging to us for providing house sites to the needy weaker section people of Kaukuntla Village is not true and correct. I once again reiterate the averments made in Writ Affidavit that we have been in continuous possession and enjoyment of the subject lands from several decades and we have also been issued pattadar pass books and title deeds by the then Mandal Revenue Officer, Devarakadra Mandal. Under the circumstances, it is not open to the Respondents to seek to dispossess us under the specious plea that the Government acquired the land from us in the year 1984 that too without making available documents of alleged acquisition. The action of the 4th Respondent is therefore highly arbitrary, illegal, unjust, without jurisdiction, violative of the fundamental and constitutional rights guaranteed to us under the Constitution of India, as well as in violation of principles of natural justice. The further allegations that the details of acquisition of the above lands were not carried out in the connected revenue records by oversight, that taking the advantage of the same the writ petitioners herein are suppressing the acquisition of their

lands that with a malafide intention got affected the mutation to grab the land which belong to the Government are not true and correct. In fact, our names and the names of our predecessors have been continuously recorded in the revenue records from the last several decades. Assuming without admitting, the Government has issued notification for acquiring our land way back in the year 1984, the Government cannot now seek to take possession of subject land from us after a lapse of 35 years basing on preliminary proceedings that too without passing an Award and without paying compensation. Further, the entire preliminary acquisition proceedings reflect a complete and total non- application of mind by the Respondents and the same is not permissible and hence the entire acquisition proceedings if any are void.

C) Panchanama, dated 05.09.2015 reads as under:

S. No.	Name of Punch	Father's name	Age	Caste	Occupation	Address
1.	Papigani Anjaneyulu	Kurmaiah	42	BC	Agri.	Kowkuntla
2.	Deshtti Ranganna	S/o Ramulu	61	BC	Agri.	-do-
3.	Gandla Harigopal	Sivaraj	70	BC	Surpanch	-do-

"We, three are the punchus, on the call of Revenue Inspectors and Village Revenue Officer we have attended at the Grama Panchayat Office. And took oath in the name of God, that we will tell only truth but no lie.

As per the Santhamgari Krishna reddy S/o. Shanireddy R/o. Koukuntla's application submitted in High Court, and the Tahsildar's Memo No. C/4668/2015, dated: 03-09-2015, we went on the land, and made enquiry, that The land in Sy.no. 435, of Koukuntla Grama Sivaru. The application Samthamgari Krishna Reddy S/o. Hanmireddy, patta lands were sold at about 25 years ago, for B.C. Plots. Later, the Government divided that land into plots and issued pattards to the public. But did not give possession to them. In the year 1984 government issued Residential place certificate. From 1984 to till now, no one has been cultivating that land. The land is still laid idle. When this panchanama was read over to us, we believe it true and we signed.

This panchanama was prepared in our presence."

S. No.	Name of Punch	Father's name	Age	Caste	Occupation	Address
1.	Khaja Mynuddin	Abdul Rahim	59	Minority	Tailor	Koukuntla
2.	Bhureddy Ramachandaiah	Bhureddy	48	BC - Golla	Agrl.	-do-
3.	Surkka Hanmanth	Kurmaiah	65	BC-65	Agrl.	-do-

We, three are the punchus, on the call of Addl. Revenue Officer and Village Revenue Officer we have attended at the Grama Panchayat Office. On the complaint of Tammareddy S/o. Venkatrama reddy and others, in respect of the the prajavani complaint we went there.

The land at the Sivaru of Koukuntala in Sy.no. 434 and 435, and extent of 12.26 patta lands was purchase by

Government for the purpose of House sites for B.C. and the Government has also issued pattas. But the Pattadars made application through Prajavani that their patta lands have been illegally cultivating by some persons. In this connection, when we went on the lands and conducted survey, the land in Sy. No. 434 and 435, since the day of purchasing land by Government, no one has been cultivating the land. Since then the land is in idle. It is stated by the punchus. On 19-10-2014, since the Government gave pattas in that land to the beneficiaries, the beneficiaries removed that thorn bushes with the help of JCB. It was stated by the Punchus.

The punchus stated that the beneficiaries at about 10 persons in the presence of Punchus, removed the thorn bushes in the said land.

4. The case of the petitioner as per the averments made by the petitioner in the affidavit filed by the petitioner in support of the present writ petition is as under:

a) It is the case of the petitioners that the petitioners are in continuous possession of land to an extent of Ac.15.84 cents in Sy.No.435/AA, 435/E, 435/U, 435/UU, 435/LU, 436/U, 436/UU, 436/UU1, 436/RU and 436/RUU situated at Kaukuntla Village, Devarakadra Mandal, Mahabubnagar District. The aforesaid land is ancestral properties of the Petitioners and the

names of the Petitioners and the names of their ancestors are shown in the revenue records.

b) Petitioner Nos.2 to 6 have been issued pattadar pass books and title deeds in respect of lands belonging to them by the 4th Respondent herein. In so far as, Petitioner Nos. 7 to 9 are concerned, Pattadar Pass Books and Title Deeds are pledged with the Bank for obtaining loans.

c) Further, in the month of April 2015, when the 1st Petitioner sought to gift, an extent of Ac.02-75 Cents in Survey No.435/E of Kaukuntla Village in favour of his daughter, Smt.S. Madhavi under Document dated 02.04.2015, the same was refused to be registered by the Sub-Registrar, Atmakur on the ground that the extent of Ac. 16-25 Cents in Survey No.435 and 436 of Kaukuntla Village is included in the prohibitory list which was forwarded by the 4th Respondent in the year 2012.

d) Aggrieved by the same the 1st Petitioner filed W.P. No.28664 of 2015 before this Court against and the same is still pending. On 19.10.2015, a group of people in the Village, namely, Sri Uppari Gopal, S/o.Pochanna and 6 others along with their associates came to the petitioners' lands and tried to

trespass into the lands and dispossess the petitioners forcibly. However, while leaving they stated that, they have the support of Respondent Nos. 4, 5 and 8 herein and that they would come back with sufficient manpower and dispossess the petitioners.

e) The Petitioners immediately addressed a complaint dated 19.10.2015 to the Devarakadra Police Station bringing to their notice of the above high-handed action of Sri Uppari Gopal and others. However, the Police did not receive or register their complaint.

f) Thereafter, a representation dated 19.10.2015 was addressed by the petitioners to the 4th Respondent bringing to his notice about the abovementioned incident and sought for providing protection. Subsequently, the 4th Respondent gave the petitioners copies of letter addressed by 5th Respondent and Revenue Inspector to the 4th Respondent dated 05.09.2015 stating that the land belonging to the petitioners was purchased by the Government for providing house sites to backward classes in the year 1984, that the said land is shown as "Padava" (barren). However, the land has not been allotted to the beneficiaries nor possession has been given. Alongside, a

Panchanama dated 05.09.2015 was also given, setting out the aforesaid information.

g) It is pertinent to mention that the Respondent nos. 4 and 5 by virtue of pressure and influence brought about by the 8th Respondent and for extraneous considerations, fabricated the aforesaid letter and Panchanama which is highly arbitrary, illegal and unjust. Subsequently, the petitioners approached Respondent Nos. 4 and 7 and requested them to furnish copies of the alleged documents of purchase by the Government. However, they informed that no such record is available with them.

h) On the other hand, the petitioners were issued pattadar pass books & title deeds and have obtained loans from the Banks, pledging their title deeds on various occasions. Neither the petitioners nor their ancestors have ever sold any part of the subject land to the Government as alleged and if the Government requires the subject land for any public purpose, it is always open to it to acquire the same under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

i) However, without following the due procedure under the abovementioned Act, the petitioners were sought to be dispossessed high handedly. Under these circumstances, it is not open to the Respondents to dispossess the petitioners under the specious plea that the Government purchased the land from the petitioners in the year 1984 that too without making available the documents of alleged sale. Thus, action of the Respondents is therefore highly arbitrary and illegal. Hence this Writ Petition.

4. The counter affidavit filed by the Respondent No. 2, is as follows:

a) As per the 1979 Old ROR of the Petitioners or their predecessors were having the land as detailed below.1) Sri. Santhamgari Hanmi Reddy S/o Sri. Thimma Reddy had an extent of Ac. 5-20 Cents in Sy. No. 435/AA, 2) Sri. Santhamgari Pedda Kondanna & Sri.Chinna Kondanna both S/o Sri. Sunkappa and Sri. Pedda Venkat Reddy & Sri.Chinna Venkat Reddy both S/o Sri. Laxmaiah have an extent of Ac. 1-36 Cents & Ac. 3-24 Cents in Sy. No. 435/E & 436/A, respectively and 3) Sri. Santhamgari Chinna Reddy S/o Shanker Reddy had an extent of Ac. 2-31 Cents in Sy. No.436/AA, Koukuntla Village, Devarakadra Mandal.

b) Out of the above lands, the Government has acquired an extent of Ac. 04-00 Cents in Sy. No. 435/AA, Ac. 1-36 Cents in Sy. No. 435/E, Ac. 3-24 Cents in Sy.No. 436/A and an extent of Ac. 3-14 Cents in Sy. No. 436/AA to a total extent of Ac.12-64 Cents, Koukuntla Village, Devarakadra Mandal for providing house sites to the weaker section people of said village, vide the Tahsildar, Atmakur file No. D2/3006/1984 and the petitioners or their predecessors had received the payment of compensation vide the Land Acquisition Officer & Tahsildar, Atmakur Form - C No. D2/3006/1984, dated 06-1985.

c) The writ petitioner Nos. 1 & 2, only having an extent of Ac. 0-30 Cents each (i.e.) total to an extent of Ac. 01-20 Cents in Sy. No. 435/AA and the remaining suit land has been acquired by the Government and they are not in possession and enjoyment over suit land. Further, it is submitted that, the details of acquisition of the above lands were not carried out in the connected Revenue Records by oversight and taking advantage of the same the petitioners herein are suppressing the acquisition of their lands with a *malafide* intention.

d) The above said lands, except Ac. (01-20) Cents in Sy. No. 435/AA has been acquired for the purpose of providing house

sites to the weaker section people of Koukuntla Village, during the year 1984 and from the date of acquisition the above lands were vested in the Government and patta certificates were issued in the year 1984-85. Thus, the petitioners have never been in possession of the above lands at any point of time after 1984. Hence, the Writ Petition is devoid of merits and is liable to be dismissed.

5. The learned Senior Designate Counsel Sri S.Srinivas Reddy appearing on behalf of the petitioners mainly puts forth the following submissions:

- i) The subject land sought to be acquired patta land which is in petitioners possession even till date as per the documents filed along with the writ petition.**
- ii) Neither the petitioners nor their predecessors have received any compensation**
- iii) Assuming that Section 4 and 6 declarations have been issued, the award ought to have been passed within two years from the date of Section 6 declaration i.e., according to the respondents, from 22.11.1984, before 21.11.1986.**
- iv) Since the same has not been done, the entire proceedings under the Act, have lapsed and if the respondents still want the land belonging to the**

petitioners, they have to invoke the provisions of the Act of 2013.

- v) None of the Documents envisaged in the Act to show issuance of Section 4 or Section 6 have been produced before this Hon'ble Court**
- vi) The 4(1) Notification produced is only a proforma notification seeking to acquire the land. It is not a notification published in the Gazette or newspapers or local publication.**
- vii) Documents showing publication of Section 6 Declaration have not been filed.**
- viii) According to Section 17 in case of urgency the possession of the land would be taken on expiration of 15 days from the date of publication of notice mentioned in Section 9(1) and the land shall thereupon vests with the Government.**
- ix) In the present case on hand, as evident from the Panchanama as well as the letter addressed by the Village Revenue Officer to the Tahsildar, possession has not been given to the beneficiaries.**
- x) The pahanies, mutation proceedings and pattadar passbooks and title deeds evidence that the petitioners are still continuing possession of the land in question.**
- xi) It is reiterated that the respondents did not produce any record/documents to show that the mandatory procedures as contemplated under the Act has been followed.**

xii) In view of the fact that no award has been passed as on date, the Land Acquisition proceedings lapsed in the year 1986 itself, there cannot be any violation of petitioners constitutional right to property under Article 300-A of the Constitution of India, since the same amounts to violation of human rights.

Basing on the aforesaid submissions, the learned counsel appearing on behalf of the petitioners contended that the writ petition should be allowed as prayed for.

DISCUSSION AND CONCLUSION:

6. It is the specific case of the petitioners that the petitioners are in continuous possession of land to an extent of Ac.15.84 Cents in Sy. Nos. 435/AA, 435/E, 435/U, 435/UU, 435/LU, 436/U, 436/UU, 436/UU1, 436/RU and 436/RUU, situated at Kaukuntla Village and Mandal, (previously Devarakadra Mandal), Mahabubnagar District, and the petitioners have been issued pattadar passbooks and title deeds by the then Mandal Revenue Officer, Devarakadra Mandal and hence it is not open to the respondents to seek dispossession of the petitioners under the plea that the subject lands had been acquired from the petitioners in the year 1984.

7. It is further the specific plea of the petitioners that assuming without admitting the Government had issued notifications for acquiring petitioners lands way back in the year 1984, the Government cannot now seek to take possession of the petitioners subject land from the petitioners after a lapse of 35 years based on preliminary proceedings that too without passing an award and without paying compensation.

8. On perusal of the original record as handed over to the Court by the learned Government Pleader representing the respondents, it has been observed and noticed by this Court as under:

a) Certain statements said to have been made during award enquiry.

b) Records relating to the publication of 4(1) Notification, 6 Declaration, 9 and 10 proceedings, 11 enquiry, 12 award and 17(4) proceedings are not available.

c) Page 243 of the original record refers to award enquiry notices along with Form No.10 as being submitted for approval.

d) Page 244 of the original record indicates a note which reads as under:

Award under Section 11 had been passed and pronounced. However, the original records does not

contain the copy of the award nor the details of the award enquiry conducted.

e) Note at page 245 of the original record says draft Form No.13 is put up for approval i.e., dated 20.01.1986.

f) The Note dated 20.01.1995 of the original record reads as under:

"Kind attention is invited to letter No.135/1273/93 dated 20.10.1994 of the AD (SRLR). The Assistant Director has issued Suppl Sethwar for Sy.No.432/2 of Kaukuntla Village. No more action is to be taken in this file. If agreed this file may be closed under R.DISA/3006/84 and original Suppl Sethwar may be handed over to the Jamabandi clerk for effecting changes in the Revenue Records."

g) Page 243 to 246 indicates 4 (1) Notification published in the village on 19.10.1994 and further that award enquiry notices along with Form No.10 are submitted for approval.

h) Page 244 indicates a Note which reads Award under Section 11 had been passed and pronounced. But the original record does not whisper the date when the alleged award has been passed.

i) Note at page 245 says draft Form No.13 is put up for approval i.e., dated 20.01.1986.

j) The record indicates approval of preliminary valuation statement dated 10.12.1984 vide File No.08/3006/1984 without an Award on record.

9. A bare perusal of the original record indicates at page 79 the note signed by LAO and Tahsildar, Athmakur, dated 31.08.1984 that the proposed needy beneficiaries are living in congested and rented houses with combined families. Therefore, this case is taken up under urgency clause Section 17 (4) of the Land Acquisition Act, and submitted the DN & DD proposals under Section 4 (1) and (6) of the Land Acquisition Act respectively, while invoking the urgency clause under Section 17 (4) of the Land Acquisition Act for approval and publication in the District Gazette for initiating the further process and to relieve the needy beneficiaries from the congestion.

10. This Court opines that the original record placed before the Court does not support the case of the official respondents as put forth in the counter affidavit at para 3 in particular that the Government had acquired an extent of Ac.04.00 gts., in Sy.No.435/AA, Ac.1.36 gts., in Sy.No.435/E, Ac.3.24 gts., in Sy.No.436/A, and an extent of Ac.3.14 gts., in Sy.No.436/AA to a total extent of Ac.12.64 cents, Koukuntla Village, Devarakadra Mandal for providing house sites to the needy weaker section

people of Koukuntla Village, Devarakadra Mandal, vide the Tahsildar, Athmakur File No.D2/3006/1984.

11. The original record does not support the specific case of the official respondents that except Ac.01.20 gts. in Sy.No.435/AA remaining entire land had been acquired by the Government. The original record neither contains the Gazetted 4 (1) notification nor 6 declaration, nor any proceedings relating to conduct of any enquiry, nor issuance of notice to persons interested, nor the date of enquiry and award by the Collector, the record however indicates short notes for approval of preliminary valuation statement of lands under acquisition for providing house sites to the beneficiaries of Koukuntla Village of Athmakur Taluq, Mahaboobnagar District. The details relating to the Publication of 4 (1) Notification in two local news papers in the locality, 6 declaration, 9 and 10 proceedings, section 11 enquiry, 12 Award, 12 (2) notices and 17 (4) proceedings are not available in the record. **However, based on the record which does not contain any documents relating to the alleged acquisition of the land belonging to the petitioners by following the due process contained in the Act, the learned Government Pleader**

curiously contends that the record produced by him corroborates that the land of the petitioners was acquired and sought for dismissal of the Writ Petition. This Court opines that the said plea of the official respondents is without any justification and contrary to the record.

12. Under Section 11A the Collector shall make an Award within a period of two years from the date of publication of the declaration and if the Award is not made within that period, the entire proceedings of the Acquisition of the Land shall lapse.

13. A bare perusal of the panchanama referred to and extracted above, as well as the letter addressed by the Village Revenue Officer to the Tahsildar, indicate that possession had not been given to the beneficiary as on date, nor any compensation had been paid to the petitioners. **A plea in the counter affidavit that the details of the acquisition of the subject lands had not been carried out in the connected revenue records by oversight, cannot be the ground to deny petitioners legitimate rights for payment of compensation.**

14. The Apex Court in the judgment reported in *Jilubhai Nanbhai Khachar Vs. State of Gujarat* reported in (1995) Suppl. (1) SCC 596 at para 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.

15. 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).

16. 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.

17. 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 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.

18. The Apex Court in the judgment dated 06.04.2022 reported in (2022) 7 SCC 508 in Sukh Dutt Ratra and another v State of Himachal Pradesh and others referring the judgment reported in (2020) 2 SCC 69 in Vidya Devi v State of Himachal Pradesh, facing an almost identical set

of facts and circumstances – rejected the contention of “oral” consent to be baseless and outlined the responsibility of the State 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.”

19. 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. But in the present case admittedly as borne on record, there is no evidence borne on record with regard to

passing of an award in respect of the petitioners' subject properties nor payment of compensation, nor delivery of possession. Hence, this Court opines that the petitioners are entitled for the relief as claimed by the petitioners herein.

20. 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 re-entry 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 re-entry 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 enures for his benefit and on behalf of the owner."

In the present case the original record pertaining to the subject issue before this Court however does not indicate the vesting specified under Section 16 which takes place after various steps such as notification under Section 4, declaration under Section 6, notice under Section 9, award under Section 11 after serving notice to the petitioners under Section 12(2) of Land Acquisition

Act, 1984 and then taking over possession of the subject land by conduct of the panchanama as per due procedure under law.

21. 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 01.01.2014, 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.

363.5. 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."

22. 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 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."

23. Taking into consideration:

- a) The aforesaid facts and circumstances of the case,
- b) The interim orders of this Court dated 27.10.2015 passed in W.P.No.34951 of 2015 which are in force as on date,
- c) Duly considering the fact as borne on record, that the record relating to publication of 4 (1) notification, 6 declaration, 9 and 10 proceedings, section 11 enquiry, copy of the award passed under Section 12, 17 (4) proceedings are not available in the original record,
- d) The observations of the Apex Court in the various judgments reported in
- (i) (1995) Suppl.(1) SCC 596 in Jilubhai Nanbhai Khachar Vs. State of Gujarat,
 - (ii) 2007 (10) SCC 448 in Lachman Dass Vs. Jagat Ram,
 - (iii) 2010 (10) SCC 43 in Amarjith Singh vs. State of Punjab,
 - (iv) 2011 (7) SCC 639 State of M.P. vs. Narmada Bachao Andolan,
 - (v) 2011 (10) SCC 404 in State of Haryana vs. Mukesh Kumar,

(vi) 2011 (9) SCC 354) in Delhi Airtech Services Pvt. Ltd., vs. State of U.P.,

(vii) (2013) 1 SCC 353 in Tukaram Kana Joshi Vs. Maharashtra Industrial Development Corporation,

(viii) (2017) SCC Online Hyd 426) in M.Shankara Reddy Vs. Amara Ramakoteswara Rao,

(ix) 2021 SCC Online SC 3422 in Supertech Ltd., Vs. Emerald Court Owner Resident Welfare Association and Ors.,

(x) (1936) L.R.63 Ind Ap372 in Nazir Ahmed Vs. King Emperor,

(xi) AIR 1960 SC 801 in Parbhani Transport Co-operative Society Ltd., Vs. The Regional Transport Authority, Aurangabad & Ors.,

(xii) (2022) 7 SCC 508 in Sukh Dutt Ratra and another v State of Himachal Pradesh and others,

(xiii) (2020) 2 SCC 69 in Vidya Devi v State of Himachal Pradesh,

(xiv) (2023) Livelaw (SC) 302 in Land and Building Department, through Secretary and Another Vs. Attro Devi & Others,

(xv) 2005 (7) SCC, page 627 in "Hindustan Petroleum Corporation Limited Vs. DARIUS Shapur, Chennai and Others, referred to and extracted above,

(xvi) In the light of the discussion and conclusion as arrived at as above.

The Writ Petition is allowed as prayed for. However there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

MRS. JUSTICE SUREPALLI NANDA

Date: 03.06.2024

**Note: L.R.Copy to be marked
(B/o) *Yvkr***