



HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Special Appeal Writ No. 1606/2017

1. The Chairman, Rajasthan Housing Board, Awas Bhawan,
Janpath, Jyoti Nagar, Jaipur
2. Estate Manager Land, Rajasthan Housing Board, Awas
Bhawan, Janpath, Jyoti Nagar, Jaipur

----Appellants

Versus

1. Raju S/o Sitaram, By Caste Acharya Bhramin, Resident Of
Village Kalyan Pura Alias Khatipura, Jaipur
2. Shankar S/o Sitaram, By Caste Acharya Bhramin,
Resident Of Village Kalyan Pura Alias Khatipura, Jaipur
3. Narbada W/o Sitaram, By Caste Acharya Bhramin,
Resident Of Village Kalyan Pura Alias Khatipura, Jaipur
4. Gopal S/o Nanga, By Caste Acharya Bhramin, Resident Of
Village Kalyan Pura Alias Khatipura, Jaipur All 1 To 4
Petitioners Duly Represented Through Power Of Attorney
Holder Prashant Karnawat Son Of Shri Santosh Chandra
Karnawat Resident Of 19-Ka-4, Jyoti Nagar, Jaipur
5. State Of Rajasthan Through Its Principal Secretary, Urban
Development And Housing, Government Secretariat,
Bhagwandas Road, Jaipur
6. Officer On Special Duty, Urban Development And Housing
Department, Government Of Rajasthan Having P, Awas
Bhawan, Janpath, Jyoti Nagar, Jaipur

----Respondents

For Appellant(s)	:	Mr. Ajay Shukla with Mr. Raghav Sharma & Mr. Pushpendra Badgati
For Respondent(s)	:	Mr. Ashutosh Bhatia

**HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA****HON'BLE MRS. JUSTICE SHUBHA MEHTA****(V.C.)****Judgment****REPORTABLE****PRONOUNCED ON:****30.04.2024**

1. This appeal, filed by the Chairman, Rajasthan Housing Board, is directed against the order dated 03.04.2017 passed by the learned Single Judge, whereby, the respondents' writ petition has been allowed declaring the acquisition as having lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the Act of 2013' for short).

2. The respondents filed writ petition through the power of attorney holder seeking declaration that acquisition proceedings initiated for acquiring the petitioners' land vide notifications dated 07.03.1992 and award dated 09.04.1996, have lapsed under Section 24(2) of the Act of 2013. They also prayed for directions to issue No Objection Certificate based on such declaration of lapse of acquisition proceedings, as also to restrain the respondents from taking any coercive measures to recover possession of the said lands.

3. The reliefs, as have been sought for, are on the pleadings, *inter alia*, that the petitioners are owners of half share in the land bearing Khasra No. (Old No. 125/483) New No. 242 admeasuring 0.0300 hectares, Khasra No. (Old No. 125/484) New Khasra No. 245 admeasuring 0.3200 hectares, Khasra No. (Old No. 129/487) New Khasra No. 276 admeasuring 0.0300 hectares, Khasra No. (Old No. 131) New Khasra No. 253 admeasuring 0.4600 hectares,



Khasra No. (Old No. 128) New Khasra No. 250/1179 admeasuring 0.0300 hectares, Khasra No. (Old No. 129) New Khasra No. 251 admeasuring 0.4800 hectares, in all six Khasras ad-measuring 1.3500 hectares situated in village Kalyanpura/Khatipura, Tehsil Sanganer, District Jaipur. It was further pleaded that a notification under Section 4(1) under the Land Acquisition Act, 1894 ('the Act of 1894' for short) was issued on 07.03.1992 which culminated in passing of the award on 09.04.1996. It was categorically averred in the petition that, though an award was passed way back in the year 1996, possession was not taken from the writ petitioners in terms of Sections 16 and 17 of the Act of 1894. The respondents, in reply to application seeking information under the Right to Information Act, also informed that possession has not been taken over. While the matter stood thus, the Act of 1894 was repealed and a new land acquisition law i.e. the Act of 2013 was enacted, which came into effect from 01.01.2014. The writ petitioners came out with the case that, in terms of the provisions contained under Section 24(2) of the Act of 2013, where physical possession of the lands are not taken under award made five years or more prior to the commencement of the new Act of 2013 i.e. 01.01.2014, the proceedings initiated under the old Act shall be deemed to have lapsed. When the writ petitioners approached the development authority seeking issuance of no objection certificate for development of their lands as per their own requirements, the authorities asserted that the land is under acquisition and refused to issue no objection certificate and also required the writ petitioners to handover the possession, failing which, the same shall be recovered.



4. The Housing Board as well as the State filed their respective reply. The Housing Board, while opposing the relief sought by the writ petitioners, came out with the case that the provisions of Section 24(2) of the Act of 2013 are not attracted and applicable because the compensation was tendered to the writ petitioners and land owners but when they refused, the compensation amount was deposited in the Court. The Housing Board also came out with the specific pleading with regard to details of deposit made in the Court, giving specific details of cheque number and the amount of compensation. The Housing Board further disclosed in the reply that even after deposit of the compensation in the Court upon refusal on the part of the petitioners, compensation was not received but the writ petitioners applied for allotment of 15% developed land in lieu of compensation from acquired land in question, whereafter, meeting was held on 16.07.2007 resolving to provide alternate piece of land as compensation to the petitioners and letters were also issued to the writ petitioners to submit their written consent but the writ petitioners did not submit any consent. A camp was organized on 24.04.2014, wherein, petitioners were again asked to submit fresh consent for granting compensation in respect of 5 Bigha 5 Biswas land lying in respective Khata of the writ petitioners. When no response was received from the side of writ petitioners, again a letter was issued on 07.07.2014 requiring the petitioners to submit their clear consent for taking compensation but even then, no response was received. Thus, the stand taken by the Housing Board was that though compensation in cash was offered to the writ petitioners, upon their refusal, the amount was deposited in the Court and as



a subsequent development, the writ petitioners sought allotment of developed plots in lieu of compensation, to which also, Housing Board agreed and though offered to allot alternate piece of land, consent was not given either for allotment of land nor any consent was given for payment of compensation.

5. In reply filed by the State and Acquisition Authority, similar plea, as taken by the Housing Board, was made that though compensation was offered, upon refusal, the amount was deposited in the Court. It was also disclosed that the writ petitioners had submitted an agreement attested on 25.10.2007 showing their willingness to seek allotment of 15% of the developed residential plots in lieu of cash compensation on free surrender of entire land. When the matter was being enquired into and verified for issuance of allotment letters, it was found that there has been change in the revenue records and new Khasra Nos. were allotted to various persons. It was also revealed that there is some dispute amongst the family members/co-sharers of the writ petitioners and certain applications have been submitted before the Sub-Divisional Officer. It was specifically pleaded that in November, 2011, the writ petitioners submitted application along with records stating that disputes have now been resolved through settlement and, therefore, allotment letters may be issued. Having found that there was a discrepancy in the award that in the name of Gopal, Ganesh was written, petitioner was required to submit affidavit in this regard vide letter dated 29.10.2012 and fresh agreement prepared and signed by the petitioners dated 30.10.2012 along with indemnity bond and affidavits were submitted. Again, to complete certain formalities, another notice



was issued to writ petitioners on 04.12.2012 and again an application was submitted on 25.04.2013 repeating prayer for grant of *patta*. Further averment made in the return filed by the State is that as the writ petitioners had applied for allotment of land in lieu of compensation, applications were submitted before the Civil Court for withdrawal of cash compensation which was deposited earlier. All said and done, but the writ petitioners ultimately did not submit clear consent for getting the land allotted excluding that recorded in favour of another *Khatedar*, and started insisting for allotment of land on 48 mtr/60 mtr wide road on afterthought ground, seeking to avoid submitting consent. The relief sought was opposed on the ground that as the writ petitioners were interested and intended to different kind of arrangement of seeking allotment of alternative land/plot in lieu of compensation, they are not entitled to any relief and it was a case of voluntary waiver of cash compensation and deemed surrender of possession in favour of the State/Housing Board.

6. Learned Single Judge, vide impugned order, recorded finding that as admittedly the possession of the land, for one reason or the other, was not handed over and the petitioners retained possession of the land and no consent was submitted by them nor any agreement executed between the parties, there was no concluded contract and plea of waiver is not maintainable under the law. Relying upon the provisions contained in Section 24(2) of the Act of 2013, learned Single Judge recorded finding that on account of possession having not being taken, the land acquisition proceedings lapsed. However, liberty was reserved in favour of the State to acquire the land, if they choose, under the Act of 2013.



7. When the case came up for hearing on 26.07.2023, it was submitted by learned counsel for the appellants that in view of authoritative pronouncement of Hon'ble Supreme Court in the case of **Indore Development Authority Vs. Manoharlal & Ors. [2020 (8) SCC 129]**, even if the possession was not taken, the proceedings would not lapse, as it is only when possession is not taken nor compensation is tendered as provided under Section 31(1) of the Act of 1894 that the proceedings would lapse. At this stage, learned counsel for the respondents submitted that the petition was filed confining the issue only with regard to possession aspect, but in view of the decision of Hon'ble Supreme Court, the case would require examination as to whether even if possession was not taken, compensation was tendered as required under Section 31(1) of the Act of 1894. A prayer for amendment in the writ petition was sought.

8. Upon due consideration of the submission and the decision of Hon'ble Supreme Court in Indore Development Authority (supra), which was delivered during the pendency of the present appeal, the Court considered just and proper to allow the writ petitioners to amend the writ petition clearly stating whether the amount of compensation was tendered as provided under Section 31(1) of the Act of 1894. The appellants were also granted opportunity to file counter affidavit/additional return by way of amendment in the main return filed in the writ proceedings.

9. Learned counsel for the appellants argued in extenso to submit that the writ petitioners, while filing the writ petition, concealed from the Court and did not disclose that the compensation was duly offered to each of the writ petitioners and



on their refusal to receive the same, that amount was deposited with the Court. The writ petitioners did not come with clean hands and suppressed the fact they themselves had applied for allotment of 15% developed plots in lieu of compensation and even though it was decided to allot developed plots, later on, the writ petitioners withheld their consent. It is, therefore, contended that the writ petition was liable to be dismissed only on the ground of concealment of material facts with regard to tender of compensation amount, deposit made with the Court and subsequent willingness of the writ petitioners to seek allotment of 15% of developed lands in lieu of compensation. The next submission of learned counsel for the appellants is that even though specific plea was taken in the return filed by the State as well as by the Housing Board that compensation amount was tendered but the petitioners refused to receive, whereafter, the amount was deposited with the Court, no rejoinder was filed to dispute the aforesaid factual position with regard to offer of compensation made, its refusal and deposit of compensation with the Court. He would submit that for the first time before this Court, by way of amended pleadings, the respondents have sought to dispute the factum of amount of compensation having been offered to them. He would submit that even though this Court allowed the writ petitioners to amend their pleading, specifically on the issue regarding tender of compensation amount, the entire pleadings of the case, as initially made and the amended pleadings, are required to be taken into consideration. He would submit that the pleadings are vague, evasive and liable to be rejected as an afterthought. He would submit that once the



respondents, in the reply filed in the writ proceedings, clearly came out with the case of compensation offered and refused and thereafter deposited with the Court, if the petitioners case was that the compensation was never offered to them, the same was required to be clearly stated by way of rejoinder which was not done. He would next submit that otherwise also, there is specific plea made along with clear details with regard to offer made, refusal on the part of the petitioners and deposit of amount with the Court. Further specific details of the cheque amount of compensation, which was deposited with the Court, has been made which has also not been traversed by the writ petitioners. Therefore, a clear case of tender of compensation in terms of the provisions contained in Section 31(1) of the old Act of 1894 is made out and, therefore, the land acquisition proceedings would not lapse under Section 24(2) of the new Act of 2013. In support of his submission, learned counsel for the appellants placed reliance upon the decision of Hon'ble Supreme Court in the case of Indore Development Authority (supra). It is also the submission of learned counsel for the appellants that, in any case, on petitioners' own request and willingness to seek allotment of alternative land in lieu of compensation, the authorities offered allotment of land and the petitioners submitted their agreement and consent both. Therefore, even though it was not counter signed by the authorities, relief for declaring lapse of proceedings is liable to be rejected as the petitioners waived any right to seek such a declaration, in view of their willingness to seek allotment of developed plots in lieu of compensation.



10. *Per contra*, learned counsel for the respondents-writ petitioners would submit that in view of the decision of Hon'ble Supreme Court in Indore Development Authority (*supra*), in order to save the acquisition proceedings from lapse, as provided under Section 24(2) of the Act of 2013, the burden lies on the Land Acquisition authorities and Housing Board to establish that tender of compensation had taken place strictly in accordance with the provisions contained in Section 31(1) of the Act of 1894. The writ petitioners have clearly denied having been offered compensation. Therefore, present is not a case where the compliance of provisions contained in Section 31(1) of the Act of 1894 has been made, as the possession admittedly remained with the writ petitioners and was not taken by the appellants-Housing Board or the State authorities, the land acquisition proceedings initiated under the old Act of 1894, award passed therein and all proceedings would lapse. It is also submitted that even though the writ petitioners had initially submitted their application for allotment of developed plots in lieu of compensation, the authorities, for one reason or the other, did not make any allotment and there is no material on record to show that offer of allotment made by the authorities was ever accepted by the writ petitioners. Therefore, the order passed by the learned Single Judge does not call for any interference.

11. We have carefully perused the records of the case, the pleadings and the documents of the authorities as filed in the writ proceedings as also amended pleadings.

12. It is not necessary for this Court to delve deep into the aspect with regard to possession because it has been an admitted



position on record that even though award was passed in the year 1996 and, as on 01.01.2014 i.e. the date on which the new Act of 2013 came into force, the possession remained with the writ petitioners. In this regard, learned Single Judge has taken into consideration the letters issued by the appellants themselves to the writ petitioners for surrender of the land. The impugned order also goes to show that even appellants have admitted in their pleadings and also revealed from various communications that possession was not taken from the writ petitioners but the relief sought in the writ petition was based mainly on the ground that the writ petitioners having submitted an offer for allotment of developed plots in lieu of compensation but later on, not accepted offer of allotment nor claimed compensation, would result in deemed surrender of the land in favour of the appellants.

13. In the case of Indore Development Authority (supra), the Constitution Bench of Hon'ble Supreme Court examined the statutory scheme, as engrafted under Section 24(2) of the Act of 2013, as to when and under what circumstances, the land acquisition proceedings initiated under the old Act of 1894 would lapse upon coming into force of the new Act of 2013 w.e.f. 01.01.2014.

The Constitution Bench, on a reference made to it, arising out of the conflict of use with regard to interpretation on Section 24(2) of the Act of 2013, framed the following questions required to be answered:

"4.....

4.1. (1) *What is the meaning of the expression "paid"/"tender" in Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013("the 2013 Act") and Section 31 of the Land Acquisition Act, 1894*





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

4.1. (2) Whether the word "or" should be read as conjunctive or disjunctive in Section 24(2) of the 2013 Act?

4.1. (3) What is the true effect of the proviso, does it form part of sub-section (2) or main Section 24 of the 2013 Act?

4.1. (4) What is the mode of taking possession under the Land Acquisition Act and true meaning of expression 'the physical possession of the land has not been taken' occurring in Section 24(2) of the 2013 Act?

4.1 (5) Whether the period covered by an interim order of a court concerning land acquisition proceedings ought to be excluded for the purpose of applicability of Section 24(2) of the 2013 Act?

4.1. (6) Whether Section 24 of the 2013 Act revives barred and stale claims?

5. In addition, question of per incuriam and other incidental questions also to be gone into."

5. *Questions 1 to 3 are interconnected and concern the correct interpretation of Section 24(2) of the 2013 Act. The following questions are required to be gone into to interpret the provision of Section 24(2) of the 2013 Act:*

5.1.(i) Whether the word "or" in Section 24(2) of the 2013 Act used in between possession has not been taken or compensation has not been paid to be read as "and"?

5.2.(ii) Whether the proviso to Section 24(2) of the 2013 Act has to be construed as part thereof or the proviso to Section 24(1)(b)?

5.3.(iii) What meaning is to be given to the word "paid" used in Section 24(2) and "deposited" used in the proviso to Section 24(2)?

5.4.(iv) What are the consequences of payment not made?

5.5.(v) What are the consequences of the amount not deposited?

5.6.(vi) What is the effect of a person refusing to accept the compensation?"

14. After a detailed and deep examination of the statutory scheme of Section 24(2) of the Act of 2013, various decisions rendered from time to time, conflict of views on various aspects, following conclusions were drawn:





"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 non-payment 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 1.1.2014. 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 proceedings pending on the date of enforcement of the 2013 Act i.e. 1.1.2014. 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."*

15. The legal position as to when deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 would take place stands authoritatively settled by the Constitution Bench of the Hon'ble Supreme Court. One of the important principle laid down is that the word "or" used in Section 24(2) between possession and compensation has to be read as "nor" or as "and". It has been settled that deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of the authorities for five years or more prior to the commencement of the said Act, the possession of the land has not been taken nor compensation has been paid. It has also been explained that 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 also there is no lapse.

16. The ambit of expression "paid" in the main part of Section 24(2) of the Act of 2013 has also been explained by giving an interpretation, which now stands as a settled legal position. The consequences where a person has been tendered the compensation in accordance with Section 31(1) of the old Land Acquisition Act of 1894 has also been clearly explained in the manner that where such tender has been placed as provided under Section 31(1) of the Act of 1894, it is not open to that person to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in Court. Particularly, it has been clearly laid down that the obligation to pay is complete by tendering the amount under Section 31(1) and where landowners refused to accept the compensation or sought reference for higher compensation cannot claim that acquisition proceedings had lapsed under Section 24(2) of the Act of 2013.

17. Keeping in forefront the aforesaid settled legal position, we shall now examine as to whether in the present case, where possession of the land was admittedly not taken, there is lapse of proceedings by operation of provisions contained in Section 24(2) of the Act of 2013 on the ground that neither possession was taken nor compensation has been paid.

18. At the time when the land acquisition proceedings in question were initiated and concluded by passing an award, old Act of 1894 was in force. The statutory mechanism for payment of compensation has been engrafted in Section 31 of the Act of 1894 which is extracted herein below:





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

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

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

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

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

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

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

19. In light of the principles laid down in the case of Indore Development Authority (supra), it has to be seen whether the compensation was paid in accordance with the provisions of Section 31(1) of the Act of 1894.

If this Court reaches to the conclusion that the compensation can be said to have been paid in terms of the aforesaid provisions, obviously it will not be a case of lapse of proceedings under





Section 24(2) of the Act of 2013. However, if the answer is in negative, certainly it would be a case of lapse of proceedings under Section 24(2) of the Act of 2013.

If this Court reaches to the conclusion that provisions of Section 31(1) were complied with, this case would be a case of compensation paid. In this regard, it is apposite to refer to the pertinent observations made by the Hon'ble Supreme Court in Indore Development Authority (supra) as below:

"...

117. *Payment of compensation under the Act of 1894 is provided for by Section 31 of the Act, which is to be after passing of the award under Section 11. The exception, is in case of urgency under Section 17, is where it has to be tendered before taking possession. Once an award has been passed, the Collector is bound to tender the payment of compensation to the persons interested entitled to it, as found in the award and shall pay it to them unless "prevented" by the contingencies mentioned in sub-section (2) of Section 31. Section 31(3) contains a non obstante clause which authorises the Collector with the sanction of the appropriate Government, in the interest of the majority, by the grant of other lands in exchange, the remission of land revenue on other lands or in such other way as may be equitable.*

118. *Section 31(1) enacts that the Collector has to tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay such amount to a person interested in the land, unless he (the Collector) is prevented from doing so, for any of the three contingencies provided by sub-section (2). Section 31 (2) provides for deposit of compensation in Court in case State is prevented from making payment in the event of:*

- (i) refusal to receive it;*
- (ii) if there be no person competent to alienate the land;*
- (iii) if there is any dispute as to the title to receive the compensation; or*
- (iv) if there is dispute as to the apportionment.*

In such exigencies, the Collector shall deposit the amount of the compensation in the court to which a reference under Section 18 would be submitted.

....

226. *Thus, in our opinion, the word "paid" used in Section 24(2) does not include within its meaning the word "deposited", which has been used in the proviso to Section 24(2). Section 31 of the Act of 1894, deals with the deposit*





as envisaged in Section 31(2) on being 'prevented' from making the payment even if the amount has been deposited in the treasury under the Rules framed under Section 55 or under the Standing Orders, that would carry the interest as envisaged under Section 34, but acquisition would not lapse on such deposit being made in the treasury. In case amount has been tendered and the landowner has refused to receive it, it cannot be said that the liability arising from non-payment of the amount is that of lapse of acquisition. Interest would follow in such a case also due to non-deposit of the amount. Equally, when the landowner does not accept the amount, but seeks a reference for higher compensation, there can be no question of such individual stating that he was not paid the amount (he was determined to be entitled to by the collector). In such case, the landowner would be entitled to the compensation determined by the Reference court."

20. The facts of the present case are required to be scrutinized in light of the provisions contained in Section 31(1) of the old Land Acquisition Act of 1894, applying the settled legal position as adumbrated by the Constitution Bench of the Hon'ble Supreme Court in the case of Indore Development Authority (supra).

21. The writ petition was filed by the writ petitioners on the pleadings that though an award was passed on 09.04.1996, the possession always remained with the writ petitioners. However, in the entire petition, except alleging that possession remained with the writ petitioners, no specific pleading as to whether compensation was offered, has been made. The entire case of the petitioners is founded only on the aspect that the possession remained with the writ petitioners and, therefore, upon coming into force of the new Acquisition Act of 2013 w.e.f. 01.01.2014, the proceedings would lapse.

22. However, when the State as well as Housing Board filed their reply, it revealed that many relevant and material facts were completely suppressed by the writ petitioners, while filing the writ



petition. In the reply filed by the State (respondent no. 1) it was categorically averred that the petitioners have concealed the material facts with regard to deposit of compensation before the Civil Court, on not accepting the same by the petitioners. In para no. 4, it has been clearly stated as below:

"4.....

the petitioners were offered compensation vide different notices issued in the year 2002, 2004 and 2005. As the petitioners did not turned up to accept the compensation, it was deposited through different cheques with the civil court, the details of which have been mentioned in reply filed by respondents no. 2 to 4."

23. The Housing Board (respondents no. 2 to 4) also exposed that the writ petitioners had not come with clean hands and have completely suppressed material facts with regard to tender of amount of compensation, their refusal and thereafter deposit of the amount of compensation with the Court. Following are the clear and specific statement on affidavit made by Housing Board:

"1..... *the compensation has been paid to the khatedars/petitioners by way of depositing before court below on 08.04.2005 and 06.04.2005 and on refusal in lieu of notice DT.15.01.2004 and 07.11.2002. Therefore the provision of section 24(2) of Act of 2013 is not applicable, hence the writ petition deserves to be dismissed.*

.....

4.... *However the compensation was offered to the petitioners but on refusal by them the answering respondent had no alternate except to deposit it before the learned court below, this way the compensation vide cheque No.836667 of Rs.3,58,027/- on Dt.11/04/2005 referring as case no. 2/92/144 and of case No.2/90/116 vide cheque No.836648 Dt.23.03.2005 of Rs.2,09,185/- and of Case No.2/92/117 vide cheque no.836649 Dt.23.03.2005 of Rs.2,20,641/- and of case No.2/92/69 vide cheque No.836628 Dt.23.05.2005 of Rs.7,74,852/- has been deposited in court on non accepting the compensation by the petitioners/awardees. A copy of the notice Dt.07/11/2002, 15/01/2004 with dispatch no.539, 15.01.2004 with dispatch No.571, 26.04.2004 with dispatch No.27, 06.04.2005 with dispatch No.28 application for depositing the compensation Dt.06/04/2005, 08/04/2005 &*



11/04/2005 are submitted here with and marked as Annexure No. R/1, R/2, R/3, R/4 & R/5, R/6, R/7 and R/8."

24. It would thus be clear that the writ petitioners completely suppressed the fact from the Court while filing the writ petition through their power of attorney holder that the compensation amount was tendered to them which they refused to take, whereupon, the amount of compensation in respect of each of the petitioners by way of cheque was deposited with the Court.

25. Though, it was open for the petitioners to file rejoinder, disputing the facts with regard to tender of amount of compensation and refusal as alleged, the petitioners did not file any rejoinder but kept absolutely mum on this aspect even though State as well as Housing Board made serious allegations with regard to suppression of the aforesaid material facts.

26. The statement of facts which were made on affidavit by respondents with regard to tendering the compensation amount and refusal on the part of the petitioners, deposits being made with the Court, in our considered opinion, fulfills the requirement of provisions contained in Section 31(1) of the old Acquisition Act of 1894, both in letter as well as in spirit, as interpreted and held by the Hon'ble Supreme Court in the case of Indore Development Authority (supra).

27. We also find that the writ petitioners suppressed another material fact while filing the writ petition. It was that the writ petitioners themselves started claiming allotment of land in lieu of compensation whereupon, the Housing Board had proceeded to offer developed plots and letters were sent to the writ petitioners to submit their consent. Specific averment was made that the writ



petitioners, though claimed allotment of developed plots in lieu of compensation, did not give specific consent for developed plots in their favour and at one point of time they had also submitted agreements which were duly signed by them, may be that it was not signed by the authorities for which the reason assigned by the Housing Board is that there were certain disputes pending amongst the shareholders along with the petitioners and also that there was change in Khasra Nos. Following specific averments were made by the State.

"....

2. That from the conduct of the petitioners, it seems that they have entered into some deal with the power of attorney holder with regard to which the acquisition proceedings have been completed way back in the year 2007 and when the petitioners executed documents with regard to surrender of land in favour of Rajasthan Housing Board and the attorney seems to have been executed for getting windfall gains in view of enactment of the provisions with regard to lapsing of acquisition which has no application in the instant case. The petition is apparently abuse of the process of this Hon'ble Court and deserves to be dismissed at the outset.

3. That the petitioners have made concealment of material facts from this Hon'ble Court with regard to deposit of compensation before Civil Court on not accepting the same by the petitioners, submission of application and documents for getting 15% developed land as per Government circulars as compensation in lieu of free surrender of the land in question in favour of Rajasthan Housing Board free from all encumbrances and also with clause for indemnifying in case the Housing Board is deprived of possession of land for any reasons. The acceptance of request by the Land Negotiation Committee as well as by the State Government and fixing of the plots to be allotted to the petitioners and execution of documents for getting these plots has also been concealed from the Hon'ble Court. The petitioners have also concealed material facts with regard to change in the record of rights and therefore demand of the consent for accepting the allotment of land as per the change in the record of rights. All these facts have substantial bearing upon the outcome of the writ petition and therefore the writ petition deserves dismissal at the outset for concealment of material facts and misleading the Hon'ble Court which also amounts to abuse of process of the Hon'ble Court.

...





5. That on the one hand, compensation has been deposited with the civil court and on the other hand petitioners submitted application for grant of 15% developed land. The Land Negotiation Committee in its meeting dated 16-07-2007 decided to allot plot no. 12/MB/25 to 33 and 12/MB/44 to 52 i.e. 18 plots total measuring 2338.16 sq. meters in Indira Gandhi Nagar residential scheme, Jagatpura in lieu of 5 Bighas and 18 Biswas of Land under acquisition.....

6. That the petitioners submitted an agreement attested on 25-10-2007 which clearly states that the agreement is being executed for allotment of 15% developed residential plots in lieu of cash compensation on free surrender of entire land as per the circular dated 13-12-2001 and the decision of Land Negotiation Committee dated 16-07-2007.....

...

12. That camp for allotment of land in lieu of compensation was held on 20-04-2014 and the petitioners were told that they should give clear consent for allotment excluding the land which has been recorded in favour of Dr. Dasot by 29-04-2014. However, the petitioners did not submit clear consent.....

13. That the petitioners did not submit the clear consent as mentioned above for getting the land allotted excluding that recorded in favour of Dr. Dasot and therefore the allotment letters could not be issued to the petitioners but the petitioners started insisting for allotment of land on 48 meter or 60 meter wide road which was clearly an afterthought. It is also pertinent to mention here that the petitioners on the one hand did not submit clear consent and on the other hand executed a power of attorney stating that the proposal of the Housing Board is not acceptable to them....."

28. In reply of the Housing Board also, the fact regarding writ petitioners having given up their claim for compensation and started making applications for allotment of alternative plots was made as below:

"...

5...However subsequent to the above the petitioners have applied for allotment of 15% developed land in lieu of compensation from acquired land in question.

6. That after having receiving the application for petitioners (in the relevant case No.2/92/69, 2/92/116, 2/92/117, 2/92/144)for the allotment of 15% developed land in lieu of compensation, the answering respondent had held a meeting on 16/07/2007 as evident from letter dt. 27/08/2007 of "land negotiation committee". However the land in negotiation committee decided to allot 2338.16 Sq.Mt. land in the form of developed land in terms of plots numbering





12-MB-25-33 and 12-MB-44-52 (total 18 plots) for which petitioners were to give written consent prior to next Land Negotiation Committee. Further the land negotiation committee has awarded 15% developed land against 5 bhiga 18 biswa land to the petitioners for complete acquired land as per acquisition and award. More so as per new jamabandi Shri Umesh Dasot is the khatedar of khasra No.3820 and 3821 (new) and for the land bearing Khasra No. 3808 (new) is in the name of JDA.

7. That the answering respondent held a camp on 24/04/2014 in sector No. 4, Indira Gandhi Nagar in which petitioners were asked for giving fresh consent for granting compensation in terms of 5 bhiga 5 biswa land lying in respective khatedari of petitioners. However when no response was received by the answering respondent from the petitioners, the answering respondent again issued a letter on 07/07/2014 reminding the petitioners and asked for submitting their clear cut consent for taking compensation in terms of developed 15% land from their khatedari land which was acquired but no response was received by the answering respondent from the petitioners.....”

29. The specific averments made by the State as well as Housing Board in their respective reply clearly make out a case of concealment of material facts both with regard to offer of compensation to the petitioners and petitioners giving up their claim for compensation, instead claiming for allotment of developed plots. The writ petitioners did not file any rejoinder to traverse those specific averments made on affidavit in the reply filed by the respondents.

30. It is only when in these appellate proceedings, on the submissions that in view of the decision of Hon’ble Supreme Court in Indore Development Authority (supra), the issue with regard payment of compensation would also require examination, petitioners were granted liberty to file additional plea on this particular aspect. The pleadings made by the writ petitioners by way of amendment in their writ petition (para 7) seek to dispute the factual position that compensation was tendered and that the





writ petitioners were informed regarding deposit of the compensation with the Civil Judge, Jaipur City, Jaipur and further that the compensation in respect of cases of the petitioners came to be withdrawn and amount of compensation deposited with the Court in relation to the cases of the petitioners came to be withdrawn in 2009 in lieu of proceedings towards issuance of patta/lease deeds of 15% of developed plots in the same vicinity to the petitioners. This averment, in our considered view, does not come to the aid of the writ petitioners. In the beginning when the writ petition was filed the aspect with regard to offer of compensation and, on refusal, deposit of the same with the Court, was not disputed. When the respondents came out with specific averments in this regard in their reply made on oath, no rejoinder was filed till conclusion of the writ proceedings. Therefore, the pleadings which have now been made are completely afterthought only to somehow wriggle out all the consequences of the authoritative pronouncement of the Hon'ble Supreme Court that where compensation has been paid in accordance with the provisions contained in Section 31(1) of the old Acquisition Act of 1894, proceedings would not lapse under Section 24(2) of the Act of 2013, even if possession has not been taken.

31. The averments made by way of amendment have been emphatically denied by the Housing Board.

32. In view of above consideration, it is clear that even though compensation was offered to the petitioners, they refused to receive the same, whereupon, the same was deposited in the Court. That fully complies with the legal requirement of Section 31(1) of the old Acquisition Act of 1894 and the case of the



petitioners falls under para 366.5 of the conclusion, referred to and extracted hereinabove.

33. The writ petition is otherwise required to be dismissed on the ground of suppression of material facts with regard to offer of compensation and petitioners' own application for allotment of plots. It is well settled that one, who seeks to invoke the equitable and extraordinary jurisdiction of the writ Court under Article 226 of the Constitution of India, has to come with clean hands. Where a party is found to have suppressed the material facts, no relief should be granted and even there is no need for the Court to examine even the merits of the case.

34. In the case of K. Jayaram and Ors. Vs. Bangalore Development Authority and Ors. [(2022) 12 SCC 815], the settled principles were reiterated by the Hon'ble Supreme Court as below:

"14. In Udyami Evam Khadi Gramodyog Welfare Sanstha and Another v. State of Uttar Pradesh and Others², this Court has reiterated that the writ remedy is an equitable one and a person approaching a superior court must come with a pair of clean hands. Such person should not suppress any material fact but also 1 (2007) 8 SCC 449 2 (2008) 1 SCC 560 should not take recourse to legal proceedings over and over again which amounts to abuse of the process of law.

15. In K.D. Sharma v. Steel Authority of India Limited and Others 3, it was held thus:

"34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of R. v. Kensington





Income Tax Commrs.- (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA) in the following words: (KB p. 514) "... it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—it says facts, not law. He must not misstate the law if he can help it—the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been 3 (2008)12 SCC 481 fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement." (emphasis supplied)

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

37. In *Kensington Income Tax Commrs.*(supra), Viscount Reading, C.J. observed: (KB pp. 495-96) "... Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit." (emphasis supplied)





38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".

39. If the primary object as highlighted in *Kensington Income Tax Commrs.(supra)* is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."

17. In the instant case, since the appellants have not disclosed the filing of the suit and its dismissal and also the dismissal of the appeal against the judgment of the civil court, the appellants have to be non-suited on the ground of suppression of material facts. They have not come to the court with clean hands and they have also abused the process of law. Therefore, they are not entitled for the extraordinary, equitable and discretionary relief."

35. Had the petitioners disclosed the fact regarding they themselves having given up claim for compensation and started claiming developed plots which led the Housing Board to seek withdrawal of the compensation amount deposited in the Court,





certainly it would have required examination of the entire facts and circumstances, conduct of the party and whether in such circumstances it would be a case of waiver of right to receive compensation but only an enforceable right of seeking allotment of plots. However, in such a case the petitioners were not entitled to challenge acquisition proceedings by taking recourse to the provisions contained in Section 24(2) of the Act of 2013. The petitioners by their own conduct to seek allotment of plots, waived their right in respect of the land in question and, therefore, on that count also, it was not necessary for the Court to examine on merits the issue with regard to lapse of proceedings, though we have examined that issue also on merits and found no substance in the claim of the petitioners.

36. It is interesting to note that even though the writ petitioners were keen to get developed plots in lieu of compensation upon acquisition of their lands and it was on their request that the authorities had proceeded to take decision to allot developed plots and the petitioners had also submitted draft agreement duly signed by them for getting developed plots, due to reason that there was some family disputes amongst the shareholders until the petitioners submitted letter before the authority that the dispute has now been settled and developed plots may be allotted and secondly because there was some discrepancy in the name in the award and further that in the meantime there was change in the Khasra Nos. of the lands of the writ petitioners, the writ petitioners remained deprived of developed plots as also compensation and through power of attorney holder, filed writ petition suppressing many material facts with regard to offer of



compensation and requested for allotment of developed plots. Even though we find that the petitioners are guilty of *suppressio veri* and *suggestio falsi*, taking into consideration that the lands have been acquired and they had applied for allotment of developed plots in lieu of compensation and the authorities agreed and made offer for allotment of plots, we are inclined, exercising our extraordinary and equitable jurisdiction to that limited extent, to direct the appellants to allot developed plots as per the offer made to the writ petitioners within a period of three months from the date of receipt of copy of this order.

37. Accordingly, though it is held that acquisition proceedings did not lapse under Section 24(2) of the Act of 2013, the writ petitioners would be entitled to developed plots as directed above.

38. The impugned order passed by the learned Single Judge is, accordingly, set aside and the appeal is partly allowed in the manner and to the extent stated herein above.

39. No order as to costs.

(SHUBHA MEHTA),J

(MANINDRA MOHAN SHRIVASTAVA),CJ

Jayesh/-