

Megh Singh Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Oct-21-2010

Judge : P.C. Verma; R.A. Singh, J.

Appeal No. : Civil Misc. Writ Petition No. 57925 of 2008

Appellant : Megh Singh

Respondent : State of U.P. and Others

Judgement :

1. By means of the present writ petition, petitioner has prayed for the following reliefs:-

i) Issue an appropriate writ, order or direction quashing the notification dated 9.8.2004 issued under the purported exercise of the powers conferred under sub-Section 1 of Section 4 of the Land Acquisition Act, 1894 pertaining to village Kisanpur, Pargana & Tahsil Koil, District Aligarh.

ii) Issue an appropriate writ, order or direction quashing the notification dated 3.8.2005 issued under the purported exercise of the powers conferred Section 6 of the Land Acquisition Act, 1894, pertaining to village Kisanpur, Pargana & Tahsil Koil, District Aligarh.

iii) Issue an appropriate writ, order or direction commanding the respondents concerned to free Khasra No. 360 & 361 admeasuring 0.0800 & 0.4260

hectares respectively situate at Village Kisanpur, Pargana & Tahsil Koil, District Aligarh from acquisition.

2. Encapsulated facts of the case are that the petitioner has been the bhumidhar with transferable rights of the land contained in Khasra nos. 360 and 361 admeasuring 0.0800 and 0.4260 hectares situate at village Kisanpur, Pargana and Tehsil Koil, District Aligarh. Vide notification dt. 9.8.2004 u/s 4(1) read with 17(4) of the Land Acquisition Act, 1894, (hereinafter referred to as Act), the land of the petitioner was sought to be acquired. The declaration u/s 6 read with 17(1) of the Act was published on 3.8.2005.

3. It is asserted by the petitioner that till date the possession of the land in question has not been taken and the name of the petitioner (original tenure holder) still continues to be recorded in the revenue records. It has also been asserted by the petitioner that till date award under section 11 of the Act has not been made by the authority concerned. At this juncture, the petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India by filing the instant writ petition complaining that the action of the respondent State in acquiring the petitioner's land in the year 2004 and not delivering any award for a long period of six years is wholly unconstitutional and that the acquisition proceedings have lapsed in view of the provisions enshrined u/s 11-A of the Act. The petitioner, taking recourse to the provisions of section 11-A, has contended that as the award has not been made within the statutory period of two years hence acquisition proceedings in question have lapsed.

4. The respondents no. 1 to 4 have filed the counter affidavit and asserted in paragraph no. 4 of the counter affidavit that the possession of the land in question was taken over by the State on 27.12.2005 vide document which has been annexed as Annexure No. C.A.-1 to the counter affidavit. The respondents have also contended that the provisions of section 17 (1) of the Act were invoked for taking the possession. The same document has also been relied by the Aligarh Development Authority, Aligarh in its counter affidavit to assert that the possession of the land in question was taken on 27.12.2005 by the State and thereafter the same was handed-over to it on the same day. It is thus contended that on account

of invocation of urgency clause and taking over of possession the land has vested in the State. The respondents have contended that the possession of the land in question has been taken after invoking the provisions of section 17 (1) of the Act and as such the provisions of section 11-A of the Act would not be applicable to the acquisition proceedings in question and the mere fact that the award has not been made for the last six years is of no consequence.

5. From the respective pleadings of the parties the following issues emerge out for adjudication, which are hereunder:

(i). Whether the State action of depriving the tenure holder of his land under the Land Acquisition Act, without delivering any award/compensation for more than five years, would withstand the constitutional protection guaranteed under Article 300-A and 31-A, particularly keeping in view the requirement of every State action to be just, legal and fair by virtue of Article 14 of the Constitution of India?

(ii). Whether taking over of the possession under Section 17 (1) of the Land Acquisition Act and thereupon vesting of the land in State is absolute or subject to the provisions of Section 11-A of the said Act?

(iii). Whether the possession of the land of the petitioner has been taken by the State in pursuance of the declaration under Section 6 read with section 17 (1) of the Act?

(iv). Whether the acquisition proceedings qua the land of the petitioner lapsed in view of the provisions contemplated under section 11-A of the Land Acquisition Act?

6. For adjudicating the issues no. 1 & 2 it would be relevant to examine the right to property vis-à-vis the laws of acquisition under the scheme of the Constitution of India and to sketch briefly the constitutional history leading to the introduction of Article 300A in the Constitution. It would further be appropriate to examine the need of bringing Section 11A in the Act and the intention of the legislature in respect of the provisions enshrined under Section 11A.

7. Originally the right to property has been a fundamental right under sub clause (f) of clause (1) of Article 19 of the Constitution of India. Article 31 of the Constitution as originally enacted required that any law relating to acquisition of property should either provide for compensation or specify the principles on which, and the manner in which, the compensation is to be determined and given. These two provisions read together guaranteed a fundamental right under the Constitution of India to hold property. Initially, the field of legislation over the subject of acquisition or requisitioning of property by the Government was controlled by three different entries in the legislative lists viz. entry 33 of list-I , 36 of list-II and 42 of list-III of the Constitution of India.

8. Prior to its amendment the entry 42 of the list III in Schedule 7 of the Constitution was as follows:

"Principles on which compensation for property acquired is requisitioned for the purpose of the Union or of a state or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given".

9. The Hon'ble Apex Court in the case of State of West Bengal v. Bela Banerjee AIR 1954 SC 170 has held that the compensation would mean a just equivalent of what the expropriated owner had been deprived of. Further, the question of adequacy was also held to be justiciable. Soon after the decision aforesaid the Parliament amended the Article 31(2) of the Constitution vide 4th Amendment and provided that no law for acquisition shall be called in question on the basis of adequacy of compensation. The said amendment was virtually for obviating the exposition of law in the case of Bela Banerjee (supra).

10. The Hon'ble Apex Court again interpreted the provisions of the Constitution in the case of R.C. Cooper v. Union of India AIR 1970 SC 564 and held that the constitution guarantees a right to compensation i.e. equivalent in money of the property expropriated. The Supreme Court proceeded to interpret the concept of compensation provided under Article 31(2) of the Constitution and held that adequacy of compensation and the principles for determination of the quantum of

compensation would be justiciable.

11. The Parliament again intervened and the word compensation occurring under Article 31(2) of the Constitution was substituted by the word "amount" vide 25th amendment. The concept of compensation was done away by the aforesaid amendment.

12. The 25th amendment of the constitution was also subjected to judicial review in the case of *Keshavananda Bharti v. State of Kerala* 1973 (4) SCC 225. The said decision interpreted the 25th amendment and the word "amount" and so held that the court could still interfere where the amount fixed was lesser or where the principle for determination of the same were not relevant.

13. This led to the complete effacing of the right to property by the Parliament from the fundamental rights chapter by omitting Article 19(1) (f) & Article 31 from the Constitution vide 44th amendment and conferring merely a truncated constitutional right by incorporating Article 300A.

14. From the above, it is evident that there emerged conflict between the intention of makers of the constitution and the judicial interpretation on the word 'compensation'. The aforesaid historical background goes to show that the Parliament has ultimately wrested the power to amend the constitution. The amendment in the constitution led to a situation that any law for acquisition shall not be called in question on the ground that the amount fixed/determined by it was not adequate.

15. After the 44th amendment of the constitution the right to property only remains a truncated constitutional right instead of fundamental right. However, the amendment to Article 31-A by 17th amendment inserting the second proviso continued to provide a fundamental right guaranteed to the expropriated owner in the matter of acquisition by the State, to receive compensation at the market value.

16. Prior to its amendment in 1984 the Land Acquisition Act did not prescribe any time limit for making an award with reference to the date of declaration under

section 6 of the Act. The fundamental right guaranteed under Article 31A of the Constitution could have easily frustrated by the State taking advantage of absence of any time limit for either making a declaration under section 6 of the Act or an award with reference to the date of declaration under section 6 of the Act. The possibility of unfair and arbitrary action on the part of the State could not have been overruled. However, Articles 14, 19 and 21 of the Constitution provide basic fundamental guarantees to a citizen against oppressive State action. The aforesaid fundamental rights clearly promise State's action to be in conformity with the principles which have fairness and reasonableness. It is settled law that any action which is oppressive, unreasonable and violates fundamental right guaranteed to a citizen cannot withstand the test of judicial scrutiny. Therefore, keeping in view of fundamental rights deprivation of property of a citizen has to be by way of law which is just, reasonable, fair and conforms to Article 14 of the Constitutional of India. Such being constitutional mandate, any law, including the Act of 1894, which deprives a citizen of his property would have to face serious challenges to its existence unless it was just, reasonable and fair. It was, therefore, incumbent upon the State to have made adequate and stringent provisions in the Act itself to safeguard the citizens against Executive harassment on account of compulsory acquisition of land without making of award within reasonable period of time. It was this need to make Act of 1894 in consonance with constitutional objectives that the Act of 1894 was amended by incorporating section 11-A. In absence of such provision, acquisition was permissible to be resorted to by the State and yet the tenure holder was compelled to run from pillar to post to get compensation at market rate. This situation prompted the Parliament to suitably amend the Land Acquisition Act in the year 1984.

17. For examining the need of bringing section 11A on the statute book and the meaning of the provisions enshrined in section 11A it would be proper to consider the scheme of the Act in its entirety.

18. A glance over the different sections of the Act would indicate that the legislature intended that after publication of notification under sub section 1 of section 4 of the Act further proceedings should be taken as expeditiously as possible. Section 4, 6, 11 and 16 of the Act are enumerated as follows:

"Section-4. Publication of preliminary notification and powers of officers thereupon-(1) Whenever it appears to the (appropriate Government) that land in any locality (is needed or) is likely to be needed for any public purpose (or for a company), a notification to that effect shall be published in the Official Gazette (and in two daily newspapers circulating in that locality of which at least one shall be in the regional language) and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification).

(2) Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workmen-

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the subsoil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any proposed to be made thereon);

to mark such levels, boundaries and line by placing marks and cutting trenches; and

whether otherwise the survey cannot be completed and the levels taken and the boundaries and lines marked, to cut down and clear away any part of the standing crop, fence or jungle;

Provided that no person shall enter into any building or upon any other enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

Section 6. Declaration that land is required for a public purpose-(1)
Subject to the provision of Part VII of this Act, (when the (appropriate Government) is satisfied, after considering the report, if any, made under Section 5-A, sub section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its order (and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under Section 4, sub section (1) irrespectively of wheth4er one report of different reports has or have been made (wherever required) under Section 5-A, sub-section (2).

(Provided that no declaration in respect of any particular land covered by a notification under Section 4, sub section (2),-

i. published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment)Act, 1984, shall be made after the expiry of three years from the date of the publication; or

ii. published after commencement of the Land Acquisition (Amendment)Act, 1984 shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by

company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(Explanation:1-In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4, sub section (1) is stayed by an order of a court shall be excluded.

Explanation:2- Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.)

(2) (Every declaration) shall be published in the Official Gazette, (land in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state) the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be: and, after making such declaration, the (appropriate Government) may acquire the land in manner hereinafter appearing.

Section 11. Enquiry and awards by Collector-(1) On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any)

which any person interested has stated pursuant to a notice given under Section 9 to the measurements made under Section 8, and into the value of the land (at the date of the publication of the notification under Section 4, sub section (1), and into the respective interests of the persons claiming the compensation and shall make an award under his hand of -

i. the true area of the land;

ii. the compensation which in his opinion should be allowed for the land; and

iii. the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him:

(Provided that no award shall be made by the Collector under this sub section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorize in this behalf.

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.)

2. (Notwithstanding anything contained in sub section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may without making further enquiry, make an award according to the terms of such agreement.

3. The determination of compensation for any land under sub section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with other provisions of this Act.

4. Notwithstanding anything contained in the registration Act, 1908(16 of 1908), no agreement made under sub section (2) shall be liable to registration under that Act.)

Section 16. Power to take possession- When the Collector has made an award under Section 11 he may take possession of the land which shall thereupon (vest absolutely in the (Government)) free from all encumbrances."

19. The aforesaid provisions go to show the basic feature of the Act i.e. it requires the award to be made and compensation to be paid before the land, which is subject matter of acquisitions, vests in the Government. The making the award has been visualized to be sine-qua-non for taking of possession of the land.

20. Section 17 of the Act, which provides a variation to the aforesaid procedure, however, is also an example of the intention of the legislature to expeditiously complete acquisition proceedings. Section 17 of the Act is as follows:-

Section 17. Special power of urgency-(1) In cases of urgency, whenever the (appropriate Government) so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, sub section (1), (take possession of any land needed for public purposes.) Such land shall thereupon (vest absolutely in the (Government)), free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such

station(or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure of system pertaining to irrigation, water supply, drainage, road communication or electricity,) the Collector may, immediately after the publication of the notice mentioned in sub section (1) and with the previous sanction of the (appropriate Government), enter upon and take possession of such land, which shall thereupon(vest absolutely in the (Government)) free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub section without giving to the occupier thereof at least forty eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) In every case under either of the proceeding sub sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in Section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provision therein contained.

(3-A) Before taking possession of any land under sub section (1) or sub section (2), the Collector shall, without prejudice to the provisions of sub section (3),

a.tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interest entitled thereto, and

b.pay it to them, unless prevented by some one or more of the contingencies mentioned in Section 31, sub section (2) and where the Collector is so prevented, the provisions of Section 31, sub section (2) (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.

(3-B) The amount paid or deposited under sub section (3-A) shall be taken into account for determining the amount of compensation required to be tendered

under Section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under Section 11, the excess may, unless refunded within three months from the date of the Collector's awards, be recovered as an arrear of land revenue.)

(4) In the case of any land to which, in the opinion of the (appropriate Government), the provisions of sub section (1) or sub section (2) are applicable, the (appropriate Government) may, direct that the provisions of Section 5-A shall not apply, and, if it does so direct, a declaration may be made under Section 6 in respect of the land at any time (after the date of the publication of the notification) under Section 4, sub section (1)."

21. The aforesaid provision has merely expedited the steps/proceedings for acquisition. The invocation of the provisions under section 17 of the Act during the proceeding for acquisition of land could not and should not be understood as suggesting that by invoking the aforesaid provisions the State would be justified in allowing the matter to drift and to take in hand the proceeding for determination/fixation of compensation whenever it thinks it proper to do. The scheme of the Act coupled with the fundamental right guaranteed under the second proviso to Article 31A of the Constitution necessarily intended to complete the acquisition proceedings by determination of compensation by making an award without any unreasonable delay.

22. House of Lords in the case of *Birmingham City Corpn. v. West Midland Baptist (Trust) Assn. (Inc.)* (1969) 3 All ER 172 pointed out that the land acquisition proceedings should be conducted in such a manner that the person affected by the land acquisition, gets substantially the value of his land, which he would have got on the date of his dispossession. It was said:

"The principle and the rule cannot be reconciled except on the basis that the total value to the owner at the date of the notice to treat is always substantially the same as the value at the date of the expulsion."

23. The fundamental right to receive compensation at the market value as enshrined in Article 31A of the Constitution could have been reconciled with the intention of the Act only if the Act would have provided for the specific time limit for completing the acquisition proceedings and stringent measures providing for substantive right to the expropriated owner to retain his land in case such time limit is violated.

24. With this background and intention the Parliament enacted the Land Acquisition (Amendment) Act, 1984 i.e. Act No. 68 of 1984. The Act No. 68 of 1984 has introduced a time limit before which a declaration under Section 6 has to be made. The relevant part of amended Section 6 of the Act says:

"Provided that no declaration in respect of any particular land covered by a notification under Section 4, sub section (1)-

i.published after the commencement of the Land Acquisition (Amendment and Validation) Ordinate, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three days from the date of the publication of the notification: or

ii.published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after expiry of one year from the date of the publication of the notification."

25. By the same Act, Section 11-A has been introduced, which fixes a time limit for the making of the award under Section 11 of the Act, failing which the proceedings for the acquisition of the land is to lapse. Section 11-A of the Act is as follows:

11-A. Period within which an award shall be made.-The Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse.

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation-In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by any order of a Court shall be excluded."

26. It is necessary to examine the meaning of the aforesaid section and to interpret the same in accordance with the intent of the Parliament. The intention of the legislature can be gathered from the objects of legislation (rule in Heydon's case). The function of the court is to interpret a law in consonance with its objects. To find the object it is permissible to refer to the statement of objects and reasons of a Bill, particularly, when it is an amending Bill, because an amending statute comes freighted with the meaning imparted to it by the mischief to be remedied.

27. It is necessary to take into consideration the statement of objection, reasons of the Land Acquisition (Amendment) Act, 1984 which is as follows:

"Prefatory Note- Statement of Objects and Reasons.- With the enormous expansion of the State's role in promoting public welfare and economic development since independence, acquisition of land for public purposes, industrialization, building of institutions, etc., has become more numerous than ever before. While this is inevitable, promotion of public purpose has to be balanced with the rights of the individual whose land is acquired, thereby often depriving him of his means of livelihood. Again, acquisition of land for private enterprises ought not to be placed on the same footing as acquisition for the State or for an enterprise under it. The individual and institutions who are unavoidably to be deprived of their property rights in land need to be adequately compensated for the loss keeping in view the sacrifice they have to make for the larger interests of the community. The pendency of acquisition

proceedings for long periods often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them.

2. It is necessary, therefore, to restructure the legislative framework for acquisition of land so that it is more adequately informed by this objective of serving the interests of the community in harmony with the rights of the individual. Keeping the above objects in view and considering the recommendations of the Law Commission, the Land Acquisition Review Committee as well as the State Governments, institutions and individuals, proposals for amendment to the Land Acquisition Act, 1894, were formulated and a Bill for this purpose was introduced in the Lok Sabha on the 30th April, 1982. The same has not been passed by either House of Parliament. Since the introduction of the Bill, various other proposals for amendment of the Act have been received and they have also been considered in consultation with State Governments and other agencies. It is now proposed to include all these proposals in a fresh Bill after withdrawing the pending Bill. The main proposals for amendment are as follows:-

(i)-----

(iii)-----

(v) It is proposed to provide for a period of two years from the date of publication of the declaration under Section 6 of the Act within which the Collector should make his award under the Act. If no award is made within that period, the entire proceedings for the acquisition of the land would lapse. He has also been empowered to correct clerical or arithmetical mistakes in the award within a certain period from the date of the award.

The Bill seeks to achieve the above objects and to make some other consequential and clarificatory amendments in the Act."

28. A statute is to be construed according "to the intent of them that make it" and "the duty of judicature is to act upon true intention of the legislature- the mens or sentential legis."

29. If a statutory provision is open to more than one interpretation the court has to choose that interpretation which represents the true intention of the legislature.

30. The Hon'ble Apex Court in *Narashimaha Murthy v. Susheelabai* 1996 (3) SCC 644 has held in paragraph no. 20 that:

"The purpose of law is to prevent brooding sense of injustice. It is not the words of the law but the spirit and internal sense of it that makes the law meaningful."

31. In the case of American Home Products Corpn. v. Mac Laboratories (P) Ltd. 1986 (1) SCC 465, it was held in paragraph no. 66 that:

"It is a well-known principle of interpretation of statutes that a construction should not be put upon a statutory provision which would lead to manifest absurdity or futility, palpable injustice or absurd inconvenience or anomaly."

32. Many a times, it becomes necessary to look into the true intention of the legislature in order to give a proper effect to the statutory provisions and in order to achieve the actual intended goal behind the legislation.

33. The same has been upheld by the Supreme Court in *CIT v. J.H. Gotla* 1985 (4) SCC 343. Similarly, in *State of Rajasthan v. Leela Jain* AIR 1965 SC 1296 wherein it was held in para 11 that:

"Unless the words are unmeaning or absurd, it would not be in accord with any sound principle of construction to refuse to give effect to the provisions of a statute on the very elusive ground that to give them their ordinary meaning leads to consequences which are not in accord with the notions of propriety or justice....."

34. Applying the aforesaid principles of interpretation and unambiguous language of Section 11A would lead to only one irresistible conclusion that Section 11A was enacted only to rescue the expropriated owner from the callousness, apathy, arbitrariness, unfairness and inaction of the authorities responsible for completing the acquisition proceedings expeditiously. Section 11A of the Act has deliberately been enacted to save the land holders from vagaries of inordinate delay at the hands of the authorities concerned. The legislature has mandated that in case the award is not made within the statutory period the entire proceeding for acquisition would lapse.

35. Section 11 A of the Act provides that if the acquisition is not completed within the time prescribed by the statute then the whole proceeding for acquisition would come to an end entitling the owner of the land to retain his land. The said provision granted a substantive right to the expropriated owner to retain the ownership right in the land in question.

36. The Hon'ble Apex court in the case of Girnar Traders reported in 2007 (7) SCC page 555 held as follows:

"If the land is not acquired within the stipulated time, then the whole proceedings in acquisition comes to an end, and thereby the owner of the land would be entitled to retain his land which appears to be the superior right than the owner's right to get the compensation for acquisition of his land.

A two Judge Bench of this Court in State of Maharashtra v. Sant Joginder Singh Kishan Singh has held that Section 11A of the L.A. Act is a procedural provision and does not stand on the same footing as Section 23 of the L.A. Act. We find it difficult to subscribe to the view taken. Procedure is a mode in which the

successive steps in litigation are taken. Section 11A not only provides a period in which the land acquisition proceedings are to be completed but also provides for consequences, namely, that if no award is made within the time stipulated, the entire proceedings for the acquisition of the land shall lapse. Lapsing of the acquisition of the land results in owner of the land retaining ownership right in the property and according to us it is a substantive right accrued to the owner of the land, and that in view thereof we feel Section 11A of the L.A. Act is part of the law which creates and defines right, not adjective law which defines method of enforcing rights. It is a law that creates, defines and regulates the right and powers of the party."

37. From the above proposition, it is quite evident that the Apex Court has held that section 11-A of the Act creates substantive right in the expropriated owner to retain the ownership right of the land in question.

38. However, the Hon'ble Supreme Court has observed that provisions of Section 11-A of the Act would not be applicable where the possession of the acquired land is taken by invoking the provisions of section 17 of the Act. The Hon'ble Apex Court in the matter of Satendra Prasad Jain reported in 1993(4) SCC 369 has taken recourse to section 48 of 1894 Act and carved out two categories of cases viz. ordinary case & the cases where the provisions of Section 17(1) of 1894 Act are applied. The Hon'ble Apex Court has held as follows:

"14. There are two judgments of this Court which we must note. In Rajasthan Housing Board v. Shri Kishan it was held that Government could not withdraw from acquisition under Section 48 once it had taken possession of the land. In Lt. Governor of H.P. v. Avinash Sharma it was held that (SCC p. 152. para 8)

"... after possession has been taken pursuant to a notification under section 17(1) the land is vested in the Government, and the notification cannot be cancelled under Section 21 of the General Clauses Act, nor can the notification be withdrawn in exercise of

the powers under section 48 of the Land Acquisition Act. Any other view would enable the State Government to circumvent the specific provision by relying upon a general power. When possession of the land is taken under section 17(1), the land vests in the Government. \There is no provision by which land statutorily vested in the Government reverts to the original owner by mere cancellation of the notification."

15. Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made under Section 11. Upon the taking of possession the land vests in the Government, that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of section 11-A are intended to benefit the landowner and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration under section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisitions under section 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner."

39. The observation in *Satendra Prasad Jain* (supra) has been reiterated by the Apex Court in the matter of *Awadh Bihari Yadav* reported in 1995 (6) SCC 31 and in the matter of *U.P. Jal Nigam* reported in 1996(3) SCC 124.

40. At this juncture, it would be relevant to briefly state the facts of the case of Satendra Prasad Jain (supra). In the said case the expropriated owner was before the court seeking direction to the State for providing him compensation for his land which was acquired by the State. The State has taken an objection in that case that as the award could not be made within statutory period and as such the acquisition proceedings have lapsed and denied to pay any compensation to the expropriated owner. In that case the possession of land had been taken by invoking the provisions of section 17 of the Act.

41. That from the decision in Satendra Prasad Jain case it would be quite evident that the Apex Court while keeping in view the principle that nobody can take an undue advantage of its own wrong, referred to provisions of section 48 of the Act and decided the said case that the provisions of Section 11A would not be applicable and directed the State to give the compensation to the expropriated owner.

42. The said case was decided on its factual matrix. The generality of the expression in respect of the applicability of section 11A in the said case was not intended to be expositions of the whole law but is governed and qualified by the particular facts and circumstances of that case.

43. Section 11A and section 17 of the Act operate in different fields and the applicability of section 11A is not at all dependent on section 17. The case of Satyendra Prasad Jain is indicative of the fact as to how the Apex Court was concerned with the cause and plight of the expropriated owner. The inaction on the part of the State and thereafter taking undue advantage of the same was the main reason of the decision of the said case. In fact what has been decided in the said judgement was that in the matter of compulsory acquisition of land of a citizen the State cannot take the undue advantage of its own wrong of drifting the proceedings for indefinite period. Hon'ble Apex Court cannot be understood to have laid down the proposition that whenever the provisions of section 17 are invoked in the matter of compulsory acquisition and expropriated owner is left remediless against the inaction and inordinate delay on the part of the State and its authority. If the judgment of Satyendra Prasad Jain is construed properly the

only irresistible conclusion would be that it had come to the rescue of the expropriated owner against the inaction of the State.

44. In case the observation made in the case of Satendra Prasad Jain (Supra) is understood as is sought to be contended by the respondent as saying that the applicability of section 11A is dependent on the invocation of provisions of section 17 then it may safely be inferred that the said observation was made without taking into consideration the law laid down in an earlier three Judges Bench of the Supreme Court in the matter of Yusuf Bhai Noor Mohammad Nendoliya reported in 1991 Vol. IV SCC-531. The Hon'ble Supreme Court while interpreting the explanation to Section 11-A of the 1894 Act has held as follows:

"8.The said Explanation is in the widest possible terms and, in our opinion, there is no warrant for limiting the action or proceedings referred to in the Explanation to actions or proceedings preceding the making of the award under Section 11 of the said Act. In the first place, as held by the learned Single Judge himself where the case is covered by Section 17, the possession can be taken before an award is made and we see no reason why the aforesaid expression in the Explanation should be given a different meaning depending upon whether the case is covered by Section 17 or otherwise. On the other hand, it appears to us that the Explanation is intended to confer a benefit on the landholder whose land is acquired after the declaration under Section 6 is made in cases covered by the Explanation. The benefit is that the award must be made within a period of two years of the declaration, failing which the acquisition proceedings would lapse and the land would revert to the landholder. In order to get the benefit of the said provision what is required, is that the landholder who seeks the benefit not have obtained any order from a court restraining any action or proceeding in pursuance of the declaration under Section 6 of the said Act so that the Explanation covers only the cases of those landholders who do not obtain any order from a court which would delay or prevent the making of the award or taking possession of the land acquired. In our opinion, the Gujarat High Court was right in taking a similar view in the impugned judgment".

45. The Hon'ble Apex Court had clearly observed that the "actions or proceedings" occurring in the Explanation to section 11-A cannot be limited to action or proceedings preceding the making of award. The Hon'ble Apex Court has further held that the expression "action or proceedings" occurring in Explanation to section 11-A cannot be given different meaning depending upon whether the case is covered by section 17 or otherwise. If the explanation of section 11-A is not dependent on the invocation of section 17 then the main section cannot be construed to have conveyed different meanings depending upon whether the case is covered by section 17 or otherwise. Section 17 of the Act can not have any limitative effect over the operation and applicability of section 11-A so as to restrict or confine it to the cases where urgency clause has not been invoked. Such a construction of the provision would completely be against legislative intent and would render the very object of bringing such provision on statute book as nugatory and redundant.

46. The expression proceedings occurring in section 11-A includes in its ambit taking of possession in pursuance of declaration u/s 6 of the Act. The meaning of the expression "Proceedings" as per different dictionaries is as follows:

The word "Proceedings" ACCORDING TO LEGAL GLOSSARY:-

" A legal action or process; any act done by authority of a court of law; any step taken by either party in a legal proceeding; a particular action or course of action"

The word "Proceedings" ACCORDING TO BLACK'S LAW DICTIONARY:-

"1.The regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment. 2. Any procedural means for seeking redress from a tribunal or agency. 3. An act or step that is part of a larger action. 4. The business conducted by a court or other official body; a hearing. 5. Bankruptcy. A particular dispute or matter arising within a pending case as opposed to the case as a whole.

"Proceeding is a word much used to express the business done in courts. A proceeding in court, an act done by the authority or direction of the court express

or implied. It is more comprehensive than the word action, but it may include in its general sense all the steps taken or measures adopted in the prosecution or defense of an action, including the pleading and judgment."

The word "Proceedings" ACCORDING TO WEBSTER'S:-

"the act of someone who or something which proceeds a course of action, transactions or negotiations, a record of the activities of a body or organization, the proceedings of the last meeting, a legal action legal measures.

The word "Proceedings" ACCORDING TO WHARTON'S LAW LEXICON:-

Proceeding, is a term of wide amplitude. It means a prescribed course of action for enforcing or protecting a legal right and further embracing the requisite steps to be taken whether procedural or substantive.

The word 'proceeding' would depend upon the scope of the enactment wherein the expression is used with reference to a particular context where it occurs. It may mean a course of action for enforcing a legal right.

Proceeding, would depend upon the scope of the enactment. Wherein the expression is used with reference to a particular context where it occurs. It may mean a course of action for enforcing a legal right.

Means all steps or measures adopted in the prosecution or defence of an action.

47. The Hon'ble Supreme Court in the matter of M.Ramalinga Thevar reported in (2000) 4 SCC 322 has categorically held that taking of possession is one of the actions to be adopted pursuant to declaration under section 6 of the Act. The Hon'ble Apex Court has observed as under:

"6.As per the Explanation the period of exclusion from the time is the period during which "any action or proceedings" to be taken in pursuance of the said declaration is stayed. We have no doubt that one of the actions contemplated pursuant to the declaration is taking possession of the land, though such action is a post award

step in normal circumstances and in emergent circumstances it can as well be a pre-award step. Nonetheless, taking possession is one of the actions to be adopted as a follow up measure pursuant to the declaration envisaged in Section 6 of the Act. The consequence mentioned in Section 11-A is a self-operating statutory process and, therefore, it can operate only when the conditions specified therein conjoin together. The consequence would step in only when there is fusion of all the conditions stipulated therein. If there is any stay regarding any of the actions to be taken pursuant to the declaration then the consequence of lapse would not happen".

48. The Hon'ble Supreme Court in the matter of Government of Tamil Nadu v. Vasantha Bai reported in 1995 Supp. (2) SCC 423 has answered the question as to whether stay of "dispossession" is stay of "proceeding under the Act". The Hon'ble Apex Court has observed as under:

"6. Question is whether stay of dispossession is a stay of proceedings under the Act so as to disable the Land Acquisition Officer to make the award? In Yusufbhai Noormohmed Nendoliya v. State of Gujarat the facts were that declaration under Section 6 was questioned by filing a writ petition under Article 226. Pending its disposal stay of dispossession from the land was granted. In the meanwhile, when award proceedings were being taken, objection was raised that since award was not made within two years, the officer had no jurisdiction to pass the award. When it was overruled and an award was made, another writ petition was filed questioning the award. The Gujarat High Court held that Explanation to Section 11-A was not confined to staying of the award to be made; and since the language was widely worded it covered within its sweep, the entire period during which any action or proceeding taken in pursuance of the declaration under Section 6 or dispossession is stayed by a competent court. When the correctness thereof was challenged, this court held that; (SCC p. 535)

" In order to get the benefit of the said provision what is required is that the landholder who seeks the benefit must not have obtained any order from a court restraining any action or proceeding in pursuance of the declaration under Section 6 of the said Act so that the Explanation covers only the cases of those landholders who do not obtain any order from a court which would delay or prevent the making of the award or taking possession of the land acquired." This court upheld the view of the High Court as correct.

8. The ratio in the above cases would squarely apply to the facts in this case. The Division Bench of the High Court was clearly in error in taking the contrary view. We, therefore, hold that the stay of dispossession would tantamount to stay of further proceedings being taken under S. 11 and Explanation to S. 11-A, covers such an order and the entire period of stay has to be excluded in computing the period of two years prescribed by S. 11-A."

49. As per the above decision of the Hon'ble Apex Court dispossession is a proceeding under the Act and as such as a necessary corollary taking of possession is also a proceeding under the Act within the meaning of section 11-A of the Act. That being the position in law it can safely be concluded that in case the award is not made within a period of two years from the date of publication of the declaration the entire proceedings, including taking of possession, for the acquisition of the land in question shall lapse.

50. Further, the legislature chose to use an omnibus expression "entire" prior to the expression proceeding in section 11-A. The Legislature clearly and understandably wanted to ensure that each and every step qua acquisition would lapse in the event of occurrence of contingency referred to in the section 11-A.

51. The provisions of section 17 were already existing when the Legislature inserted provisions of section 11-A in the Act. However, neither any corresponding amendment was made in the section 17 of the Act nor any provision has been made in section 11-A making it dependent on the applicability / invocation of section 17 of the Act. No construction of section 11-A would be permissible limiting

its applicability on the invocation of section 17.

52. The Hon'ble Supreme Court in the matter of Abdul Majid Sahib reported in 1997(1) SCC 297 has considered the object of bringing section 11-A on statute. The Hon'ble Apex Court has categorically held that statutory lapse under Section 11-A is distinct and different from voluntary act of withdrawal on the part of the government under section 48. The Hon'ble Apex Court has observed as under:

"6. Section 11-A was brought on statute by Amendment Act 68 of 1984. It was notorious that the State, after publication of declaration under Section 6 went on delaying for years, to pass the awards putting obstruction to the owner of the land for enjoyment; resultantly, loss and undue disadvantage ensued to the owner of the land. To mitigate such hardship, Parliament introduced Section 11-A and directed the Land Acquisition Officer to make the award within two years from the date of publication of last of the steps under Section 6(2) publishing the declaration under Section 6. As a consequence, the Land Acquisition Office is statutorily under an obligation, at the pain of invalidation of the acquisition itself, to make the award within two years unless it falls within one of the provisos or the Explanation added thereto. In this case, neither the proviso nor the Explanation stands attracted to the facts. Consequently, since the Land Acquisition Officer did not make the award within two years from the date of the declaration viz., 17.6.1988 the entire acquisition shall stand lapsed.

7. Section 48(1) of the Act provides that:

"(E)xcept in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken."

Consequently, due to any notification issued under Section 4(1) or the declaration published under Section 6, if the owner is subjected to any detriment in enjoyment of the property, though the notification is withdrawn by the Government by exercising the power under Section 48(1), since possession of the land was not taken, the statute envisages payment of compensation for the loss suffered by the owners/tenant. The right to claim compensation and the manner of determination

has been provided in sub section (2) of Section 48 of the Act which reads as under:-

"48. (2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(8)THE word 'withdraws' would indicate that the government by its own action voluntarily withdraws from the acquisition; the government has necessarily to withdraw from the acquisition, in other words, there should be publication of the withdrawal of the notification published under Section 4(1) and the declaration published under Section 6 by exercising the power under Section 48(1). Ss. (2) of Section 48 would then apply. In this case, admittedly, the government had not exercised the power under Section 48(1) withdrawing from the notification under Section 4(1) or the declaration under Section 6. The statutory lapse under Section 11-A is distinct different from voluntary act on the part of the government. Therefore, it must be by withdrawal of the notification by voluntary act on the part of the State under Section 48(1). Under these circumstances, the appellant is not entitled to avail of the remedy of Ss. (2) of Section 48."

53. The above decision of the Hon'ble Apex Court has held that the statutory lapse under section 11-A is distinct and different from voluntary Act of withdrawal on the part of the Government under section 48 of the Act and as such section 48 and section 11-A of the Act clearly operate in different fields and as such section 17 can not have any limitative effect on the applicability of section 11-A so as to restrict it to the cases of acquisition without invoking urgency clause.

54. The Hon'ble Apex Court in the matter of Ramesh Dutta v. State of Punjab reported in 2004(7) SCC 388, has observed as follows:

"7.On behalf of the appellant it is submitted that as Section 17 was invoked the proviso to Section 11(1) would not apply. It is submitted that once the possession

is taken, the Land Acquisition Officer is bound to pass an award. It is submitted that in such case it would not be necessary to seek approval. We are unable to accept this submission. Section 17 merely permits taking of possession in case of urgency. However, even in such cases an award has to be passed. The award can only be under Section 11. Therefore, the proviso to Section 11(1) would apply even in such cases."

55. From the aforesaid it is quite evident that invocation of section 17 in any acquisition proceedings cannot be construed to have granted any relaxation to the authorities in not complying with the mandatory requirements of the provisions of the Act. Even in the cases where provisions of section 17 of the Act have been invoked in the matter of acquisition the authorities concerned are under obligation to make an award within the statutory period prescribed under section 11-A of the Act or else the entire proceedings for acquisition shall lapse. The taking of possession as well as the vesting of the land in so far as the applicability of the section 11 A is concerned do not have any relevance. In case the mandatory requirement contained in section 11A is not fulfilled the taking of possession as well as the vesting of the land, coming within the purview of "entire proceeding for acquisition", would lapse.

56. The Hon'ble Supreme Court in the matter of Bailamma @ Doddabailamma (Dead) reported in 2006 (2) SCC 416 has observed as under:

"16.This court emphasized the fact that Section 11-A was enacted with a view to prevent inordinate delay being made by the Land Acquisition Officer in making the award which deprived owners of the enjoyment of the property or to deal with the land whose possession has already been taken. Delay in making the award subjected the owner of the land to untold hardship. The objects and reasons for introducing Section-11-A into the Act were that "the pendency of acquisition proceedings for long periods often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them" and " it is proposed to provide for a period of two years from the date of publication of the declaration under section 6 of the Act within which the Collector should make his award under the Act". The emphasis, therefore, was on the Collector making his award within

the period prescribed."

57. In this case the Hon'ble Supreme Court has again clarified the object of bringing the provisions of section 11-A on the Statute book.

58. The Hon'ble Supreme Court in the matter of Rajinder Singh Bhatti and Ors. reported in 2009(11) SCC 480 has observed as under:

"15. On the contentions urged, two points arise for our consideration:-

1. Whether in view of the decision of the Government in not approving the award proposed by the Collector, the award could not be made within the period of two years from the date of publication of declaration (final notification under Section 6) and the acquisition of land lapsed, would such lapse of acquisition proceedings amount to withdrawal from the acquisition by the State Government under Section 48(1) of the Act?

2. Whether the decision of the State Government for withdrawal from the acquisition under section 48(1) is mandatorily required to be published in the Official Gazette?

23. From the perusal of section 11, particularly the first proviso thereto, it is apparent that the approval of the appropriate Government to the award proposed by the Collector is mandatory. In other words, it is imperative for the Collector to seek previous approval of the appropriate Government to the award that he proposes to make unless the case is covered by section 11(2). If an award under Section 11 is not made by the Collector within a period of two years from the date of the publication of the declaration, the entire proceedings for the acquisition of the land shall lapse under Section 11-A.. Section 11-A provides the maximum period within which the award from the date of the publication of the declaration has to be made. In default, the consequence is that the entire proceedings for the acquisition would lapse. Section 48(1) empowers the State Government to withdraw from the acquisition of any land subject to two conditions, namely; (i) the case is not provided under section 36, and (ii) that possession has not been taken. Section 11-A and the consequence provided therein i.e. lapse of acquisition

proceedings in the event of the award having not been made within a period of two years from the date of publication of the declaration under Section 6 is entirely distinct and different than the decision that the Government may take for withdrawal from the acquisition under Section 48(1) provided possession has not been taken.

59. In the context of Section 48, the word "withdraw" is indicative of the voluntary and conscious decision of the Government for withdrawal from the acquisition: statutory lapse under section 11-A is entirely different. The object of Section 11-A is to arrest delay in making award. An obligation is cast on the Collector under Section 11-A to make the award within the time prescribed therein failing which statutory consequence follows, namely, acquisition proceedings lapse automatically."

60. From the above, it is quite evident that statutory lapse under section 11-A of the act does not depend upon taking of possession of the land in question.

61. The Hon'ble Supreme Court in the matter of R.Kolandaivelu and Ors. reported in 2010(2) SCC 97 has observed as under:

"21. By the provisions of section 11-A, the State authorities are required to pass a final award within two years from the date of publication of declaration under section 6 of the Act failing which, the acquisition proceedings would lapse, and it would clearly show the intention of the legislature that the benefit of this provision would be in favour of the landowner if the award could not be passed within two years from the date of declaration when no order was obtained by the landowner from the court staying the acquisition and the land would revert back to the landowner because of expiry of the period of two years from the date of declaration or notification within the meaning of Section 11-A of the Act.

23. There is another aspect of the matter. The purpose for which the Land Acquisition Act was amended and Section 11-A was enacted, was to prevent inordinate delay being caused by the Land Acquisition Officer in making an award which deprived the landowners of their enjoyment of their land or dealt with the land whose possession was already taken. The delay in making the award

subjected the owner of the land to untold hardship. The objects and reasons for introducing Section 11-A into the act were that "the pendency of acquisition proceedings for long periods often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them" and "it is proposed to provide for a period of two years from the date of publication of the declaration under Section 6 of the Act within which the Collector should make his award under the Act.

62. The Hon'ble Apex Court has clearly observed that in case the award is not made within two years from the declaration u/s 6 of the Act then the land would revert back to the landowner.

63. The concept of statutory lapse of acquisition emanates from Legislature's object of ensuring justice to tenure holder from executive harassment and arbitrariness and has to be interpreted in a manner which protects citizens against might of the executive State.

64. Statutory consequence of lapse envisaged by section 11-A, rendering entire proceedings to have lapsed contemplates no limitation. The concept of statutory lapses of acquisition in specified cases cannot be construed in a manner which renders object of ensuring fairness and justice getting frustrated. Judgement in Satyendra Prasad Jain's case cannot be given an interpretation, as is sought to be made out which nullifies constitutional promise of justice to a tenure holder.

65. A whole reading of Section 17 reveals that the Collector has to pay 80 % of the estimated compensation before taking over of the possession. In normal course of acquisition where Section 17(4) of the Act is not invoked dispensing with Section 5A of the Act notice is required to be given by the Collector notifying that the Government intends to take possession of the land. Under Section 11 of the Act, Collector has to make an award. Award has to be made as per provisions of Sections 23 and 23-A of the Act. Section 16 of the Act provides that when the Collector has made an award under Section 11 of the Act, he may take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrances. Section 17 of the Act confers special power of urgency and in cases of urgency notification under Section 17 (4) of the Act is

issued dispensing with the requirement of Section 5A and after an order of acquisition is obtained under Section 7 of the Act, after 15 days of issue of notice under Section 9(1) of the Act, may take possession and thereupon the land shall vests in the State Government free from all encumbrances. In Section 17 of the Act sub Section 3-A has been inserted by Amendment Act No. 68 of 1984 which provides that Collector shall before taking the possession under sub Section 1 tender payment of 80 % of compensation for such land as estimated by him.

66. The difference between the normal course of acquisition and taking over of possession and in case of urgency and taking over of possession is that in normal course of acquisition award is to be made as per provisions of Section 23 and 23-A of the Act while under Sub Section 3-A of Section 17 of the Act it is the only estimated compensation by the Collector not the compensation determined as per provisions contained under Section 23 & 23-A of the Act. There is no other amendment either under Section 16 or under Section 17 of the Act by Act No. 68 of 1984 while Section 11-A of the Act in its entirety is a new section inserted by the said Act No. 68 of 1984 with special object which has been narrated by us in the earlier part of our judgment. The intention of the legislation is very clear from the object of insertion of 11 A of the Act i.e. the tenure holders who are deprived of their right to property may not be allowed to suffer for a longer period without any compensation as in Section 11 of the Act the award has to be made before taking over possession and in Section 17 of the Act 80% of the estimated compensation has to be tendered to the tenure holders. Thus the object of making an award within time bound period is to meet the special requirement and without making the award within two years the vesting in the State Government cannot be held to be absolute after the insertion of Section 11A of the Act. Therefore, vesting of the land either under Section 16 or under Section 17(1) of the Act is subject to provisions of Section 11-A of the Act and accordingly we hold that Section 11-A of the Act having been inserted with socio economic security to the tenure holders (who are little Indians) aims to secure the social and economic justice to the citizen as contained in the preamble of the Constitution. Thus, we hold that Section 11-A of the Act has overriding effect over Section 16 & 17 of the Act.

67. From the aforesaid it is quite evident that the factum of taking of possession is irrelevant for the applicability of the provisions of section 11-A of the Act. Even the vesting of the land by taking possession by resorting to section 17 of the Act is not sacrosanct that it transcends beyond the Constitutional guarantee of fairness and reasonableness of State action. Further, the provisions of section 11A contemplate that any action or proceeding including taking of possession or vesting would lapse in case the statutory period prescribed under the aforesaid provision is violated by the authorities concerned. The language of Section 11A leaves no room for doubt that the vesting in the context of Section 17 of the Act is not absolute rather the same is subjected to the provisions of Section 11A. In the instant case the award has not been made within the statutory period of two years and as such in view of the provisions enshrined in section 11-A of the Act the entire proceedings for acquisition stand lapsed and the land in question is entitled to be revert back to the petitioner.

68. For the reasons aforesaid the issues no. 1 & 2 are answered that the action of the State acquiring the land of the petitioner without making the award even after lapse of a period of more than five years from the date of declaration under section 6 of the Act is arbitrary, unfair and cannot withstand the Constitutional protection guaranteed under Articles 14, 300-A and 31-A of the Constitution. Further, the applicability of section 11-A of the Act would not be dependent on the invocation of section 17 (1) of the Act and taking over of the possession under Section 17 (1) of the Land Acquisition Act and consequent vesting of the land in State is subjected to the provisions of Section 11-A of the said Act.

69. For adjudicating the issue no. 2 the averments made and the documents annexed with the counter affidavits of the respondents concerned would be relevant. The document i.e. Annexure No. C.A.-1 to the counter affidavit of the respondents no. 1 to 4 is neither the possession memo/ panchnama nor discloses as to when the possession of the land in question was taken by the State Government. There is no document on record to show that the possession of the land in question has ever been taken by the State. From the record it is established that the possession of the land has never been taken by the State and as such any consequential action of delivery of possession in favour of respondent

no. 5 is void ab-initio.

70. It would be relevant to point out here that taking of possession referred to in the Act means actual and physical possession. A three Judges' Bench of the Supreme Court considered the same issue in *Balwant Narain Bhagde v. M.D. Bhagwat and others*, AIR 1975 SC 1767 and held as under:

"19. In order to appreciate what is meant by taking possession of the land under section 16 or 17(1) of the Act and what is the mode of taking such possession in regard to the waste or arable land with which we are concerned in this case, it is necessary to refer to certain provisions of the Code of Civil Procedure-hereinafter called the Code, and some decisions thereon. Order XXI, Rules 35, 36, 95 and 96 of the Code prescribe two modes of delivery of possession based upon the nature of the property concerned. The Code does not prescribe that in respect of a particular property there can be two modes of giving possession either to a decree holder or to an auction purchaser one "symbolical" and the other "actual". These Rules prescribe that if the property is in the occupation of the judgment debtor or some one on his behalf the possession shall be given if necessary by removing the judgment debtor and placing the decree holder or the auction purchaser in occupation of the same. On the other hand if the property is of such a nature that the judgment debtor cannot be in actual occupation of it, as for instance, property in the possession of a tenant, the only mode of giving possession is by proclaiming on the spot that the possession has been given to the decree holder or the auction purchaser. In some decisions the former mode of possession has been called "actual" and the latter "symbolical". Really speaking even the delivery of so called "symbolical" possession of the right title and interest of the judgment debtor. It completely dispossesses him. It does not affect the physical occupation of the property by a person who is not bound by the decree or whose interest is not affected by sale of the judgment debtor's interest in execution of a decree. If the property is land over which does not stand any building or structure, then delivery of possession over the judgment debtor's property becomes complete and effective against him the moment the delivery is effected by going upon the land, or in case of resistance, by removing the person resisting unauthorisedly. A different mode of delivery is prescribed in the Code in the rules

aforesaid in regard to a building, with which we are not concerned in this case. Sometimes the expression symbolical or formal delivery of possession has been used in decisions to connote the actual delivery of possession effective against the judgement debtor leading to his dispossession in the eye of law even though the duration of the dispossession may be momentary or temporary".

71. The Apex court has further observed as under:

"On the taking of possession of the land under section 16 or 17 (1) it vests absolutely in the Government free from all encumbrances. It is, therefore, clear that taking of possession within the meaning of Section 16 or 17(1) means taking of possession on the spot. It is neither a possession on paper nor a "symbolical" possession as generally understood in Civil Law. But the question is what is the mode of taking possession? The act is silent on the point. Unless possession is taken by the written agreement of the party concerned the mode of taking possession obviously would be for the authority to go upon the land and to do some act which would indicate that the authority has taken possession of the land. It may be in the form of a declaration by beat of drum or otherwise or by hanging a written declaration on the spot that the authority has taken possession of the land. The presence of the owner or the occupant of the land to effectuate the taking of possession is not necessary. No further notice beyond that under Section 9(1) of the Act is required. When possession has been taken the owner or the occupant of the land is dispossessed. Once possession has been taken the land vests in the Government."

72. Reference may also be made to the judgment of Apex Court in the case of Nahar Singh v. State of U.P. & others reported in 1996 Vol. 1 SCC 434 and the Division Bench Judgment of this court reported in 2008(2) AWC 1832. In the aforesaid decision this Court has observed in paragraphs 4, 5, 15, 18 & 19 as follows:

"5. In State of Tamilnadu and another v. Maha Luxmi Ammal and others, 1996 Vol. 7, SCC 269 was decided by the Hon'ble Apex Court without taking note of its earlier judgement in Balwant Narain Bhagde, 1996 Vol. 1 SCC 700 held as under:

Possession of the acquired land would be taken only by way of a memorandum panchnama which is a legally accepted norm. It would not be possible to take any physical possession. Therefore, subsequent continuation, if any, had by the erstwhile owner is only illegal or unlawful possession which does vest under Section 16 divested in the illegal occupant.

15. The question does arise as to what is the meaning of taking possession whether it is taking of actual physical possession or symbolic/paper possession would be sufficient to meet the requirement of law. The issue was considered by a Division Bench of Patna High Court in *M/s Jetmull Bhojraj v. State of Bihar and others*, AIR 1967 Pat 287, wherein it has been held that taking of possession referred to in Sections 16, 17(1), 34 and 48(1) of the Act must be of the same nature. It means actual and physical. Possession for this purpose must be the possession as a full owner, in consequence of which the land vests absolutely in the Government free from all encumbrances. It cannot be of same nature as any previous possession which the Government might have taken either as a lessee or mortgagee or licensee or under some colour of title, or even as a trespasser. The court held as under; "though the Act is silent as to the mode of taking possession either under section 16 or 17 of the Act, nonetheless either actual occupation by the Collector or his agents for taking the symbolic possession" where actual possession is already with the Collector" or doing something equivalent to the effective possession is contemplated.

18. It is evident that in order to dispossess the person interested some positive action has to be taken by the Collector or his nominee on the spot after giving notice to the said persons interested. It is also evident from the judgment relied by Sri B.D. Madhyani learned Senior Counsel according to which Panchnama is a condition precedent for establishing that possession has been taken.

19. In the present application what has been filed by the applicant is the certificate executed between Amin and Mandi Samit. Such agreement cannot be termed as a Panchnama or an Act done on the spot. Therefore, such a document cannot be the relevant document for the purpose of establishing that possession has been taken from the person interested."

73. In order to dispossess the persons interested some positive action has to be taken by the Collector or his nominee on the spot after giving notice to the said persons interested. In the instant case a document "Adhikar Patra" has been brought on record by the respondents executed between the Land Acquisition Amin and Assistant Engineer of the respondent Development Authority. Such a document cannot be termed as "Panchnama" or an "act done on the spot". Further, such document miserably failed to establish as to when the possession of the land in question was taken by the State from the petitioner. Therefore, such a document cannot be the relevant document for the purpose of establishing that possession has been taken by the State from the petitioner.

74. This court is constrained to hold that in the instant case possession of the land in question has not been taken by the State. From the revenue records also it is quite evident that the name of the petitioner is duly recorded in Khasra and Khatauni and he is in possession of the land in question (Annexure No. 1 to the writ petition and R.A. 1 to the Rejoinder Affidavit filed to the counter affidavit of respondent no. 5). From the above it is quite established that the possession of land in question has never been taken by the State. For the reasons aforesaid the issue no. 3 is answered to the effect that possession of the land of the petitioner has never been taken by the State in pursuance of the notification under section 6 of the Act.

75. It has been asserted by the petitioner, supported by the reply given by the respondent no.4 under Right to Information Act (Annexure No.4 to the writ petition) that till date no award has been made by the Collector in pursuance of the notification u/s 6 of the Act. This fact has not been denied by the respondents. Admittedly, till date award has not been made by the Collector in respect of the lands covered under the notifications in question and already more than five years have lapsed since the declaration under Section 6 of the Act. The respondents concerned have leveled allegations against each other in the matter of delay in making the award.

76. In view of the foregoing discussion the entire proceedings for acquisition qua the land of the petitioner have lapsed as per the provisions contemplated under

section 11-A of the Act. The issue no. 4 is answered accordingly.

77. In the result the writ petition succeeds and is allowed. The notification dated 9.8.2004 (Annexure No. 2) and the declaration dated 3.8.2005 (Annexure No. 3) are hereby quashed in so far as the same relate to the land of the petitioner. There would be no order as to cost.

Petition Allowed.

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