



GAHC010016962017

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1743/2017

M/S. CHANDMARI TEA COMPANY PVT. LTD.
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT, 1956 HAVING ITS REGD. OFFICE AT 37 AT ROAD, P.O-
TALAP, P.S- DOOMDOOMA IN THE DISTRICT OF TINSUKIA, ASSAM AND IS
REPRESENTED BY ONE OF ITS DIRECTORS, SHRI DIN DAYAL VERMA

VERSUS

THE STATE OF ASSAM and 2 ORS.
REPRESENTED BY ITS SECRETARY, REVENUE, AND DMLR DEPT. DISPUR,
GUWAHATI- 06, ASSAM

2:THE DEPUTY COMMISSIONER
OFFICE OF THE DEPUTY COMMISSIONER
TINSUKIA
ASSAM

3:THE COMPETENT AUTHORITY
NAMELY THE ADDITIONAL DEPUTY COMMISSIONERLA
TINSUKIA
DISTRICT- TINSUKIA
ASSAM

4:AXOMIYA BYABASAYEE SAMAJ
A SOCIETY REGISTERED UNDER THE SOCIETIES REGISTRATION ACT
1860
HAVING ITS REGISTERED OFFICE AT NEW MARKET
CHIRAPATTI ROAD
P.O. and DIST. TINSUKIA
ASSAM

Advocate for the Petitioner : MR.MD ASLAM



Advocate for the Respondent : MR P S DEKA, SC R-1

Linked Case : WP(C)/245/2017

M/S. CHANDMARI TEA CO. PVT LTD
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT
1956 HAVING ITS REGISTERED OFFICE AT 37 A.T. ROAD
P.O. TALAP
P.S. DOOM DOOMA IN THE DIST. OF TINSUKIA
ASSAM AND IS REP. BY ONE OF ITS DIRECTORS
SHRI DINDAYAL VERMA.

VERSUS

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REVENUE AND DM LR DEPARTMENT
DISPUR
GUWAHATI-781006
ASSAM.

2:THE DEPUTY COMMISSIONER

OFFICE OF THE DEPUTY COMMISSIONER
TINSUKIA
ASSAM.

3:THE COMPETENT AUTHORITY NAMELY THE
ADDITIONAL DEPUTY COMMISSIONER LA TINSUKIA DISTRICT
TINSUKIA
ASSAM.

Advocate for : MR.P DEKA

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM and 2 ORS.

BEFORE
HONOURABLE MR. JUSTICE PRASANTA KUMAR DEKA

JUDGMENT

Date : 03-02-2021

Date of hearing : 9.11.2020

JUDGMENT & ORDER(CAV)

Heard Mr. G. N. Sahewalla, learned Senior Counsel assisted by Mr. A. Chetia, learned counsel for the petitioner. Also heard Mr. P. S. Deka, learned Standing counsel for respondent No. 1, Revenue and Disaster Management Department and Ms. M. Bhattacharjee, learned Addl. Senior Govt. Advocate for the respondent Nos. 2 and 3.

WP(C) No. 1743/2017

2. The respondent No. 1 for the purpose of construction of National Highway 37 by-pass at village Chandmari, Nepaligaon in the district of Tinsukia initiated the process of acquisition of land under LA Case No.15/2008-09. Accordingly notification u/s 4 for the Land Acquisition Act 1894 (hereinafter referred as L. A. Act, 1894) was published on 26.2.2009 and subsequent thereto declaration u/s 6 of L. A Act 1894 was published on 16.7.2009. Under the said notification about 48 bighas 4 kathas 12 lechas of land was acquired covered by various dags and patta numbers of village Chandmari, Nepaligaon under Rangagora Mauza in the district of Tinsukia and the land was handed over to the requiring department on 20.3.2010 after taking possession by the authorities. Later on, the aforesaid notification dated 26.2.2009 and the declaration u/s 6 of the Land Acquisition Act, 1894 were withdrawn vide notification dated 19.2.2011. Thereafter a fresh notification u/s 4 of the L. A. Act, 1894 was published on 29.8.2011 and the declaration u/s 6 was issued on 16.9.2011 which was published in the Assam Gazette on 27.9.2011. Under the said notification u/s 4 of the L.A. Act. 1894 substantial portion of land belonging to the petitioner company was acquired by the respondent authorities. The respondent No. 2 forwarded the land acquisition estimate

amounting Rs. 77,65,730/- to the respondent No. 1 and vide letter No. RLA 317/2008/602 dated 15.11.2013 approved the award amounting Rs. 70,41,891/- only in respect of L. A. Case No. 15/2008-09 for the said project of construction of N.H. 37, Tinsukia by-pass at village Chandmari, Nepaligaon in Tinsukia District. Vide said letter dated 15.11.2013, the earlier letters No. RLA No 317/2008/373 dated 27.12.2011 and RLA 317/2008/583 dated 3.10.2013 communicated to the respondent No. 2 were treated to be cancelled.

3. The petitioner pleading that as per Section 11A of the L. A. Act 1894 the respondent No. 2, Collector is supposed to notify the award within a period of two years from the date of declaration and as there was failure to notify the award within the stipulated period of two years, u/s 11 A of L. A. Act 1894, the proceeding of land acquisition lapsed and sought for a direction in the nature of mandamus to the respondents for initiating fresh proceedings under the provision of Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act, 2013(hereinafter referred as the Act, 2013) and determine the compensation payable in terms of the said Act, 2013.

WP(C) No. 245/2017.

4. The respondent authorities initiated the process of acquisition of land in the year 2008-09 being L. A. Case No. 12/2008-09 and the respondent No.1 vide memo No. RLA 314/2008/21 dated 19.1.2009 directed the respondent No. 2, the Deputy Commissioner, Tinsukia for publication of the notification u/s 4 of the L. A. Act, 1894 for acquisition of land for construction of National Highway 37 by-pass of village Gelapukhuri Part II under Mouza Rongagora in the district of Tinsukia. In terms of the said direction declaration u/s 6 of the L. A. Act 1894 was published in the news papers on 22.9.2009. The respondent No. 1 vide



letter No. RLA 314/2008/127 dated 31.8.2016 approved the revised land acquisition estimate and award in respect of L. A. Case No. 12/2008-09 amounting Rs. 1,15,26,155/-. Vide the said letter dated 31.8.2016 the land acquisition estimate and award issued vide letter No. RLA 314/2008/83 dated 27.12.2011 was treated as cancelled. It is pleaded that after the award was notified by the revised award under letter dated 31.8.2016, the petitioner was shown to be entitled to Rs. 85,76,899/- only though no final award was passed. The Act 2013 came into force on 1.1.2014 and as the respondents failed to make the award within two years from the date of declaration as required u/s 11 A of the L. A. Act 1894, the proceeding lapsed and fresh award under the Act 2013 is required to be assessed and to that effect the petitioner sought for a writ of mandamus to the respondents.

It is further stated in the petition that an amount of Rs 1,55,40,688.03 was payable by the petitioner as per the direction of the court of learned Civil Judge, Tinsukia in three money execution cases being Case No. 9/2006, 10/2006 and 11/2006 and as per direction passed in CRP 398/2020 by the Hon'ble Gauhati High Court in respect of 8 Nos. of Bakijai cases and said amount was accordingly attached by the respondent authorities in terms of the respective directions from the court. As no award was passed within two years from the date of notification u/s 11 of the L. A. Act, 1894 and due to lapse of the proceeding, the petitioner in both the L. A. Case Nos. 15/2008-09 and 12/2008-09 by its representations sought for fresh assessment of the compensation against its land acquired by the respondent authorities under the Act, 2013. But no actions were initiated and as such the petitioner filed these writ petitions.

5. The respondent No. 2 in WP(C) 1743/2017 filed affidavit-in-opposition and admitted



the issuance of fresh notification u/s 4(1) of L. A. Act, 1894 on 29.8.2011 and the consequent declaration u/s 6 (1) of L. A. Act, 1894 on 16.9.2011. The said declaration was published in the Assam Gazette dated 27.9.2011. Further it is admitted that vide letter dated 15.11.2013 the award amounting Rs. 53,16,480 was approved by the Government in L. A. Case No. 15/2008-09. It is further stated that after the said approval of the award dated 15.11.2013 the compensation to the affected families were disbursed and the same were accepted without any protest. The said compensation amount were paid in between 1st July, 2014 and 22nd July, 2014 and as regards the compensation payable to the petitioner, the same was not disbursed due to orders passed by the learned Civil Judge, Tinsukia in Money Ex. Case Nos. 9/2006, 10/2006 and 11/2006 and the directions of this court in CRP No. 398/2010. Later as per direction of the Hon'ble Gauhati High Court payments were released. The details of payment disbursed from the compensation assessed in favour of petitioner both in L.A Case No. 15/2008-09 and 12/2008-09 are stated in the affidavit as follows:

“8. That the deponent respectfully states that besides Rs.53,16,480.00 payable to the petitioner as compensation in respect of L.A. Case No. 15/2008-09 the said Tea Estate was also to get a sum of Rs. 85,76,899.00 in L.A Case No. 12/2008-09 as land acquisition compensation. However, the compensation amount as payable to the T.E. could not be disbursed for following reasons:

1. The Secretary cum Commissioner, Board of Trustee, Assam T. E. Employees Provident Fund Organisation had filed a writ petition being numbered as WP(C) No. 4572 of 2014 before the Hon'ble Court for recovery of a sum of Rs. 92,45,420.51 from the Chandmari T.E. out of the amount of compensation payable to the Tea Estate in the L. A. Case as the said Tea Estate defaulted in depositing the P. F. Contribution of the employees of the Tea Estate. Subsequently, the said amount was arrived at Rs. 93, 95,420.76 raising from Rs. 92, 45,420.51.

2. Three nos. Of Money Execution cases namely 9/2006, 10/2006 and 11/2006 were also filed by Sri Rakesh Kr. Agarwal, Sri Anil Kumar Gupta and Sri Bijoy Kumar Agarwal in the learned court of Civil Judge, Tinsukia against the Chandmari Tea Company Pvt. Ltd. for an amount of Rs. 55,45,195.50. The learned court of Civil Judge, Tinsukia accordingly attached an aggregate sum of Rs. 55, 45,195.50 in three Money Execution Cases and accordingly the said sum of Rs.55, 45,195.50 was also attached out of the compensation payable to Chandmari T.E.

The deponent respectfully states that subsequently, this Hon'ble Court in W.P(C) No.4783/2015 by an order dated 11.5.2016 directed Deputy Commissioner, Tinsukia to release

the P.F. Amount payable by the T.E. from the compensation amount in respect of land acquired from them. Accordingly altogether an amount of Rs. 93,95,420.76 was paid to Asstt.P.F.Commissioner, Tinsukia Zone from the compensation amount payable to the Tea Estate payable in L.A.Case No. 12/2008-09.

The deponent crave leave of the Hon'ble Court to produce the challans towards payments made in the PF Account at the time of hearing of the case or as and when directed by the Hon'ble Court.

9. The similarly, the learned Court of Civil Judge, Tinsukia vide order dated 5.1.2017 directed Deputy Commissioner, Tinsukia to remit Rs.18, 34,925.86 in Money Execution Case No. 9/2006 and Rs. 16,92,123.55 in Money Execution Case No. 10/2006 from the compensation amount payable to Chandmari T.E. Accordingly, the aforesaid amounts were released in favour of the decree holder against the two Money Execution cases."

6. Further it is denied in the affidavit that the acquisition proceeding lapsed u/s 11 A of L. A. Act, 1894 and that the respondent authorities were liable to initiate a fresh acquisition proceeding as per the provision of Section 24(2) of the Act, 2013 on the ground that the entire compensation has not been paid to the petitioner and the possession of the petitioner's entire land was not taken in L.A Case No. 15/2008-09.

7. The respondent No. 2 also submitted an affidavit-in-opposition in WP(C) 245/2017. In the said affidavit it is stated that the procedure relating to L.A. Case No. 12/2008-09 were followed as per the provisions of the L. A. Act, 1894. The initial award was also passed before the commencement of the new Act, 2013. However it is stated that while the acquisition process was going on, families residing over the acquired land raised objection on the ground that the surface compensation assessed against their houses etc were inadequate and demanded to reassess by the PWD (Building) whereafter reassessment was made. The revised award as per assessment of the PWD (Building) was approved by the Government on 31.8.2016. Accordingly it is the stand that all the process relating to the acquisition in L.A. Case No. 12/2008-09 were completed by making the initial award approved on 27.12.2011 and the possession of the land was also taken before commencement of the

new Act 2013 and accordingly the acquisition process does not attract the provision of Section 24 of the new Act, 2013.

8. Mr. Sahewalla, learned Senior counsel for the petitioner submitted that the process of acquisition of land in LA Case No 15/2008-09 was initiated in the year 2008. Notice u/s 4(1) of the LA Act 1894 was issued on 26.2.2009 and declaration u/s 6(1) was issued on 27.2.2009. Referring to the affidavit-in-opposition of the respondent No. 2 in WP(C) No. 1743/2017, it is submitted that the earlier notification dated 26.2.2009 and declaration dated 27.2.2009 were not acted upon and fresh notification u/s 4 of the L. A. Act, 1894 was issued on 29.8.2011. Declaration u/s 6 of L. A. Act, 1894 was published on 16.9.2011 and the award was approved and passed on 15.11.2013. But as the award was passed on 15.11.2013 which was beyond two years time limit from the date of declaration u/s 6 of the L. A. Act, 1894 the same is in clear violation of Section 11-A of L. A. Act, 1894. Accordingly it is his contention that once the proceeding lapsed and the possession of land which was taken over on 20.3.2010 and handed over to the required department also became invalid. In support of his contention that the proceeding lapsed, Mr. Sahewalla relied the decisions of the Apex Court rendered in *Bailamma (Smt) Alias Doddabailamma(Dead) and others Vs. Poornaprajna House Building Cooperative Society and others reported in (2006) 2 SCC 416* and in *(R. Kolandaivelu (Dead) by LRS. and others Vs Government of Tamil Nadu and another) reported in (2010)2 SCC 97*. It is also stated that there cannot be two acquisition process in respect of the same land and when a fresh notification was issued the earlier notification would stand lapsed and in support of the said submission, Mr. Sahewalla relied the judgment dated 14.3.2019 rendered in W.A No. 219/2017 (*Assam Industrial Development Corporation Ltd. Vs Gillapukhuri Tea Company and others*) by the Hon'ble Division Bench of



this court relying *Soorajmull Nagarmull Vs. State of Bihar and others reported in AIR 2015 SC 3400*. Further relying the decision of a larger Bench of five Judges of the Apex Court in *Indore Development Authority Vs. Manoharlal and others reported in (2020) 8 SCC.129*, it was submitted that under the provision of Section 24(1)(a) of Act 2013, in case award was not made as on 1.1.2014 i.e the date of commencement of the Act, 2013 there is no lapse of proceeding initiated under the L.A Act, 1894 but the compensation has to be determined as per the provision of the Act, 2013. As against the stand taken by the learned counsel for the respondents that due to some interim orders passed by various courts there were restrictions in disbursal of the award to the petitioner it was submitted that there was no interim order staying the proceeding of acquisition. Relying *Indore Development Authority (supra)* it was submitted that if any interim order is operative preventing the State from taking possession of the acquired land or from giving effect to the award in a particular case or cases the said period cannot result in the inclusion of such period or periods for the purpose of recording of the period of five years as stipulated u/s 24(2) of the Act, 2013. Moreover it is specifically stated by the respondent No.2 that the land was taken possession from the Managing Director of the petitioner Company on 20.3.2010 and award was passed on 27.12.2011 which was not given effect to and finally award was made on 31.8.2016 by which, award dated 27.12.2011 was cancelled. Accordingly Section 24(1)(a) of the Act, 2013 is applicable.

9. Mr Deka learned counsel for the respondent No. 1 referring to L.A Case No. 12/2008-09 submitted that declaration u/s 6 of the L. A. Act 1894 was made on 22.9.2009. The land was handed over to the requiring department on 20.3.2010 . The land acquisition estimate was completed on 19.7.2011 and the award was approved by the Government on 27.12.2011. Subsequently the revised award was approved by the Government on 31.8.2016.

Mr. Deka relying Indore Development Authority(supra) submits that there was an estimate passed on 19.7.2011 and subsequently approved on 27.12.2011 prior to 1.1.2014 i.e. the date on which the Act, 2013 came into force. The said award vide letter No. 314/2008/83 dated 31.8.2016 was treated to be cancelled. The required process relating to the land acquisition proceeding were completed except disbursement of the award to the petitioner because of the prohibitory order dated 1.10.2010 passed in CRP 398/2010 by the Hon'ble Gauhati High Court. However because of the objections of the persons possessing the land acquired and that too in respect of the surface compensation, reassessment was made by the PWD (Building) and after the reassessment the Government approved the revised award on 31.8.2016. Accordingly the award dated 27.12.2011 was made in LA Case No. 12/2008-09 within the window period of five years prior to 1.1.2014 and the L. A. Act, 1894 is applicable for continuation of necessary action in L A Case No. 12/2008-09 after 1.1.2014.

10. Mr. Sahewalla countering the submission of Mr. Deka submitted that the declaration u/s 6 of the L. A. Act, 1894 was issued on 22.9.2009 and the award ought to have been passed within 22.9.2011. But admittedly the same was approved and passed by the Government on 27.12.2011. The same was not given effect until the revised award was passed on 31.8.2016. Even if the initial award passed on 27.12.2011 was taken into consideration then also it was beyond two years and accordingly the proceeding lapsed as per Section 11A of the LA Act, 1894. Referring Section 24 of the Act, 2013 it was the contention that when the entire proceeding had lapsed as per Section 11-A of the L.A Act, 1894 the provision of Section 24(1) (a) of the Act 2013 would come into play and in support of said contention, Mr. Sahewalla

learned Senior counsel also relied Indore Development Authority (supra) and submitted that Section 24 1(a) of the Act, 2013 is applicable in case the award was not made as on 1.1.2014. Relying Gillapukhuri Tea Company(supra) it is submitted that once the conclusion is drawn that due to non drawal of the award within the period of two years from the date of publication of Section 6 (1) declaration , it cannot be accepted that it lapsed only in part as against some of land losers and not against the petitioner. Further it was held that an award even if passed in respect of lapsed proceeding the same cannot be held to be valid. Accordingly it is the contention that the petitioner is entitled to the benefit u/s 24 1 (a) of 2013 Act.

WP(C) 1743/2017

11. Mr. Sahewalla learned Senior counsel submitted that in respect of L.A Case 15/2008-09, notice u/s 4 (1) of the L. A. Act, 1894 was issued on 26.2.2009 and the declaration u/s 6(1) of L.A. Act, 1894 was published on 27.2.2009. The award was approved on 15.11.2013 beyond the period prescribed u/s 11-A of the L. A. Act, 1894. Referring to the affidavit of the respondent No.2 he further submitted that the earlier notification was not acted upon and fresh notification u/s 4 of L. A. Act, 1894 was issued on 29.8.2011 and the consequent declaration u/s 6 was issued on 16.9.2011. The award was passed on 15.11.2013. It is the contention of the learned Senior counsel that the award was passed beyond two years from the date of declaration u/s 6 of the L. A. Act, 1894 i.e. 16.9.2011 and the said proceeding lapsed. On the other hand, possession of the land was taken on 20.3.2010 and later on handed over to the required department. Accordingly as the notification dated 29.8.2011 lapsed and the possession already taken by the respondent State and though in the year

2017 some amount was released as per court's order, he submitted that the respondent authorities required to be directed to issue fresh acquisition proceeding in respect of the land already acquired and assess the compensation in terms of the Act, 2013.

12. Mr. Deka the learned counsel for the respondent No. 1 admitted the fact of withdrawal of the notification on 26.2.2009 and the declaration dated 27.2.2009 by the Government. It is also admitted that on 29.8.2011 fresh notification u/s 4 of the L. A. Act, 1894 was published and the consequent declaration u/s 6 was also published on 27.9.2011 in the Assam Gazette and the award was approved on 15.11.2013. The award was to the tune of Rs.53, 16,480/- as approved by the Government and thereafter the award in L.A Case No. 15/2008-09 was passed. Admittedly the possession was taken on 20.3.2010. It is further submitted that compensation payable to the affected families were disbursed without any protest from the land owners. Admitted the fact regarding disbursal of the compensation amount to the petitioner as per direction of the learned Civil Judge, Tinsukia and the Hon'ble Gauhati High Court. It is further submitted that the petitioner Company did not raise any objection in regard to the compensation payable till the filing of the instant writ petition As all the proceedings relating to the acquisition of L. A. Case No. 15/2008-09 were completed including making of the award and possession of the land was also taken before the commencement of the Act, 2013, as such the claim of the petitioner for determination of compensation under the Act, 2013 is not tenable. The award was made within the window period of five years and as such, continuation of necessary action of L.A Case No. 15/2008-09 is well within the scope of L. A. Act, 1894, as per the decision in Indore Development Authority (supra).



13. In response to the submission of Mr. Deka, Mr. Sahewalla learned Senior counsel countered the submission on the ground that the proceeding u/s L.A. Case No. 15/2008-09 lapsed inasmuch as there was specific violation of Section 11 A of the L. A. Act, 1894 and the award ought to have been passed within 27.9.2013 by the Government. Relying Section 24(1) (a) of the Act, 2013 and the view taken in Indore Development Authority (supra) it is submitted that the petitioner is entitled for the benefit under the Act 2013.

14. I have given due consideration to the submissions made by the learned counsel and accordingly I am taking up the W.P(C) No. 245/2017 at first. This writ petition is in respect of L.A. Case No. 12/2008-09. In this L.A. Case No. 12/2008-09 Section 4 notification under L. A. Act 1894 was issued on 19.1.2009 and the declaration u/s 6 was made on 22.9.2009. The land acquisition estimate was submitted on 19.7.2011 and the award was approved on 27.12.2011. It was contended by the learned Senior counsel for the petitioner that the said award dated 27.12.2011 was not given effect to and finally as against the revised L. A. estimate amounting Rs. 1,26,98,601/- an amount of Rs. 1,15,26,155/- only was approved in the said L.A. Case No. 12/2008-09 vide letter No. RLA 314/2008/127 dated 31.8.2016. In the said letter it was specifically mentioned that earlier approved L. A. estimate and the award approved vide letter No. RLA 314/2008/83 dated 27.12.2011 was cancelled. The respondent No. 2 in his affidavit-in-opposition stated that the land was taken from the petitioner Company and handed over to the requiring department on 20.3.2010 and further stated that the land estimate was passed by the Collector on 19.7.2011 and the same was approved by the Government on 27.12.2011. But the share of the said award dated 27.12.2011 could not be disbursed to the petitioner due to attachment of the award due to it in 3 Nos. of money execution cases in the court of learned Civil Judge, Tinsukia and due to a restraining order



dated 1.10.2010 passed in CRP 398/2010 by the Hon'ble Gauhati High Court. During the pendency of said acquisition proceeding some of the families residing over the acquired land raised objection in respect of surface compensation and accordingly re-assessment was done by the PWD (Building) and the revised award was approved by the Government on 31.8.2016.

15. From the aforesaid factual matrix there is no dispute that initial award was approved by the Government on 27.12.2011. Subsequently the revised award was approved on 31.8.2016. It is settled position under the law that publication of the declaration u/s 6 of the L. A. Act, 1894 is the proof of conclusiveness of the acquisition of land for the public purpose. The possession of the acquired land was taken on 20.3.2010 after the declaration on 22.9.2009. In an acquisition proceeding there is no bar in approving a revised award subject to the initial award being made u/s 11 of the L. A. Act, 1894 within a period of two years from the date of publication of the declaration. Under Section 11 A of the L. A. Act, 1894, it is stipulated that if no award is made within the stipulated period of two years from the date of publication of declaration under Section 6 of L.A. Act, 1894, the entire proceeding for the acquisition of the land shall lapse.

16. In the present case it is an admitted fact that initial award was approved by the Government on 27.12.2011. Under Section 11 of the L. A. Act, 1894 the award to be made by the Collector must be approved by the Government. Admittedly declaration u/s 6 of the L.A Act, 1894 was made on 22.9.2009 and the award was approved on 27.12.2011. Accordingly it can be held that the initial award was not made within two years from the date of publication of the declaration as required u/s 11 A of the L.A Act, 1894. The entire proceeding for the

acquisition accordingly lapsed. On perusal of annexure-3 of the writ petition which is the approval letter of the revised award to the tune of Rs.1,50, 26,155/- it is specifically stated that the earlier approval of the award on 27.12.2011 was cancelled. In view of the aforesaid discussion and there being no endeavour by the Government for drawing up a fresh acquisition proceeding after the lapse, even if the respondents claim that there existed an award as on 1.1.2014 i.e. the date on which the Act, 2013 came into force, but by operation of law the acquisition proceeding lapsed. Possession of the land acquired was admittedly taken on 20.03.2010 but as the award was not passed within two years from the date of declaration under Section 6 of L. A. Act 1894, the proceeding lapsed. Section 11 of the L A Act, 1894 in the proviso specifically stipulates that no award shall be made by the Collector without the previous approval of the appropriate Government. The respondent No.2 failed to place on record any direction to the Collector by the Government to make such award without such approval as per the other proviso of Sub- Section 1 of Section 11 of the L. A. Act 1894. Whether in such a situation the Government could hold the acquired land absolutely. For that it would be proper to take note of the ratio laid down in *Satendra Prasad Jain and Ors Vs. State of U.P and Ors* reported in AIR 1993 SC 2517 .

17. In *Satendra Prasad Jain and Ors.-Vs- State of UP and Ors* reported (supra) the Apex Court held as follows:

“14. 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 land owner and ensure that the award is made within a period of two years from the date of [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

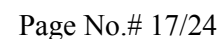
of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisition under Section 17 because the 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.

“15. Further, Section 17(3-A) postulates that the owner will be offered an amount equivalent to 80 per cent of the estimated compensation for the land before the Government takes possession of it under Section 17(1). Section 11-A cannot be so construed as to leave the Government holding title to the land without the obligation to determine compensation, make an award and pay to the owner the difference between the amount of the award and the amount of 80 per cent of the estimated compensation.”

Thus from the above decision it can be concluded that when Government failed to make the award within two years of the declaration under Section 6 of the L.A Act, 1894, the land remained vested with the owners. The acquisition proceedings still remain pending and by virtue of Section 11 A of the L.A. Act, 1894 it lapse. If the Government applying Section 17(1) of the L. A. Act, 1894 took possession of the land due to urgency before making an award divesting the title of the landowners then also Section 11 A cannot be construed allowing the Government to withhold the possession and title without the obligation to determine compensation and make an award.

18. Accordingly the land acquired and possession taken by the authorities in the present case does not vest with the Government and the title remained with the petitioner. The initial award was itself not approved within two years as required under Section 11 A of L. A. Act, 1894, as such the acquisition was not complete as on 1.1.2014. Rather the proceeding was still pending on 1.1.2014. The proceeding of L. A Case No 12/2008-09 once held to be lapsed the same must be held to have been against all the land losers including the petitioner company though the revised award was due to objections raised by some land possessors in respect of the surface compensation.

19. Mr. Deka relied the Apex Court decision in Indore Development Authority (supra) and submitted that the award passed in L.A.12/2008-09 was within five years of window period and therefore there is no question of lapse of proceeding under Section 24(2) of Act 2013 as



claimed by the petitioner. Further the possession of the land was handed over to the requiring department and as such fresh determination of compensation under the Act, 2013 cannot be allowed. In order to examine the said submission, it would be proper to look into Section 24 of the Act, 2013 which is reproduced hereinbelow:

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases-(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894(1 of 1894)-.

(a)Where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) Where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub- section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 OF 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

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

20. In *Indore Development Corporation* (supra) the intent and purpose of the Act, 2013 has been discussed by the Apex Court and held that the Act has provided safeguard in the form of higher compensation and provisions for rehabilitation and the court has to interpret its provisions, to give full and meaningful effect to the legislative intent keeping in mind the language and tenor of the provisions. At the same time the Act, 2013 envisages lapse of acquisitions notified due to indolence and inaction on the part of the authorities and intends

acquisition at a fast track and for that purpose full effect has to be given to the provisions contained in Section 24. The relevant portion of the clarification of Section 24 of the Act 2013 by the Apex Court are reproduced hereinbelow:

“284. Before we go to various rival submissions, the pivotal question for consideration is the interpretation of Section 24 and aims and objectives of the Act of 2013. Section 24 contemplates that in case the proceedings initiated under the Act of 1894, are pending as on the date on which Act of 2013 has been enacted and if no award has been passed in the proceedings, then there is no lapse and only determination of compensation has to be made under the Act of 2013. Where an award has been passed, it is provided under Section 24(1)(b), the pending proceedings shall continue under the provisions of the Act of 1894 as if the old Act has not been repealed. The provisions totally exclude the applicability of any provision of Act of 2013. There are two requirements under Section 24(2), which are to be met by the Authorities, where award has been made 5 years or more prior to the commencement of the Act of 2013, if the physical possession of the land has not been taken nor compensation has been paid. If possession has been taken, compensation has to be paid by the acquiring authorities. The time of five years is provided for authorities to take action, not to sleep over the matter. In case of lethargy or machinery and default on the part of the Authorities and for no other reason the lapse is provided. Lapse is provided only in case of default by Authorities acquiring the land, not caused by any other reason or order of the court.”

21. Finally, it was concluded as follows:

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 a interim order of the court, then proceeding 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 landholding 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 proceeding pending on the date of enforcement of the 2013 Act i.e. 1.1.2014. It does not revive stale and time barred claim and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition."

22. From the aforesaid conclusion made in Indore Development Corporation(Supra) Section 24(2) of Act 2013 provides for deemed lapse of a proceeding under LA Act 1894 only due to inaction of the authorities for five years or more prior to 1.1.2014 i.e. commencement of the Act 2013 and failed to take possession nor paid the compensation. If no award is made in a proceeding under LA Act, 1894 as on 1.1.2014 the proceeding shall not lapse but the compensation has to be determined under Section 24(1)(a). In case an award is passed within the window period of five years excluding the period covered by an interim order of the court then the proceeding shall continue as per Section 24(1)(b) of Act 2013 under the L. A. Act, 1894.

23. In the present case in hand the award dated 27.12.2011 is hit by the provision of Section 11-A of the L.A Act, 1894, as it was beyond the period of two years from the date of declaration under Section 6 of the L. A Act, 1894 and cannot be termed to be an award as contemplated u/s 24(1)(b) of the Act, 2013 on the basis of which the title of ownership of the



land was divested from the landowners under the L A Act, 1894. Section 16 of the L A Act, 1894 authorises the authority to possess the acquired land absolutely once the award was made as per Section 11 of the L A. Act and notified under Section 12 of the L A Act, 1894 by the Collector. The revised award dated 31.8.2016, in my considered opinion cannot be held to be so on the basis of the award purportedly approved by the Government on 27.12.2011. Further vide approval letter dated 31.8.2016 the initial award dated 27.12.2011 was treated as cancelled. Under such circumstances the revised award dated 31.8.2016 cannot be held to be an award u/s 11 of the L.A Act, 1894 inasmuch as if the said award dated 31.8.2016 is considered from the date of publication of declaration u/s 6 i.e. 22.9.2009, the same is far beyond the period of two years as stipulated u/s 11 A of the L.A Act, 1894 on which date the proceeding had already lapsed. The landowners were not divested from their title of the acquired land and the Government had not been vested with the absolute authority to possess the same free from encumbrances under the old Act. Accordingly it can be held that as on 1.1.2014 no award in the land acquisition proceeding under L. A. Case No. 12/2008-09 was passed u/s 11 of the LA Act, 1894. Though the proceeding was initiated by way of notification u/s 4 of the L.A Act, 1894, and possession was taken on 20.3.2010 but as there was no award the title of the land remained vested with the owner at least just prior to 1.1.2014 and the acquisition proceeding was still pending which subsequently lapsed as per the ratio laid down in *Satindra Prasad Jain* (supra). The case is covered by Section 24(1)(a) of the Act, 2013 as the acquisition proceeding was pending as on 1.1.2014 and the compensation is to be assessed under the Act 2013.

24. It is submitted by Mr. Deka that the required process for the acquisition proceeding was completed prior to 1.1.2014 and possession in respect of the land acquired was taken

and delivered to the requiring department. Lapse of the earlier proceeding would jeopardize the possession of the land already handed over to the requiring department. The said submission cannot be accepted. If we take note of the finding of the Apex Court in Indore Development Authority (supra) it is specifically held that the intent of Act, 2013 is not to disturb the possession handed over to the acquiring bodies under the L A Act, 1894 inasmuch as after deposit of the compensation for the acquisition purpose those bodies were handed over the possession of the land. Accordingly it held that the drawal of *Panchnama* of taking possession is the prescribed mode of taking possession in land acquisition cases whereafter the land vests in the State and any re-entry or retaining the possession thereafter is unlawful and not a case for conferring benefits u/s 24(2) of the Act, 2013. Here it is an admitted fact that the possession was already handed over to the requiring department accordingly the benefit under Section 24(2) of Act 2013 by holding the proceeding as lapsed under Section 24(2) of Act 2013 cannot be given to the petitioner. However as hereinabove held the proceeding initiated under L. A. Act, 1894 lapsed under Section 11 A of the L A. Act, 1894. If we consider the manner of possession for divesting the landowners of the acquired land and the intent of the Act, 2013 it cannot be urged for re-delivery of the possession of the land back to the petitioner company. Further even if a proceeding under L A Act 1894 lapsed prior to 1.1.2014 and continued after 1.1.2014 by dint of Section 24(2), the landowners cannot claim for repossession of the land and as such the authorities are bound to compensate the land owners but within the scope of Section 24(I)(a) of the Act 2013.

25. It is the further contention of Mr. Deka that though the award was passed on 27.12.2011, but the same could not be disbursed to the petitioner due to restraining interim orders passed by various courts . The said contention cannot be accepted inasmuch as the

court proceeding contemplated in the explanation of Section 11A of the L.A.Act, 1894 a stay order which must be in respect of the acquisition process and not beyond that. In Bailamma (Smt.) alias Doddabailamma(dead) and ors (supra) it was held that:

“16 This Court emphasised 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 reason 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. However , the legislature was also aware of the reality of the situation and was not oblivious of the fact that in many cases acquisition proceedings were stalled by stay orders obtained from courts of law by interested parties. It , therefore, became imperative that in computing the period of two years, the period during which an order of stay operated, which prevented the authorities from taking any action or proceeding in pursuance of the declaration, must be excluded. If such a provision was not made , an acquisition proceeding could be easily defeated by obtaining an order of stay and prolonging the litigation thereafter.....”

26. The stay order referred by Mr Deka was in respect to the disbursement of the award but not in respect of completion of the acquisition process after the declaration under Section 6 of L. A. Act which under Section 11 A of L. A. Act, 1894 in its Explanation had taken care of. Further the present case does not fall under Section 24(2) of the Act 2013 and as such the stay order referred by Mr. Deka has no effect in deciding the case of the petitioner.

27. The petitioner raised its objection for non passing an appropriate order under the Act 2013 as stated in the writ petition. Though Mr. Deka wanted to project that the petitioner accepted the award already passed without objection but I am unable to accept the same inasmuch as disbursal was stayed by the Court’s order and the same was allowed to be released by the Courts order however as against admitted liabilities of the petitioner. Subsequent thereto the petitioner by its representation requested the competent authority to assess the compensation as per Act 2013.

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28. The admitted positions are as follows:

L.A. Case 15/2008-09 was initiated by the respondent authority and notice u/s 4 of L. A. Act, 1894 was published on 26.2.2009 and the declaration dated 27.2.2009 were withdrawn. Fresh notification u/s 4 of L. A. Act 1894 was published on 29.8.2011 and the declaration was issued on 16.9.2011 which was published in the Assam Gazette on 27.9.2011. On 15.11.2013 the award was approved by the Government. So the proceeding lapsed in view of Section 11 A of L A Act, 1894.

29. For the reasons discussed above the award approved on 15.11.2013 does not fall within the award contemplated u/s 11 of L.A.Act, 1894 as the same was not approved within the mandatory period of two years from the date of publication of the declaration u/s 6 of the L.A.Act,1894. Even if the award was passed beyond the stipulated period of two years but as it is the mandate u/s 11 and keeping in view the mandatory nature of the time period u/s 11A of L.A.Act,1894 the proceeding lapsed by operation of law. I am of the considered view that on 1.1.2014 there was no award passed under the L.A.Act,1894 in L.A.Case No. 15/2008-09. Admittedly the possession of the land had already been taken by the authority on 20.3.2010. Further the compensation had already been paid in the year 2017 on the basis of an award passed beyond the stipulated period of two years u/s 11A of L. A. Act, 1894. But there was objection raised by the petitioner for fresh award to be passed as per law. Under similar factual matrix hereinabove, it was held that the award which the respondent authority claimed to have passed within five year window period is not a valid award and the proceeding under L.A. Case No. 2008-09 lapsed prior to 1.1.2014 and as held by the Apex



Court in Indore Development Authority(supra), the Act 2013 envisaged lapse of acquisition notified due to inaction on the part of the authority and Section 24 of the Act 2013 intended to give full effect of such acquisition notified and lapsed. The present case falls u/s 24 of the Act, 2013 and no award can be passed u/s 11 of the L.A.Act,1894 after 1.1.2014 and as such though there was an award approved by the Government on 15.11.2013 after the proceeding lapsed, the said award can only depict a tentative assessment and subject to further determination under the Act, 2013. The amount of compensation already paid to the petitioner is required to be deducted from the awards to be assessed and passed under the new Act 2013 which are required to be paid to the petitioner.

30. Both the writ petitions accordingly stand disposed of with a direction to the respondent authorities to initiate assessment for determination of compensation under Section 24(1) (a) of the Act 2013 inasmuch as the proceeding initiated under the L. A. Act, 1894 had not come to its logical conclusion for vesting of the acquired land absolutely with the Government. But under the Act, 2013 the possession taken by the authority does not revert back to the land losers and as such the petitioner is entitled to be compensated as per Section 24(1)(a) of the Act 2013. As there is delay in concluding the L. A. proceeding the respondent authorities are directed to complete the process within a period of 90(ninety) days from the receipt of the copy of this order.

JUDGE

Comparing Assistant