

[2014] 13 S.C.R. 98

A M/S MAGNUM PROMOTERS P. LTD.

v.

UNION OF INDIA & ORS.

(I. A. 3 of 2014)

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(Civil Appeal No.4284 of 2011)

NOVEMBER 27, 2014

C **[V. GOPALA GOWDA AND C. NAGAPPAN, JJ.]**

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – s.24(2) – Land acquisition – Issuance of acquisition Notification for different parcels of land including land and building owned by the appellant – Subsequently, issuance of notices regarding the said land by Assistant Collector to the appellant – Writ petition challenging acquisition Notifications by the appellant – Dismissed on 16.05.2008, holding that the acquisition of land by NCT Delhi was legal and valid – On appeal, case of the appellant that actual physical possession of the land not taken by Land Acquisition Collector even after 5 years being elapsed after the award nor compensation awarded, as such acquisition proceedings lapsed – Held: Plea of taking over possession of land of the appellant either on 27.12.2013 as per the original record or on 31.12.2013 as per document, cannot be accepted – Respondents misrepresented certain relevant facts by filing affidavit with an oblique motive to deny the valuable statutory right accrued in favour of appellant u/s. 24(2), which conduct is deprecated – Acquisition proceedings of appellant's land have lapsed, thus, acquisition proceeding notifications quashed.

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Allowing the application, the Court

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HELD: 1.1 The plea of taking over possession of land of the appellant either on 27.12.2013 as per the original record or on 31.12.2013 as per document Annexure R1, cannot be accepted. The respondents misrepresented certain relevant facts to this Court by filing the affidavit with an oblique motive to deny the valuable statutory right accrued in favour of the appellant under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Hence, the conduct of respondent No. 4 and officials of respondent No.3 in misrepresenting facts is deprecated. [Para 15][114-D-H]

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1.2 The document Annexure R-1 to the response affidavit was falsely created by respondent Nos. 3 and 4 with a malafide intention not only to defeat the statutory right of the appellant-land owner accrued in its favour under the provision of Section 24(2) of the Act of 2013, but it is a clear case of misrepresentation of facts to this Court with an oblique motive to deprive the valuable constitutional right of the appellant to the land involved in these proceedings. This conduct of the ADM/Land Acquisition Collector is highly objectionable and reprehensible as his action in creating false official documents to deny the legitimate right accrued in favour of the appellant, which conduct of him amounts to breach of trust reposed with him by the public to discharge his public functions in the larger interest of public. The public officers are required to maintain the public record honestly, truly and correctly, the Additional District Magistrate cadre indulging in such unlawful acts will discredit the credibility of the public office from maintaining trust and confidence in the public office

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A which is most important and necessary for the good
administration of the second respondent. [Para 16]
[114-F-H; 115-A-C]

1.3 The plea of the respondents that as per memo
of possession dated 31.12.2013 the possession of the
said land of the appellant was taken and handed over to
the DDA-respondent no.4 on the same day is not
accepted as it is not done in fact and could not have
been done in view of the interim order and also the same
was not been done in the presence of independent
witnesses as required in law. Further, the legal principle
as to how taken over physical possession of the
acquired land means the actual taking of possession of
it from the land owners/interested persons. [Paras 17,
18][116-C-D; 117-B]

1.4 The plea taken regarding contravention of
Sections 3 and 4 for transfer of the land in question by
the appellant during the pendency of the proceedings
as it was acquired by the NCT on behalf of the Central
Government by placing reliance on Article 239AA of the
Constitution has no application to the fact situation. It
was contended that the land and home subject-matters
that are in Delhi are still with the Central Government and
therefore, acquisition of land by NCT is the acquisition
made by it on behalf of the Central Government cannot
be accepted for the reason that the acquisition
notification available in the original record would clearly
show that the land is acquired by the NCT, Delhi and not
on behalf of the Central Government. Further, even
assuming that the Act of 1972 is applicable, it has been
specifically stated that the competent authority gave
permission to the appellants to transfer the land in favour
of subsidiary company of the appellant. Therefore, the
provisions of Sections 3, 4, and 9 have no application.

The acquisition proceedings in respect of the appellant's land have lapsed. Thus, the acquisition proceeding notifications in respect of the appellant's land is quashed. [Paras 20-22][118-E-H; 119-A-C; E-F]

Pune Municipal Corporation and Anr. v. Harakchand Misirimal Solanki & Ors. 2014 (1) SCR 783 : (2014) 3 SCC 183; *Union of India & others v. Shiv Raj & others* (2014) 6 SCC 564; *Bimla Devi & Others v. State of Haryana & Others* (2014) 6 SCC 583; *Bharat Kumar v. State of Haryana & Another* (2014) 6 SCC 586; *Sree Balaji Nagar Residential Association v. State of Tamil Nadu & others* 2014 (10) SCALE 388; *Prahlad Singh & Ors. v. U.O.I & Ors.* 2011 (5) SCR 1002 : (2011) 5 SCC 386; *Raghubir Singh Sehrawat v. State of Haryana and Ors.* 2011 (14) SCR 1113 : (2012) 1 SCC 792; *Satendra Prasad Jain v. State of UP* 1993 (2) Suppl. SCR 336 : (1993) 4 SCC 369; *Sanjeevanagar Medical and Health Employees' Co-operative Housing Society v. Mohd. Abdul Wahab and Ors.* 1996 (2) SCR 308 : (1996) 3 SCC 600; *The Punjab Produce and Trading Co. Ltd. v. CIT, West Bengal, Calcutta* (1971) 2 SCC 540; *Sita Ram Bhandar Society, New Delhi v. Lieutenant Governor, Government Of NCT, Delhi And Others* 2009 (14) SCR 507 : (2009) 10 SCC 501 – referred to.

Case Law Reference:

2014 (1) SCR 783	referred to	Para 6	G
(2014) 6 SCC 564	referred to	Para 6	
(2014) 6 SCC 583	referred to	Para 6	
(2014) 6 SCC 586	referred to	Para 6	H

- A 2014 (10) SCALE 388 referred to Para 6
 2011 (5) SCR 1002 referred to Para 9
 2011 (14) SCR 1113 referred to Para 9
 1993(2) Suppl. SCR 336 referred to Para 11
 B 1996 (2) SCR 308 referred to Para 11
 (1971) 2 SCC 540 referred to Para 12
 2009 (14) SCR 507 referred to Para 14

- C CIVIL APPELLATE JURISDICTION: I. A. No. 3 of 2014
 in Civil Appeal No. 4284 of 2011.

From the Judgment and Order dated 16.05.2008 of the High Court of Delhi at New Delhi in W.P. (C) No. 3695 of 1999.

- D Chandra Uday Singh, Sr. Adv., Siddhartha Dave,
 Ms. Jemtiben Ao, Senthil Jagadeesan for the Appellant.

R. S. Suri, Sr. Adv., Kiran Bhardwaj, Ms. Charul S., Ms. Sushma Suri, Ms. Rachna Srivastava, Utkarsh Sharma, Vishnu B. Saharya (For M/s. Saharya & Co.), Mrs. Anil Katiyar
 E for the Respondents.

The Judgment of the Court was delivered by

- V. GOPALA GOWDA, J.** 1. This I.A. No.3 of 2014 in Civil
 F Appeal No. 4284 of 2011 is filed by the appellant seeking for
 direction and appropriate orders for disposal of this appeal in
 terms of Section 24(2) of the Right to Fair Compensation and
 Transparency in Land Acquisition, Rehabilitation and
 Resettlement Act, 2013 (in short 'the Act of 2013'). The
 G appellant-land owner has come to this Court questioning the
 correctness of the judgment and order dated 16.05.2008
 passed by the High Court of Delhi in W.P.(C)No. 3695 of 1999,
 inter alia, urging various facts and legal contentions.

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2. Brief facts of the case are stated hereunder: A

The appellant is the lawful owner of the land comprised in Khasra Nos. 750 Min (1-2 ½) and 751 Min (0-18) situated in the revenue estate of Village Malikpur, Kohi alias Rangpuri, Tehsil Mehrauli in the National Capital Territory of Delhi (for short 'NCT, Delhi'). The Municipal Corporation of Delhi (MCD) vide its sanction bearing No. S.N.406/B/HQ/17/148/AE (B) HQ III dated 12.07.1990 gave sanction for constructing the farmhouse from common land. On 17.12.1993, the Completion Certificate with regard to the farm house on the land in question was issued to the appellant by the MCD. On 27.06.1996, the Government of National Capital Territory issued Notification No.F.9 (12)/95/L&B/LA/8474 dated 01.06.1995 under Section 4 of Land Acquisition Act, 1894 (in short 'the repealed L.A. Act') for the acquisition of the different parcels of land including an area measuring 369 bighas and 1 biswa situated in the revenue estate of village Malikpur Kohi alias Rangpuri in the NCT, Delhi. The above said notification issued for acquisition of the land covered the land and building owned by the appellant bearing Khasra No. 750 for 3 bighas and Khasra No.751 for 3.12 bighas. The public purpose mentioned in the said acquisition notification was for development of Vasant Kunj Phase IV. B C D E

3. On 24th June, 1997, a declaration under Section 6(1) of the repealed L.A. Act was issued by the NCT, Delhi in respect of the land sought to be acquired including the land owned by the appellant. On 9th June, 1999, notices under Sections 9 and 10 of the repealed L.A. Act with regard to the land in question were issued by the Land Acquisition Collector to the appellant. On 15th June, 1999, the appellant filed a writ petition (c) No. 3695 of 1999 before the High Court of Delhi, questioning the legality of the aforesaid acquisition notifications published under Sections 4 and 6 of the repealed L.A. Act F G

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- A urging various grounds. Other similarly placed land holders also challenged the said two notifications before the High Court. The writ petitions were heard together by the High Court and passed its judgment and order dated 16.05.2008 by dismissing the writ petitions holding that the acquisition of land by the NCT, Delhi is legal and valid and did not suffer from any legal infirmities. Hence, this appeal.

- C 4. It is the case of the appellant that throughout the proceedings before the High Court as well as this Court, the appellant has been in continuous physical possession of the land involved in this appeal as it has been protected by various orders of "status quo" by the High Court as well as this Court with respect to the possession of the land in question.

- D 5. Mr. Chandra Uday Singh, the learned senior counsel appearing on behalf of the appellant placed strong reliance upon Section 24(2) of the Act of 2013 to substantiate the plea that actual physical possession of land has not been taken by the Land Acquisition Collector even after 5 years being elapsed after the award was passed as on the date of the Act of 2013 which came into force with effect from 01.01.2014. The aforesaid provision is extracted hereunder:-

- F "24(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the LAAct, 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.

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Provided that whether an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries specified in the notifications for acquisition under Section 4 of the said land acquisition and shall be entitled to compensation in accordance with the provisions of this Act.”

6. Having regard to the facts narrated above that neither physical possession of the land nor compensation awarded was paid to the appellant, it is contended that the acquisition proceedings of the land of the appellant are lapsed. In support of the aforesaid submission he has placed reliance upon the decisions of this Court in the cases of **Pune Municipal Corporation and Anr. Vs. Harakchand Misirimal Solanki & Ors.**¹, **Union of India & others v. Shiv Raj & others**², **Bimla Devi & Others v. State of Haryana & Others**³, **Bharat Kumar v. State of Haryana & Another**⁴ and **Sree Balaji Nagar Residential Association v. State of Tamil Nadu & others**⁵. Therefore, the learned senior counsel has requested for grant of relief as prayed for in this application.

7. The above said provision of the Act of 2013 quoted above has been interpreted by the three Judge Bench of this Court in the case of **Pune Municipal Corporation** (supra), the relevant paras 20 and 21 from the case are extracted hereunder:-

“20.....it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act. It is also admitted position that

¹ (2014) 3 SCC 183

² (2014) 6 SCC 564

³ (2014) 6 SCC 583

⁴ (2014) 6 SCC 586

⁵ 2014 (10) SCALE 388

- A compensation so awarded has neither been paid to the landowners/persons interested nor deposited in the court. The deposit of compensation amount in the Government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested. We have, therefore, no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the 2013 Act.
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- C **21.** The argument on behalf of the Corporation that the subject land acquisition proceedings have been concluded in all respects under the 1894 Act and that they are not affected at all in view of Section 114(2) of the 2013 Act, has no merit at all, and is noted to be rejected. Section 114(1) of the 2013 Act repeals the 1894 Act. Sub-section (2) of Section 114, however, makes Section 6 of the General Clauses Act, 1897 applicable with regard to the effect of repeal but this is subject to the provisions in the 2013 Act. Under Section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of the 2013 Act and possession of the land is not taken or compensation has not been paid.
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- F The legal fiction under Section 24(2) comes into operation as soon as conditions stated therein are satisfied. The applicability of Section 6 of the General Clauses Act being subject to Section 24(2), there is no merit in the contention of the Corporation."
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- H **8.** Further, reliance was also placed on the decision of this Court in ***Sree Balaji Nagar Residential Association*** (supra), wherein it was opined that Section 24(2) of the Act of 2013 does not exclude any period during which the land acquisition proceedings might have remained stayed on

account of stay or injunction or "status quo" order regarding possession of the land granted by any court. It was conclusively held that the Legislature has consciously omitted to extend the period of five years indicated in Section 24(2) of the Act of 2013, even if the proceedings had been delayed on account of an order of stay or injunction granted by a court of law or for any reason.

9. It was further contended that the phrase used under Section 24(2) is 'physical possession' which means actual taking over possession from the appellant-land owner by the Land Acquisition Collector. In support of this contention he has also placed reliance upon two judgments of this Court in **Prahlad Singh & Ors. v. U.O.I & Ors**⁶ case and **Raghubir Singh Sehrawat v. State of Haryana and Ors.**⁷

10. On the other hand, Ms. Rachna Srivastava, the learned counsel on behalf of respondent Nos. 2 & 3 contended that the Act of 2013 is prospective in operation by virtue of Section 24 read with Section 114 of the Act of 2013. As provided under Section 24, the effect of Section 6 of the General Clauses Act, 1897 the action taken by respondent Nos. 2-4 has been saved. She submits that by reading the above two Sections of the Act, it is clear that Legislature wanted to protect and save the acquisition proceedings initiated under the repealed L.A. Act, particularly where possession of the acquired land has been taken. It is submitted that the intention of the Legislature in providing Section 24(2) of Act of 2013 was never to destroy the entire acquisition proceedings in acquiring the land for the public purpose under the repealed L.A. Act, 1894.

11. It is further contended that it is a well settled position of law that the proceedings initiated and culminated under the

⁶ (2011) 5 SCC 386

⁷ (2012) 1 SCC 792

- A repealed Act of 1894 are not to be disturbed by interpreting the provisions of Section 24(2) of the Act of 2013 to declare the acquisition proceeding of land as lapsed on account of not taking physical possession of the land after 5 year period or not paying compensation from the date of passing of the
- B award. Under the provisions of the repealed L.A. Act of 1894, by operation of Section 16 or 17 (1) of the Act as the case may be, once the possession of the acquired land is taken, the land will be vested with the State Government and is absolutely free from all encumbrances. Thereafter, it is not
- C even open for the State Government to restore the land to the land owner in exercise of its power under Section 48 of the repealed L.A. Act as, it is not permissible in law. The above said legal position is laid down by this Court in the cases of
- D **Satendra Prasad Jain v. State of UP⁸**, and **Sanjeevanagar Medical and Health Employees' Co-operative Housing Society v. Mohd. Abdul Wahab and Ors.⁹**. In the aforesaid cases, this Court has held that Section 11(A) of the repealed
- E L.A. Act, is not applicable (which is analogous to Section 24 of the Act of 2013) and that in such circumstances, the only consequence provided under the repealed L.A. Act is payment of interest under Section 34 in respect of the acquired land. Therefore, the acquisition of land cannot be deemed to have
- F lapsed under Section 24(2) of the Act of 2013, in view of the law laid down in the above cases referred to supra. It is further contended by the learned counsel for the respondents that the above said judgments were not brought to the notice of this Court and could not be considered at the time of rendering the decision in the case of **Pune Municipal Corporation** and
- G other cases of this Court referred to supra. Therefore, the reliance placed upon the said cases by the appellant's senior counsel do not render any assistance in support of its case for grant of relief as prayed in the application.

⁸ (1993) 4 SCC 369

H ⁹ (1996) 3 SCC 600

12. It is further contended by the learned counsel that if either of the two negative conditions mentioned in Section 24(2) of the Act of 2013 remains unfulfilled, the acquisition proceedings of the land involved in this appeal cannot be held to have lapsed as it would defeat the purpose of acquisition and intendment of the L.A. Act. In other words, the two negative conditions contained in Section 24(2) has to be read conjunctively and as such both the conditions are required to be fulfilled for the purpose of holding the acquisition proceedings as lapsed. This aspect of the matter has been dealt with by this Court in the case of **The Punjab Produce and Trading Co. Ltd. v. CIT, West Bengal, Calcutta**¹⁰. It is contended that this case was also not brought to the notice of this Court in the case of **Pune Municipal Corporation** (supra) and other cases referred to supra and therefore the said decisions require re-consideration by the larger Bench of this Court.

13. Further, it is urged that the appellant has violated the provisions of Sections 3 and 4 of the Delhi Land (Restriction on Transfer) Act, 1972. It is contended that during the pendency of the present appeal the appellant has sold the land admeasuring area 12 Bigha, falling in Khasra Nos. 745(1-18), 746 (2-14), 747 (4-8) 750 (1-16), 751 (1-4) situated in the Revenue Estate of Village Malikpur Kohi at Rangpuri, Tehsil Vasant Vihar, New Delhi along with all necessary rights to M/s. DCBC Properties Pvt. Ltd. vide registered sale deed No. 6539 dated 1st June, 2012 out of which 1 Bigha 2.5 Biswas in Khasra No. 750 and 18 Biswas in Khasra No. 751 have been acquired under acquisition notification. Sections 3 and 4 read along with Section 9 of the Delhi Land (Restrictions on Transfer) Act of 1972 are extracted hereunder for the purpose of answering the legal contention urged in this regard:-

¹⁰ (1971) 2 SCC 540

A "3. Prohibition on transfer of lands acquired by Central Government -

B No person shall purport to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof situated in the Union territory of Delhi which has been acquired by the Central Government under the Land Acquisition Act, 1984 or under any other law providing for acquisition of land for a public purpose.

C 4. Regulation on transfer of lands in relation to which acquisition proceedings have been initiated.

D No person shall, except with the previous permission in writing of the competent authority, transfer or purport to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof situated in the Union territory of Delhi, which is proposed to be acquired in connection with the Scheme and in relation to which a declaration to the effect that such land or part thereof is needed for a public purpose having been made by the Central Government under section 6 of the Land Acquisition Act, 1894, the Central Government has not withdrawn from the acquisition under section 48 of that Act.

.....

F 9. Penalty -

If any person contravenes the provisions of section 3 or section 4, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both."

G 14. Further the learned counsel for the respondents 2 to 4 sought to distinguish the two decisions in the case of **Prahlad Singh** (supra) and **Raghubir Singh Sehrawat** (supra) and further if this Court had to differ from the decision as per **Sita Ram Bhandar Society, New Delhi v. Lieutenant Governor**,

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Government Of NCT, Delhi And Others¹¹ the said cases should have been referred to the larger Bench, that has not been done. Therefore, reliance placed upon the aforesaid decisions on behalf of the appellant are of no avail in support of the plea taken that physical possession of the land is not taken by respondent nos.2, 3 and 4. Therefore, she has requested this Court for the dismissal of the application filed under Section 24(2) of the Act of 2013 as it has no application in the case on hand.

15. We have carefully gone through the legal submissions made by the learned counsel on behalf of the parties in respect of the application filed by the appellant under Section 24(2) of the Act of 2013 with reference to the averments made therein and the objection statement filed by respondent Nos. 2-4 and response affidavit of the Land Acquisition Collector. The official original record produced before us for our perusal as per our direction, discloses that the "Kabza Karyavahi" or possession taking proceedings of the acquired land was started on 27.12.2013. As per the record, on 27.12.2013, the taking over of possession was done only to the extent of the vacant portion of the appellant's land whereas the building structure situated on the land could not be taken on that day as the demolition squad was not available for respondent No.4. Thus, it is clear from the said document available on record that the possession of the building structure situated on the appellant's land was not taken by him on 27.12.2013. As per the possession memo available in the record, it is recorded in the said proceeding that the further action for taking over possession in respect of the land were to be continued by the Land Acquisition Collector on 28.12.2013 and there is no record to show as to whether the action continued on 28.12.2013 in this regard. The alleged taking over of possession of the land involved in this appeal was done on

¹¹ (2009) 10 SCC 501

- A 31.12.2013, as per the document annexure R-1 memo of possession taking possession of the acquired land in Award no.07/98-99 is signed by the officers of the Land and Building Department of the third respondent; the same was alleged to have immediately been delivered to the DDA officials i.e.
- B respondent no.5 on the same day. According to respondent Nos. 3 and 4, the possession of the land involved in this appeal has been allegedly taken by them without any objections being raised by the appellant-owner. The above said plea taken by them cannot be accepted by us as the same is wholly contrary
- C to the factual position regarding possession of the land. The question of raising objection to respondent Nos. 3 and 4 for taking possession of the land by the appellant did not arise at all for the reason that notice in this regard was not issued to it calling upon it to handover possession of the land to the Land
- D Acquisition Collector. The reasons stated at paragraphs 8 and 9 in the response affidavit filed by one Mr. Vivek Kumar Tripathi, who is the Land Acquisition Collector-respondent No. 4 in these proceedings with regard to limits of the then existing sub-
- E divisions Tehsils in Delhi being modified, consequently the revenue estate of the boundaries of village Malikpur Kohi Rangpuri which previously formed part of District South, due to the said reorganisation, sub-division, Delhi Cantonment and sub-division, Vasant Vihar which were earlier part of District
- F of South West have become part of District New Delhi. Resultantly, village Rangapuri which was part of sub-division Vasant Vihar under the jurisdiction of Land Acquisition Collector, South-West fell under the jurisdiction of District New Delhi. The notification dated 11.09.2012 was issued by the
- G first respondent creating 11 districts by altering sub-divisions Tehsils in Delhi. Land Acquisition of the land involved in these proceedings was transferred from District South-West to the office of respondent no.4 on 21.12.2012 and remaining records on 14.01.2014. The above said make believe story narrated
- H by the Land Acquisition Collector in his affidavit is a deliberate

intention to misrepresent facts to justify the alleged taking over possession of the land on 31.12.2013. The aforesaid explanation furnished by the Land Acquisition Collector in his affidavit for the alleged taking over possession of acquired land is wholly unnecessary and irrelevant. Therefore, the said explanation by him cannot be accepted by us. The averments made at para 10 of the response affidavit of Land Acquisition Collector are contrary to the "Kabza Karyavahi (possession taking over proceedings) dated 27.12.2013 and the reason stated in the said memo is that the Land Acquisition Collector could not take possession of the building structure situated on the acquired appellant's land, as the demolition squad was not available on that day. The possession of the land taking over document Annexure R-1 to the response affidavit dated 31.12.2013 produced by the Land Acquisition Collector in which it is stated that the possession of the land of the appellant has been taken on 31.12.2013 the said averment in the affidavit is contradictory to the "kabza karyavahi" document dated 27.12.2013 available in the original record. The contradictory statements made by the Land Acquisition Collector in his response affidavit at para 10 cannot be accepted by us. The plea sworn by the Land Acquisition Collector in the affidavit is a false statement of fact for the reason that the physical possession of the land is in fact not taken and could not have been taken by the Land Acquisition Collector from the appellant when the interim order of "status quo" with regard to the possession of land of the appellant was passed by this Court on 04.08.2008. The said order being well within the knowledge of the respondent Nos. 2-5 is evident from the record of proceedings of this Court dated 24.09.2010 as the names of learned counsel on behalf of the respondent Nos. 1-5 is shown in this Court's record of proceedings. The further plea taken by him at para 10 of the said affidavit that the second respondent enquired about the litigation status in respect of the order passed in relation to this case and other cases of

- A village Rangpuri from the 5th respondent-DDA and did not receive any response from it is once again a false statement of fact. Therefore, the office of the 3rd respondent being unaware of any interim order of "status quo" is once again a false statement and the same has been deliberately made by him to justify his action as stated in the respondent affidavit. Hence, the statement of facts sworn to at paras 8-10 are liable to be rejected and accordingly rejected. Therefore, the plea of the Additional District Collector/Land Acquisition Collector and its officers to have allegedly taken over possession of the land as stated at paragraph 10 of the response affidavit is false and it amounts to contempt of this Court committed by them, as they have wilfully disobeyed the interim order of this Court dated 04.08.2008. Therefore, the plea of taking over possession of land of the appellant either on 27.12.2013 as per the original record or on 31.12.2013 as per document Annexure R1 cannot be accepted by us. The respondents have misrepresented certain relevant facts to this Court by filing the above referred response affidavit with an oblique motive to deny the valuable statutory right accrued in favour of the appellant under Section 24(2) of the Act of 2013. Hence, the conduct of respondent No. 4 and officials of respondent No.3 in misrepresenting facts is deprecated by us.

16. The document of Annexure R-1 to the response affidavit has been falsely created by respondent Nos. 3 and 4 with a *malafide* intention not only to defeat the statutory right of the appellant-land owner accrued in its favour under the provision of Section 24(2) of the Act of 2013, but it is a clear case of misrepresentation of facts to this Court with an oblique motive to deprive the valuable constitutional right of the appellant to the land involved in these proceedings. This conduct of the ADM/Land Acquisition Collector is highly objectionable and reprehensible as his action in creating false official documents to deny the legitimate right accrued in favour

of the appellant, which conduct of him amounts to breach of trust reposed with him by the public to discharge his public functions in the larger interest of public. The public officers are required to maintain the public record honestly, truly and correctly, the Additional District Magistrate cadre indulging in such unlawful acts will discredit the credibility of the public office from maintaining trust and confidence in the public office which is most important and necessary for the good administration of the second respondent. This has not been done in the case on hand by the Land Acquisition Collector which cannot be appreciated by this Court.

17. Further, the reliance is placed upon the judgment by the learned senior counsel on behalf of the appellant on **Prahlad Singh's** case (supra) to show that the alleged taking over of the possession of the land is not legally correct. The relevant paragraph reads thus:-

"13. We have given our serious thought to the entire matter and carefully examined the records. Section 16 lays down that once the Collector has made an award under Section 11, he can take possession of the acquired land. Simultaneously, the section declares that upon taking possession by the Collector, the acquired land shall vest absolutely in the Government free from all encumbrances. In terms of the plain language of this section, vesting of the acquired land in the Government takes place as soon as possession is taken by the Collector after passing an award under Section 11. To put it differently, the vesting of land under Section 16 of the Act presupposes actual taking of possession and till that is done, legal presumption of vesting enshrined in Section 16 cannot be raised in favour of the acquiring authority. Since the Act does not prescribe the mode and manner of taking possession of the acquired land by the Collector, it will be useful to notice some of the judgments

A in which this issue has been considered.”

(emphasis supplied by this Court)

At para 19 of the above case, it has been further clearly held that the memo of taking over possession of the acquired
B land must be in the presence of independent witnesses, undisputedly the same has not been done by respondent Nos. 2, 3 and 4 in the case on hand. Therefore, in view of the principles laid down in the above case, the plea of the respondents that as per memo of possession dated
C 31.12.2013 the possession of the said land of the appellant was taken and handed over to the DDA-respondent no.4 on the same day is not accepted by us as it is not done in fact and could not have been done in view of the interim order referred to supra and also the same has not been done in the
D presence of independent witnesses as required in law.

18. Further, this Court held at para 26 in **Raghuvir Singh Sehravat's** case (supra) as under:-

E “26. Bhagwati, J. (as he then was) and Gupta, J., who constituted the majority did not agree with Untwalia, J. and observed as under: (*Balwant Narayan Bhagde* case, SCC pp. 711-12, para 28)

F “28. ... We think it is enough to state that when the Government proceeds to take possession of the land acquired by it under the Land Acquisition Act, 1894, it must take actual possession of the land, since all interests in the land are sought to be acquired by it. There can be no question of taking 'symbolical' possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land.

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How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of.....” A

(emphasis laid by this Court)

Thus, in view of the above decisions, this Court has clearly laid down the legal principle as to how taken over physical possession of the acquired land means the actual taking of possession of it of it from the land owners/interested persons. B

19. The learned counsel on behalf of respondent Nos. 2,3 and 4 sought to distinguish the said judgments by placing reliance upon the judgment in the case of **Sita Ram Bhandar Society** (supra) wherein this Court opined thus:- C

“28. A cumulative reading of the aforesaid judgments would reveal that while taking possession, symbolic and notional possession is perhaps not envisaged under the Act but the manner in which possession is taken must of necessity depend upon the facts of each case. Keeping this broad principle in mind, this Court in *T.N. Housing Board v. A. Viswam* after considering the judgment in *Narayan Bhagde* case, observed that while taking possession of a large area of land (in this case 339 acres) a pragmatic and realistic approach had to be taken. This Court then examined the context under which the judgment in *Narayan Bhagde* case had been rendered and held as under: (*Viswam* case, SCC p. 262, para 9) D E F

9. It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or panchnama by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested G H

A person may not be cooperative in taking possession of the land.

29. In *Balmokand Khatri Educational and Industrial Trust v. State of Punjab* yet again the question was as to the taking over of the possession of agricultural land and it was observed thus: (SCC p. 215, para 4)

4. It is seen that the entire gamut of the acquisition proceedings stood completed by 17-4-1976 by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession."

E 20. Further, on the plea taken by the learned counsel on behalf of the respondent nos. 2 and 3 regarding contravention of Sections 3 and 4 of the Act of 1972 for transfer of the land in question by the appellant during the pendency of the proceedings as it was acquired by the NCT on behalf of the Central Government by placing reliance on Article 239AA of the Constitution, with respect to the contention of 1972 Act is concerned, the same has no application to the fact situation. In view of the said provision, it has been contended by the learned counsel on behalf of the respondent nos. 2, 3 and 4 that the land and home subject-matters that are in Delhi are still with the Central Government and therefore, acquisition of land by NCT is the acquisition made by it on behalf of the Central Government. This is far-fetched argument of the learned counsel and therefore, the same cannot be accepted

by us for the reason that the acquisition notification available in the original record would clearly show that the land is acquired by the NCT, Delhi and not on behalf of the Central Government. Hence, the said contention is liable to be rejected and accordingly rejected. A

21. Apart from the said reason, even assuming for the sake of argument that the Act of 1972 is applicable, it has been specifically stated by the learned senior counsel that the competent authority has given permission to the appellants to transfer the land in favour of subsidiary company of the appellant. The same can be seen in para 5 of the sale deed produced before this Court which reads thus:- B C

“5. The vendor have obtained NOC under provisions of the Delhi Land (Restriction on transfer) Act, 1972 from the concerned department/Tehsildar Notification Delhi and shall obtain all such necessary clearance/permission as may be required for effectively transferring and conferring the title on the Vendee.” D

Therefore, the provisions of Sections 3, 4, and 9 have no application to the fact situation on hand and there is no substance in this plea of the respondent and the same is rejected. E

22. In view of the aforesaid findings and reasons recorded by us, the prayer made in this application is allowed. The acquisition proceedings in respect of the appellant's land have lapsed. Consequently the appeal is also allowed quashing the acquisition proceeding notifications in respect of the appellant's land. No costs. F G