REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2915 OF 2022

Faizabad-Ayodhya
Development Authority, Faizabad …Appellant

Versus

Dr. Rajesh Kumar Pandey & Ors. …Respondents

WITH

CIVIL APPEAL NO. 2917 OF 2022

Moradabad Development Authority & Anr. …Appellants

Versus

Babu & Ors. …Respondents

WITH

CIVIL APPEAL NO. 2918 OF 2022

Moradabad Development Authority & Anr. …Appellants

Versus

Hiram Singh & Ors. …Respondents

AND

CIVIL APPEAL NO. 2919 OF 2022

Moradabad Development Authority …Appellant

Versus

Smt. Malka Begum & Ors. …Respondents

J U D G M E N T

M.R. SHAH, J.

1. As common questions of law and facts arise in this group of appeals, they have been heard together and are being disposed of by this common judgment and order.

2. Feeling aggrieved and dissatisfied with the respective judgments and orders/order(s) passed by the High Court of Judicature at Allahabad passed in respective writ petitions preferred by the private respondents herein – original landowners by which the High Court has disposed of the said writ petitions by directing the respective appellant(s) – Development Authorities to pay the compensation to the original landowners as per "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the

"Act, 2013)" on the ground that on the date on which the Act, 2013 came into force, no award under Section 11 of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act, 1894") was declared with respect to the lands acquired, the respective Development Authorities have preferred the present appeals.

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3. Land totally measuring 17.172 hectares in village Ranopali, District Faizabad was requisitioned by the Faizabad Development Authority (hereinafter referred to as the "Authority") for the purpose of residential project. The land therein included land admeasuring 03.13 hectares in Plot Nos. 407, 413 and 415 belonging to respondent Nos. 1 to 4 herein (hereinafter referred to as the "original landowners").

3.1 Notification under Section 4 and Section 6 read with Section 17 was issued. The original landowners preferred Writ Petition No. 3810 of 2005 before the High Court challenging the acquisition with respect to the aforesaid three plots. The High Court granted interim stay restraining the Authority from taking over the possession of the aforesaid three plots. Except the aforesaid three plot, the possession of the entire land was taken over by the Authority. Even the Award under Section 11 of Act, 1894 was also declared except in respect of the aforesaid three plots in question, due to the pendency of the writ petition before the High Court

and due to the interim order passed by the High Court. It is this significant fact, which has led us to consider this case in light of the real intention of the Parliament under Section 24(1)(a) of the Act, 2013. Thus, excluding the land involved in the aforesaid writ petition, i.e., the aforesaid three plots, possession of the remaining property was taken over on 07.09.2005 and Award therein was published on 10.04.2007. A total sum of Rs. 5,11,60,606.00 was made available on different dates with respect to the compensation to be paid.

3.2 Vide order dated 27.09.2010, the High Court has disposed of the said Writ Petition No. 3810 of 2005 preferred by the respondents herein by directing the State Government to consider the application/representation submitted by the original landowners under Section 48(1) of the Act, 1894. That the Appropriate Authority rejected the representation/application of the original landowners under Section 48 of the Act, 1894 vide order dated 13.03.2012. The respondents herein – original landowners again preferred the present Writ Petition No. 41 of 2012 before the High Court.

3.3 During the pendency of the aforesaid writ petition, Act, 2013 came into force. At the time of hearing of the present writ petition before the High Court, it was submitted on behalf of the original landowners – original writ petitioners that as no award has been made under Section 11 of the Act, 1894, therefore, the provisions of Section 24(1) of the Act,

2013 would be attracted and the original landowners shall be entitled to the compensation determined under the provisions of Act, 2013.

3.4 By the impugned judgment and order, the High Court has allowed the said writ petition and has observed and held that the respondents herein – original writ petitioners – original landowners would be entitled to compensation in terms of provisions of Section 24(1) of the Act, 2013. Therefore, as pursuant to the impugned judgment and order passed by the High court, now the original landowners / original writ petitioners will have to be paid compensation as determined under the Act, 2013, the Faizabad-Ayodhya Development Authority, Faizabad has preferred the present appeal.

Civil Appeal No. 2917 of 2022

4. By the impugned judgment and order dated 20.07.2017, the High Court has directed the appellant – Moradabad Development Authority to declare the award and determine the compensation under Section 24(1) of the Act, 2013 and consequently, the respondents herein – original landowners shall be entitled to compensation determined under the Act, 2013. Hence, the Moradabad Development Authority has preferred the present appeal.

4.1 Before the High Court, in the writ petition, the original writ petitioners challenged the acquisition proceedings mainly on the ground that the award was not made within two years of the publication of the declaration under Section 6 of the Act, 1894 and therefore, in view of the provisions of Section 11A of the Act, 1894, the acquisition has lapsed.

4.2 However, during the course of hearing of the writ petition and without any specific prayer sought to determine and pay the compensation under the Act, 2013, learned counsel appearing on behalf of the original writ petitioners placed reliance upon the provisions of Section 24(1) of the Act, 2013 and relied upon paragraph 20 of the counter affidavit in which it was stated that the award has not been made under Section 11 of the Act, 1894 and therefore, the award will now be made under Section 24(1) of the Act, 2013.

4.3 It was the case on behalf of the appellant that as such the award under Section 11 of the Act, 1894 could not be declared in view of the pendency of the writ petition and the interim stay order granted by the High Court. By the impugned judgment and order, the High Court has directed the appellant – Moradabad Development Authority to declare the award under Section 24(1) of the Act, 2013.

4.4 Feeling aggrieved and dissatisfied with the impugned order passed by the High Court directing the appellant to declare the award under

Section 24(1) of the Act, 2013, Moradabad Development Authority has preferred the present appeal.

Civil Appeal No. 2918 of 2022 and Civil Appeal No. 2919 of 2022

5. Civil Appeal No. 2918 of 2022 is arising out of the impugned judgment and order passed by the High Court dated 20.07.2017 passed in Writ Petition No. 31806 of 2013 and Civil Appeal No. 2919 of 2022 is arising out of the impugned judgment and order passed by the High Court dated 20.07.2017 passed in Writ Petition No. 29247 of 2011 by which similar orders have been passed by the High Court directing the Moradabad Development Authority to declare the award under Section 24(1) of the Act, 2013 and thereby the original landowners shall be entitled to the compensation determined under the Act, 2013, the Moradabad Development Authority has preferred the present appeal.

6. Shri V.K. Shukla, learned Senior Advocate has appeared on behalf of the respective Development Authority(s) and Shri S.R. Singh, learned Senior Advocate has appeared on behalf of the respective original landowners – original writ petitioners.

7. Shri Shukla**,** learned Senior Advocate appearing on behalf of the respective Development Authority(s) has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a grave error in directing the Development Authority(s) to declare the

award under Section 24(1) of the Act, 2013 and thereby now the original landowners shall be entitled to the compensation determined under the Act, 2013.

7.1 It is submitted that the High Court has not properly appreciated the fact that as such the Special Land Acquisition Officer could not declare the award due to the pendency of the writ petitions before the High Court and/or the interim stay granted by the High Court either restraining the Authority from taking over the possession and/or directing to maintain the status quo.

7.2 It is submitted that in fact in Civil Appeal No. 2915 of 2022, in view of the fact that the urgency clause was applied, even 80% of the compensation was deposited, however, the award under Section 11 of the Act, 1894 could not be declared because of the pendency of the writ petition before the High Court. It is submitted that in the said case, such a large area of the land was acquired including Plot Nos. 407, 413 and 415 belonging to the respondents herein. It is submitted that the award excluding the aforesaid three plots was in fact declared under Section 11 of the Act and it was also stated therein that the award with respect to the aforesaid three plots in question could not be declared in view of the stay order granted by the High Court. It is contended that the award with respect to the plots in question could not be declared under Section 11

of the Act, 1894 in view of the pendency of the writ petition before the High court and the interim stay granted by the High Court.

7.3 Learned counsel appearing on behalf of the Moradabad Development Authority in Civil Appeal Nos. 2917, 2918 and 2919 of 2022 has submitted that as such in view of the urgency clause applied, even 80% of the compensation was already deposited, however, the award under Section 11 of the Act, 1894 could not be declared because of the pendency of the writ petition before the High Court.

7.4 It is submitted that in fact the impugned order has been passed by the High Court on oral submissions that the award has not been declared and therefore they are entitled to the relief under Section 24(1) of the Act, 2013. That as such, neither were the writ petitions amended nor specific reliefs were prayed, directing the Authority(s) to declare the award under Section 24(1) of the Act, 2013. It is contended that in any case, once the award could not be declared because of the pendency of the writ petition and/or the interim stay granted by the High Court, landowners cannot be permitted to take the benefit of compensation under the Act, 2013. It is urged that there was no inaction on the part of the Land Acquisition Officer and/or Authority in not declaring the award under Section 11 of the Act, 1894.

7.5 Learned counsel appearing on behalf of the respective Development Authority(s) have heavily relied upon the decision of the

Constitution Bench of this Court in the case of **Indore Development Authority Vs. Manoharlal and Ors., (2020) 8 SCC 129**, more particularly, paragraph 366.8. It is submitted that after detailed discussion and after taking into consideration various decisions of this Court on the effect of the stay granted by the Court and on the principle of restitution, it is specifically observed and held by this Court that (i) the act of the Court shall prejudice no one; (ii) no one is bound to do an impossibility; (iii) law does not compel a man to do that which he cannot possibly perform; (iv) where law creates a duty or charge and the party is disabled to perform it, without any default and has no remedy over, there the law will in general excuse him; (v) it is not the intendment of the Act, 2013 that those who have litigated should get benefits of higher compensation as contemplated under Section 24 of the Act, 2013.

7.6 Learned counsel appearing on behalf of the respective Development Authorities has heavily relied upon paragraph 366.8 of the decision in the case of **Indore Development Authority (supra)** and submitted that while interpreting Section 24(2) of the Act, 2013, this Court has specifically observed and held that the period of subsistence of interim orders passed by the Court has to be excluded. It is submitted that the same analogy shall be applicable in a case where the Authority could not declare the award under Section 11 of the Act, 1894 due to subsistence of the interim order passed by the Court.

7.7 Making the above submissions and relying upon the observations made by this Court in the case of **Indore Development Authority (supra)** in paragraphs 284, 285, 287, 289, 293, 297, 299, 300, 301, 302, 306, 308, 309, 314, 315, 316, 317, 318, 319, 320, 321, 323, 324, 325, 326, 329, 334 and 335, it is prayed to allow the present appeals.

8. Learned counsel appearing on behalf of the original landowners have also relied upon the decision of this Court in the case of **Indore Development Authority (supra).** It is submitted that as observed and held by this Court in the said decision, the moment it is found that no award has been declared under Section 11 of the Act, 1894 at the time of commencement of Act, 2013, the landowner shall be straightaway entitled to the compensation under Section 24(1) of the Act, 2013.

8.1 It is further submitted by learned counsel appearing on behalf of the original landowners – original writ petitioners that as such there is no specific provision made in Section 24(1) of the Act, 2013 to the effect that the period of interim stay and/or pendency of the writ petition shall be excluded. Hence, as per the settled proposition of law, a statute has to be read as it is.

8.2 It is contended that the legislature's intention is that once the award is not declared under Section 11 of the Act, 1894, at the time of commencement of the Act, 2013, to save lapsing of the acquisition,

under sub-section (1) of Section 24 of the Act, 2013, the original landowners shall have to be compensated by payment of compensation determined under the Act, 2013. Therefore, as such, the High Court has not committed any error in directing the Development Authorities to declare the award under Section 24(1) of the Act, 2013 and consequently to determine the compensation under the provisions of the Act, 2013.

8.3 It is further submitted by the learned counsel appearing on behalf of the respondents – original writ petitioners in Civil Appeal Nos. 2917, 2918 and 2919 of 2022 that as such in the counter affidavit, it was submitted that as the award has not been declared, the award shall be declared under Section 24(1) of the Act, 2013. It is pointed out that considering the aforesaid stand/submission made in the counter filed on behalf of the Authority, the High Court has directed to declare the award and pay the compensation under Section 24(1) of the Act, 2013, which direction may not be interfered by this Court.

8.4 Making the above submissions, it is prayed to dismiss the present appeals and direct the appropriate Authorities to declare the award under Section 24(1) of the Act, 2013 and to pay the compensation to the respective landowners under the provisions of the Act, 2013.

9. Having heard the learned counsel appearing on behalf of the respective parties, the question which is posed for the consideration of this Court is:-

> Whether in a case where an award under Section 11 of the Land Acquisition Act, 1894 could not be declared by the Authority due to the pendency of the writ petition and/or the interim stay granted by the High Court, which was filed by the landowners and consequently as on the date on which the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act, 2013) came into force, there was no award declared under Section 11 of the Act, 1894, the original landowners shall be entitled to compensation determined under sub-section (1) of Section 24 of the Act, 2013?

10. At this stage, it is necessary to consider the relevant provisions of the Act, 1894 and Section 24 of Act, 2013 dealing with lapse of acquisition in the context of the question raised in this case arising under Section 24(1)(a) of Act, 2013 especially in the context of stay orders granted by a court of law and as a result award not being made as on 01.01.2014 i.e., the date when Act, 2013 was enforced. Sections 11 and 11A of the Act, 1894 are extracted as under:

> "**11. Enquiry and award 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

objection (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, or 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 the 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.

11A. Period within which an award shall be made. – (1) 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 proceeding 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 (68 of 1984), the award shall be made within a period of two years from such commencement.

10.1 Section 24 of the Act, 2013 is extracted as under:

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 holdings 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."

10.2 Section 11 of the Act, 1894 deals with the enquiry to be held prior to making of the award by the Collector/Deputy Commissioner/District Magistrate, as the case may be, who may be designated as the land acquisition officer. However, Section 11A of the said Act mandates that the Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration (under Section 6 of the said Act) and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse. The proviso, thereto, is not relevant for the purpose of this case. However, the Explanation is of significance. It stated that in computing the period of two years referred to in sub-section 1 of Section 11A, wherein it is provided that the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a court is excluded. Therefore, the implication is that if there is inaction on the part of the Collector in passing the award for a period of two years from the date of publication of the declaration, then the acquisition would

lapse. The object of providing and prescribing a two-year period was in order to ensure that the land loser was assured of the compensation to be paid in pursuance of the acquisition of his land within a reasonable period which is stated to be two years under Section 11A of the Act, 1894. However, while calculating the said period of two years, the period during which no award could be passed owing to an order of stay in that regard passed by a court had to be excluded.

10.3 The concept of lapse is also provided under sub-section (2) of Section 24 of the Act, 2013. However, for the purpose of this case, it is not necessary to dwell into the said aspect except by stating that where an award under Section 11 of Act, 1894 has been made five years or more prior to the commencement of the Act, 2013 (which was enforced with effect from 01.01.2014) but the physical possession of the land has not been taken or the compensation has not been paid, then the said proceedings of acquisition shall be deemed to have lapsed. An interpretation of sub-section 2 of Section 24 of the Act has been made by this Court in **Indore Development Authority (supra)**. It has been clearly held in para that while calculating the period of five years the period during which an interim order was under operation has to be excluded.

10.4 As far as this case is concerned, clause (a) of sub-section 1 of Section 24 of the Act, 2013 has to be interpreted in the aforesaid backdrop. The said sub-section begins with a non-obstante clause and it

states that notwithstanding anything contained in the Act, 2013 in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, -

a) Where no award under Section 11 of the Act, 1894 has been made, all provisions of the Act, 2013 relating to the determination of compensation shall apply; or

b) Where an award under Section 11 has been made, such proceedings shall continue under the provisions of the Act, 1894 as if the said Act has not been repealed.

10.5 The object and purpose of providing sub-section (1) of Section 24 of Act, 2013 is to save acquisitions which had been initiated under Act, 1894, where no award had been made or where an award had been made under Section 11 of Act, 1894. The respective consequences for both the aforesaid situations are indicated in the respective clauses (a) and (b) of sub-section 1 of Section 24 of the Act, 2013.

10.6 What is of significance for the purpose of this case is clause (a) of sub-section 1 of Section 24 of the Act. To reiterate the same, when no award under Section 11 of the Act, 1894 has been made, all provisions of Act, 2013 relating to determination of compensation shall apply. This means that when the acquisition proceeding under Act, 1894 has been initiated but the award has not been made as on the date of the enforcement of Act, 2013 i.e., 01.01.2014, in such an event, the

provisions of Act, 2013 would apply with regard to determination of compensation. It is necessary to understand the implication of the words “where no award under Section 11 of Act, 1894 has been made.” This means that although acquisition proceedings had been initiated, for reasons best known to the acquiring authority, the Collector or the Deputy Commissioner or District Magistrate or the Special Land Acquisition Officer, as the case may be, had not passed an award as on the date of enforcement of Act, 2013 i.e., on 01.01.2014. This could be on account of sheer inaction on the part of the Collector or Land Acquisition Officer in not passing an award and the Act, 2013 being enforced. In such a case, the provisions of the Act, 2013 would straightaway apply vis-à-vis determination of compensation. This is because Act, 2013 is a more beneficial legislation as compared to Act, 1894. The compensation payable under the Act, 2013 is higher than under the repealed Act being Act i.e., 1894. Thus, there would be a continuity in the acquisition proceedings under the Act, 2013.

10.7 However, it is necessary to delve deeper into the provision to assimilate the reasons as to why no award would have been made on the date of enforcement of the Act, 2013 in a given case when the acquisition had commenced under the Act, 1894 which is the repealed Act. One of the reasons would be that the acquisition proceedings are assailed either before the High Court under Article 226 of the Constitution

of India or by filing a civil suit before the Civil Court seeking certain reliefs, in which there would be interim orders including but not limited to “stay of further proceedings”, “stay of dispossession” or “status quo to be maintained by both the land owner as well as the acquiring authority”. In such a case, where an interim order would have been operating against the acquiring authority, the said authority would be restrained from proceeding further in the acquisition proceedings vis-à-vis making of an award under Section 11 of the Act, 1894.

10.8 As already noted, if an award is not made within a period of two years from the date of the publication of the declaration, then under Section 11A of Act, 1894, the acquisition of the land would lapse. But in computing the said period of two years, the period during which a declaration under Section 6 of the Act, 1894 is stayed and during which period the no action or further proceeding could have been taken pursuant thereto by an order of court, is excluded. But, under clause (a) of sub-section 1 of Section 24 of Act, 2013, if no award has been made on the enforcement of the said Act i.e., on 01.01.2014 then the provisions of Act, 2013 would apply relating to the determination of compensation.

10.9 When these two Sections though in the repealed Act and the new Act i.e., Act, 2013 are read together in an analogous way, the question that emerges is, if, by reason of an interim order of a Court granted in favour of a land owner, no award under Section 11 of the Act, 1894 has

been made on the date of enforcement of Act, 2013 i.e., 01.01.2014, would it imply that the award has not been made owing to inaction on the part of Collector/Land Acquisition Officer. Thus, straightaway whether the benefit under Act, 2013 must be made applicable to such a land owner who has also the benefit of an interim order granted by a court in his favour on the date of enforcement of Act, 2013 i.e., on 01.01.2014.

10.10 We find that the expression “where no award under Section 11 of the said Land Acquisition Act has been made” has to be read contextually and not by way of a plain reading. This is because a land owner who has an interim order of stay of further proceedings pursuant to the declaration made under Section 6 of the Act, 1894 issued by a Court of law and has thereby restrained the Collector/Land Acquisition Officer from making an award cannot thereafter by contending that as on 01.01.2014, no award has been made by the acquiring authority seek benefit under the provisions of the Act, 2013 by receiving a higher compensation.

10.11 As already noted, Section 24 is in the nature of a saving clause to save all acquisitions initiated under the provisions of Act, 1894 and at the same time, to grant certain reliefs under the provisions of Act, 2013 such as lapse of acquisition under sub-section 2 of Section 24 of the Act or clause (a) of sub-section 1 of Section 24 thereof. Therefore, while applying the said provisions to the facts of each case, it is necessary to bear in mind the contextual interpretation having regard to provisions

under both the Acts. This also becomes clear on a reading of clause (b) of sub-section 1 of Section 24 which states that if an award has been made under Section 11 of Act, 1894 as on 01.01.2014 i.e., the date of enforcement of Act, 2013, then the proceedings shall continue under the provisions of Act, 1894 as if the same has not been repealed. But if no award has been made as on 01.01.2014 then clause (a) of sub-section 1 of Section 24 would apply.

10.12 Thus, it is necessary to dwell into the reasons as to why no award has been made. As discussed aforesaid, if there is an order of restraint on the Collector or on the acquiring authority and as a result of which, the Collector or the Land Acquisition Officer is not in a position to make an award for reasons beyond his control and in compliance of the interim order granted by a court of law at the instance of the land owner or any other person who may have questioned the acquisition, the period during which the interim order has operated has to be reckoned and if on the date of enforcement of Act, 2013 i.e., 01.01.2014, no award has been made owing to the operation of such an interim order granted by a Court in favour of the land owner, then the provisions of the 2013, Act cannot straightaway be made applicable in the determination of the compensation. This is because, but for the operation of the interim order, the award could have been made under the provisions of the Act, 1894 until 31.12.2013 and then provisions of Act, 1894 would have applied as

per clause (b) of sub-section 1 of Section 24. But on the other hand, owing to the operation of the interim order granted by a Court in favour of land owner, the award would not have been made as on 01.01.2014 when the Act, 2013 was enforced.

10.13 In our view in such a situation the acquiring authority cannot be burdened with the determination of compensation under the provisions of the Act, 2013. In other words, the land owner cannot, on the one hand, assail the acquisition and seek interim orders restraining the authorities from proceeding further in the acquisition, and on the other hand, contend that since no award has been made under Section 11 of Act, 1894 on 01.01.2014, the provisions of the Act, 2013 should be made applicable in determining the compensation.

11. On interpreting sub-section (2) of Section 24 of Act, 2013, the Constitution Bench of this Court in **Indore Development Authority (supra)** has ultimately concluded in paragraph 366.8 as under:-

> **"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."

11.1 While holding so and dealing with somewhat similar submissions, this Court has observed and held in paragraphs 284, 285, 287, 289, 293, 297, 299, 300, 301, 302, 306, 308, 309, 314, 315, 316, 317, 318, 319, 321, 323, 324, 325, 326, 329, 334 as under:-

> **"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 2013 Act. Section 24 contemplates that in case the proceedings initiated under the 1894 Act, are pending as on the date on which the 2013 Act 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 2013 Act. Where an award has been passed, it is provided under Section 24(1)(*b*), the pending proceedings shall continue under the provisions of the 1894 Act as if the old Act has not been repealed. The provisions totally exclude the applicability of any provision of the 2013 Act. 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 2013 Act, 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 the authorities acquiring the land, not caused by any other reason or order of the court. When the interpretation of the provision is clear, there was no necessity for Parliament to make such a provision under Section 24(2) for exclusion of the period of the interim order. Though it has excluded the period of interim order for making declaration under the proviso to Section 19(7) and exclusion has also been made for

computation of the period under Section 69 of the 2013 Act. It is due to the necessity to provide so in view of the language of the provision. Under Section 69 of the 2013 Act, additional compensation @ 12% has to be given on market value for the period commencing from the date of the publication of the preliminary notification under Section 11. The additional compensation @ 12% has been excluded for the period acquisition proceedings have been held up on account of the interim injunction order of any court. The provisions of Section 24 cast an obligation upon the authorities to take steps meaning thereby that it is open to them to take such steps, and inaction or lethargy on their part has not been countenanced by Parliament. Resultantly, lapse of proceedings takes place. It is by the very nature of the provisions if it was not possible for authorities for any reason not attributable to them or the Government to take requisite steps, the period has to be excluded. The Minister concerned Shri Jairam Ramesh in answer to the debate quoted above has made it clear that time-limit of five years has been fixed for the authorities to take action. If we do not exclude the period of interim order, the very spirit of the provision will be violated.

285. With respect to fixation of period is five years for the executive authorities to take the requisite steps, *DDA* v. *Sukhbir Singh* [(2016) 16 SCC 258] observed that what the legislature is in effect telling the executive is that they ought to have put their house in order and completed the acquisition proceedings within a reasonable time after the pronouncement of award. Not having done so even after a leeway of five years, would cross the limits of legislative tolerance, after which the whole proceeding would be deemed to have lapsed. Thus, it is apparent from the decision of *DDA* v. *Sukhbir Singh* [(2016) 16 SCC 258], which is relied upon by the landowners, that time-limit is fixed for the executive authorities to take steps. In case they are prevented by the court's order, obviously, as per the interpretation of the

provisions is that such period has to be excluded. In case such a provision would have been made, it would have been “ex abundanti cautela”. There was no necessity of making such a provision even if this proposition has been discussed during the formulation of legislation. However, the provision providing exclusion has been enacted. It casts an obligation upon the authorities to take requisite steps within five years, that by itself excludes such period of interim order.

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287. The intent of the 2013 Act, is not to benefit litigants only. It has introduced a new regime which is beneficial to the landowners. The provisions of Section 24 by itself do not intend to confer the benefits on litigating parties, while as per Section 114 of the 2013 Act and Section 6 of the General Clauses Act, has to be litigated as per the provisions of the 1894 Act.

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289. In the opinion of this Court it is not the intendment of the 2013 Act that those who have litigated should get benefits of higher compensation as contemplated under Section 24 benefit is conferred on all beneficiaries. It is not intended by the provisions that in piecemeal the persons who have litigated and have obtained the interim order should get the benefits of the provisions of the 2013 Act. Those who have accepted the compensation within 5 years and handed over the possession too, are to be benefited, in case amount has not been deposited with respect to majority of holdings. There are cases in which projects have come up in part and as per plan rest of the area is required for planned development with respect to which interim stays have been obtained. It is not the intendment of the law to deliver advantage to relentless litigants. It cannot be said hence, that it was due to the inaction of the

authorities that possession could not be taken within 5 years. Public policy is not to foment or foster litigation but put an end to it. In several instances, in various High Courts writ petitions were dismissed by the Single Judge Benches and the writ appeals were pending for a long time and in which, with respect to part of land of the projects, efforts were made to obtain the benefit of Section 24(2). Parliament in our view did not intend to confer benefits to such litigants for the aforementioned reasons. Litigation may be frivolous or may be worthy. Such litigants have to stand on the strength of their own case and in such a case provisions of Section 114 of the 2013 Act and Section 6 of the General Clauses Act, 1897, are clearly attracted and such proceedings have to be continued under the provisions of the old Act that would be in the spirit of Section 24(1)(*b*) itself of the 2013 Act. Section 6(*b*) of the General Clauses Act, 1897, provides that repeal will not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder. Section 6(*c*) states that repeal would not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. When there is a provision itself in Section 24(1)(*b*) of continuance of the proceedings where award has been passed under the 1894 Act, for the purposes of Section 24 as provided in Section 24(*b*), the provisions of Section 114 is clearly attracted so as the provisions of Section 6 of the General Clauses Act, 1897, to the extent of non obstante clause of Section 24, where possession has not been taken nor payment has been made, there is a lapse, that too by the inaction of the authorities. Any court's interim order cannot be said to be inaction of the authorities or agencies; thus, time period is not to be included for counting the 5 years period as envisaged in Section 24(2). As per the proviso to Section 24(2), where possession has been taken, but compensation has not been paid or deposited with respect to majority of landholdings, all the beneficiaries would be entitled for higher compensation only to that extent, the

provisions of Section 114 of the 2013 Act, would be superseded but it would not obliterate the general application of Section 6 of the General Clauses Act, 1897, which deals with effect of repeal except as provided in Section 24(2) and its proviso.

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293. There cannot be any dispute with the above propositions. However, in the present case, when we construe the provisions of Section 24, it clearly ousts the period spent during the interim stay of the court. Five years' period is fixed for the purpose to take action, if they have not taken the action for 5 years or more, then there is lapse, not otherwise. Even if there had been a provision made with respect to the exclusion of time spent in the court proceedings with respect to interim stay due to court's order, it could have been ex abundanti cautela, which has been considered by this Court in *Union of India* v. *Modi Rubber Ltd.* [(1986) 4 SCC 66] It would have been superfluous to make such a provision. Following observations were made in *Modi Rubber Ltd.* [(1986) 4 SCC 66]: (SCC pp. 72-74, para 7)

> "*7*. Both these notifications, as the opening part shows, are issued under Rule 8(1) of the Central Excise Rules, 1944 and since the definition of "duty" in Rule 2, clause (*v*) must necessarily be projected in Rule 8(1) and the expression "duty of excise" in Rule 8(1) must be read in the light of that definition, the same expression used in these two notifications issued under Rule 8(1) must also be interpreted in the same sense, namely, duty of excise payable under the Central Excises and Salt Act, 1944 and the exemption granted under both these notifications must be regarded as limited only to such duty of excise. But the respondents contended that the expression "duty

of excise" was one of large amplitude and in the absence of any restrictive or limitative words indicating that it was intended to refer only to duty of excise leviable under the Central Excises and Salt Act, 1944, it must be held to cover all duties of excise whether leviable under the Central Excises and Salt Act, 1944 or under any other enactment. The respondents sought to support this contention by pointing out that whenever the Central Government wanted to confine the exemption granted under a notification to the duty of excise leviable under the Central Excises and Salt Act, 1944, the Central Government made its intention abundantly clear by using appropriate words of limitation such as "duty of excise leviable … under Section 3 of the Central Excises and Salt Act, 1944" or "duty of excise leviable … under the Central Excises and Salt Act, 1944" or "duty of excise leviable … under the said Act" as in Notification No. CER-8(3)/55-C.E. dated 17-9-1955, Notification No. 255/77-C.E. dated 20-7-1977, Notification No. CER-8(1)/55-C.E. dated 2-9-1955, Notification No. CER-8(9)/55-C.E. dated 31-12-1955, Notification No. 95/61-C.E. dated 1-4-1961, Notification No. 23/55-C.E. dated 29-4-1955 and similar other notifications. But, here said the respondents, no such words of limitation are used in the two notifications in question and the expression "duty of excise" must, therefore, be read according to its plain natural meaning as including all duties of excise, including special duty of excise and auxiliary duty of excise. Now, it is no doubt true that in these various notifications referred to above, the Central Government has, while granting exemption under Rule 8(1), used specified language indicating that the exemption, total or partial, granted under each such notification is in respect of excise duty leviable

under the Central Excises and Salt Act, 1944. But, merely because, as a matter of drafting, the Central Government has in some notifications specifically referred to the excise duty in respect of which exemption is granted as “duty of excise” leviable under the Central Excises and Salt Act, 1944, it does not follow that in the absence of such words of specificity, the expression “duty of excise” standing by itself must be read as referring to all duties of excise. *It is not uncommon to find that the legislature sometimes, with a view to making its intention clear beyond doubt, uses language ex abundanti cautela though it may not be strictly necessary and even without it the same intention can be spelt out as a matter of judicial construction and this would be more so in case of subordinate legislation by the executive*. The officer drafting a particular piece of subordinate legislation in the Executive Department may employ words with a view to leaving no scope for possible doubt as to its intention or sometimes even for greater completeness, though these words may not add anything to the meaning and scope of the subordinate legislation. Here, in the present notifications, the words, ‘duty of excise leviable under the Central Excises and Salt Act, 1944’ do not find a place as in the other notifications relied upon by the respondents. But, that does not necessarily lead to the inference that the expression “duty of excise” in these notifications was intended to refer to all duties of excise including special and auxiliary duties of excise. The absence of these words does not absolve us from the obligation to interpret the expression “duty of excise” in these notifications. We have still to construe this expression — what is its meaning and import — and that has to be done

bearing in mind the context in which it occurs. We have already pointed out that these notifications having been issued under Rule 8(1), the expression "duty of excise" in these notifications must bear the same meaning which it has in Rule 8(1) and that meaning clearly is — excise duty payable under the Central Excises and Salt Act, 1944 as envisaged in Rule 2 clause (*v*). It cannot in the circumstances bear an extended meaning so as to include special excise duty and auxiliary excise duty."

(emphasis supplied)

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297. The correctness of the decision of *Sree Balaji Nagar Residential Assn.* [*Sree Balaji Nagar Residential Assn.* v. *State of T.N.*, (2015) 3 SCC 353] was doubted in *Yogesh Neema* [*Yogesh Neema* v. *State of M.P.*, (2016) 6 SCC 387], and the matter was referred to a larger Bench. In *Sree Balaji Nagar Residential Assn.* [*Sree Balaji Nagar Residential Assn.* v. *State of T.N.*, (2015) 3 SCC 353] following observations were made: (SCC p. 361, paras 11-12)

"*11*. From a plain reading of Section 24 of the 2013 Act, it is clear that Section 24(2) of the 2013 Act does not exclude any period during which the land acquisition proceeding might have remained stayed on account of stay or injunction granted by any court. In the same Act, the proviso to Section 19(7) in the context of limitation for publication of declaration under Section 19(1) and the Explanation to Section 69(2) for working out the market value of the land in the context of delay between preliminary notification under Section 11 and the date of the award, specifically provide that the period or

periods during which the acquisition proceedings were held up on account of any stay or injunction by the order of any court be excluded in computing the relevant period. In that view of the matter, it can be safely concluded that the legislature has consciously omitted to extend the period of five years indicated in Section 24(2) 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. Such *casus omissus* cannot be supplied by the court in view of law on the subject elaborately discussed by this Court in *Padma Sundara Rao* v. *State of T.N.* [(2002) 3 SCC 533]

12. Even in the Land Acquisition Act, 1894, the legislature had brought about amendment in Section 6 through an Amendment Act of 1984 to add Explanation 1 for the purpose of excluding the period when the proceeding suffered stay by an order of the court, in the context of limitation provided for publishing the declaration under Section 6(1) of the Act. To a similar effect was the Explanation to Section 11-A, which was added by Amendment Act 68 of 1984. Clearly, the legislature has, in its wisdom, made the period of five years under Section 24(2) of the 2013 Act absolute and unaffected by any delay in the proceedings on account of any order of stay by a court. The plain wordings used by the legislature are clear and do not create any ambiguity or conflict. In such a situation, the court is not required to depart from the literal rule of interpretation."

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299. In cases where some landowners have chosen to take recourse to litigation (which they have a right to) and have obtained interim orders on taking possession or orders of status quo, as a matter of practical reality it is not possible for the authorities or State officials to take the possession or to make payment of the compensation. In several instances, such interim orders also impeded the making of an award. Now, so far as awards (and compensation payments, pursuant to such proceedings were concerned) the period provided for making of awards under the 2013 Act (*sic* 1894 Act) could be excluded by virtue of Explanation to Section 11-A. ["**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 commencements. *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 an order of a court shall be excluded."] Thus, no fault of inaction can be attributed to the authorities and those who had obtained such interim orders, cannot benefit by their own action in filing litigation, which may or may not be meritorious. Apart from the question of merits, when there is an interim order with respect to the possession or order of status quo or stay of further proceedings, the authorities cannot proceed; nor can they pay compensation. Their obligations are intertwined with the scheme of land acquisition. It is observed that authorities may wait in the proceedings till the interim order is vacated.

300. In our considered opinion, litigation which initiated by the landowners has to be decided on its own merits and

the benefits of Section 24(2) should not be available to the litigants. In case there is no interim order, they can get the benefits they are entitled to, not otherwise as a result of fruit of litigation, delays and dilatory tactics and sometime it may be wholly frivolous pleas and forged documents as observed in *V.Chandrasekaran* [*V. Chandrasekaran* v. *Administrative Officer*, (2012) 12 SCC 133] mentioned above.

301. In *Abhey Ram* v. *Union of India* [(1997) 5 SCC 421], this Court considered the extended meaning of words "stay of the action or proceedings". It was observed that any type of orders passed by this Court would be an inhibitive action on the part of the authorities to proceed further. This Court observed thus: (SCC pp. 428-29, para 9)

> "*9*. Therefore, the reasons given in *B.R. Gupta* v. *Union of India* [1988 SCC OnLine Del 367], are obvious with reference to the quashing of the publication of the declaration under Section 6 vis-à-vis the writ petitioners therein. The question that arises for consideration is whether the stay obtained by some of the persons who prohibited the respondents from publication of the declaration under Section 6 would equally be extendible to the cases relating to the appellants. We proceed on the premise that the appellants had not obtained any stay of the publication of the declaration but since the High Court in some of the cases has, in fact, prohibited them as extracted hereinbefore, from publication of the declaration, necessarily, when the Court has not restricted the declaration in the impugned orders in support of the petitioners therein, the officers had to hold back their hands till the matters were disposed of. In fact, this Court has given extended meaning to the orders of stay or proceeding in various cases, namely, *Yusufbhai Noormohmed*

Nendoliya v. *State of Gujarat* [(1991) 4 SCC 531], *Hansraj H. Jain* v. *State of Maharashtra* [(1993) 3 SCC 634], *Sangappa Gurulingappa Sajjan* v. *State of Karnataka* [(1994) 4 SCC 145], *Gandhi Grah Nirman Sahkari Samiti Ltd.* v. *State of Rajasthan* [(1993) 2 SCC 662], *G. Narayanaswamy Reddy* v. *State of Karnataka* [(1991) 3 SCC 261] and *Roshnara Begum* v. *Union of India* [Civil Appeal No. 13976 of 1996 sub nom *Murari* v. *Union of India*, (1997) 1 SCC 15] . The words "stay of the action or proceeding" have been widely interpreted by this Court and mean that any type of the orders passed by this Court would be an inhibitive action on the part of the authorities to proceed further. When the action of conducting an enquiry under Section 5-A was put in issue and the declaration under Section 6 was questioned, necessarily unless the Court holds that enquiry under Section 5-A was properly conducted and the declaration published under Section 6 was valid, it would not be open to the officers to proceed further into the matter. As a consequence, the stay granted in respect of some would be applicable to others also who had not obtained stay in that behalf. We are not concerned with the correctness of the earlier direction with regard to Section 5-A enquiry and consideration of objections as it was not challenged by the respondent Union. We express no opinion on its correctness, though it is open to doubt."

302. In *Om Parkash* v. *Union of India* [(2010) 4 SCC 17], it was observed that interim order of stay granted in one of the matters of the landowners would put complete restraint on the respondents to proceed further to issue declaration under Section 6 of the Act. It was observed as under: (SCC p. 44, para 72)

> "*72*. Thus, in other words, the interim order of stay granted in one of the matters of the landowners would put complete restraint on the respondents to have proceeded further to issue notification under Section 6 of the Act. Had they issued the said notification during the period when the stay was operative, then obviously they may have been hauled up for committing contempt of court. The language employed in the interim orders of stay is also such that it had completely restrained the respondents from proceeding further in the matter by issuing declaration/notification under Section 6 of the Act."

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306. When the authorities are disabled from performing duties due to impossibility, would be a good excuse for them to save them from rigour of provisions of Section 24(2). A litigant may be right or wrong. He cannot be permitted to take advantage of a situation created by him of interim order. The doctrine "*commodum ex injuria sua nemo habere debet*" that is convenience cannot accrue to a party from his own wrong. Provisions of Section 24 do not discriminate litigants or non-litigants and treat them differently with respect to the same acquisition, otherwise, anomalous results may occur and provisions may become discriminatory in itself.

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308. In *Union of India* v. *North Telumer Colliery* [(1989) 3 SCC 411], this Court observed that delaying tactics should not be permitted to fructify. By causing delay, the owner would get huge amount of interest, but he may not get a penny out of the principal amount. It would amount to conferring unjust benefit on the owners which can never be

the intention of Parliament. This Court observed: (SCC pp. 416-17, para 8)

> "*8*. The High Court's conclusions are primarily based on the interpretation of Section 18(5) of the Coal Act. The High Court has quoted the meaning of words "enure" and "benefit" from various dictionaries. No dictionary or any outside assistance is needed to understand the meaning of these simple words in the context and scheme of the Coal Act. The interest has to enure to the benefit of the owners of the coal mines. The claims before the Commissioner under the Coal Act are from the creditors of the owners, and the liabilities sought to be discharged are also of the owners of the coal mines. When the debts are paid and the liabilities discharged, it is only the owners of coal mines who are benefited. Taking away the interest amount by the owners without discharging their debts and liabilities would be unreasonable. They have only to adopt delaying tactics to postpone the disbursement of claims and consequently earn more interest. Due to such delay, the owner would get huge amount of interest though ultimately, he may not get a penny out of principal amount on the final settlement of claims. It would amount to conferring unjust benefit on the owners which can never be the intention of Parliament. We do not agree with the interpretation given by the High Court and hold that the interest accruing under the Coal Act is the money paid to the Commissioner in relation to the coal mine and the same has to be utilised by the Commissioner in meeting the claims of the creditors and discharging other liabilities in accordance with the provisions of the Coal Act."

309. It may not be doubtful conduct to file frivolous litigation and obtain stay; but benefit of Section 24(2) should not be conferred on those who prevented the taking of possession or payment of compensation, for the period spent during the stay.

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314. The maxim "*lex non cogit ad impossibilia*" means that the law does not expect the performance of the impossible. Though payment is possible but the logic of payment is relevant. There are cases in which compensation was tendered, but refused and then deposited in the treasury. There was litigation in court, which was pending (or in some cases, decided); earlier references for enhancement of compensation were sought and compensation was enhanced. There was no challenge to acquisition proceedings or taking possession, etc. In pending matters in this Court or in the High Court even in proceedings relating to compensation, Section 24(2) was invoked to state that proceedings have lapsed due to non-deposit of compensation in the court or to deposit in the treasury or otherwise due to interim order of the court needful could not be done, as such proceedings should lapse.

315. In *Chandra Kishore Jha* v. *Mahavir Prasad* [(1999) 8 SCC 266], an election petition was to be presented in the manner prescribed in Rule 6 of Chapter XXI-E of the Patna High Court Rules. The Rules stipulated that the election petition, could under no circumstances, be presented to the Registrar to save the period of limitation. The election petition could be presented in the open court up to 4.15 p.m. i.e. working hours of the court. The Chief Justice had passed the order that court shall not sit for the rest after 3.15 p.m. Thus, the petition filed the next day was held to be within time. In *Mohd. Gazi* v. *State of M.P.* [(2000) 4 SCC 342], the maxim "*actus curiae neminem gravabit*" came up for consideration along with maxim "*lex non cogit ad impossibilia*" — the law does not compel a man to

perform act which is not possible. Following observations had been made: (SCC p. 347, para 7)

> "7. In the facts and circumstances of the case, the maxim of equity, namely, *actus curiae neminem gravabit* — an act of the court shall prejudice no man, shall be applicable. This maxim is founded upon justice and good sense, which serves a safe and certain guide for the administration of law. The other maxim is, *lex non cogit ad impossibilia* — the law does not compel a man to do what he cannot possibly perform. The law itself and its administration are understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in consideration of particular cases. The applicability of the aforesaid maxims has been approved by this Court in *Raj Kumar Dey* v. *Tarapada Dey* [(1987) 4 SCC 398] and *Gursharan Singh* v. *NDMC* [(1996) 2 SCC 459]."

316. Another Roman Law maxim "*nemo tenetur ad impossibilia*", means no one is bound to do an impossibility. Though such acts of taking possession and disbursement of compensation are not impossible, yet they are not capable of law performance, during subsistence of a court's order; the order has to be complied with and cannot be violated. Thus, on equitable principles also, such a period has to be excluded. In *Industrial Finance Corpn. of India Ltd.* v. *Cannanore Spg. & Wvg. Mills Ltd.* [(2002) 5 SCC 54], this Court observed that where law creates a duty or charge and the party is disabled to perform it, without any default and has no remedy over, there the law will in general excuse him. This Court relying upon the aforesaid maxim observed as under: (SCC p. 71, para 30)

"*30*. The Latin maxim referred to in the English judgment *lex non cogit ad impossibilia* also expressed as *impotentia excusat legem* in common English acceptation means, the law does not compel a man to do that which he cannot possibly perform. There ought always thus to be an invincible disability to perform the obligation, and the same is akin to the Roman maxim *nemo tenetur ad impossible*. In *Broom's Legal Maxims*, the state of the situation has been described as below:

> 'It is, then, a general rule which admits of ample practical illustration, that *impotentia excusat legem*; where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over, there the law will in general excuse him (*t*) : and though impossibility of performance is, in general, no excuse for not performing an obligation which a party has expressly undertaken by contract, yet when the obligation is one implied by law, impossibility of performance is a good excuse. Thus in a case in which consignees of a cargo were prevented from unloading a ship promptly by reason of a dock strike, the Court, after holding that in the absence of an express agreement to unload in a specified time there was implied obligation to unload within a reasonable time, held that the maxim *lex non cogit ad impossibilia* applied, and Lindley, L.J., said: "We have to do with *implied* obligations, and I am not aware of any case in which an obligation

> to pay damages is ever cast by implication upon a person for not doing that which is rendered impossible by causes beyond his control.” ’ ”
>
> (emphasis in original)

317. In *HUDA* v. *Babeswar Kanhar* [(2005) 1 SCC 191], this Court considered the general principle that a party prevented from doing an act by some circumstances beyond his control, can do so at the first subsequent opportunity as held in *Sambasiva Chari* v. *Ramasami Reddi* [ILR (1899) 22 Mad 179]. In *Babeswar Kanhar* [*HUDA* v. *Babeswar Kanhar*, (2005) 1 SCC 191], it was observed thus: (SCC pp. 192-93, para 5)

> “*5*. What is stipulated in Clause 4 of the letter dated 30-10-2001 is a communication regarding refusal to accept the allotment. This was done on 28-11-2001. Respondent 1 cannot be put to a loss for the closure of the office of HUDA on 1-12-2001 and 2-12-2001 and the postal holiday on 30-11-2001. In fact, he had no control over these matters. Even the logic of Section 10 of the General Clauses Act, 1897 can be pressed into service. Apart from the said section and various provisions in various other Acts, there is the general principle that a party prevented from doing an act by some circumstances beyond his control, can do so at the first subsequent opportunity (see *Sambasiva Chari* v. *Ramasami Reddi* [ILR (1899) 22 Mad 179]). The underlying object of the principle is to enable a person to do what he could have done on holiday, on the next working day. Where, therefore, a period is prescribed for the performance of an act in a court or office, and that period expires on a holiday, then the act should be considered to have been done within that period if it is done on the next day

on which the court or office is open. The reason is that the law does not compel the performance of an impossibility. (See *Hossein Ally* v. *Donzelle* [ILR (1880) 5 Cal 906].) Every consideration of justice and expediency would require that the accepted principle, which underlies Section 10 of the General Clauses Act, should be applied in cases where it does not otherwise in terms apply. The principles underlying are *lex non cogit ad impossibilia* (the law does not compel a man to do the impossible) and *actus curiae neminem gravabit* (the act of court shall prejudice no man). Above being the position, there is nothing infirm in the orders passed by the forums below. However, the rate of interest fixed appears to be slightly on the higher side and is reduced to 9% to be paid with effect from 3-12-2001 i.e. the date on which the letter was received by HUDA."

318. In *Presidential Poll, In re* [(1974) 2 SCC 33], this Court made similar observations. When there is a disability to perform a part of the law, such a charge has to be excused. When performance of the formalities prescribed by a statute is rendered impossible by circumstances over which the persons concerned have no control, it has to be taken as a valid excuse. The Court observed: (SCC pp. 49-50, para 15)

"*15*. The impossibility of the completion of the election to fill the vacancy in the office of the President before the expiration of the term of office in the case of death of a candidate as may appear from Section 7 of the 1952 Act does not rob Article 62(1) of its mandatory character. The maxim of law *impotentia excusat legem* is intimately connected with another maxim of law *lex non cogit ad impossibilia*. *Impotentia*

> *excusat legem* is that when there is a necessary or invincible disability to perform the mandatory part of the law that impotentia excuses. The law does not compel one to do that which one cannot possibly perform. 'Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over it, there the law will in general excuse him.' Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like the act of God, the circumstances will be taken as a valid excuse. Where the act of God prevents the compliance of the words of a statute, the statutory provision is not denuded of its mandatory character because of supervening impossibility caused by the act of God. (See *Broom's Legal Maxims*, 10th Edn. at pp. 162-63 and *Craies on Statute Law*, 6th Edn. at p. 268)."

319. In *Standard Chartered Bank* v. *Directorate of Enforcement* [(2005) 4 SCC 530], the legal maxim "*impotentia excusat legem*" has been applied to hold that law does not compel a man to do that which cannot possibly be performed. Though the maxim with respect to the impossibility of performance may not be strictly applicable, however, the effect of the court's order, for the time being, made the authorities disable to fulfil the obligation. Thus, when they were incapable of performing, they have to be permitted to perform at the first available opportunity, which is the time prescribed by the statute for them i.e. the total period of 5 years excluding the period of the interim order.

320. The maxim *actus curiae neminem gravabit* is founded upon the principle due to court proceedings or acts of court, no party should suffer. If any interim orders are made

during the pendency of the litigation, they are subject to the final decision in the matter. In case the matter is dismissed as without merit, the interim order is automatically dissolved. In case the matter has been filed without any merit, the maxim is attracted *commodum ex injuria sua nemo habere debet*, that is, convenience cannot accrue to a party from his own wrong. No person ought to have the advantage of his own wrong. In case litigation has been filed frivolously or without any basis, iniquitously in order to delay and by that it is delayed, there is no equity in favour of such a person. Such cases are required to be decided on merits. In *Mrutunjay Pani* v. *Narmada Bala Sasmal* [AIR 1961 SC 1353], this Court observed that: (AIR p. 1355, para 5)

> "*5*. … The same principle is comprised in the Latin maxim *commodum ex injuria sua nemo habere debet*, that is, convenience cannot accrue to a party from his own wrong. To put it in other words, no one can be allowed to benefit from his own wrongful act."

321. It is not the policy of law that untenable claims should get fructified due to delay. Similarly, sufferance of a person who abides by law is not permissible. The 2013 Act does not confer the benefit on unscrupulous litigants, but it aims at and frowns upon the lethargy of the officials to complete the requisites within five years.

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323. In *GTC Industries Ltd.* v. *Union of India* [(1998) 3 SCC 376], it was observed that while vacating stay, it is the court's duty to account for the period of delay and to settle equities. It is not the gain which can be conferred. In *Jaipur Municipal Corpn.* v. *C.L. Mishra* [(2005) 8 SCC 423], it has been observed that interim order merges in the final order, and it cannot have an independent existence, cannot

survive beyond final decision. In *Ram Krishna Verma* v. *State of U.P.* [(1992) 2 SCC 620], reliance was placed on *Grindlays Bank Ltd.* v. *CIT* [(1980) 2 SCC 191]. It was held that no one could be permitted to suffer from the act of the court and in case an interim order has been passed and ultimately petition is found to be without merit and is dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised.

324. In *Mahadeo Savlaram Shelke* v. *Pune Municipal Corpn.* [(1995) 3 SCC 33], it has been observed that the Court can under its inherent jurisdiction *ex debito justitiae* has a duty to mitigate the damage suffered by the defendants by the act of the court. Such action is necessary to put a check on abuse of process of the court. In *Amarjeet Singh* v. *Devi Ratan* [(2010) 1 SCC 417], and *Ram Krishna Verma* [*Ram Krishna Verma* v. *State of U.P.*, (1992) 2 SCC 620], it was observed that no person can suffer from the act of court and unfair advantage of the interim order must be neutralised. In *Amarjeet Singh* [*Amarjeet Singh* v. *Devi Ratan*, (2010) 1 SCC 417], this Court observed: (SCC pp. 422-23, paras 17-18)

> "*17*. No litigant can derive any benefit from mere pendency of the case in a court of law, as the interim order always merges in the final order to be passed in the case, and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of its own wrongs by getting an interim order and thereafter blame the court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim *actus curiae neminem gravabit*, which means that the act of the court shall prejudice no one, becomes applicable in such a case. In such a fact situation, the court is under

> an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the court. (Vide *Shiv Shankar* v. *U.P. SRTC* [1995 Supp (2) SCC 726], *GTC Industries Ltd.* v. *Union of India* [(1998) 3 SCC 376] and *Jaipur Municipal Corpn.* v. *C.L. Mishra* [(2005) 8 SCC 423].)
>
> *18*. In *Ram Krishna Verma* v. *State of U.P.* [(1992) 2 SCC 620], this Court examined a similar issue while placing reliance upon its earlier judgment in *Grindlays Bank Ltd.* v. *CIT* [(1980) 2 SCC 191] and held that no person can suffer from the act of the court and in case an interim order has been passed, and the petitioner takes advantage thereof, and ultimately the petition is found to be without any merit and is dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised."

325. In *Karnataka Rare Earth* v. *Deptt. of Mines & Geology* [(2004) 2 SCC 783], this Court observed that maxim *actus curiae neminem gravabit* requires that the party should be placed in the same position but for the court's order which is ultimately found to be not sustainable which has resulted in one party gaining advantage which otherwise would not have earned and the other party has suffered but for the orders of the court. The successful party can demand the delivery of benefit earned by the other party, or make restitution for what it has lost. This Court observed: (SCC pp. 790-91, paras 10-11)

"*10*. In … the doctrine of *actus curiae neminem gravabit* and held that the doctrine was not confined in its application only to such acts of the court which were erroneous; the doctrine is applicable to all such acts as to which it can be held that the court would not have so acted had it been correctly apprised of the facts and the law. It is the principle of restitution that is attracted. *When on account of an act of the party, persuading the court to pass an order, which at the end is held as not sustainable, has resulted in one party gaining advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered, but for the order of the court and the act of such party, then the successful party finally held entitled to a relief, assessable in terms of money at the end of the litigation, is entitled to be compensated in the same manner in which the parties would have been if the interim order of the court would not have been passed. The successful party can demand : (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost*.

11. In the facts of this case, in spite of the judgment [*Karnataka Rare Earth* v. *Department of Mines & Geology*, WPs No. 4030-4031 of 1997, order dated 1-12-1998 (KAR)] of the High Court, if the appellants would not have persuaded this Court to pass the interim orders, they would not have been entitled to operate the mining leases and to raise and remove and dispose of the minerals extracted. But for the interim orders passed by this Court, there is no difference between the appellants and any person raising, without any lawful authority, any mineral from any

land, attracting applicability of sub-section (5) of Section 21. As the appellants have lost from the Court, they cannot be allowed to retain the benefit earned by them under the interim orders of the Court. *The High Court has rightly held the appellants liable to be placed in the same position in which they would have been if this Court would not have protected them by issuing interim orders*. All that the State Government is demanding from the appellants is the price of the minor minerals. Rent, royalty or tax has already been recovered by the State Government and, therefore, there is no demand under that head. No penal proceedings, much less any criminal proceedings, have been initiated against the appellants. It is absolutely incorrect to contend that the appellants are being asked to pay any penalty or are being subjected to any penal action. It is not the case of the appellants that they are being asked to pay the price more than what they have realised from the exports or that the price appointed by the respondent State is in any manner arbitrary or unreasonable."

(emphasis supplied)

326. In *A.R. Antulay* [*A.R. Antulay* v. *R.S. Nayak*, (1988) 2 SCC 602], this Court observed that it is a settled principle that an act of the court shall prejudice no man. This maxim *actus curiae neminem gravabit* is founded upon justice and good sense and affords a safe and certain guide for the administration of the law. No man can be denied his rights. In India, a delay occurs due to procedural wrangles. In *A.R. Antulay* [*A.R. Antulay* v. *R.S. Nayak*, (1988) 2 SCC 602], this Court observed: (SCC p. 687, para 102)

"*102*. This being the apex court, no litigant has any opportunity of approaching any higher forum

to question its decisions. Lord Buckmaster in *Montreal Street Railway Co.* v. *Normandin* [1917 AC 170 (PC)] (sic) stated:

> ‘All rules of court are nothing but provisions intended to secure the proper administration of justice. It is, therefore, essential that they should be made to serve and be subordinate to that purpose.’

This Court in *State of Gujarat* v. *Ramprakash P. Puri* [(1969) 3 SCC 156], reiterated the position by saying: (SCC p. 159, para 5)

> ‘*5*. … Procedure has been described to be a handmaid and not a mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it. Like all rules of procedure, this rule demands a construction which would promote this cause.’

Once judicial satisfaction is reached that the direction was not open to be made and it is accepted as a mistake of the court, it is not only appropriate but also the duty of the court to rectify the mistake by exercising inherent powers. Judicial opinion heavily leans in favour of this view that a mistake of the court can be corrected by the court itself without any fetters. This is on principle, as indicated in *Alexander Rodger case* [*Alexander Rodger* v. *Comptoir D'Escompte De Paris*, (1969-71) LR 3 PC 465 : 17 ER 120]. I am of the view that in the present situation, the court's inherent powers can be exercised to remedy the mistake. Mahajan, J. speaking for a four-Judge Bench in *Keshardeo Chamria* v. *Radha Kissen Chamria* [1953 SCR 136 : AIR 1953 SC 23], SCR p. 153 stated: (AIR p. 28, para 21)

‘*21*. … The Judge had jurisdiction to correct his own error without entering into a discussion of the grounds taken by the decree-holder or the objections raised by the judgment-debtors.’ ”

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329. There can be no doubt that when parties are before court, the final decision has to prevail, and they succeed or fail based on the merits of their relative cases. Neither can be permitted to take shelter under the cover of court's order to put the other party in a disadvantageous position. If one has enjoyed under the court's cover, that period cannot be included towards inaction of the authorities to take requisite steps under Section 24. The State authorities would have acted but for the court's order. *In fact, the occasion for the petitioners to approach the court in those cases, was that the State or acquiring bodies were taking their properties*. Ultimately case had to stand on its merit in the challenge to the acquisition or compensation, and no right or advantage could therefore be conferred (or accrue) under Section 24(2) in such situations.

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334. For all these reasons, it is held that the omission to expressly enact a provision, that excludes the period during which any interim order was operative, preventing the State from taking possession of acquired land, or from giving effect to the award, in a particular case or cases, cannot result in the inclusion of such period or periods for the purpose of reckoning the period of 5 years. Also, merely because timelines are indicated, with the consequence of lapsing, under Sections 19 and 69 of the 2013 Act, per se does not mean that omission to factor such time (of subsistence of interim orders) has any special legislative intent. This Court notices, in this context, that even under the new Act (nor was it so under the 1894 Act) no provision

has been enacted, for lapse of the entire acquisition, for non-payment of compensation within a specified time; nor has any such provision been made regarding possession. Furthermore, non-compliance with payment and deposit provisions (under Section 77) only results in higher interest pay-outs under Section 80. The omission to provide for exclusion of time during which interim orders subsisted, while determining whether or not acquisitions lapsed, in the present case, is a clear result of inadvertence or accident, having regard to the subject-matter, refusal to apply the principle underlying the maxim *actus curiae neminem gravabit* would result in injustice."

11.2 While applying the principle of restitution, it is observed in paragraphs 335 to 339 as under:-

"In re : Principle of restitution

335. The principle of restitution is founded on the ideal of doing complete justice at the end of litigation, and parties have to be placed in the same position but for the litigation and interim order, if any, passed in the matter. In *South Eastern Coalfields Ltd.* v. *State of M.P.* [(2003) 8 SCC 648], it was held that no party could take advantage of litigation. It has to disgorge the advantage gained due to delay in case lis is lost. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final order going against the party successful at the interim stage. Section 144 of the Code of Civil Procedure is not the fountain source of restitution. It is rather a statutory recognition of the rule of justice, equity and fair play. The court has inherent jurisdiction to order restitution so as to do complete justice. This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it. In exercise of such power, the courts have applied the principle of restitution to myriad situations

not falling within the terms of Section 144 CPC. What attracts applicability of restitution is not the act of the court being wrongful or mistake or an error committed by the court; the test is whether, on account of an act of the party persuading the court to pass an order held at the end as not sustainable, resulting in one party gaining an advantage which it would not have otherwise earned, or the other party having suffered an impoverishment, restitution has to be made. Litigation cannot be permitted to be a productive industry. Litigation cannot be reduced to gaming where there is an element of chance in every case. If the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order. This Court observed in *South Eastern Coalfields* [*South Eastern Coalfields Ltd.* v. *State of M.P.*, (2003) 8 SCC 648] thus: (SCC pp. 662-64, paras 26-28)

> "*26*. In our opinion, the principle of restitution takes care of this submission. The word "restitution" in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in execution of decree or order of the court or in direct consequence of a decree or order (see *Zafar Khan* v. *Board of Revenue, U.P.* [1984 Supp SCC 505]). In law, the term "restitution" is used in three senses : (*i*) return or restoration of some specific thing to its rightful owner or status; (*ii*) compensation for benefits derived from a wrong done to another; and (*iii*) compensation or reparation for the loss caused to another. (See *Black's Law Dictionary*, 7th Edn., p. 1315). *The Law of Contracts* by John D. Calamari & Joseph M. Perillo has been quoted by Black to say that "restitution" is an ambiguous term, sometimes referring to the disgorging of

something which has been taken and at times referring to compensation for the injury done:

> ‘Often, the result under either meaning of the term would be the same. … Unjust impoverishment, as well as unjust enrichment, is a ground for restitution. If the defendant is guilty of a non-tortious misrepresentation, the measure of recovery is not rigid but, as in other cases of restitution, such factors as relative fault, the agreed-upon risks, and the fairness of alternative risk allocations not agreed upon and not attributable to the fault of either party need to be weighed.’

The principle of restitution has been statutorily recognised in Section 144 of the Code of Civil Procedure, 1908. Section 144 CPC speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on a par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage. …

27. … This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it (*A. Arunagiri Nadar* v. *S.P. Rathinasami* [1970 SCC OnLine Mad 63]). In the exercise of such inherent power, the courts have applied the principles of restitution to myriad

situations not strictly falling within the terms of Section 144.

28. That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the "act of the court" embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. … the concept of restitution *is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order* even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation."

(emphasis supplied)

336. In *State of Gujarat* v. *Essar Oil Ltd.* [(2012) 3 SCC 522], it was observed that the principle of restitution is a remedy against unjust enrichment or unjust benefit. The Court observed: (SCC p. 542, paras 61-62)

"*61*. The concept of restitution is virtually a common law principle, and it is a remedy against unjust enrichment or unjust benefit. The core of the concept lies in the conscience of the court, which prevents a party from retaining money or some benefit derived from another, which it has received by way of an erroneous decree of the court. Such remedy in English Law is generally different from a remedy in contract or in tort and

falls within the third category of common law remedy, which is called quasi-contract or restitution.

62. If we analyse the concept of restitution, one thing emerges clearly that the obligation to restitute lies on the person or the authority that has received unjust enrichment or unjust benefit (see *Halsbury's Laws of England*, 4th Edn., Vol. 9, p. 434)."

337. In *A. Shanmugam* v. *Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam* [(2012) 6 SCC 430], it was stated that restitutionary jurisdiction is inherent in every court, to neutralise the advantage of litigation. A person on the right side of the law should not be deprived, on account of the effects of litigation; the wrongful gain of frivolous litigation has to be eliminated if the faith of people in the judiciary has to be sustained. The Court observed: (SCC pp. 451-55, para 37)

"*37*. This Court, in another important case in *Indian Council for Enviro-Legal Action* v. *Union of India* [*Indian Council for Enviro-Legal Action* v. *Union of India*, (2011) 8 SCC 161] (of which one of us, Dr Bhandari, J. was the author of the judgment) had an occasion to deal with the concept of restitution. The relevant paragraphs of that judgment dealing with relevant judgments are reproduced hereunder : (SCC pp. 238-41 & 243, paras 171-76 & 183-84)

'*170*.***

171. In *Ram Krishna Verma* v. *State of U.P.* [(1992) 2 SCC 620] this Court observed as under: (SCC p. 630, para 16)

"*16*. The 50 operators, including the appellants/private operators, have been running their stage carriages by blatant abuse of the process of the court by delaying the hearing as directed in *Jeewan Nath Wahal case* [*Jeewan Nath Wahal* v. *State of U.P.*, (2011) 12 SCC 769] and the High Court earlier thereto. As a fact, on the expiry of the initial period of the grant after 29-9-1959, they lost the right to obtain renewal or to ply their vehicles, as this Court declared the scheme to be operative. However, by sheer abuse of the process of law, they are continuing to ply their vehicles pending the hearing of the objections. This Court in *Grindlays Bank Ltd.* v. *CIT* [(1980) 2 SCC 191] held that the High Court, while exercising its power under Article 226, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised. It was further held that the institution of the litigation by it should not be permitted to confer an unfair advantage on the party responsible for it. In the light of that law and in view of the power under Article 142(1) of the Constitution this Court, while exercising its jurisdiction would do complete justice and neutralise the unfair advantage gained by the 50 operators including the appellants in dragging the litigation to run the stage carriages on the approved route or area or portion thereof and forfeited their right to hearing of the

objections filed by them to the draft scheme dated 26-2-1959."

172. This Court in *Kavita Trehan* v. *Balsara Hygiene Products Ltd.* [(1994) 5 SCC 380] observed as under: (SCC p. 391, para 22)

"*22*. The jurisdiction to make restitution is inherent in every court and will be exercised whenever the justice of the case demands. It will be exercised under inherent powers, where the case did not strictly fall within the ambit of Section 144. Section 144 opens with the words:

'**144.** ***Application for restitution***.—(1) Where and insofar as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose,….'

The instant case may not strictly fall within the terms of Section 144, but the aggrieved party in such a case can appeal to the larger and general powers of restitution inherent in every court."

173. This Court in *Marshall Sons & Co. (India) Ltd.* v. *Sahi Oretrans (P) Ltd.* [(1999) 2 SCC 325] observed as under: (SCC pp. 326-27, para 4)

"*4*. From the narration of the facts, though it appears to us, prima facie, that a decree in favour of the appellant is not being executed for some reason or the other, we do not think it proper at this stage to direct the respondent to deliver the possession to the appellant since the suit filed by the respondent is still pending. It is true that proceedings are dragged on for a long time on one count or the other and, on occasion, become

highly technical accompanied by unending prolixity at every stage, providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage, and the person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of the immovable property, its execution takes a long time. In such a situation, for protecting the interest of the judgment-creditor, it is necessary to pass appropriate orders so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property. In appropriate cases, the court may appoint a Receiver and direct the person who is holding over the property to act as an agent of the [Receiver with a direction to deposit the royalty amount fixed by the] Receiver or pass such other order which may meet the interest of justice. This may prevent further injury to the plaintiff in whose favour the decree is passed and to protect the property, including further alienation."

174. In *Padmawati* v. *Harijan Sewak Sangh* [2008 SCC OnLine Del 1202] decided by the Delhi High Court on 6-11-2008, the Court held as under: (SCC Online Del para 6)

"*6*. The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where the court finds that using the courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the court

must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the courts. One of the aims of every judicial system has to be to discourage unjust enrichment using courts as a tool. The costs imposed by the courts must in all cases should be the real costs equal to deprivation suffered by the rightful person."

We approve the findings of the High Court of Delhi in the case mentioned above.

175. The High Court also stated: (*Padmawati case* [*Padmawati* v. *Harijan Sewak Sangh*, 2008 SCC OnLine Del 1202], SCC OnLine Del para 9)

"*9*. Before parting with this case, we consider it necessary to observe that one of the [main] reasons for overflowing of court dockets is the frivolous litigation in which the courts are engaged by the litigants and which is dragged on for as long as possible. Even if these litigants ultimately lose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right but also must be burdened with exemplary costs. The faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make the wrongdoer as real

> gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the courts to see that such wrongdoers are discouraged at every step, and even if they succeed in prolonging the litigation due to their money power, ultimately, they must suffer the costs of all these years' long litigation. Despite the settled legal positions, the obvious wrongdoers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour since even if they lose, the time gained is the real gain. This situation must be redeemed by the courts."

176. Against this judgment of the Delhi High Court, Special Leave to Appeal (Civil) No. 29197 of 2008 was preferred to this Court. The Court passed the following order [*Padmawati* v. *Harijan Sewak Sangh*, (2012) 6 SCC 460]: (SCC p. 460, para 1)

> "*1*. We have heard the learned counsel appearing for the parties. We find no ground to interfere with the well-considered judgment passed by the High Court. The special leave petition is, accordingly, dismissed."

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183. In *Marshall Sons & Co. (India) Ltd.* v. *Sahi Oretrans (P) Ltd.* [(1999) 2 SCC 325] this Court in para 4 of the judgment observed as under: (SCC pp. 326-27)

> "*4*. … It is true that proceedings are dragged on for a long time on one count or the other and, on occasion, become highly technical accompanied by unending prolixity at every stage, providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage, and a person who is in wrongful possession draws delight in delay in

> disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes a long time. In such a situation, for protecting the interest of the judgment-creditor, it is necessary to pass appropriate orders so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property. In appropriate cases, the court may appoint a Receiver and direct the person who is holding over the property to act as an agent of the Receiver with a direction to deposit the royalty amount fixed by the Receiver or pass such other order which may meet the interest of justice. This may prevent further injury to the plaintiff in whose favour the decree is passed and to protect the property, including further alienation."

184. In *Ouseph Mathai* v. *M. Abdul Khadir* [(2002) 1 SCC 319] this Court reiterated the legal position that: (SCC p. 328, para 13)

> "*13*. … [the] stay granted by the court does not confer a right upon a party and it is granted always subject to the final result of the matter in the court and at the risks and costs of the party obtaining the stay. After the dismissal, of the lis, the party concerned is relegated to the position which existed prior to the filing of the petition in the court which had granted the stay. Grant of stay does not automatically amount to extension of a statutory protection." ' "

There are other decisions as well, which iterate and apply the same principle. [*Indian Council for Enviro-Legal Action* v. *Union of India*, (2011) 8 SCC 161; *Grindlays Bank Ltd.* v. *CIT*, (1980) 2 SCC 191; *Ram Krishna*

Verma v. *State of U.P.*, (1992) 2 SCC 620. Also *Marshall Sons & Co. (India) Ltd.* v. *Sahi Oretrans (P) Ltd.*, (1999) 2 SCC 325.]

338. A wrongdoer or in the present context, a litigant who takes his chances, cannot be permitted to gain by delaying tactics. It is the duty of the judicial system to discourage undue enrichment or drawing of undue advantage, by using the court as a tool. In *Kalabharati Advertising* v. *Hemant Vimalnath Narichania* [(2010) 9 SCC 437], it was observed that courts should be careful in neutralizing the effect of consequential orders passed pursuant to interim orders. Such directions are necessary to check the rising trend among the litigants to secure reliefs as an interim measure and avoid adjudication of the case on merits. Thus, the restitutionary principle recognizes and gives shape to the idea that advantages secured by a litigant, on account of orders of court, *at his behest*, should not be perpetuated; this would encourage the prolific or serial litigant, to approach courts time and again and defeat rights of others — including undermining of public purposes underlying acquisition proceedings. A different approach would mean that, for instance, where two landowners (sought to be displaced from their lands by the same notification) are awarded compensation, of whom one allows the issue to attain finality — and moves on, the other obdurately seeks to stall the public purpose underlying the acquisition, by filing one or series of litigation, during the pendency of which interim orders might inure and bind the parties, the latter would profit and be rewarded, with the deemed lapse condition under Section 24(2). Such a consequence, in the opinion of this Court, was never intended by Parliament; furthermore, the restitutionary principle requires that the advantage gained by the litigant should be suitably offset, in favour of the other party.

339. In *Krishnaswamy S. Pd.* v. *Union of India* [(2006) 3 SCC 286], it was observed that an unintentional mistake of

the Court, which may prejudice the cause of any party, must and alone could be rectified. Thus, in our opinion, the period for which the interim order has operated under Section 24 has to be excluded for counting the period of 5 years under Section 24(2) for the various reasons mentioned above."

12. The sum and substance of the aforesaid observations could be summarized as under:-

(i) The time of five years is provided to the authorities to take action, not to sleep over the matter;

(ii) Only in cases of lethargy or inaction and default on the part of the authorities and for no other reason lapse of acquisition can occur;

(iii) Lapse of acquisition takes place only in case of default by the authorities acquiring the land, not caused by any other reason or order of the court;

(iv) The additional compensation @ 12% provided under Section 69 of the Act, 2013 has been excluded from the period acquisition proceedings have been held up on account of the interim injunction order of any court;

(v) If it was not possible for the acquiring authorities, for any reason not attributable to them or the Government, to take requisite steps, the period has to be excluded;

(vi) In case the authorities are prevented by the court's order, obviously, as per the interpretation of the provisions such period has to be excluded;

(vii) The intent of the Act, 2013 is not to benefit landowners only. The provisions of Section 24 by itself do not intend to confer benefits on litigating parties as such, while as per Section 114 of the Act, 2013 and Section 6 of the General Clauses Act the case has to be litigated as per the provisions of the Act, 1894.

(viii) It is not the intendment of the Act, 2013 that those who have assailed the acquisition process should get benefits of higher compensation as contemplated under Section 24;

(ix) It is not intended by the provisions that in case, the persons, who have litigated and have obtained interim orders from the Civil Courts by filing suits or from the High Court under Article 226 of the Constitution should have the benefits of the provisions of the Act, 2013 except to the extent specifically provided under the Act, 2013;

(x) In cases where some landowners have chosen to take recourse to litigation and have obtained interim orders restraining taking of possession or orders of status quo, as a matter of practical reality it is not possible for the authorities

or the Government to take possession or to make payment of compensation to the landowners. In several instances, such interim orders also have impeded the making of an award;

(xi) However, so far as awards are concerned, the period provided for making of awards under the Act, 2013 (sic 1894 Act) could be excluded by virtue of Explanation to Section 11-A, which provided that in computing the period of two years, the period during which any action or proceeding to be taken in pursuance of the declaration is stayed by an order of a court shall be excluded;

(xii) The litigation initiated by the landowners has to be decided on its own merits and the benefits of Section 24(2) should not be available to the litigants in a straightjacket manner. In case there is no interim order, they can get the benefits they are entitled to, not otherwise. Delays and dilatory tactics and sometimes wholly frivolous pleas cannot result in benefitting the landowners under sub-section (1) of Section 24 of the Act, 2013;

(xiii) Any type of order passed by this Court would inhibit action on the part of the authorities to proceed further, when a challenge to acquisition is pending;

(xiv) Interim order of stay granted in one of the matters of the landowners would cause a complete restraint on the authorities to proceed further to issue declaration;

(xv) When the authorities are disabled from performing duties due to impossibility, it would be a sufficient excuse for them to save them from rigour of provisions of Section 24. A litigant may have a good or a bad cause, be right or wrong. But he cannot be permitted to take advantage of a situation created by him by way of an interim order passed in his favour by the Court at his instance. Although provision of Section 24 does not discriminate between landowners, who are litigants or non-litigants and treat them differently with respect to the same acquisition, it is necessary to view all of them from the stand point of the intention of the Parliament. Otherwise, anomalous results may occur and provisions may become discriminatory in itself;

(xvi) The law does not expect the performance of the impossible;

(xvii) An act of the court shall prejudice no man;

(xviii) A party prevented from doing an act by certain circumstances beyond his control can do so at the first subsequent opportunity;

(xix) When there is a disability to perform a part of the law, such a charge has to be excused. When performance of the formalities prescribed by a statute is rendered impossible by circumstances over which the persons concerned have no control, it has to be taken as a valid excuse;

(xx) The Court can under its inherent jurisdiction *ex debito justitiae* has a duty to mitigate the damage suffered by the defendants by the act of the Court;

(xxi) No person can suffer from the act of Court and an unfair advantage of the interim order must be neutralised;

(xxii) No party can be permitted to take shelter under the cover of Court's order to put the other party in a disadvantageous position;

(xxiii) If one has enjoyed under the Court's cover, that period cannot be included towards inaction of the authorities to take requisite steps under Section 24 as the State authorities would have acted and passed an award determining compensation but for the Court's order.

13. Repelling the submission that there is no express provision in Section 24, that excludes the period during which any interim order was operative, preventing the State from making an award, it is observed and

held that preventing the State from taking the possession of acquired land or from giving effect to the award, in a particular case or cases, cannot result in the inclusion of such period or periods for the purpose of reckoning the period of five years.

14. The aforesaid observations would be aptly applicable while interpreting and considering Section 24(1) of the Act, 2013. In other words, whether due to the interim stay granted by the Court and the authority not declaring the award under Section 11 of the Act, 1894 and the interim stay being continued at the time when the Act, 2013 came to be enforced, such litigants, who have benefitted from the interim order can be permitted to take the advantage of the same and thereafter pray that in such a situation, they shall be paid compensation as per the new Act, 2013? It cannot be disputed that there shall be a very huge difference between the quantum of compensation payable under the Act, 1894 and the compensation payable under the Act, 2013. It cannot be said that there was any inaction on the part of the Authority in not declaring the award because of the interim order passed by the Court. Therefore, should the State and the Public Exchequer be made to suffer when there is no inaction on the part of the Authority in declaring the Award? The intention of the Parliament while enacting Section 24(1) of the Act, 2013 cannot be to give benefit to a litigant, who has obtained a stay order and because of that the award could not be declared and

thereafter the litigant may be awarded the compensation as per Act, 2013. It may even result in discrimination between the landowners, whose lands have been acquired under the same notification. Take an example, as in the present case, in Civil Appeal No. 2915 of 2022, the total land measuring 17.172 hectares was acquired from different landowners including the three plots owned by the respondents herein. The respondents herein alone were granted the interim order and because of that, the award could not be declared with respect to three plots only and with respect to the remaining lands under the same notification, the awards were declared and the payment of compensation was made under the Act, 1894. Therefore, if respondents herein, who litigated and obtained the stay order are now to be paid the compensation under the Act, 2013 on the ground that so far as they are concerned, the award has not been declared as on the date on which the Act, 2013 has been enforced, in that case, there would be two different amounts of compensation with respect to the landowners under the same notification and that would lead to discrimination amongst the landowners whose lands have been acquired under the same notification, which would never have been the intention of the Parliament.

15. In the case of **Indore Development Authority (supra)**, even this Court applied the principle of restitution. It is observed that the principle of restitution is founded on the ideal of doing complete justice at the end

of litigation, and parties have to be placed in the same position but for the litigation and interim order, if any, passed in the matter. Applying the principle of restitution, it is further observed that no party could take advantage of a litigation. It is further observed and held that the principle of restitution is a statutory recognition of the rule of justice, equity and fair play. The court has inherent jurisdiction to order restitution so as to do complete justice. This is also on the principle that an unsuccessful litigant who had the benefit of an interim order in his favour cannot encash or take advantage of the same on the enforcement of the Act, 2013 by initially stalling the acquisition process and later seeking a higher compensation under the provisions of Act, 2013. We say so for the reason that if at the instance of a landowner, who has challenged the acquisition, an interim order has been passed by a Court is successful then the proceeding of acquisition or the acquisition notification would be quashed. Then there would be no occasion to determine any compensation. But on the other hand, if a landowner, who has the benefit of an interim order in his favour whilst a challenge is made to the acquisition, is unsuccessful, he cannot then contend that he must be paid compensation under the provision of the Act, 2013 on its enforcement, whereas a landowner, who did not have the benefit of any interim order is paid compensation determined under the provisions of

the Act, 1894, which is lesser than what would be computed under the Act, 2013.

15.1 Following the decision of this Court in the case of **State of Gujarat Vs. Essar Oil Ltd., (2012) 3 SCC 522**, it is observed that the principle of restitution is a remedy against unjust enrichment or unjust benefit. Following the decision of this Court in the case of **A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam, (2012) 6 SCC 430**, it is observed that the restitutionary jurisdiction is inherent in every court, to neutralise the advantage of litigation. A person on the right side of the law should not be deprived, on account of the effects of litigation; the wrongful gain of frivolous litigation has to be eliminated if the faith of people in the judiciary has to be sustained.

16. Therefore, even applying the principle of restitution, as applied by this Court in the case of **Indore Development Authority (supra)**, the landowners cannot be permitted to take advantage of the interim order obtained by them due to which the Authority could not declare the award under Section 11 of the Act, 1894 and thereafter contend that in that view of the matter, he/they shall be paid the compensation under Section 24(1) of the Act, 2013, under which a higher compensation will be available to them on determination of the compensation under the Act, 2013.

Conclusion:-

17. In view of the above and for the reasons stated above, it is observed as under:-

(i) It is concluded and held that in a case where on the date of commencement of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, no award has been declared under Section 11 of the Act, 1894, due to the pendency of any proceedings and/or the interim stay granted by the Court, such landowners shall not be entitled to the compensation under Section 24(1) of the Act, 2013 and they shall be entitled to the compensation only under the Act, 1894.

18. In view of the above discussion and for the reasons stated above and in view of our conclusion above, all these appeals are allowed. The impugned judgment(s) and order(s) passed by the High Court are quashed and set aside. The concerned appropriate Authority(s) to declare the award under Section 11 of the Act, 1894 with respect to the lands in question and determine the compensation under the provisions of the Act, 1894 by taking into consideration Section 114 of the Act, 2013 read with Section 6 of the General Clauses Act, 1897, wherever applicable and the original landowners shall be paid the compensation accordingly, under the provisions of the Act, 1894.

It goes without saying that if the landowners are aggrieved by the determination of compensation declared under the award under the Act, 1894, it will be open for them to take recourse to law for enhancement of compensation under the provisions of the Land Acquisition Act, 1894 only.

With this, the present appeals are allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

……..J.
[M.R. SHAH]

NEW DELHI; ……..J.
MAY 20, 2022. [B.V. NAGARATHNA]