

ITEM NO.501+502

COURT NO.1

SECTION IV-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).9798-9799/2016

(Arising out of impugned final judgment and order dated 30-11-2015 in WA No.250/2008 30-11-2015 in WA No.323/2008 passed by the High Court of M.P. at Indore)

INDORE DEVELOPMENT AUTHORITY AND ETC. &amp; ANR.

Petitioner(s)

VERSUS

SHYAM VERMA AND ORS. ETC. &amp; ORS.

Respondent(s)

([ FOR DIRECTIONS ] and IA No.30398/2018-INTERVENTION APPLICATION and IA No.31441/2018-INTERVENTION APPLICATION)

WITH

SLP(C) Nos. 9036-9038/2016 (IV-A)

(IA No.120433/2017-APPLICATION FOR SUBSTITUTION)

C.A.No.4835/2015

([ FOR DIRECTIONS ] and IA No.30361/2018-INTERVENTION APPLICATION)

WITH

SLP(C) Nos.30577-30580/2015 (IV-B)

Date : 06-03-2018 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE A.M. KHANWILKAR

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Petitioner(s)

Mr.Tushar Mehta, ASG  
Mr.Vikas Singh, Sr.Adv.  
Mr.Sanjay Kapur, AOR  
Ms.Megha Karnwal, Adv.  
Ms.Mansi Kapur, Adv.

Mr.Tushar Mehta, ASG  
Mr.P.S.Patwalia, Sr.Adv.  
Mr.B.K.Satija, AAG  
Mr.Ajay Bansal, AAG  
Mr.Anil Grover, AAG  
Mr.Shekar Raj Sharma, Adv.  
Mr.Abhinash Jain, Adv.  
Mr.Manu Aggarwal, Adv.

Mr. Anil Grover, AAG  
Mr. Ajay Bansal, AAG  
Mr. Gaurav Yadav, Adv.  
Mr. Shivam Kumar, Adv.  
Mr. Sanjay Kumar Visen, Adv.  
Mrs. Veena Bansal, Adv.  
Mr. Abhinash Jain, Adv.

For Respondent(s) Mr. Mukul Rohatgi, Sr. Adv.  
Mr. Vikas Kumar, Adv.  
Mr. Rohit Chandra, Adv.  
Mr. Manish Yadav, Adv.

Mr. Shyam Divan, Sr. Adv.  
Mr. Manish Paliwal, Adv.  
Mr. Aakash Nandolia, Adv.

Mr. Sushil Kumar Jain, Sr. Adv.  
Mr. Abhinav Gupta, Adv.  
Mr. Harsh Jain, Adv.  
Ms. Ankita Gupta, Adv.  
Mr. Shailendra Sharma, Adv.  
Mr. Pankaj Sharma, Adv.  
Ms. Pratibha Jain, AOR

Mr. C. U. Singh, Sr. Adv.  
Mr. Sandeep Narain, Adv.  
Mr. Pradeep K. Dubey, Adv.  
For M/s S. Narain & Co., AOR

Mr. Dinesh Dwivedi, Sr. Adv.  
Mr. Baldev Atreya, Adv.  
Mr. Deepak Goel, Adv.

Mr. Dhruv Mehta, Sr. Adv.  
Mr. Anubhav Ray, Adv.  
Mr. Yash Raj Singh Deora, Adv.

Mr. Varun Thakur, Adv.  
Mr. Varinder Kumar Sharma, Adv.

Mr. Mayank Kshirsagar, Adv.  
Mr. Abhishek Bharti, Adv.  
Ms. Vaishnavi Subrahmanyam, Adv.  
Mr. Balaji Srinivasan, Adv.  
Ms. Srishti Govil, Adv.  
Ms. Pratiksha Mishra, Adv.

Mr. Gopal Shankarnarayan, Adv.  
Mr. Mayank Kshirsagar, Adv.  
Mr. Sahil Mongia, Adv.  
Mr. Abhishek Bharti, Adv.

Ms.Vaishnavi Subrahmanyam, Adv.  
Mr.Tushar Singh, Adv.  
Ms.Srishti Govil, Adv.  
Ms.Pratiksha Mishra, Adv.  
Mr.Balaji Srinivasan, Adv.

Ms. Christi Jain, AOR

Mr.Ankur Mittal, Adv.

Mr.Shree Pal Singh, Adv.

Ms.Rachana Srivastava, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Heard Mr.Tushar Mehta, learned Additional Solicitor General, Mr.Vikas Singh and Mr.P.S.Patwalia, learned senior counsel for the petitioners and Mr.Mukul Rohatgi, Mr.Shyam Divan, Mr.C.U.Singh, Mr.Sushil Kumar Jain and Mr.Dinesh Dwivedi, learned senior counsel for the respondents.

A three-Judge Bench of this Court in *Pune Municipal Corporation and another vs. Harakchand Misirimal Solanki and others*, (2014) 3 SCC 183, had delivered a judgment interpreting Sections 24(1) & (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for brevity, 'the 2013 Act').

In *Yogesh Neema and others vs. State of Madhya Pradesh and others*, (2016) 6 SCC 387, a two-Judge Bench doubting the decision rendered in *Sree Balaji Nagar Residential Assn. vs. State of Tamil Nadu*, (2015) 3 SCC 353, referred the matter to a larger Bench. When the matter stood thus, a two-Judge Bench vide order dated 07.12.2017 in C.A.No.20982 of 2017 @ SLP(C)No.2131 of 2016 (*Indore Development Authority vs. Shailendra (Dead) through Lrs. &*

Ors.) thought it appropriate to refer the matter to a larger Bench.

The order passed in that regard reads as follows:

"19. It was also urged that this Court is also bound to prevent the abuse of process of law. The cases which have been concluded are being revived. In spite of not accepting the compensation deliberately and statements are made in the court that they do not want to receive the compensation at any cost and they are agitating the matter time and again after having lost the matters and when proceedings are kept pending by interim orders by filing successive petitions, the provisions of section 24 cannot be invoked by such landowners.

20. There is already a reference made as to the applicability of section 24 in SLP(C)No.10742/2008 - Yogesh Neema & Ors. v. State of M.P. & Ors. vide order dated 12.01.2016. There are several other issues arising which have been mentioned above but have not been considered in Pune Municipal Corpn.(supra). Thus, here is a case where the matter should be considered by a larger Bench. Let the matter be placed before Hon'ble the Chief Justice of India for appropriate orders."

In *Indore Development Authority vs. Shailendra (Dead) through Lrs. & Ors.*, 2018 SCC Online SC 100, a three-Judge Bench dealt with the reference. The majority concluded thus:

"228. Our answers to the questions are as follows:

Q.No.1:- The word 'paid' in section 24 of the Act of 2013 has the same meaning as 'tender of payment' in section 31(1) of the Act of 1894. They carry the same meaning and the expression 'deposited' in section 31(2) is not included in the expressions 'paid' in section 24 of the Act of 2013 or in 'tender of payment' used in section 31(1) of the Act of 1894. The words 'paid'/tender' and 'deposited' are different expressions and carry different meanings within their fold.

In section 24(2) of the Act of 2013 in the expression 'paid', it is not necessary that the amount should be deposited in court as provided in section 31(2) of the Act of 1894. Non-deposit of compensation in court under section 31(2) of the Act of 1894 does not result in a lapse of acquisition under Section 24(2) of the Act of 2013. Due to the failure of

deposit in court, the only consequence at the most in appropriate cases may be of a higher rate of interest on compensation as envisaged under section 34 of the Act of 1894 and not lapse of acquisition.

Once the amount of compensation has been unconditionally tendered and it is refused, that would amount to payment and the obligation under section 31(1) stands discharged and that amounts to discharge of obligation of payment under section 24(2) of the Act of 2013 also and it is not open to the person who has refused to accept compensation, to urge that since it has not been deposited in court, acquisition has lapsed. Claimants/landowners after refusal, cannot take advantage of their own wrong and seek protection under the provisions of section 24(2).

Q.No.II:- The normal mode of taking physical possession under the land acquisition cases is drawing of panchnama as held in Banda Development Authority (supra).

Q.No.III:- The provisions of section 24 of the Act of 2013, do not revive barred or stale claims such claims cannot be entertained.

Q.No.IV:- Provisions of section 24(2) do not intend to cover the period spent during litigation and when the authorities have been disabled to act under section 24(2) due to the final or interim order of a court or otherwise, such period has to be excluded from the period of five years as provided in section 24(2) of the Act of 2013. There is no conscious omission in section 24(2) for the exclusion of a period of the interim order. There was no necessity to insert such a provision. The omission does not make any substantial difference as to legal position.

Q.No.V:- The principle of *actus curiae neminem gravabit* is applicable including the other common law principles for determining the questions under section 24 of the Act of 2013. The period covered by the final/interim order by which the authorities have been deprived of taking possession has to be excluded. Section 24(2) has no application where Court has quashed acquisition."

When the matter stood thus, another three-Judge Bench, vide order dated 21.02.2018 in SLP(C)CC No.8453/2017 (*State of Haryana vs M/s. GD Goenka*) passed the following order:

"Special Leave to Appeal (C).....CC 8453/2017 has been filed by the State of Haryana challenging the judgment and order dated 29<sup>th</sup> June, 2016 passed by the High Court of Punjab and Haryana in *M/s. G.D. Goenka Tourism Corporation Limited & Anr. V. State of Haryana*

and Others.

There are some other similar matters that are listed today on the same subject, that is, with regard to acquisition of the land of the respondents.

It is submitted by learned counsel for the State of Haryana that the matter is covered by the recent decision of a Bench of 3 learned Judges of this Court in the case of Indore Development Authority Vs. Shailendra (Dead) Through Lrs. And Ors. [(2018) 2 SCALE 1].

During the course of the submissions made by learned counsel for the State of Haryana, some learned senior counsel were present in Court and they requested to be heard in the matter since they had been engaged in some similar matters. They submitted that the decision in Indore Development Authority had unsettled a long standing statement of law and had very serious repercussions on land acquisition cases.

Acceding to their request, we heard some learned senior counsel led by Mr. Mukul Rohatgi, Sr. Adv. and we also heard learned counsel for the State of Haryana.

Mr. P.S. Patwalia, learned senior counsel who has been engaged to represent the State of Haryana expressed his personal difficulty in appearing in Court today and tomorrow. However, he did appear for a short while and requested that the matter may be taken up on some other day.

Acceding to his request, we list the matter on 7<sup>th</sup> March, 2018 as part-heard matter.

It was submitted by Mr. Mukul Rohatgi, learned senior counsel and by other learned senior counsel that when a Bench of 3 learned Judges does not agree with the decision rendered by another Bench of 3 learned Judges, the appropriate course of action would be to refer the matter to a larger Bench. He submitted that one of the learned Judges in Indore Development Authority (supra) has expressed that view.

It was also submitted by Mr. Rohatgi that a Bench of 3 learned Judges cannot hold another decision rendered by a Bench of 3 learned Judges as *per incuriam*. He referred to some decisions but we need not go into them at the present moment.

Hearing is not concluded on the issue whether the matter should at all be referred to a larger Bench or

not. However, we were informed by Mr. Rohatgi that some cases have already been decided on the basis of the judgment rendered in the case of Indore Development Authority (supra), without the matter being referred to a larger Bench.

We have also been informed by learned counsel appearing on both the sides that some similar matters are listed tomorrow as well and it is possible that in the next couple of days similar matters may be listed before various High Courts.

Taking all this into consideration, we are of the opinion that it would be appropriate if in the interim and pending a final decision on making a reference (if at all) to a larger Bench, the High Courts be requested not to deal with any cases relating to the interpretation of or concerning Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The Secretary General will urgently communicate this order to the Registrar General of every High Court so that our request is complied with.

Insofar as cases pending in this Court are concerned, we request the concerned Benches dealing with similar matters to defer the hearing until a decision is rendered one way or the other on the issue whether the matter should be referred to larger Bench or not. Apart from anything else, deferring the consideration would avoid inconvenience to the litigating parties, whether it is the State or individuals.

Delay condoned in SLPs.

Issue notice on SLPs returnable on 7<sup>th</sup> March, 2018. Dasti."

Thereafter, another two-Judge Bench vide order dated 22.02.2018 in SLP(C)No.9798/2016 (*Indore Development Authority vs. Shyam Verma and others etc.*) passed the following order :

"Vide order dated 18.04.2016, this matter was directed to be listed after the decision in SLP(Civil) No.10742/2008. The same has since been decided in "*Indore Development Authority Vs. Shailendra (Dead) Through Lrs. And Ors.*", (2018) 2 SCALE 1.

A copy of order dated 21.02.2018 in SLP(C) No. 5552/2018 CC. No.8453/2017 titled "*State of Haryana and Ors. Vs. M/S. G.D. Goenka Tourism Corporation Limited & Anr.*" has been shown to this Court by Mr. Rohatgi,



senior Advocate.

We are of the view that having regard to the nature of the issues involved in the matter, the issues need to be resolved by a larger Bench at the earliest.

These matters may be placed before the appropriate Bench tomorrow i.e. 23<sup>rd</sup> February, 2018, as per orders of Hon'ble The Chief Justice of India."

On the same date, another two-Judge Bench in C.A.No.4835/2015 (*State of Haryana & Ors. vs. Maharana Pratap Charitable Trust (Regd.) & Anr.*) passed the following order:

"In view of the order of this Court dated 21.2.2018 in Special Leave Petition(C)..... CC 8453 of 2017 titled as State of Haryana and Others versus M/s G.D. Goenka Tourism Corporation Limited and Another, that has been placed before this Court, we consider it appropriate that these matters be referred to the Hon'ble the Chief Justice to constitute an appropriate Bench and to see whether we can proceed with the hearing or not.

Since a larger issue is involved, we refer the matters to the Hon'ble Chief Justice to be dealt with by an appropriate Bench, as His Lordship may consider appropriate."

Keeping in view the aforesaid orders, it was thought appropriate by the Chief Justice of India to constitute a Constitution Bench to deal with all the issues in an apposite manner, and that is how these matters have been placed before us.

Learned counsel for the parties argued at some length and requested for framing questions of law. We think it appropriate to state, this Bench shall consider all the aspects including the correctness of the decision rendered in *Pune Municipal Corporation (supra)* and the other judgments following the said decision as well as the judgment rendered in *Indore Development Authority (supra)*.

Be it noted, learned counsel for the parties would be at liberty to file their propositions of law when the matter is taken



up for hearing.

We would have proceeded for hearing of these matters but as we are in the midst of hearing of another Constitution Bench matter, we think it appropriate to list these matters after conclusion of hearing of Item No.506 i.e. W.P.(Crl.)No.76/2016. However, the matters shall remain in the cause-list.

(Chetan Kumar )  
Court Master

(H.S.Parasher)  
Assistant Registrar