

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11150 OF 2022

Namdev Bhagwan Khedkar through Power of
Attorney Holder Dr. Dhananjay Namdev Khedkar ... Petitioner
Vs.
State of Maharashtra and others ... Respondents

WITH

INTERIM APPLICATION NO.18257 OF 2022

IN

WRIT PETITION NO.11150 OF 2022

ALONG WITH

WRIT PETITION NO.10352 OF 2022

Laxman Gajanan Wadekar (deceased) through LRs
and others ... Petitioners
Vs.
Additional Commissioner, Pune and others ... Respondents

Mr. P. K. Dhakephalkar, Senior Advocate (through VC) i/b. Mr. B. S. Shinde for
Petitioner / Applicant in WP/11150/2022 and IA/18257/2022 and for Respondent
No.5 in WP/10352 of 2022.

Mr. Kishore Patil a/w. Mr. Sumit Khairi i/b. Mr. Nilesh Wable for Petitioner in
WP/10352/2022 and for Respondent Nos.6 to 12 in WP/11150/2022.

Ms. M. S. Bane, AGP for Respondent Nos.1 to 5, 13 and 14 - State in
WP/11150/2022.

Ms. Tanu N. Bhatia, AGP for Respondent Nos.1 to 4 and 6-State in
WP/10352/2022.

CORAM : MANISH PITALE &**SHREERAM V. SHIRSAT, JJ.**Reserved on : **JULY 15, 2026**Pronounced on: **JULY 24, 2026****ORDER :** *(Per Justice Manish Pitale)*

. In these proceedings, two writ petitions have come up for consideration and the reliefs sought therein are such that if Writ Petition No.11150 of 2022 is allowed, Writ Petition No.10352 of 2022 will have to be dismissed. If only the reliefs sought in Writ Petition No.11150 of

2022 are rejected, the occasion would arise for considering the prayers in Writ Petition No.10352 of 2022. This is because the petitioner in Writ Petition No.11150 of 2022 is claiming lapsing of acquisition of his land, while the petitioners in Writ Petition No.10352 of 2022 (hereinafter referred to as 'Laxman Wadekar and family') are concerned with allotment of land as project affected persons, part of which concerns the land in respect of which lapsing of acquisition is prayed for. Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act of 2013) is invoked while claiming lapsing of acquisition. In this backdrop, the chronology of events has to be appreciated and in that light, the rival submissions shall be considered.

2. A perusal of the documents on record shows that the petitioner claiming lapsing of acquisition is concerned with land bearing Gat No.1420 admeasuring 5 Hectares 35 Ares located at Village - Sikrapur, Taluka - Shirur, District - Pune. On 24.12.1997, notification under Section 4 of the Land Acquisition Act, 1894 (L.A. Act) was issued for acquisition of the said land for project affected persons displaced by Chaskaman Irrigation Project. On 15.01.1998, enquiry was initiated under Section 5A of the L.A. Act for the proposed acquisition. The father of the petitioner in Writ Petition No.11150 of 2022 submitted an objection on the ground that the aforesaid land did not fall in the beneficial zone of the Chaskaman Irrigation Project. An enquiry conducted in the context of the said objection indicated that the said land did not fall in the beneficial zone. The Executive Engineer of Chaskaman Irrigation Project, by a letter dated 09.10.1997 addressed to the father of the said petitioner i.e. the objector, categorically stated that the said land located in Gat No.1420 did not fall in the beneficial zone.

3. On 12.01.1999, declaration under Section 6 of the L.A. Act was

issued, which included land to the extent of 1 Hectare 61 Ares from Gat No.1420. On 15.12.1999, the Sub-Divisional Officer (SDO) sent a letter to the Collector, specifically stating that the aforesaid piece of land admeasuring 1 Hectare 61 Ares from Gat No.1420 can be excluded from acquisition. In this backdrop when the land acquisition award was passed on 29.02.2000 under Section 11 of the L. A. Act in respect of the subject land, it was specifically recorded that after the award is passed, in terms of the objections raised for deletion of the said land from acquisition, a proposal for deletion under Section 48(1) of the L. A. Act would be submitted before the Commissioner. On 02.08.2000, the SDO sent a letter to the District Rehabilitation Officer at Pune to delete the aforesaid piece of land from Gat No.1420. It is significant to note that in the said letter, it was recorded that possession of the said piece of land was not taken.

4. On 09.06.2000, notices were issued under Section 12(2) of the L.A. Act. The petitioner contends that no such notice was issued and / or received by the petitioner or his predecessor in the context of the subject land. Yet on 30.07.2002, the Commissioner rejected an application filed under Section 48(1) of the L. A. Act for deletion of 1 Hectare 61 Ares of land from Gat No.1420. The petitioner claims that possession of the land was never taken and that he continues to be in possession of the subject land. It is the case of the said petitioner that despite possession of the land being retained, the Deputy Collector (Rehabilitation), Pune, illegally, by order dated 19.06.2019, allotted 1 Hectare 60 Ares land from Gat No.1420 to Laxman Wadekar. By the said order, total land of 2 Hectares 40 Ares was allotted to Laxman Wadekar, which included the aforesaid 1 Hectare 60 Ares from the land of the petitioner in Gat No.1420. On 09.07.2019, the petitioner filed Writ Petition No.10530 of 2019 against the said allotment order dated 19.06.2019. On 10.07.2019, this Court granted *status quo*. Subsequently, on 16.09.2019, the said

petition was withdrawn as the petitioner had filed an appeal before the Additional Commissioner against the allotment order dated 19.06.2019. In the meanwhile, on 15.07.2019, the petitioner's son filed an application / complaint before the Commissioner, Pune Division against the said allotment of land to Laxman Wadekar, partly from Gat No.1420. In this context, on 05.08.2019, the Rehabilitation Department prepared a report and submitted the same before the Divisional Commissioner, Pune with regard to the said grievance of the petitioner. The petitioner heavily relies upon the contents of the said report. It was stated in the said report that possession of the said land was not taken; notice under Section 12(2) of the L.A. Act was not issued / served upon the petitioner; compensation was not paid and consequently, it could not be said that the land was acquired or that it vested in the Government.

5. In the light of the said report dated 05.08.2019, on 04.09.2019, the Commissioner directed an enquiry to be conducted into the illegal allotment of land from Gat No.1420. The Commissioner also directed initiation of enquiry against the Deputy Collector (Rehabilitation), Pune, who had issued such an allotment order. On 02.11.2019, the Commissioner, Pune Division disposed of the aforesaid appeal filed by the petitioner, recording that by order dated 04.09.2019, the Commissioner had already directed an enquiry to be conducted in the matter.

6. Respondent Nos.6 to 12 in Writ Petition No.11150 of 2022 i.e. the allottees of the land challenged the order dated 02.11.2019 by filing Writ Petition No.12583 of 2019 before this Court. The said petition remained pending. But, in the light of the subsequent events, it appears that the same was rendered infructuous. On 04.01.2020, the Additional Collector passed an order in terms of the direction issued on 02.11.2019 by the Commissioner, Pune Division while disposing of the aforesaid appeal of

the petitioner. By the said order dated 04.01.2020, the Additional Collector reduced the area allotted to Laxman Wadekar and family from 2 Hectares 40 Ares to 1 Hectare 20 Ares and in that context, the area allotted from Gat No.1420 was reduced to 40 Ares. In this backdrop, on 30.01.2020, the petitioner filed the instant Writ Petition No.11150 of 2022, claiming that acquisition of land from Gat No.1420 had lapsed under Section 24(2) of the Act of 2013. The petitioner also prayed for a direction to cancel allotment of any land from Gat No.1420 in the light of lapsing of the acquisition. In that context, the petitioner also challenged the aforementioned allotment orders dated 19.06.2019 and 04.01.2020, apart from challenging the order dated 02.11.2019 passed by the Commissioner, Pune Division. Respondent Nos.6 to 12 i.e. the persons concerned with the allotment of land as project affected persons challenged the said order dated 04.01.2020 passed by the Additional Collector, whereby area of the allotted land was reduced by filing Writ Petition (St.) No.358 of 2020. On 31.01.2020, this Court allowed the writ petition and set aside the said order dated 04.01.2020 on the ground that hearing was not granted to the said respondents. The matter was remanded back for consideration afresh.

7. On 30.11.2021, the said respondents also filed Writ Petition No.7029 of 2021 seeking possession of the land allotted to them and for entering their name in the Revenue Record (7/12 extract) concerning Gat No.1420. The said writ petition was disposed of with a direction to the Additional Collector to decide the case of the said respondents as directed in the aforementioned order passed in favour of the said respondents. On 02.08.2022, the Additional Collector passed the order on remand and reduced the allotment of land to the said respondents i.e. Laxman Wadekar and family from 2 Hectares 40 Ares to 1 Hectare 20 Ares, of which 40 Ares was allotted from Gat No.1420. In this context, the petitioner in Writ Petition No.11150 of 2022 filed Interim

Application No.18257 of 2022 to amend the writ petition in order to challenge the said order dated 02.08.2022 also. The said application remained pending till these two writ petitions were taken up for consideration and final hearing. Since the said application was filed in the light of subsequent event and the aforesaid Writ Petition No.10352 of 2022 was filed by Laxman Wadekar and family challenging the said order dated 02.08.2022, the amendment application clearly deserves to be allowed in the interest of justice.

8. In that light, Interim Application No.18257 of 2022 filed by the petitioner in Writ Petition No.11150 of 2022 is allowed. Leave is granted to the petitioner to carry out the formal amendment within two weeks of pronouncement of this order. Since the amendment has been allowed, the submissions of the parties have been considered, treating the amendment proposed on behalf of the petitioner in Interim Application No.18257 of 2022 as being part and parcel of the pleadings in Writ Petition No.11150 of 2022.

9. As noted hereinabove, respondent Nos.6 to 12 in Writ Petition No.11150 of 2022 belonging to Wadekar family filed Writ Petition No.10352 of 2022 through Laxman Wadekar and family to challenge the said order dated 02.08.2022 passed by the Additional Collector on remand of the matter, whereby the area of the allotted land was further reduced. The two writ petitions i.e. Writ Petition Nos.11150 of 2022 and 10352 of 2022 were clubbed together and listed for hearing. The pleadings were completed in the writ petitions and they were taken up for final hearing.

10. Mr. Dhakephalkar, learned senior counsel appearing for the petitioner in Writ Petition No.11150 of 2022 submitted that a perusal of the documents and material on record demonstrates that insofar as the

subject land i.e. Gat No.1420 located at Village - Sikrapur, Taluka - Shirur, District - Pune is concerned, neither is possession taken nor is the petitioner paid compensation for the same. By applying the position of law clarified by the Constitution Bench of the Supreme Court in the case of *Indore Development Authority Vs. Manoharlal and others*, **(2020) 8 SCC 129**, as the twin conditions have been satisfied, Section 24(2) of the Act of 2013 squarely applies and the acquisition of the land lapsed by operation of law. The learned senior counsel for the said petitioner heavily relied upon report of the Rehabilitation Department dated 05.08.2019, wherein the aforesaid claims made by the petitioner were confirmed. It was submitted that the said findings were accepted by the Commissioner and yet, consequential order of deletion of the said land from acquisition was not passed. It was submitted that since the acquisition of the land, itself, had lapsed, the orders of allotment passed by the Additional Collector, thereby allotting part of the land from Gat No.1420 to Laxman Wadekar and family also deserved to be set aside as *non est* and illegal.

11. It was submitted that the documents filed on behalf of the respondent State authorities along with their reply affidavit supported the contentions of the said petitioner. The copies of notices placed on record concern proceedings under Section 9(3) and (4) of the L.A. Act and not Section 12(2) thereof. This clearly demonstrated that even offer for payment of compensation was not served upon the petitioner and there was no question of the compensation having been paid. As regards possession, photocopy of one disjointed paper / document was filed along with the reply of the respondent State authorities, referring to Section 17 of the L.A. Act. It was submitted that the said document could never be proof of advance possession of the land having been taken. It was submitted that the respondent State authorities had miserably failed to demonstrate that the mandatory requirements of

Section 17 including sub-sections (3), (3A) and (3B) thereof were satisfied and therefore, there was no basis for the respondents to claim that this was a case of advance possession having been taken. In this regard, the learned senior counsel for the said petitioner relied upon the judgement of the Supreme Court in the case of *M/s. Delhi Airtech Services Private Limited Vs. State of Uttar Pradesh and another*, **2022 SCC OnLine SC 1408**.

12. It was further submitted that while the respondent State authorities had failed to take any specific stand with regard to advance possession having been taken in the present case, it was surprising that the petitioners in Writ Petition No.10352 of 2022 were seeking to address the Court on the said aspect of the matter. It was submitted that in that context, the contention raised on behalf of the said petitioners i.e. Laxman Wadekar and family, who are respondents in Writ Petition No.11150 of 2022, by placing reliance on *proviso* added by Maharashtra Amendment to Section 24 of the Act of 2013, can be of no consequence. In the first place, there are no details forthcoming as to when the revenue record was mutated to show the name of the State of Maharashtra with regard to the said Gat No.1420. This was never the stand of the respondent State authorities at any point in time. In any case, there is nothing to show that the mutation had been undertaken within three years of passing of the award dated 29.02.2000.

13. On this basis, it was submitted that this was a clear case of lapsing of acquisition under Section 24(2) of the Act of 2013. It was, therefore, submitted that Writ Petition No.11150 of 2022 ought to be allowed and consequently, Writ Petition No.10352 of 2022 needs to be dismissed.

14. Mr. Kishore Patil, learned counsel appearing for the petitioners i.e. Laxman Wadekar and family in Writ Petition No.10352 of 2022 and

respondent Nos.6 to 12 in Writ Petition No.11150 of 2022 submitted that the claim regarding lapsing of acquisition under Section 24(2) of the Act of 2013, in the facts and circumstances of the present case, was clearly not made out. It was submitted that the material placed on record on behalf of the respondent State authorities sufficiently demonstrated that advance possession of the subject land was already taken for the Chaskaman Irrigation Project. Much reliance was placed on the single page document filed along with the reply of the respondent State authorities specifically recording details of Gat numbers of which advance possession was taken under Section 17 of the L.A. Act. It was submitted that the said document having come from the record of the State authorities was sufficient proof of possession having been taken. Since possession was already taken, this could be treated as a case of lapsing of acquisition as per law laid down in the Constitution Bench judgement of the Supreme Court in the case of **Indore Development Authority Vs. Manoharlal and others** (*supra*).

15. As regards Writ Petition No.10352 of 2022, it was submitted that the impugned order dated 02.08.2022 deserved to be quashed and set aside as the Additional Collector could not have exercised power of review. In the said order, the area of land allotted to Laxman Wadekar and family by order dated 19.06.2019, had been illegally reduced. It was submitted that the Additional Collector, being an executive authority, had no power of review and therefore, on this sole ground, the impugned order dated 02.08.2022 deserved to be set aside. It was submitted that the petitioners i.e. Laxman Wadekar and family were waiting for enjoying the fruits of the allotment of land made as far back as on 19.06.2019. On this basis, it was submitted that Writ Petition No.10352 of 2022 deserved to be allowed.

16. Ms. Bane, learned AGP appearing on behalf of the respondent

State authorities in Writ Petition No.11150 of 2022 and Ms. Bhatia, learned AGP appearing on behalf of the respondent State authorities in Writ Petition No.10352 of 2022, both, submitted that the claim regarding lapsing of acquisition under Section 24(2) of the Act of 2013 was not made out in the facts and circumstances of the present case.

17. Having heard the learned counsel for the rival parties, as noted in this judgement at the outset, if the contention regarding lapsing of acquisition is accepted, nothing would really remain for consideration in Writ Petition No.10352 of 2022 filed by Laxman Wadekar and family. At the most, this Court may consider issuing an appropriate direction to the State authorities for passing fresh order for allotment of alternative land. Therefore, the crux of the controversy is, as to whether the petitioner in Writ Petition No.11150 of 2022 has been able to demonstrate that the twin requirements under Section 24(2) of the Act of 2013, have been satisfied to hold that this is indeed a case of lapsing of acquisition of the subject land.

18. The Constitution Bench judgement of the Supreme Court in the case of **Indore Development Authority Vs. Manoharlal and others** (*supra*) held that if Section 24(2) of the Act of 2013 is to apply, the persons claiming that acquisition has lapsed, will have to demonstrate that neither compensation was paid to them nor possession of the subject land was taken. The relevant paragraph concerning conclusions rendered in the said judgement of the Supreme Court in the case of **Indore Development Authority Vs. Manoharlal and others** (*supra*) reads as follows:-

“**366.3.** The word ‘or’ used in Section 24(2) between possession and compensation has to be read as ‘nor’ or as ‘and’. The deemed lapse of land acquisition proceedings under Section 24(2) of the 2013 Act takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor

compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.”

19. In the present case, the petitioner in Writ Petition No.11150 of 2022 has stoutly claimed that neither compensation was paid nor possession was taken of Gat No.1420, which was made subject matter of acquisition of Chaskaman Irrigation Project. The documents placed on record show that from the very beginning, the predecessor of the petitioner objected to acquisition of Gat No.1420. Such an objection was raised at the stage of Section 5A of the L.A. Act. The letter dated 09.10.1997 issued by the Executive Engineer of the Chaskaman Irrigation Project addressed to the father of the petitioner clearly recorded that the land in Gat No.1420 being located in an elevated portion, could not be covered under the beneficial zone. The report of the Executive Engineer in that regard also confirmed the said finding. The award dated 29.02.2000 specifically recorded with regard to the said land of the petitioner that upon the pronouncement of the award, necessary steps under Section 48(1) of the L.A. Act would be taken for deletion of the same and that, such a proposal shall be placed before the Commissioner. This was perhaps because prior to the pronouncement of the said award, the Sub-Divisional Officer had specifically written to the Collector on 15.12.1999 that Gat No.1420 ought to be deleted from acquisition. The said communication was followed by another communication dated 02.08.2000 sent by the SDO to the District Rehabilitation Officer, reiterating that Gat No.1420 ought to be deleted from the proposed acquisition.

20. Thus, we find that there is sufficient material placed on record, including the contents of the land acquisition award dated 29.02.2000 itself, to demonstrate that from the very beginning the land of the said

petitioner located in Gat No.1420 was not to be included for acquisition and the responsible officers of the State authorities themselves had recorded such opinion in writing. The aforesaid communications addressed by the Executive Engineer of Chaskaman Irrigation Project and the SDO to various authorities and also the predecessor of the petitioner sufficiently support the assertion of the petitioner that the subject land in Gat No.1420 was not to be acquired as it did not fall in the beneficial zone.

21. The material placed on record and relied upon by the respondent State authorities with regard to their assertion that possession of the subject land was taken, needs to be carefully analyzed in the aforesaid backdrop. The learned AGPs relied upon a single page document annexed at Exhibit R5 to the reply affidavit filed in Writ Petition No.11150 of 2022 on behalf of the respondent SDO. The said document pertains to allotment of land from various Gat numbers that were acquired and the words 'advance possession' are mentioned therein. It is relevant to note that even the said document records only the fact that 1 Hectare 61 Ares land was acquired from Gat No.1420 and the column regarding 'allotted area of land', was kept blank. In other words, even as per the said document, no land was allotted from Gat No.1420. We fail to understand how such a disjointed one page document annexed by the respondent SDO to the reply affidavit can be accepted as clinching evidence of advance possession having been taken under Section 17 of the L.A. Act. Even otherwise, the respondent State authorities failed to place on record any reliable document showing physical possession of the subject land having been taken. No *panchanama* or possession receipt (ताबेपावती) were placed on record, at any point in time for demonstrating that possession of the subject land was taken.

22. The respondent State authorities also relied upon the statement in

the award dated 29.02.2000 regarding possession wherein it was claimed that advance possession of the lands was already taken. We find that such reliance is wholly misplaced and it specifically ignores the fact recorded in paragraph '३' of the award. In the said paragraph, with reference to the subject land of the petitioner, it was specifically recorded that the aforementioned objection was raised and that, after the pronouncement of award, a proposal would be moved separately before the Commissioner under Section 48(1) of the L.A. Act for deletion of the subject land from acquisition.

23. It is relevant to note that in the order dated 30.07.2002 passed by the Commissioner rejecting the prayer for deletion of the subject land from acquisition under Section 48(1) of the L.A. Act, it was nowhere recorded that the application did not deserve to be considered as advance possession of the land had been already taken. As a matter of fact, the application was considered on various grounds and upon rendering certain findings, by the said order, the application under Section 48(1) of the L.A. Act was dismissed. Nonetheless, the very fact that the application was considered by the Commissioner shows that possession was still retained by the petitioner. This is an aspect that is required to be considered in the backdrop of the contentions raised on behalf of the respondent State authorities.

24. The petitioner emphatically asserts that he continues to be in possession of the subject land in Gat No.1420. We find substance in reliance placed on behalf of the petitioner on the report of the Rehabilitation Department itself dated 05.08.2019, which is a part of Exhibit-D of Writ Petition No.11150 of 2022. This was a report submitted by the Rehabilitation Department on enquiry, concerning the subject land and it was submitted to the Commissioner of Pune Division. The said report recorded findings that notice under Section 12(2) of the

L.A. Act was not issued to the petitioner and that possession of the subject land was not taken. It was recorded that since neither possession of the land was taken nor compensation was paid to the petitioner, the land did not vest in the Government. It was specifically recorded that despite this factual position, part of the subject land was allotted to the project affected persons i.e. Laxman Wadekar and family. It was recorded, as a matter of fact, that even before the land was recorded in the Revenue Record as belonging to the Government, the allotment order was passed in favour of the project affected persons. Adverse findings were rendered against the officers making such an allotment and it was also recorded that just days after the allotment order dated 19.06.2019 issued by the the Deputy Collector (Rehabilitation), Pune, the said land was further sold, thereby creating suspicion. We are of the opinion that this fact finding report given by the Rehabilitation Department itself, clearly inures to the benefit of the said petitioner for claiming lapsing of acquisition under Section 24(2) of the Act of 2013. In such circumstances, the Commissioner ought to have held the allotment order passed in favour of the allottees i.e. Laxman Wadekar and family itself as illegal and unsustainable. Yet, by order dated 02.11.2019, the Commissioner merely directed enquiry to be continued in the matter for passing appropriate orders.

25. A contention was raised on behalf of Laxman Wadekar and family i.e. the allottees of the land to the effect that the present case would give rise to a situation of deemed possession having been taken by the respondent State authorities. In that context, reliance was placed on Maharashtra Amendment to Section 24(2) of the Act of 2013, whereby a *proviso* was added. The said *proviso*, *inter alia*, specifies that if the name of the State is recorded in the Revenue Record (7/12 extract) within three years of acquisition, it would be deemed that possession of the subject land was taken. In the present case, the report dated 05.08.2019

of the Rehabilitation Department records that the name of the State authorities in the Revenue Record was incorporated after the order dated 19.06.2019 was issued for allotment of the land to Laxman Wadekar and family. The land acquisition award, in the present case, was passed as far back as on 29.02.2000 and from the contents of the said report, it becomes abundantly clear that the name of the respondent State authorities was shown in the Revenue Record after 19.06.2019, which was clearly beyond the period of three years from the date of the award. This completely falsifies the theory sought to be propounded on behalf of the respondents that the present case could be said to be a case of deemed possession having been taken of the subject land. Hence, the said contention is also rejected.

26. In such a situation, the respondent State authorities as well as the private respondents, who are petitioners in Writ Petition No.10352 of 2022 i.e. Laxman Wadekar and family, vehemently claimed that since this was a case of advance possession having been taken under Section 17 of the L.A. Act, there was no question of lapsing of acquisition. As noted hereinabove, other than the single page disjointed document annexed by the respondent SDO at exhibit R-5 to its reply in Writ Petition No.11150 of 2022, there is not a shred of document or evidence to convince this Court that advance possession of the subject land was taken under Section 17 of the L.A. Act. Even the said document, as noted hereinabove, records that 'zero' land was allotted from Gat No.1420. Apart from this, we find substance in the contention raised on behalf of the petitioner claiming lapsing of acquisition that since mandatory requirements under Section 17 of the L.A. Act were not satisfied in the present case, there was no question of the theory of advance possession floated on behalf of the respondent authorities being accepted. In this context, it would be appropriate to refer to Section 17 of the L.A. Act, which reads as follows:-

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

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity, the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances:

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

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

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

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

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2),

and where the Collector is so prevented, the provisions of section 31, sub-section (2), (except the second proviso thereto,) shall apply as they apply to the payment of compensation under that section.

(3-B) The amount paid or deposited under sub-section (3-A), shall be taken into account for determining the amount of compensation, required to be tendered under section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under section 11, the excess may, unless refunded within three months from the date of the Collector's award, be recovered as an arrear of land revenue.

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

27. A perusal of the above-quoted provision shows that as per sub-section (3) of Section 17 of the L.A. Act, at the time of taking possession, the Collector mandatorily has to offer to the persons interested compensation for the standing crops and trees on such land and for any other damage sustained by them, caused by sudden dispossession. As per sub-section (3A) of Section 17 of the L.A. Act, before taking possession of any land under sub-sections (1) or (2) thereof, the Collector mandatorily has to tender 80% of the compensation for such land as estimated by the Collector to the persons interested and entitled thereto and further to pay it to them, unless prevented by one or more contingencies recorded in the said sub-section (2) of Section 31.

28. In the aforementioned judgement of the Supreme Court, in the case of **M/s. Delhi Airtech Services Private Limited Vs. State of**

Uttar Pradesh and another (*supra*) relied upon by the said petitioner, it was observed as follows:-

“16. So far so good, the question however is as to whether the rigour of Section 11-A of Act, 1894 will apply when the appropriate Government exercises its special power in cases of urgency, which does not contemplate the same procedure as in the normal acquisition process noted above. In this regard also this Court in *Yusufbhai Noormohmed Nandoliya Vs. State of Gujarat*, (1991) 4 SCC 531 has held Section 11-A is applicable to acquisition under Section 17, though without detailed discussion.

17. From the provision of Section 17 reproduced *supra*, it is seen that the acquiring authority will be entitled to take possession without taking recourse to the procedure which is otherwise provided under Section 16 of the Act, 1894 wherein it contemplates the passing of an award before taking possession. But under Section 17 of the Act, 1894, possession is permitted to be taken even before the award is passed. Though such power was absolute earlier, sub-section (3-A) was inserted by Act 68 of 1984, w.e.f 24-09-1984 whereby the precondition imposed before taking possession is that 80% of the estimated compensation is to be tendered and paid to the persons interested in the land. The tendered amount should be paid unless prevented by one or more of the contingencies mentioned in Section 31(2) of the Act, 1894. It would necessarily mean that Section 31 will come into play and the 80% of the estimated compensation amount, though no award is passed, will have to be tendered and paid to the persons interested. If tendered, but not able to pay due to valid reasons, it is to be deposited in court.

18. The word employed in sub-section (3-A) of Section 17 of the Act, 1984 is ‘shall’ and it is to be tendered and paid ‘before taking possession’. Hence it cannot be understood as providing any discretion to the acquiring authority. In fact, the last sentence of sub-section (1) of Section 17 uses the word ‘thereupon’ with respect to vesting. This word ‘thereupon’ is correlated to taking possession and payment in terms of sub-section (3-A) is a *sine qua non* for taking possession. Therefore: (1) payment of 80%, (2) taking over possession thereafter, and (3) vesting of land in the Government take place in a sequence. Absent anyone of these in the sequence, the emergency provision fails. It is a prerequisite condition to acquire and take possession of the land since such acquisition is permitted by exempting the requirement of the procedure

under Section 5-A and possession is permitted to be taken prior to an award being passed under Section 11 of the Act, 1894.”

29. In view of the said position of law, we find that since the respondent State authorities have not placed a shred of evidence before this Court to demonstrate that the aforementioned mandatory requirements of Section 17 of the L.A. Act pertaining to advance possession were satisfied in the present case, the aforesaid theory of advance possession must necessarily be rejected. This is quite apart from the fact that the aforesaid report of the Rehabilitation Department of the respondent State itself dated 05.08.2019 categorically records that even at the point in time in the year 2019 when the matter was enquired into and the report was prepared, the possession of the subject land had not been taken from the said petitioner and compensation had not been paid.

30. As regards the payment of compensation, the learned AGPs sought to rely upon exhibit R-4 filed along with the reply affidavit of the respondent SDO. A bare perusal of the same shows that the said exhibit pertains to notices issued under Section 9(3) and (4) of the L.A. Act. The said notice does not pertain to a notice under Section 12(2) of the L.A. Act. The document at exhibit R-3 purported to be a notice under Section 12(2) is merely an internal communication dated 09.06.2000 addressed by the SDO to the Talathi, stating that notices under Section 12(2) were being enclosed for service upon concerned persons. The said document also does not demonstrate that notice under Section 12(2) was served upon the petitioner or his predecessor.

31. At the stage of arguments, the learned AGP appearing in Writ Petition No.11150 of 2022 contended that the aforesaid document dated 09.06.2000, annexed at exhibit R-3 to the reply affidavit, was not a complete document and the backside of the same was inadvertently not placed on record. In that backdrop, a photocopy of the purported entire

document was tendered. But, upon specific queries put by the Court, the learned AGP conceded that even if the said photocopy of the purported entire document at exhibit R-3 was to be considered, it did not record that the notice under Section 12(2) of the L.A. Act was issued or served upon the said petitioner or his predecessor. The said document merely recorded some of the landowners being purportedly served with such a notice. Thus, we find that the respondent State authorities miserably failed to demonstrate that even notice under Section 12(2) of the L.A. Act was ever served on the petitioner or his predecessor. Therefore, it is evident that compensation was not even offered to them, leave alone being paid. In such a situation, the twin requirements under Section 24(2) of the Act of 2013 are found to be duly satisfied and hence, the acquisition of the subject land of the petitioner clearly lapsed.

32. Once this Court has reached the aforesaid conclusion in favour of the petitioner in Writ Petition No.11150 of 2022, consequentially, the orders impugned in Writ Petition No.11150 of 2022 pertaining to allotment of land from Gat No.1420 deserve to be quashed and set aside. These would include orders dated 19.06.2019, 04.01.2020 and 02.08.2022, for allotment of land to Laxman Wadekar and family as project affected persons.

33. We find that in the light of the conclusions rendered hereinabove in favour of the petitioner in Writ Petition No.11150 of 2022, the only relief that can be granted to the petitioners in Writ Petition No.10352 of 2022 is to direct the respondent State authorities to reconsider the allotment of land to the petitioners therein afresh in accordance with law, without reference to the land located in Gat No.1420. The entitlement of the petitioners in Writ Petition No.10352 of 2022 has to be in terms of the policy of the State with regard to resettlement of such persons and since the order dated 19.06.2019 cannot be restored in the light of relief

proposed to be granted in favour of the petitioners in Writ Petition No.11150 of 2022, the respondent State authorities shall consider the claim and entitlement of the petitioners in Writ Petition No.10352 of 2022 by passing an order for allotting land to them within a specified period of time.

34. In view of the above, the writ petitions are disposed of as follows:-

- A. Writ Petition No.11150 of 2022 is allowed and it is declared that the acquisition of land in Gat No.1420 of Village - Sikrapur, Taluka - Shirur, District - Pune has lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;
- B. Impugned orders dated 19.06.2019 passed by the Deputy Collector (Rehabilitation); 02.11.2019 passed by the Commissioner, Pune Division; and 02.08.2022 passed by the Additional Collector, Pune are quashed and set aside. It is to be noted that impugned order dated 04.01.2020 passed by the Additional Collector was already quashed and set aside by this Court by order dated 31.01.2020 passed in Writ Petition (St.) No.358 of 2020;
- C. Writ Petition No.10352 of 2022 is disposed of by directing the respondent State authorities to consider the claim of the petitioners therein for allotment of land in accordance with law. Such claim shall be considered and an appropriate order for allotting land to the said petitioners shall be passed expeditiously and in any case, within eight weeks from the date of this order;

D. It is made clear that since acquisition pertaining to Gat No.1420 of Village - Sikrapur, Taluka - Shirur, District - Pune has been held to have lapsed, the respondent State authorities passing an order of allotment of land to the petitioners in Writ Petition No.10352 of 2022 shall not include any portion of the land in Gat No.1420;

35. Both, Writ Petition Nos.11150 of 2022 and 10352 of 2022, are disposed of in above terms. Pending applications, if any, also stand disposed of.

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)

Minal Parab