

ITEM NO.5

COURT NO.7

SECTION IVA

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). 10742/2008
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 28/03/2008
IN WA NO. 128/2008 PASSED BY THE HIGH COURT OF M.P AT JABALPUR)

YOGESH NEEMA & ORS.

PETITIONER(S)

VERSUS

STATE OF M.P. & ORS.

RESPONDENT(S)

(WITH APPLN. (S) FOR DIRECTIONS AND EXEMPTION FROM FILING O.T. AND
URGING ADDITIONAL SUBMISSIONS AND INTERIM RELIEF AND OFFICE REPORT)
(FOR FINAL DISPOSAL)

Date : 12/01/2016 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Petitioner(s)

Mr. Puneet Jain, Adv.
Mr. Abhinav Gupta, Adv.
Mr. Manu Maheshwari, Adv.
Ms. Ankita Gupta, Adv.
Ms. Pratibha Jain, Adv.

For Respondent(s)

Mr. Naveen Sharma, Adv.
Mr. Mishra Saurabh, Adv.

Ms. Suparna Srivastava, Adv.
Mr. Rahul Srivastava, Adv.
Mr. Ram Swarup Sharma, Adv.

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

The Registry of this Court is directed to place the papers before the Hon'ble the Chief Justice of India for appropriate orders. We make it clear that as the questions posed by us are required to be answered at the threshold we

have refrained from going into the other questions raised on behalf of the petitioners which would undoubtedly be open to be considered in the event the same becomes necessary.

[VINOD LAKHINA]
COURT MASTER

[ASHA SONI]
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO.10742/2008

YOGESH NEEMA & ORS. PETITIONERS

VERSUS

STATE OF M.P. & ORS. RESPONDENTS

ORDER

1. In the present Special Leave Petition apart from several other issues urged by the petitioners to challenge the order of the High Court upholding the acquisition under the provisions of the Land Acquisition Act, 1894, a question has been raised with regard to the applicability of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the 2013 Act") and whether

in view of the fact that the possession had not been taken over despite the award being passed five years prior to 1st January, 2014 the land acquisition proceedings have lapsed. It may be taken note of at this stage that the petitioners had been the beneficiaries of the interim order of the High Court as well as this Court on account of which possession of the acquired land could not be taken over by the State. It has also to be noted that the order of the High Court had upheld the acquisition in question and the writ petition(s) was dismissed.

2. The matter appears to have been settled by a decision of a coordinate bench of this Court in Sree Balaji Nagar Residential Association Versus State of Tamil Nadu and others [(2015) 3 SCC 353]. Paragraphs 11 and 12 of the aforesaid

decision which contain the reasons for the view taken may be extracted below:

"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 proceedings 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 of 1894, the legislature had brought about amendment in Section 6 through an Amendment Act of 1984 to add Explanation I 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."

3. A consideration of the aforesaid paragraphs would go to indicate that what

had prevailed with the coordinate bench of this Court to take the view in question is that the omission in Section 24(2) to specifically exclude the period covered by an interim order of this Court staying the acquisition proceeding is a conscious omission of the legislature and the courts cannot fill up such an omission. In paragraph 12 of the aforesaid decision the fact that similar situations in the Land Acquisition Act had been subsequently rectified by means of appropriate amendments to Section 6 and 11-A by bringing in Explanation thereto has also been noticed. The aforesaid decision of the coordinate bench of this Court in Sree Balaji Nagar Residential Association (supra) has been followed in large number of cases details of which have been laid before us. The decision of a three judge bench of this Court in Union of India and

others versus Shiv Raj and others [(2014) 6 SCC 564] has also been laid before us.

4. We have considered the views expressed in Sree Balaji Nagar Residential Association (supra) and Union of India and others versus Shiv Raj and others (supra). At the outset, we clarify that upon reading the decision of the three judge bench of this Court in Union of India and others versus Shiv Raj and others, we do not find any view of the bench on the question arising, namely, whether the period during which the award had been remained stayed should be excluded for the purposes of consideration of the provisions of Section 24(2) of the 2013 Act. Insofar as the decision of the coordinate bench of this Court in Sree Balaji Nagar Residential Association (supra) is concerned, having read and considered paragraphs 11 and 12

thereof, as extracted above, it is our considered view that the legal effect of the absence of any specific exclusion of the period covered by an interim order in Section 24(2) of the 2013 Act requires serious reconsideration having regard to the fact that it is an established principle of law that the act of the court cannot be understood to cause prejudice to any of the contesting parties in a litigation which is expressed in the maxim "actus curiae neminem gravabit". We accordingly take the view that the aforesaid question should receive the attention and consideration of a larger bench of this Court. The following two questions of law, according to us, would specifically require an authoritative pronouncement for an appropriate adjudication on the factual controversy arising in the present case and in a large

number of connected cases:

(i) Whether the conscious omission referred to in paragraph 11 of the judgment in Sree Balaji Nagar Residential Association (supra) makes any substantial difference to the legal position with regard to the exclusion or inclusion of the period covered by an interim order of the Court for the purpose of determination of the applicability of Section 24(2) of the 2013 Act?

(ii) Whether the principle of "actus curiae neminem gravabit", namely act of the court should not prejudice any parties would be applicable in the present case to exclude the period covered by an interim order for the purpose of determining the question with regard to taking of possession as contemplated in Section 24(2) of the 2013 Act?

5. The Registry of this Court is directed to place the papers before the Hon'ble the Chief Justice of India for appropriate orders. We make it clear that as the aforesaid questions posed by us are required to be answered at the threshold we have refrained from going into the other questions raised on behalf of the petitioners which would undoubtedly be open to be considered in the event the same becomes necessary.

.....,J.
(RANJAN GOGOI)

.....,J.
(PRAFULLA C. PANT)

NEW DELHI
JANUARY 12, 2016