

A THE STATE OF MADHYA PRADESH & ORS.

v.

SMT. KALLO BAI

(Criminal Appeal No. 932 of 2017)

B MAY 08, 2017

[N. V. RAMANA AND PRAFULLA C. PANT, JJ.]

Madhya Pradesh Van Upaj (Vyapar Viniyam) Adhiniyam, 1969:

C *s.15 – Confiscation under – Of Tractor and Trolley and the forest produce – Appellate authority upheld the confiscation order – Revisional Court held that confiscation was not permissible unless the guilt of the accused is fully established – High Court affirmed the order of Revisional Court – On appeal, held: Criminal prosecution is distinct from confiscation proceedings – The two proceedings are different and parallel, each having distinct purpose*
D *– The scheme of Adhiniyam prescribes an independent procedure for confiscation – Therefore, the conclusion by the Revisional Court and High Court was erroneous.*

Allowing the appeal, the Court

E **HELD: 1.** In order to facilitate development of a good forest policy, the State of Madhya Pradesh enacted the Madhya Pradesh Van Upaj (Vyapar Viniyam) Adhiniyam, 1969. This legislation was enacted with an object to regulate the trade of certain forest produce in the State of Madhya Pradesh. The Adhiniyam is a statute enacted for the purpose of preserving certain forest
F produce in the State of Madhya Pradesh. The Scheme of the Act, as expressed in several provisions, is to empower the authorized officers of the Forest Department for proper implementation/enforcement of the statutory provisions and for enabling them to take effective steps for preserving these forest produce. For this purpose certain powers including the power of seizure,
G confiscation and forfeiture have been vested in them. [Para 11] [222-F-G; 223-A]

H **2.** Confiscation proceedings as contemplated under Section 15 of the Adhiniyam is a quasi-judicial proceedings and not a criminal proceedings. Confiscation proceeds on the basis of the

'satisfaction' of the Authorized Officer with regard to the commission of forest offence. [Para 15] [226-G-H; 227-A] A

3. Adhiniyam as originally enacted, did not provide for separate confiscatory proceedings. Original enactment only had penal provisions. The newly introduced Sections from Section 15-A to 15-D were brought in line with Indian Forest Act, as amended by the State of Madhya Pradesh to provide for a separate confiscatory mechanism. [Para 12] [223-B-C] B

4. The broad scheme of the Adhiniyam is to punish those who are in contravention of the law at the hand of the criminal court. The confiscation being incidental and ancillary to the conviction, State of Madhya Pradesh, separated the process of confiscation from the process of prosecution. The purpose of the enactment seems to be that the power of the criminal court regarding the disposal of property is made subject to the jurisdiction of the authorized officer with regard to that aspect; the jurisdiction of criminal court in regard to the main trial remains unaffected. [Para 20] [229-A-B] C
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Divisional Forest Officer And Anr. v. G. V. Sudhakar And Ors. [1985] 3 Suppl. SCR 680 : 1985 (4) SCC 573; *State of West Bengal v. Gopal Sarkar* [2001] 5 Suppl. SCR 212 : 2002 (1) SCC 495; *State of M.P. v. S.P. Sales Agencies* [2004] 3 SCR 640 : 2004 (4) SCC 448 – relied on. E

5. Section 15 gives independent power to the concerned authority to confiscate the articles, as mentioned there under, even before the guilt is completely established. This power can be exercised by the concerned officer if he is satisfied that the said objects were utilized during the commission of a forest offence. A protection is provided for the owners of the vehicles/articles, if they are able to prove that they took all reasonable care and precautions as envisaged under Sub-section (5) of Section 15 of the Adhiniyam and the said offence was committed without their knowledge or connivance. [Para 24] [230-H; 231-A-B] F
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6. Criminal prosecution is distinct from confiscation proceedings. The two proceedings are different and parallel, each

A having a distinct purpose. The object of confiscation proceeding is to enable speedy and effective adjudication with regard to confiscation of the produce and the means used for committing the offence while the object of the prosecution is to punish the offender. The scheme of Adhiniyam prescribes an independent procedure for confiscation. The intention of prescribing separate proceedings is to provide a deterrent mechanism and to stop further misuse of the vehicle. [Para 25] [231-C-D]

B 7. The High Court as well as the Revisional Court erred in coming to a conclusion that the confiscation under the law was not permissible unless the guilt of the accused is completely established. [Para 26] [231-D-E]

Case Law Reference

	[1985] 3 Suppl. SCR 680	relied on	Para 21
D	[2001] 5 Suppl. SCR 212	relied on	Para 22
	[2004] 3 SCR 640	relied on	Para 23

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 932 of 2017.

E From the Judgment and Order dated 21.01.2014 of the High Court of Madhya Pradesh at Jabalpur in M. Cr. C. No. 12750 of 2013.

Purushaindra Kumar, Mishra Saurabh, Ankit Kumar Lal, Ms. Vanshujha Shukla, Ms. Anuradha Mishra, Advs. for the Appellants.

F Parmanand Gaur, Sameer Kumar, Ekansh Bansal, Advs. for the Respondent.

The Judgment of the Court was delivered by

N. V. RAMANA, J. I. Leave granted.

G 2. This appeal is filed assailing the judgment, dated 21.01.2014, in M.Cr.C No. 12750/2013, passed by the High Court of Madhya Pradesh at Jabalpur, wherein the High Court has dismissed the appeal filed by the appellant State by upholding the order of the lower court, which through its order directed to release the confiscated vehicle during the pendency of the main criminal case.

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3. Brief facts of the case in nut shell are that the respondent is the owner of the tractor bearing number (MP-22 AA-0736) and trolley bearing number (MP 22 AA 0764). On 03.1.2012 while this vehicle was being used to transport 1.054 cubic meters of teak wood from Saliwara to Parasia Road, Reserve Forest Compartment No. 117. As the driver was not carrying the documents required for the transportation of teak wood, the staff of Forest Development Corporation, at Dhuma District, Seoni, after completion of formalities seized the teakwood and the aforesaid vehicle, being tractor (MP-22 AA-0736) and trolley (MP 22 AA 0764). Thereafter, the Project Range Officer registered the offence under Section 5 and Section 15 of Madhya Pradesh Van Upaj (Vyapar Viniyam) Adhiniyam, 1969 [hereinafter 'Adhiniyam' for brevity] read with Section 26 and Section 41 of the Indian Forest Act, 1927. The said case was registered as Offence No. 251/2013. In relation to this, a charge sheet was filed which was numbered as Criminal Case No. 269/2013 before the trial court.

4. The Authorized Officer-cum-Sub Divisional Officer Lakhnadone, Forest Division North (territorial), Seoni simultaneously initiated the confiscation proceeding under Section 15 of the Adhiniyam. The same was registered as Confiscation Case No. 9/2012.

5. In the process, the Authorized Officer-cum-Sub Divisional Officer Lakhnadone, Forest Division North (territorial), Seoni, ordered confiscation of tractor (MP-22 AA-0736) and trolley (MP 22 AA 0764) and teak wood. The Authorized Officer-cum-Sub Divisional Officer held that the vehicle operator and his companion had deliberately transported the teak wood without the requisite permit or any valid document. Further, he held that the owner was aware of the said illegal transport.

6. Aggrieved by the said order, the respondent carried the matter in appeal before the Appellate Authority i.e. Appellate Authority-cum-Chief Conservator of Forest, Seoni Circle, Seoni (M.P), who in turn dismissed the appeal and confirmed the order of the authority below by order dated 06.12.2012.

7. The respondent having been unsatisfied with the order dated 6-11-2012 preferred revision before the additional sessions judge, Seoni, under Section 15-B of the Adhiniyam. The additional sessions judge, Seoni, by judgment dated 18.07.2013, allowed the revision and quashed the order of confiscation and directed to release the vehicle. Moreover

A the court was of the view that unless the guilt of the accused is proved, there cannot be any confiscation of the vehicle and the forest produce. The reasoning of the first revisional court is extracted as under:

B 14. As such, the order of Authorized Officer and Sub Divisional Officer dated 09.04.2012 and order of Appellate Authority and Designated Conservator of Forests dated 06.12.2012 in Appeal No. 7/2012 are violation of Section 55 of the Indian Forest Act, 1927 and also Adhiniyam, 1969. **The Sub Divisional Forest officer lakhnadon and Appellate Authority without holding accused guilty in criminal case no. 269/2012 had no right to confiscate the vehicle and forest produce.**

C (emphasis supplied)

D 8. The State challenged the aforesaid order of the additional sessions judge, Seoni, dated 18.07.2013, by filing a petition under Section 482 of the Code of Criminal Procedure, 1973 being M.Cr.C No. 12750/2013 before the High Court of Madhya Pradesh at Jabalpur. The High Court, by order dated 21.01.2014, dismissed the petition filed by the appellant/state and affirmed the order of the lower court. Aggrieved by the order of the High Court, the appellant/state has knocked on the doors of this Court by way of special leave petition.

E 9. Heard the learned counsel for both parties and perused the material available on record.

F 10. Madhya Pradesh is famous for its abundant biodiversity. The rich biodiversity generates minor forest produce such as tendu, harra, sal seed and gum etc¹. These forest produce are a good source of revenue for the state and provides employment opportunities for the people.

G 11. In order to facilitate development of a good forest policy, the State of Madhya Pradesh enacted the Adhiniyam in the year 1969.² This legislation was enacted with an object to regulate the trade of certain forest produce in the State of Madhya Pradesh.³ The Adhiniyam is a statute enacted for the purpose of preserving certain forest produce in the State of Madhya Pradesh. The Scheme of the Act, as expressed in several provisions, is to empower the authorized officers of the Forest Department for proper implementation/enforcement of the statutory

¹ Madhya Pradesh Development Report, Planning Commission (2011).

² Preamble, Adhiniyam.

³ Ibid.

provisions and for enabling them to take effective steps for preserving these forest produce. For this purpose certain powers including the power of seizure, confiscation and forfeiture have been vested in them. This position is made clear by giving overriding effect to the provisions of the Act over other statutes and laws. A

12. At this juncture it is important to have a glance at certain changes the Adhiniyam has undergone over the years. Sections 15 and 22 (1) were replaced by Section 15-A to 15-D by the *State Act 15 of 1987*. Adhiniyam as originally enacted did not provide for separate confiscatory proceedings. Original enactment only had penal provisions. The newly introduced Sections from Section 15-A to 15-D were brought in line with Indian Forest Act, as amended by the State of Madhya Pradesh to provide for a separate confiscatory mechanism. B C

13. Before we delve into the issue, a brief reference to the overall scheme of the Act is necessary. Section 2 of the Adhiniyam is the definition clause. Under Sub-clause (d) of Section 2 various forest produce have been elucidated. Section 3 of the Adhiniyam empowers State Government to divide forest area into units for carrying out the purposes of the Act. Section 4 of the Adhiniyam states that the State Government may appoint requisite number of agents to trade in specific forest produce. Further, Section 5 creates bar on individuals other than the State Government or authorized officers of the State Government or an agent appointed under Section 4, to purchase or transport such specified forest produce in such area with certain exceptions as provided under Sub-section (2) of Section 5. Furthermore, Section 7, 8 and 9 of the Adhiniyam allows the State Government to fix prices, prescribe procedures for opening depots, publication of price lists etc. at the depot. D E

14. Section 10 and 11 of the Adhiniyam prescribes registration of growers, manufacturers, traders and consumers of specified forest produce respectively. Section 12 vests discretionary powers upon the State Government to dispose of specified forest produce. Section 12-A provides for re-sale of excess specified forest produce by manufacturer, trader or consumer. Section 13 provides for the mode of retail sale of specified forest produce. Section 14 empowers State Government to delegate powers or functions under the Act. F G

15. It would be useful for the purpose of this case to reproduce Section 15 of the Adhiniyam- H

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15. Search and seizure of property liable to confiscation and procedure thereof - (1) Any Forest Officer as may be notified by the State Government or any Police Officer not below the rank of an Assistant Sub Inspector or any other person authorized by the State Government may, with a view to securing compliance with the provisions of this Act or the Rules made thereunder or to satisfying himself that the said provisions have been complied with,-

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(i) stop and search any person, boat, vehicle or receptacle use or intended to be used for the transport of satisfied forest produced;

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(ii) Enter and search any place.

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(2) When there is reason to believe that any officer under this Act has been committed in respect of any specified forest produce, 3[Any Forest Officer as may be notified by the State Government or any Police Officer not below the rank of an Assistant Sub Inspector] or any person authorized by the State Government in this behalf may, seize such specified Forest Produce along with all tools, boats, vehicles, ropes, chains or any other articles used in committing such offence under the provisions of this Act.

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(3) Any Officer or Person seizing any property under this Section shall place on all such property a mark indicating that the same has been so seized and shall, as soon as may be, either produce the property seized before the officer not below the rank of an Assistant Conservator or Forest authorised by the State Government in this behalf, by notification (hereinafter referred to as the Authorised Officer] or where it is having regard to quantity or bulk or other genuine difficulty, not practicable to produce the property seized before the Authorised Officer, make a report about the seizure to the Authorised Officer, or where it is intended to launch criminal proceedings against the offender immediately make report of such seizure to the Magistrate having jurisdiction to try the offence account of which seizure has been made:

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Provided that, when the specified Forest Produce with respect to which such offence is believed to have been committed is the property of Government and the offender is unknown it shall be

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sufficient if the officer make as soon as may be a report of the circumstances to his official superior. A

(3A) Any forest officer of a rank not inferior to that of a Ranger, who or whose subordinate, has seized any tools, boats, vehicles, ropes, claims or any other article as liable for confiscation, may release the same on the execution by the owner thereof, of a security in a form as may be prescribed, of an amount equal to double the value of such property, as estimated by such officer, of the production of the property so released, when so required, before the officer authorized order the confiscation or the Magistrate having jurisdiction to try the offence on account of which the seizure has been made. B C

(4) Subject to the provisions of sub-section(6), where the authorized officer upon production before him of the specified forest produce or upon receipt of report about the seizure, as the case may be, is satisfied that offence has been committed in respect thereof, he may, by order in writing and for reasons to be recorded confiscate the specified forest produce so seized together with all tools, vehicles, boats ropes, chains or any other articles used in committing such offence. A copy of order of confiscation shall be forwarded without any undue delay to the 1[Officer-in-charge of Forest Circle] in which the specified forest produce has been seized. D E

(5) No order confiscating any property shall be made under sub-section(4) unless the authorised officer, -

- (a) sends an intimation in forms prescribed about intimation of proceedings for confiscation of property to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made; F
- (b) issues a notice in writing to the person from whom the property is seized, and to any other person who may appear to the authorised officer to have some interest in such property; G
- (c) affords an opportunity to the persons referred to in clause (b) of making a representation within such reasonable time as may be specified in the notice against the proposed confiscation; and H

A (d) gives to the officer or person effecting the seizure and the person or persons to whom notice has been issued under clause (b), hearing on the date to be fixed for such purpose.

B (5A) When the authorised officer having the jurisdiction over the case is himself involved in the seizure of investigation, the next higher authority may transfer the case to any other officer of the same rank for conducting proceedings under this section.]

C (6) No order of confiscation under sub-section (4) of any tools, vehicles, boats, ropes, chains or any other articles (other than specified forest produce seized) shall be made if any person referred to in clause (b) of sub-section (5) proves to the satisfaction of authorised officer that any such knowledge or connivance or as the case may be without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of objects aforesaid for commission of an offence under this Act.

D (6A) The seized forest produce or any other property, if ordered to be released by the authorised officer, shall continue to be under custody until confirmation of the order of the authorised officer by the Appellate Authority or until the expiry of the period for initiating "*suomotu*" action by him, whichever is earlier, as specified under Section 15-A.

E (7) The provisions of Sections 102 and 103 of the Code of Criminal Procedure, 1973 (No.2 of 1974) relating to search and seizures shall so far as may be apply to searches and seizures and seizures under this section.

F Sub-section (1) of Section 15 empowers concerned forest officers to conduct search to secure compliance of the provisions of the Adhinyam. On a plain reading of Sub-section (2), it is clear that the concerned officer may seize vehicles, ropes etc, if he has reason to believe that the said items were used for the commission of an offence under the Adhinyam. Confiscation proceedings as contemplated under Section 15 of the Adhinyam is a quasi-judicial proceedings and not a criminal proceedings. Confiscation proceeds on the basis of the 'satisfaction' of the Authorized Officer with regard to the commission

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of forest offence. Sub-section (3) of the provision lays down the procedure to be followed for confiscation under the Adhiniyam. Sub-section (3A) authorizes forest officers of rank not inferior to that of a Ranger, who or whose subordinate, has seized any tools, boats, vehicles, ropes, claims or any other article as liable for confiscation, may release the same on execution of a security worth double the amount of the property so seized. This provision is similar to that of Section 53 of the Indian Forest Act as amended by the State of Madhya Pradesh. Sub-section (4) mandates that the concerned officer should pass a written order recording reasons for confiscation, if he is satisfied that a forest offence has been committed by using the items marked for confiscation. Sub-section (5) prescribes various procedures for confiscation proceedings. Sub-Section (5A) prescribes that whenever an Authorized Officer having jurisdiction over the case is himself involved in the seizure, the next higher authority may transfer the case to any other officer of the same rank for conducting confiscation proceedings. Sub-section (6) provides that with respect to tools, vehicles, boats, ropes, chains or any other article other than timber or forest-produce seized, confiscation may be directed unless the person referred in clause (b) of Sub-section 5 is able to satisfy that the articles were used without his knowledge or connivance or, as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against the use of such objects for commission of forest offence.

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16. Section 15 A provides the remedy of appeal against the order of the authorized officer under Section 15 in confiscation proceedings. Section 15-B of the Adhiniyam provides for revision before the Court of Sessions against the order of the Appellate Authority in the confiscation proceedings.

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17. Under Section 15-C of the Adhiniyam, a jurisdictional bar on courts and tribunals have been provided for, if the confiscation proceedings are initiated under Section 15 of the Adhiniyam. Moreover Sub-section (2) of Section 15-C provides that nothing hereinbefore contained shall be deemed to prevent any officer authorized in this behalf by the State Government from directing at any time the immediate release of any property seized under Section 15. The necessary proposition which follows such a provision is that, in a case where the Authorized Officer

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A is empowered to confiscate the seized forest produce on being satisfied
 that an offence under the Act has been committed, the general power
 vested in the Magistrate for dealing with interim custody/release of the
 seized materials under the Cr. P.C. gives way. The Magistrate while
 B dealing with a case of seizure of forest produce under the Act should
 first examine whether the power to confiscate the seized forest produce
 is vested in the Authorized Officer under the Act and if he finds so, then
 he has no power to pass any order dealing with interim custody/release
 of the seized material. Such ouster of jurisdiction would aid in proper
 implementation of the Adhiniyam. If in such cases the power to grant
 interim custody/release of seized forest produce is vested in the
 C Magistrate, then it will defeat the very scheme of the Act. Such a
 consequence is to be avoided.

18. Another relevant provision which needs to be discussed is
 Section 15-D of the Adhiniyam. It provides that:

D **15-D. Confiscation of property when the produce is not the
 property of Government.-** All specified forest produce which
 in either case is not the property of the Government and in respect
 of which a contravention of any provision of the Act or the rules
 made thereunder has been committed and all tools, boats, vehicles,
 ropes, chains or any other articles, in case used in committing
 E such contravention shall, subject to the provisions of Sections 15,
 15A, 15 B and 15 C be liable to confiscation upon conviction of
 the offender for such contravention.

19. The said section makes it clear that section 15-D subjects
 itself to confiscation proceedings under Section 15, 15-A, 15-B and 15-
 F C of Act. Further Section 15-D speaks of confiscation of all tools, boats,
 vehicles, ropes, chains or any other articles upon conviction of the offender
 for such forest offence. This Section is equivalent to Section 55 of the
 Indian Forest Act as amended by the State of Madhya Pradesh. In this
 Section the confiscation after the conviction is subjected to separate
 confiscation proceedings as contemplated under Section 15, 15-A, 15-
 G C. At the cost of repetition it should be noted that if a confiscation
 proceeding under Section 15 has commenced and the confiscation has
 already occurred, then there is no question of confiscation under Section
 15-D again. If the confiscation has not taken place under Section 15,
 then the Court after final conviction can order confiscation under Section
 H 15-D of the Adhiniyam.

20. The broad scheme of the Adhinyam is to punish those who are in contravention of the law at the hand of the criminal court. The confiscation being incidental and ancillary to the conviction, State of Madhya Pradesh, separated the process of confiscation from the process of prosecution. The purpose of the enactment seems to be that the power of the criminal court regarding the disposal of property is made subject to the jurisdiction of the authorized officer with regard to that aspect; the jurisdiction of criminal court in regard to the main trial remains unaffected.

21. Before we deal with the question concerned in this appeal it would be apt to have a look at three cases decided by this court. In *Divisional Forest Officer And Anr. Vs. G.V. Sudhakar And Ors.*⁴, this Court was concerned with the question as to whether the proceedings for confiscation of illegally felled timber by the respondent therein can be continued till the disposal of main criminal case pending against him. This Court after considering the various provisions of the Andhra Pradesh Forest Act came to the conclusion that there is no doubt that the object of the legislation was to provide for two separate proceedings before two different forums and that there is no conflict of jurisdiction as Section 45, as amended by the Amendment Act, in turn curtails the power conferred on the Magistrate to direct confiscation of timber or forest produce on conviction of the accused. This Court proceeded to observe-

The conferral of the power of confiscation of seized timber or forest produce and the implements, etc. on the Authorized Officer under Sub-section (2a) of Section 44 of the Act on his being satisfied that a forest offence had been committed in respect thereof, is not dependent upon whether a criminal prosecution for commission of a forest offence has been launched against the offender or not. It is a separate and distinct proceeding from that of a trial before the Court for commission of an offence. Under Sub-section (2A) of Section 44 of the Act, where a Forest Officer makes report of seizure of any timber before the Authorized Officer along with a report under Section 44(2), the Authorized Officer can direct confiscation to Government of such timber or forest produce and the implements, etc., if he is satisfied that a forest offence has been committed, irrespective of the fact whether the accused is facing a trial before a Magistrate for the commission of a forest offence under Section 20 or 29 of the Act.

⁴(1985) 4 SCC 573

A 22. In the case of *State of West Bengal vs. Gopal Sarkar*⁵, this Court again had an opportunity to deal with the confiscatory proceedings initiated for forest offences. This Court while relying on the judgment in *Divisional Forest Officer vs G. V. Sudhakar Rao* (Supra) has come to the following conclusion:

B 10. On a fair reading of the provision it is clear that in a case
 C where any timber or other forest produce which is the property of
 D the State Government is produced under sub-section (1) and an
 Authorised Officer is satisfied that a forest offence has been
 committed in respect of such property he may pass order of
 confiscation of the said property (forest produce) together with
 all tools, ropes, chains, boats, vehicles and cattle used in committing
 the offence. The power of confiscation is independent of any
 proceeding of prosecution for the forest offence committed. This
 position is manifest from the statute and has also been held by this
 Court in *Divisional Forest Officer v. G.V. Sudhakar Rao* [(1985)
 4 SCC 573 : 1986 SCC (Cri) 34 : AIR 1986 SC 328] .

E 23. In the case of *State of M.P. vs. S.P. Sales Agencies*⁶, the
 brief facts therein were a truck was intercepted by the police in the
 District of Gwalior. It was found that 281 cases of Kuttcha manufactured
 by M/s Harsh Food Products, respondent 2 therein were found in the
 truck. These wood cases were being transported without requisite transit
 pass under Rule 3 of M.P. Transit Rules thereafter; this matter was
 reported to Sub-Divisional Forest Officer, Gwalior, who initiated
 confiscation proceedings under Section 52 of the Act. This Court had an
 opportunity to deal with the question as to whether confiscation
 proceedings can be initiated under section 52 of the Act only after
 F launching of the criminal prosecution or is it open to the forest authorities
 upon seizure of forest produce to initiate both or either. This Court relying
 on the cases in *Divisional Forest Officer vs. G. V. Sudhakar Rao* and
State of West Bengal vs. Gopal Sarkar, came to the conclusion that
 the power of confiscation is independent of any criminal prosecution for
 G forest offences committed.

24. In view of the foregoing discussions, it is apparent that Section
 15 gives independent power to the concerned authority to confiscate the
 articles, as mentioned there under, even before the guilt is completely

⁵ (2002) 1 SCC 495

H ⁶ (2004) 4 SCC 448

established. This power can be exercised by the concerned officer if he is satisfied that the said objects were utilized during the commission of a forest offence. A protection is provided for the owners of the vehicles/articles, if they are able to prove that they took all reasonable care and precautions as envisaged under Sub-section (5) of Section 15 of the Adhiniyam and the said offence was committed without their knowledge or connivance.

25. Criminal prosecution is distinct from confiscation proceedings. The two proceedings are different and parallel, each having a distinct purpose. The object of confiscation proceeding is to enable speedy and effective adjudication with regard to confiscation of the produce and the means used for committing the offence while the object of the prosecution is to punish the offender. The scheme Adhiniyam prescribes an independent procedure for confiscation. The intention of prescribing separate proceedings is to provide a deterrent mechanism and to stop further misuse of the vehicle

26. At the cost of repetition we clarify that confiscatory proceedings are independent of the main criminal proceedings. In view of our detailed discussion in the preceding paragraph we are of opinion that High Court as well as the revisional court erred in coming to a conclusion that the confiscation under the law was not permissible unless the guilt of the accused is completely established.

27. Consequently the appeal is allowed and the judgment of the High Court is set aside.

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GOVT. OF NCT OF DELHI

v.

MANAV DHARAM TRUST AND ANOTHER

(Civil Appeal No. 6112 of 2017)

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MAY 04, 2017

[KURIAN JOSEPH AND R. BANUMATHI, JJ.]

C

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – s.24(2) – Subsequent purchasers/Assignees/Power of attorney holders etc – Locus standi to file a petition for a declaration of lapse of acquisition proceedings u/s.24(2) – Held: The subsequent purchaser, the assignee, the successor in interest, the power of attorney, etc., are all persons who are interested in compensation/affected persons in terms of the 2013 Act and such persons are entitled to file a case for a declaration that the land acquisition proceedings have lapsed by virtue of operation of s.24(2) of the 2013 Act – It is a declaration qua the land wherein indisputably they have an interest and they are affected by such acquisition – Land Acquisition Act, 1894.

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Dismissing the appeals, the Court

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HELD: 1. Under the 2013 Act, all persons claiming interest in compensation to be paid on account of the acquisition of land under the 2013 Act, are persons interested. Among others, any person whose primary source of livelihood is likely to be adversely affected is also a person interested. The definition of affected family also indicates that even a family residing in the lands sought to be acquired, be it an owner or not, is an affected family, and if a family or a person is affected, necessarily, he has a right to approach the Court to protect his interests. [Paras 18, 20] [245-C; 246-G]

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2. The challenge made by the writ petitioners was not to the acquisition or to the regularity of the process of acquisition including the taking of possession. Their only prayer was for a declaration that the proceedings qua the land referred to in the Application have lapsed by virtue of the operation of Section

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24(2) of the 2013 Act. It is one thing to say that there is a challenge to the legality or propriety or validity of the acquisition proceedings and yet another thing to say that by virtue of operation of a subsequent legislation, the acquisition proceedings have lapsed. [Paras 21, 23] [246-H; 247-A, C] A

3. The 2013 Act has made a sea change in the approach on the acquisition of land and compensation thereof. The only lapse under the 1894 Act was under Section 11A where what would lapse is the ... "entire proceedings for the acquisition of land" whereas under Section 24(2) of the 2013 Act, what gets lapsed is the land acquisition proceedings initiated under the 1894 Act which has culminated in passing of an award under Section 11 but where either possession was not taken or compensation was not paid within five years prior to 01.01.2014. In other words, the land acquisition proceedings contemplated under Section 24(2) of the 2013 Act would take in both, payment of compensation and taking of possession within the five year period prior to 01.01.2014. If either of them is not satisfied, the entire land acquisition proceedings would lapse under the deeming provision. The impact of deemed lapse under Section 24(2) is that pervasive. Thus, on account of the lapse, the encumbrance created in favour of the State comes to an end, and resultantly, the impediment to encumber the land also comes to an end. [Para 25] [247-E-G; 248-A-B] B C D E

4. The whole face of land acquisition has changed by the 2013 Act. Section 105 of the 2013 Act has provided that the provisions of the Act shall not apply to the enactments specified in the Fourth Schedule. So far, only 13 Acts have been notified under the Fourth Schedule. Neither Delhi Development Act, 1957 nor Delhi Lands (Restrictions on Transfers) Act, 1972 is included in the Fourth Schedule. There is a clear indication that the Act proposes to protect the interest of those persons, among others who are affected by the acquisition. The subsequent purchasers/successors, etc., in the cases before us, are all people affected by the acquisition, and therefore, also they are entitled to seek a declaration on lapse under the 2013 Act. [Paras 26, 27] [248-D, E; 249-A] F G

A 5. The subsequent purchaser, the assignee, the successor
 in interest, the power of attorney, etc., are all persons who are
 interested in compensation/land owners/affected persons in terms
 of the 2013 Act and such persons are entitled to file a case for a
 declaration that the land acquisition proceedings have lapsed by
 virtue of operation of Section 24(2) of the 2013 Act. It is a
 B declaration qua the land wherein indisputably they have an interest
 and they are affected by such acquisition. For such a declaration,
 it cannot be said that the respondents/writ petitioners do not have
 any locus standi. The appellants are given a period of six months
 to exercise its liberty granted under Section 24(2) of the 2013
 C Act for initiation of the acquisition proceedings afresh. [Paras
 29, 31] [249-F-G; 250-B]

D *U.P. Jal Nigam, Lucknow Through Its Chairman and
 another v. Kalra Properties (P) Ltd., Lucknow and
 others* [1996] 1 SCR 683 : (1996) 3 SCC 124; *Sneh
 Prabha (Smt.) and others v. State of U.P. and another*
 [1995] 5 Suppl. SCR 264 : (1996) 7 SCC 426; *Meera
 Sahni v. Lieutenant Governor of Delhi and others* [2008]
 10 SCR 1012 : (2008) 9 SCC 177; *V. Chandrasekaran
 and another v. Administrative Officer and others* [2012]
 E 10 SCR 603 : (2012) 12 SCC 133; *Rajasthan State
 Industrial Development and Investment Corporation v.
 Subhash Sindhi Cooperative Housing Society, Jaipur
 and others* [2013] 4 SCR 978 : (2013) 5 SCC 427 –
 held inapplicable.

F *Suryaprakash and others v. State of Karnataka and
 others* MANU/KA/3319/2016 (Writ Petition No.
 10286-291 of 2014, decided on 05.12.2016) – held
 applicable.

G *Delhi Development Authority v. Sukbhir Singh and
 others* (2016) 8 SCALE 655 – relied on.

Case Law Reference

[1996] 1 SCR 683	held inapplicable	Para 7
H [1995] 5 Suppl. SCR 264	held inapplicable	Para 7

[2008] 10 SCR 1012	held inapplicable	Para 7	A
[2012] 10 SCR 603	held inapplicable	Para 7	
[2013] 4 SCR 978	held inapplicable	Para 7	
(2016) 8 SCALE 655	relied on	Para 25	B

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6112 of 2017.

From the Judgment and Order dated 01.10.2014 of the High Court of Delhi at New Delhi in Writ Petition (C) No. 3411 of 2014

WITH

C. A. Nos. 6113, 6115, 6118, 6120, 6123, 6128, 6131, 6134, 6136, 6138, 6140, 6142, 6146, 6149, 6152, 6156, 6160, 6163, 6164, 6166, 6170, 6173, 6186, 6190, 6194, 6197, 6203, 6206, 6209, 6213, 6216, 6219, 6224, 6228, 6233, 6237, 6240, 6242, 6246, 6249, 6260, 6264, 6267, 6270, 6272, 6274, 6276, 6279, 6281, 6283, 6285, 6287, 6289, 6291, 6292, 6294, 6296, 6298, 6300, 6302, 6125, 6127, 6129, 6130, 6132, 6133, 6135, 6137, 6141, 6143, 6145, 6147, 6150, 6153, 6155, 6157, 6159, 6161, 6167, 6169, 6172, 6175, 6176, 6178, 6180, 6181, 6182, 6184, 6185, 6187, 6189, 6191, 6193, 6195, 6198, 6200, 6202, 6205, 6207, 6210, 6212, 6214, 6217, 6218, 6221, 6222, 6225, 6227, 6230, 6231, 6234, 6236, 6239, 6241, 6243, 6245, 6248, 6250, 6252, 6253, 6255, 6256, 6259, 6262, 6263, 6265, 6266, 6269, 6119, 6121, 6122, 6139, 6144, 6148, 6151, 6154, 6158, 6162, 6168, 6171, 6174, 6177, 6179, 6183, 6188, 6192, 6196, 6199, 6201, 6204, 6208, 6211, 6215, 6220, 6223, 6226, 6229, 6232, 6235, 6238, 6244, 6247, 6251, 6254, 6257-6258, 6261, 6268, 6271, 6273, 6275, 6278, 6280, 6282, 6284, 6286, 6288, 6290, 6293, 6295, 6297, 6299 and 6301 of 2017.

P. S. Patwalia, ASG, S. S. Shamsbery, AAG (Rajasthan), A. K. Sanghi, K. Radhakrishnan, Amrendra Sharan, A. Sharan, V. Mohana, Salman Khurshid, V. Giri, Vivek Kumar Tankha, Rakesh Tiku, R. A. Jain, Sachin Dutta, Ravinder Sethi, A. Mariarputham, Ms. Indu Malhotra, Ashok Chhabra, Yashank Adhyaru, Dr. Arun Mohan, P. H. Parekh, Ajit Kumar Sinha, Dhruv Mehta, A. K. Sanghi, Jayant Sud, Sachin Datta, Sr. Advs, Mohan Prasad Gupta, R. K. Rathore, R. K. Mohanty, Ms. Sunita Sharma, Pravesh Thakur, Kiran Bhardwaj, B. K. Prasad, Shailender Saini, Harish Khinchi, Meenesh Dubey, Ms. Meenakshi

- A Dubey, Shadman Ali, S. N. Terdal, Ms. Kiran Bhardwaj, Sakesh Kumar, Ms. Sonam Nagrath Kohli, Karunakar Mahalik, Mukul Singh, Shekhar Vyas, Meenesh Kumar Dubey, R. K. Rathord, Anil Hooda, Ms. Sushma Sharma, Raj Bahadur Yadav, M. K. Maroria, Ajay Kumar Singh, Vikas Bansal, Ms. Sushma Suri, Neeraj Kr. Sharma, D. S. Mahra, Ms. Garima Prashad, Ms. Nupur Kumar, L. B. Rai, Mohit Kumar Sharma, Deekant Tripathi, Vijay Awana, Dr. Rajeev Sharma, Raghuvir Sharma, Vipin Kumar Sharma, Dharmendra Sharma, Lt. Col. (R) Arun Kumar, Hazi Salimuddin, Ashish Garg, T. L. Garg, Vineet Garg, R. K. Shokeen, Tarjit Singh, Ms. Kamini Jaiswal, Ravi Mishra, Govind Goel, Ankit Goel, Shrey Dambhare, Ram Naresh Yadav, Vishnu B. Saharya, Viresh B. Saharya,
- C Ms. Binu Tamta, (for M/s Saharya & Co.), Ashwani Kumar, Jay Kumar Bhardwaj, Atul Kumar, Ms. Sweety Singh, Sheetanshu Shekhar, Ms. Bushra Parveen, Ms. Archana Kumari, Ms. Minali Deswal, Tushar Duneja, Vikas Pandey, Rajiv Sharma, Girish Chandra, Sanchit Garg, Ms. Shweta Jain, Parhlad Singh Sharma, Sandeep Singh, Satya Siddiqui, Sarfraz Ahmed Siddiqui, S. A. Siddiqui, M. K. Maroria, Gopal Singh, Manish Kumar, Ms. Varsha Poddar, Vibhu Shankar Mishra, R. R. Rajesh, Ajay Sharma, A. K. Kaul, Raj Bahadur, Ms. Garima Prashad, Kaushik Poddar, Shantanu Sagar, Anmol, A. Deb Kumar, Rabin Majumder, Sameer Jain, Ms. Anu Suha, Ms. Sanchita, Ms. Azra Rehman, B. S. Mathur, Bharat Bhushan, Kaushik, N.S. Dalal, D. P. Singh, Madan Gera, Ashutosh
- E Dubey, Ms. Rajshri Dubey, Abhishek Chauhan, V. S. Rawat, Aman Nandrajog, Ashish Tiwari, Gopal Sankara Narayanan, Zeeshan Diwan, Sumeer Sodhi, Arjun Nanda, T. Mahipal, R.K. Singh, Ms. Deepa Rai, Kedar Nath Tripathy, Arunabh Chowdhury, Anjuman Tripathy, Jayant Mohan, Mohan Prasad Gupta, Shadman Ali, Raj Bahadur Yadav, Rajesh Singh Chauhan, Mahesh Prasad, Shambhu Prasad, Ms. Ritu Singh Mann,
- F Dheeraj Garg, S. K. Rout, Ms. Amit Kalkal, Jitender Choudhary, Rajesh Singh, P. K. Jain, Saurabh Jain, P. K. Goswami, S. P. Singh Rathore, Ashok Kumar Sharma, Uday Prakash Yadav, H. Arjun, Mrs. Anuradha Soni Verma, Swetank Shantanu, R.R. Kumar, A. Shivani, Navin Chawla, Ms. Nidhi Mohan Prashar, Gaurav Sarin, Mrs. Charul Sarin,
- G Mrs. Ranjeeta Rohatgi, Ms. Renuka Arora, Ms. S. Janani, Ms. Renuka, Ms. Anusuya Salwan, Bankey Bihari, Ms. Smita Maan, Naresh Maan, Sachin Gupta, Ankur Chawla, Ms. Meenakshi Chatterjee, Akshay Sahni, Vinay Shailendra, Ms. Worthing Kasar, Ms. Deepika V. Marwaha, Chandra Bhushan Prasad, Saksham Maheshwari, J. S. Chhabra, Mohan

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Lal Sharma, Ms. Shikha Sharma, Govind Goel, D. Ramakrishna Reddy, Ms. Vidyottma, N. S. Vasisht, Ms. Jyoti Kataria, Pradeep Misra, Daleep Dhyani, Suraj Singh, Ms. Rashmi Chopra, Ms. Asiya, Ms. Rashmi Arora, Dr. Monika Gusain, Syed Mehdi Imam, D. K. Sharma, Shamama Anis, Tabrez Ahmed, Navras Sohrawarby, Mohd. Noorullah, Javed Muzaffar, Sumit Bansal, Ms. Richa Oberoi, Ms. Sumi Anand, Vikas Kumar, Gagan Gupta, Manish Paliwal, P.S. Sharma, Vivek Singh, Chandra Prakash, Ms. Ashwarya Malik, Ms. Ashwarya Sinha, Ms. Vanshaya Shukla, Ms. Ritika Jhurani, Dinesh Chandra, Amit Sharma, Ankit Raj, Ms. Ruchi Kohli, Sumit Bansal, Ateev Mathur, Ms. Richa Oberoi, A.P.S. Sehgal, Vikas Kumar, Gagan Gupta, Arun K. Sinha, Ms. Alka Agrawal, Sumit Sinha, Mukesh Kr. Maroria, Balendu Shekhar, Ajay Singh, Rajesh Kumar, Sibo Sankar Mishra, Ms. Gunwant Dara, Ms. Kiran Bhardwaj, B.K. Prasad, Surender Kumar Gupta, Ms. Sunita Sharma, Manish Kumar, Madan Lal Sharma, Piyush Rayal, Ms. Smriti Vashisht, Ghan Shyam Vashisht, Manoj K. Mishra, Sandeep Kr. Dwivedi, Umesh Dubey, S. K. Pathak, Rajiv Kumar Ghawana, T. V. S. Raghavendra Sreyas, Ms. Gayatri Gulati, Puneet Sharma, Ms. Usha Nandini V., Jasbir Singh Malik, Ms. Joymoti Mize, Dhiraj Parveen, Ms. Manjul Dahiya, Pradeep Jatav, Rajat Bhardwaj, Govind Goel, Ankit Goel, Rajendra Prasad Saxena, N.P. Sahani, Anuj Agarwala, Anubhav Sinha, Aayush Agarwala, Gopal Sankarnarayanan, Sumeer Sodhi, Arjun Nanda, Anubhav Bhasin, Pramod B. Agarwala, Ms. Aruna Mathur, Avneesh Arputham, Ms. Anuradha Arputham, Amit Arora, Vikas Mehta, Devender Prasad, Ms. Anushree Menon, Ms. Esha Mazumdar, Ms. Priyanjali Singh, Rahul Rathore, Rahul Jarjal, Vikas Kumar, Ms. Anusuya Salwan, Ms. Renuka Arora, Anup Kumar, B. Tripathy, Naresh Kaushik, Randhir Pandey, Ms. Ranjeeta Rohtagi, Ms. Bushra Parveen, Sheetanshu Shekhar, Ms. Minali Deswal, Tushar Duneja, Mohit D. Ram, Monisha Handa, Bharat Beriwal, Ms. Manjeet Chawla, Dharamveer Khatri, Mansoor Ali, Pradeep Misra, Ajay Sharma, Puneet Sharma, Ms. Iti Sharma, Puneet Sharma, Rahul Bhatia, Kartik Bhardwaj, Manu Mridul, Ms. Anwesha Saha, Anil Kumar Tandale, Amitabh Kumar Verma, Rajesh, Ms. Mukti Chowdhary, Madan Gera, Garav M. Liberham, Ritesh Khatri, Manoj K. Mishra, Yogendra Kumar, Umesh Dubey, Lalit K. Rawal, Nitin Mishra, Tushar Bakshi, Ms. Richa Kapoor, Ms. Mallika Parmar, Gopal Jha, N. Prabhakar, Ms. Rachana Srivastava, Ms. Monika, Ms. Nitya Madhusoodhanan, S. K. Raut, D. S Kavntae, Megh Pal Singh, Ms. Farha Faiz, Ms. Rita

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- A Gupta, Sanjay Jain, Vinay Arora, Raj Bahadur, Amit Sharma, Ms. Sushma Verma, D. S. Mahra, R. R. Rajesh, Shadman Ali, Rajesh Ranjan, Ms. Rashmi Malhotra, Sachin Sharma, Ms. Sushma Sharma, Ms. Sumi Anand, Ms. Anju Bhattacharya, D. P. Mohanty, Ms. Swati Bhardwaj, Ajay Sharma, Rajeev Sharma, Ms. Neelam Sharma, Ms. Diksha Kukrety,
- B Rajesh K. Singh, Ms. Rekha Pandey, Shailendra Saini, Shadman Ali, Karan Sethi, S. A. Siddiqui, Ms. Sushma Verma, Vibhu Shanker Mishra, Mukul Singh, Rabindra Kumar Mohanty, Yashraj Singh Deore, Ms. Priyadarshinee Singh, Pankaj Bhatia, Nipun Goel, Dhruv Tamta, B. L. Shivare, Dhruv Surana, Ashish Choudhury, Ms. Bharti Tyagi, M. A. Chinnasamy, K. S. Gananasambandam, C. Rubavathi, V. Senthil
- C Kumar, P. Raja Ram, R. R. Rajesh, Harsh Gunchind, Azim H. Laskar, Sachin Das, Ms. Sampa Sengupta Ray, Abhijit Sengupta, Ms. Priya Hingo Rani, Bhushan Prasad, Mann Mridul, Amitabh Kumar Verma, Krishan Kumar, Pankaj Vivek, Mrs. Priya Puri, Puneet Sharma, Ranjay Kumar Dubey, Ms. Vaishali Soni, Ms. Kush Chaturvedi, Rajeev, P. Kausir
- D Prabhu, Ms. Vanshaja Shukla, Ms. Ritika Jhurani, Dinesh Sharma, Advs. for the appearing parties.

The Judgment of the Court was delivered by

KURIAN, J. 1. Leave granted.

- E 2. Whether the subsequent purchasers/assignees/power of attorney holders, etc., have *locus standi* to file a petition for a declaration of lapse of acquisition proceedings under 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”),
- F is the only issue arising for consideration in these cases.

3. The High Court has taken the view in favour of such people. Thus, aggrieved the NCT of Delhi and Delhi Development Authority are in appeals before this Court.

- G 4. At the outset, we may note that in these cases, the land acquisition proceedings have otherwise lapsed by the operation of Section 24(2) of the 2013 Act since either compensation was not paid or possession was not taken within five years prior to 01.01.2014, the date of coming into force of the 2013 Act. Thus, the dispute is only on the *locus standi*.

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5. Shri Amarendra Saran, learned Senior Counsel leading the arguments on behalf of the appellants submits that in all these cases, the transfer is in violation of The Delhi Lands (Restrictions on Transfer) Act, 1972 (hereinafter referred to as "the Delhi Act, 1972"). The transfers in favour of the writ petitioners are hence void, and accordingly, the beneficiary of an illegal/void transaction is not entitled to file a case for any relief.

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6. Reliance is placed on Sections 3,4,8, and 9 of the 1972 Act, which read as follows:

3. Prohibition on transfer of lands acquired by Central Government –

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

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

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

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8. Restrictions on registration of transfers of land –

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Notwithstanding any thing contained in any other law for the time being in force, where any document required to be registered under the provisions of clause (a) to clause (e) of sub-section (1)

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A of section 17 of the Registration Act, 1908, purports to transfer by
 sale, mortgage, gift, lease or otherwise any land or part thereof
 referred to in section 4, no registering officer appointed under
 that Act shall register any such document unless the transferor
 produces before such registering officer a permission in writing
 of the competent authority for such transfer.

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9. Penalty –

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

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7. Learned Senior Counsel and other learned Counsel further
 submitted that the issue is no more *res integra* in view of the following
 decisions of this Court:

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(i) U.P. Jal Nigam, Lucknow Through Its Chairman and another
 v. Kalra Properties (P) Ltd., Lucknow and others¹,

(ii) Sneh Prabha (Smt.) and others v. State of U.P. and another²,

(iii) Meera Sahni v. Lieutenant Governor of Delhi and others³,

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(iv) V. Chandrasekaran and another v. Administrative Officer and
 others⁴,

(v) Rajasthan State Industrial Development and Investment
 Corporation v. Subhash Sindhi Cooperative Housing Society,
 Jaipur and others⁵ and

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8. U.P. Jal Nigam, Lucknow (supra), is a case where this Court
 considered the consequences of a transfer of the land after issuance of
 notification under Section 4(1) of the Land Acquisition Act, 1894
 (hereinafter referred to as “the 1894 Act”) in the State of Uttar Pradesh.
 It was held that any encumbrances created by the owner after Section
 4(1) Notification is published, does not bind the Government and such a
 purchaser does not acquire any title to the property. Therefore, such a

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¹(1996) 3 SCC 124

²(1996) 7 SCC 426

³(2008) 9 SCC 177

⁴(2012) 12 SCC 133

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⁵(2013) 5 SCC 427

purchaser cannot challenge the validity of the notification or the regularity of the process of taking possession of the land. To quote paragraph-3:

“3. ... It is settled law that after the notification under Section 4(1) is published in the Gazette any encumbrance created by the owner does not bind the Government and the purchaser does not acquire any title to the property. In this case, notification under Section 4(1) was published on 24-3-1973, possession of the land admittedly was taken on 5-7-1973 and pumping station house was constructed. No doubt, declaration under Section 6 was published later on 8-7-1973. Admittedly power under Section 17(4) was exercised dispensing with the enquiry under Section 5-A and on service of the notice under Section 9 possession was taken, since urgency was acute, viz., pumping station house was to be constructed to drain out flood water. Consequently, the land stood vested in the State under Section 17(2) free from all encumbrances. It is further settled law that once possession is taken, by operation of Section 17(2), the land vests in the State free from all encumbrances unless a notification under Section 48(1) is published in the Gazette withdrawing from the acquisition. Section 11-A, as amended by Act 68 of 1984, therefore, does not apply and the acquisition does not lapse. The notification under Section 4(1) and the declaration under Section 6, therefore, remain valid. There is no other provision under the Act to have the acquired land divested, unless, as stated earlier, notification under Section 48(1) was published and the possession is surrendered pursuant thereto. That apart, since M/s Kalra Properties, respondent had purchased the land after the notification under Section 4(1) was published, its sale is void against the State and it acquired no right, title or interest in the land. Consequently, it is settled law that it cannot challenge the validity of the notification or the regularity in taking possession of the land before publication of the declaration under Section 6 was published.”

9. In Sneh Prabha (supra), this Court reiterated the position that any alienation of land after the publication of the notification under Section 4(1) of the 1894 Act does not bind the Government or the beneficiary under the acquisition. It has also been held that once the possession of the land is taken under Section 16 of the Act, the land vests with the

A Government free from all encumbrances and the absolute title is vested in the Government. To quote from paragraph-5:

B “5. ... It is settled law that any person who purchases land after publication of the notification under Section 4(1), does so at his/her own peril. The object of publication of the notification under Section 4(1) is notice to everyone that the land is needed or is likely to be needed for public purpose and the acquisition proceedings point out an impediment to anyone to encumber the land acquired thereunder. It authorises the designated officer to enter upon the land to do preliminaries etc. Therefore, any alienation of land after the publication of the notification under Section 4(1) does not bind the Government or the beneficiary under the acquisition. On taking possession of the land, all rights, titles and interests in land stand vested in the State, under Section 16 of the Act, free from all encumbrances and thereby absolute title in the land is acquired thereunder. If any subsequent purchaser acquires land, his/her only right would be subject to the provisions of the Act and/or to receive compensation for the land. In a recent judgment, this Court in *Union of India v. Shivkumar Bhargava* considered the controversy and held that a person who purchases land subsequent to the notification is not entitled to alternative site. It is seen that the Land Policy expressly conferred that right only on that person whose land was acquired. In other words, the person must be the owner of the land on the date on which notification under Section 4(1) was published. By necessary implication, the subsequent purchaser was elbowed out from the policy and became disentitled to the benefit of the Land Policy.”

F 10. In Meera Sahni (supra), this Court dealt with the provisions under the Delhi Act, 1972. After referring to U.P. Jal Nigam and Sneh Prabha cases (supra), in paragraph-21 of the judgment, it was held that ... “it is by now well settled law that under the Land Acquisition Act, the subsequent purchaser cannot challenge the acquisition proceedings and that he would be only entitled to get the compensation”.

G 11. In V. Chandrasekaran (supra), this Court again addressed the issue as to whether the subsequent purchaser can challenge the

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acquisition proceedings. After referring to some of the earlier judgments, at paragraph-18, the law has been laid down as follows: A

“18. In view of the above, the law on the issue can be summarised to the effect that a person who purchases land subsequent to the issuance of a Section 4 notification with respect to it, is not competent to challenge the validity of the acquisition proceedings on any ground whatsoever, for the reason that the sale deed executed in his favour does not confer upon him, any title and at the most he can claim compensation on the basis of his vendor’s title.” B

12. In Rajasthan State Industrial Development and Investment Corporation (supra), this Court held that such transactions after initiation of acquisition proceedings would be void and would not be binding on the Government. To quote paragraph-13: C

“13. There can be no quarrel with respect to the settled legal proposition that a purchaser, subsequent to the issuance of a Section 4 notification in respect of the land, cannot challenge the acquisition proceedings, and can only claim compensation as the sale transaction in such a situation is *void* qua the Government. Any such encumbrance created by the owner, or any transfer of the land in question, that is made after the issuance of such a notification, would be deemed to be void and would not be binding on the Government. ...” D E

13. On behalf of the respondents, it has been mainly contended that the subsequent purchasers are persons interested and they have every right to file a case to protect their interests. It was also pointed out that under the Delhi Act, 1972, there is no absolute bar on transfer since under Section 5, the transfer was possible with the permission of the Competent Authority and that under Section 5, the Competent Authority cannot refuse to grant the permission except on any of the grounds under sub-Section (3) of Section 5. To quote Section 5: F

“5. *Application for grant of permission for transfer under section 4 –* G

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(3) The competent authority shall not refuse to grant the permission applied for under this section except on one or more of the following grounds, namely:- H

- A (i) That the land is needed or is likely to be needed for the effective implementation of the Scheme;
- (ii) That the land is needed or is likely to be needed for securing the objects of the Delhi Development Authority referred to in section 6 of the Development Act;
- B (iii) That the land is needed or is likely to be needed for any development within the meaning of clause (d) of section 2 of the Development Act or for such things as public building and other public works and utilities, roads, housing, recreation, industry, business, markets, schools and other educational institutions, hospitals and public open spaces and other categories of public uses.”
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14. It was also contended that the 2013 Act has not exempted the acquisitions under The Delhi Development Act, 1957, and for that matter the Delhi Act, 1972 under the Fourth Schedule to Section 105.

15. Yet another contention was that in all these cases, the challenge was not to the acquisition proceedings but for a declaration under Section 24(2) of the 2013 Act to the effect that by virtue of operation of the said provision, the acquisition proceedings have lapsed.

16. “Person interested”, under the 1894 Act, is defined under Section 3(b) of the Act, which reads as follows:

“3(b) the expression “person interested” includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land;”

17. Under the 2013 Act, “person interested” has been given a much wider meaning under Section 3(x). To quote:

“3(x). “person interested” means—

- (i) all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act;
- (ii) the Scheduled Tribes and other traditional forest dwellers, who have lost any forest rights recognised under the Scheduled

Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006; A

(iii) a person interested in an easement affecting the land;

(iv) persons having tenancy rights under the relevant State laws including share-croppers by whatever name they may be called; and B

(v) any person whose primary source of livelihood is likely to be adversely affected;”

18. Thus, under the 2013 Act, all persons claiming interest in compensation to be paid on account of the acquisition of land under the 2013 Act, are persons interested. Among others, any person whose primary source of livelihood is likely to be adversely affected is also a person interested. C

19. “Land owner” under the 2013 Act is defined under Section 3(r), which reads as follows: D

“3(r)“land owner” includes any person,—

(i) whose name is recorded as the owner of the land or building or part thereof, in the records of the authority concerned; or E

(ii) any person who is granted forest rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 or under any other law for the time being in force; or

(iii) who is entitled to be granted Patta rights on the land under any law of the State including assigned lands; or F

(iv) any person who has been declared as such by an order of the court or Authority;

Thus, among others, a person whose name is recorded as owner of the land or building or part thereof in the records of the Authority concerned, is a land owner. G

20. “Affected family” has been defined in the 2013 Act under Section 3(c) which reads as follows :-

- A “3(c) — affected family includes—
- (i) a family whose land or other immovable property has been acquired;
- B (ii) a family which does not own any land but a member or members of such family may be agricultural labourers, tenants including any form of tenancy or holding of usufruct right, share-croppers or artisans or who may be working in the affected area for three years prior to the acquisition of the land, whose primary source of livelihood stand affected by the acquisition of land;
- C (iii) the Scheduled Tribes and other traditional forest dwellers who have lost any of their forest rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) due to acquisition of land;
- D (iv) family whose primary source of livelihood for three years prior to the acquisition of the land is dependent on forests or water bodies and includes gatherers of forest produce, hunters, fisher folk and boatmen and such livelihood is affected due to acquisition of land;
- E (v) a member of the family who has been assigned land by the State Government or the Central Government under any of its schemes and such land is under acquisition;
- (vi) a family residing on any land in the urban areas for preceding three years or more prior to the acquisition of the land or whose primary source of livelihood for three years prior to the acquisition of the land is affected by the acquisition of such land;”
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G This definition of affected family also indicates that even a family residing in the lands sought to be acquired, be it an owner or not, is an affected family, and if a family or a person is affected, necessarily, he has a right to approach the Court to protect his interests.

H 21. It is also to be specifically noted that the challenge made by the writ petitioners in the Miscellaneous Application filed by them is not to the acquisition or to the regularity of the process of acquisition including

the taking of possession. Their only prayer is for a declaration that the proceedings *qua* the land referred to in the Application have lapsed by virtue of the operation of Section 24(2) of the 2013 Act.

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22. All the decisions cited by the learned Senior Counsel appearing for the appellants, no doubt, have categorically held that the subsequent purchasers do not have *locus standi* to challenge the acquisition proceedings. But in the present case, the challenge is not to the acquisition proceeding; it is only for a declaration that the acquisition proceedings have lapsed in view of the operation of Section 24(2) of the 2013 Act, and therefore, the ratio in those cases has no application to these cases.

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23. It is one thing to say that there is a challenge to the legality or propriety or validity of the acquisition proceedings and yet another thing to say that by virtue of operation of a subsequent legislation, the acquisition proceedings have lapsed.

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24. In all the decisions cited by the learned Senior Counsel for the appellants, which we have referred to above, this Court has protected the rights of the subsequent purchaser to claim compensation, being a person interested in the compensation, despite holding that they have no *locus standi* to challenge the acquisition proceedings.

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25. The 2013 Act has made a sea change in the approach on the acquisition of land and compensation thereof. The only lapse under the 1894 Act was under Section 11A where what would lapse is the ... "*entire proceedings for the acquisition of land*" whereas under Section 24(2) of the 2013 Act, what gets lapsed is the land acquisition proceedings initiated under the 1894 Act which has culminated in passing of an award under Section 11 but where either possession was not taken or compensation was not paid within five years prior to 01.01.2014. In other words, the land acquisition proceedings contemplated under Section 24(2) of the 2013 Act would take in both, payment of compensation and taking of possession within the five year period prior to 01.01.2014. If either of them is not satisfied, the entire land acquisition proceedings would lapse under the deeming provision. The impact of deemed lapse under Section 24(2) is that pervasive. To quote R.F. Nariman, J. in Delhi Development Authority v. Sukbhir Singh and others⁶. To quote:

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“... As is well settled, a deeming fiction is enacted so that a putative state of affairs must be imagined, the mind not being

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A allowed to boggle at the logical consequence of such putative
state of affairs ... In fact, Section 24(2) uses the expression
“deemed to have lapsed” because the Legislature was cognisant
of the fact that, in cases where compensation has not been paid,
B and physical possession handed over to the State/vesting has taken
place, after which land acquisition proceedings could be said to
have been ended. ...” (Paragraph-27).

Thus, on account of the lapse, the encumbrance created in favour
of the State comes to an end, and resultantly, the impediment to encumber
the land also comes to an end. Even, according to the appellants, the
transfers were illegal and void for the reason that there was an
C impediment for the transfer. Once the acquisition proceedings lapse, all
impediments cease to exist.

26. As we have already noted above, the whole face of land
acquisition has changed by the 2013 Act. Section 105 of the 2013 Act
D has provided that the provisions of the Act shall not apply to the
enactments specified in the Fourth Schedule. So far, only 13 Acts have
been notified under the Fourth Schedule. Neither The Delhi Development
Act, 1957 nor The Delhi Lands (Restrictions on Transfers) Act, 1972 is
included in the Fourth Schedule.

E 27. The main purpose of the 2013 Act is clearly stated in the
preamble which reads as follows :-

“An Act to ensure, in consultation with institutions of local self-
government and Gram Sabhas established under the Constitution,
a humane, participative, informed and transparent process for land
F acquisition for industrialisation, development of essential
infrastructural facilities and urbanisation with the least disturbance
to the owners of the land and other affected families and provide
just and fair compensation to the affected families whose land
has been acquired or proposed to be acquired or are affected by
such acquisition and make adequate provisions for such affected
G persons for their rehabilitation and resettlement and for ensuring
that the cumulative outcome of compulsory acquisition should be
that affected persons become partners in development leading to
an improvement in their post acquisition social and economic status
and for matters connected therewith or incidental thereto.”

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There is a clear indication that the Act proposes to protect the interest of those persons, among others who are affected by the acquisition. The subsequent purchasers/successors, etc., in the cases before us, are all people affected by the acquisition, and therefore, also they are entitled to seek a declaration on lapse under the 2013 Act.

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28. The High Court of Karnataka at Bengaluru in Suryaprakash and others v. State of Karnataka and others⁷ has considered a situation of lapse and *locus standi* of the subsequent purchaser to file a writ petition for a declaration on lapse, though not under Section 24(2) of the 2013 Act. At paragraph-16, it has been held:

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“16. ... the principle that transferee of land after the publication of preliminary notification cannot maintain a writ petition challenging the acquisition, cannot be made applicable to a case where the acquisition itself has been abandoned and has stood lapsed due to efflux of time on account of the omission and inaction on the part of the acquiring authority, particularly because, it is because of the lapse of time and the abandonment of the acquisition, right accrues to the original owner to deal with his property including by way of the sale and the purchaser will acquire right to protect his interest. Hence, the judgment in the case of Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur and others (2013) 5 SCC 427, will have no application to the facts of the present case.”

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We are of the view that this decision, in principle, applies to the facts of these appeals as well.

29. Thus, the subsequent purchaser, the assignee, the successor in interest, the power of attorney, etc., are all persons who are interested in compensation/land owners/affected persons in terms of the 2013 Act and such persons are entitled to file a case for a declaration that the land acquisition proceedings have lapsed by virtue of operation of Section 24(2) of the 2013 Act. It is a declaration *qua* the land wherein indisputably they have an interest and they are affected by such acquisition. For such a declaration, it cannot be said that the respondents/writ petitioners do not have any *locus standi*.

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30. Thus, we do not find any merit in these appeals and they are accordingly dismissed. All Interlocutory Applications for Impleadment

⁷MANU/KA/3319/2016 (Writ Petition No. 10286-291 of 2014, decided on 05.12.2016).

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A and Intervention, other than those by Legal Representatives, are also rejected. Applications for Impleadment of Legal Representatives are allowed. There shall be no order as to costs.

B 31. In the peculiar facts and circumstances of these cases, the appellants are given a period of six months to exercise its liberty granted under Section 24(2) of the 2013 Act for initiation of the acquisition proceedings afresh.

C 32. We make it clear that we have not gone into the *inter se* disputes between the parties in some cases or other claims regarding the ownership.

Devika Gujral

Appeals dismissed.