


HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Special Appeal (Writ) No. 1208/2015

In

S.B. Civil Writ Petition No.2442/2015

1. Jhutharam S/o Rampratap Aged 63 Years, R/o Village Heerapura, Beed Khatipura, District Jaipur.
2. Shaitan Singh S/o Ramdas, Aged About 58 Years, R/o Village Heerapura, Beed Khatipura, District Jaipur(Since Deceased), Through His Legal Heirs:
 - 2/1. Smt. Nani Devi W/o Late Shri Shaitan Singh Yadav, Aged About 58 Years, R/o Roshan Farm, Gandhi Path Road, Vaishali Nagar, Jaipur.
 - 2/2. Rakesh Yadav S/o Late Shri Shaitan Singh Yadav, Aged About 38 Years, R/o Roshan Farm, Gandhi Path Road, Vaishali Nagar, Jaipur.
 - 2/3. Dara Singh Yadav S/o Late Shri Shaitan Singh Yadav, Aged About 32 Years, R/o Roshan Farm, Gandhi Path Road, Vaishali Nagar, Jaipur.
 - 2/4. Smt. Anita Yadav D/o Late Shri Shaitan Singh Yadav W/o Pradeep Yadav, Aged About 34 Years, R/o Plot No. 34, Vishawnath Dham Colony, Niwaru Road, Jothwara, Jaipur.
 - 2/5. Smt. Rekha Yadav D/o Late Shri Shaitan Singh Yadav W/o Manoj Kumar Yadav, R/o Plot No. C-290, Vaishali Nagar, Jaipur.
 - 2/6. Smt. Sunita Devi D/o Late Shri Shaitan Singh Yadav W/o Prahalad Mal, Aged About 48 Years, R/o Tehsil-Shrimadhampur, Dhani-Banya Wali, Krishna Nagar, Mahroli, Sikar.
 - 2/7. Smt. Mamta Yadav D/o Late Shri Shaitan Singh Yadav W/o Vinod Yadav, Aged About 40 Years, R/o Roshan Farm, Gandhi Path Road, Vaishali Nagar, Jaipur.
 - 2/8. Smt. Sushila Yadav D/o Late Shri Shaitan Singh Yadav, Aged About 35 Years, R/o Roshan Farm, Gandhi Path Road, Vaishali Nagar, Jaipur.
3. M/s United Land Developers (Partnership Firm), Plot No. 8, Harsh Tower, Triveni Nagar Mod, Gopalpura Bypass, Jaipur Through Its Partner Shri Charan Singh Khangarut S/o Shri Mukut Singh Aged About 36 Years R/o M-28, Income Tax Colony, Durgapura, Tonk Road, Jaipur.M/s
4. United Developers (Partnership Firm), 29, Janpath,

Shyam Nagar, Jaipur Through Its Partner Shri Vinay Chauradiya S/o Shri Labhchand Chauradiya Aged About 53 Years R/o C-61, Sangram Colony, C-Scheme, Jaipur.

5. M/s KNS Developers (Partnership Firm), A-48, Sudarshanpura Enclave, 4th Floor, Golimar Garden Jaipur Through Its Partner Shri Sanjiv Sharma S/o Shri Sitaram Sharma Aged About 37 Years R/o 187, Girnar Colony, Scheme No. 16, Gandhi Path, Vaishali Nagar, Jaipur.
6. M/s Om Developers (Partnership Firm), G-1, B-17, Bajrangbali Apartment-1 Arya Nagar Vistar, Murlipura, Jaipur Through Its Partner Shri Anuj Badaya S/o Shri Sitaram Badaya Aged About 40 Years R/o 191, Ward No. 69, Vidhyadhar Nagar, Sector-7, Jaipur.
7. M/s Baap Residency LLP, Office At D-25, Lal Bahadur Nagar, Kesar Marg, Jawahar Lal Nehru Road, Jaipur Through Its Partner Shri Bhupendra Jain S/o Late Shri Bhanwar Lal Jain Aged About 50 Years R/o D-25, Lal Bahadur Nagar East, Jawahar Lal Nehru Marg, Malviya Nagar, Jaipur

----Appellants

Versus

1. State of Rajasthan Through The Secretary, Urban Development & Housing Department, Govt. of Rajasthan, Jaipur
2. Jaipur Development Authority, Through Its Secretary, Indira Gandhi Circle, JLN Marg, Jaipur.
3. The Land Acquisition Officer, Jaipur Development Authority.
4. The Deputy Commissioner (Zone-7), Jaipur Development Authority.

----Respondents

Connected With

D.B. Civil Special Appeal (Writ) No. 19/2016

In

S.B. Civil Writ Petition No.2442/2015

1. Jaipur Development Authority Through Its Secretary, Indira Gandhi Circle, JLN Marg, Jaipur.
2. Deputy Commissioner Zone-7 Jaipur Development Authority, Jaipur.

3. State Of Rajasthan Through The Secretary, Urban Development And Housing Department, Govt. Of Rajasthan, Jaipur.
4. Land Acquisition Officer, Jaipur Development Authority, Jaipur.

----Appellants

Versus

1. Jhutharam S/o Rampratap, Aged 63 Years, Resident Of Village Heerapura, Beed Khatipura District Jaipur.
2. Shaitan Singh S/o Ramdas, Aged 58 Years, Resident Of Village Heerapura, Beed Khatipura, District Jaipur.
3. M/s United Land Developers (Partnership Firm), Plot No. 8, Harsh Tower, Triveni Nagar Mod, Gopalpura Bypass, Jaipur Through Its Partner Shri Charan Singh Khangarut Son Of Shri Mukut Singh, Aged About 36 Years, Resident Of M-28, Income Tax Colony, Durgapura, Tonk Road, Jaipur.
4. M/s United Developers (Partnership Firm) 29, Janpath, Shyam Nagar, Jaipur Through Its Partner Shri Vinay Chauradiya Son Of Shri Labhchand Chauradiya, Aged About 53 Years, Resident Of C-61, Sangram Colony, C-Scheme, Jaipur.
5. M/s KNS Developers (Partnership Firm), A-48, Sudarshanpura Enclave, 4th Floor, Golimar Garden Jaipur Through Its Partner Shri Sanjiv Sharma Son Of Shri Sitaram Sharma, Aged About 37 Years, Resident Of 187, Girnar Colony, Scheme No. 16, Gandhi Path, Vaishali Nagar, Jaipur.
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7. M/s Baap Residency LLP Office At D-25, Lal Bahadur Nagar, Kesar Marg, Jawahar Lal Nehru Road, Jaipur Through Its Partner Shri Bhupendra Jain Son Of Late Shri Bhanwar Lal Jain, Aged About 50 Years, Resident Of D-25, Lal Bahadur Nagar East, Jawahar Lal Nehru Marg, Malviya Nagar, Jaipur

----Respondents

For Appellant(s) : Mr. Kamlakar Sharma, Sr. Adv. with
 Mr. Madhudsudhan Singh Rajpurohit &
 Mr. Harshil Bansal
 Mr. Pradeep Kumar Chaudhary with
 Mr. Parth Singh Dhaked (in D.B. SAW
 No. 1208/2015)
 Mr. Rajendra Prasad, Advocate
 General assisted by Mr. Sheetanshu
 Sharma, Mr. Tanay Goyal, Ms.
 Harshita Thakral & Ms. Dhriti Laddha
 (in D.B. SAW No. 19/2016)

For Respondent(s) : Mr. Rajendra Prasad, Advocate
 General assisted by Mr. Sheetanshu
 Sharma, Mr. Tanay Goyal, Ms.
 Harshita Thakral & Ms. Dhriti Laddha
 (in D.B. SAW No. 1208/2015)
 Mr. Kamlakar Sharma, Sr. Adv. with
 Mr. Madhudsudhan Singh Rajpurohit &
 Mr. Harshil Bansal
 Mr. Pradeep Kumar Chaudhary with
 Mr. Parth Singh Dhaked (in SAW No.
 19/2016)

HON'BLE THE ACTING CHIEF JUSTICE MR. SANJEEV PRAKASH SHARMA

HON'BLE MRS. JUSTICE SANGEETA SHARMA

Judgment

Date of conclusion of Arguments : **30/03/2026**
Date on which judgment was reserved : **30/03/2026**
Whether the full judgment or only the
operative part is pronounced : **Full judgment**
Date of pronouncement : **27th/05/2026**

REPORTABLE

(Per Hon'ble the Acting Chief Justice)

1. The present batch of Special Appeals (Writ) arises out of the Judgment dated 15.10.2015 (herein after referred as the impugned order) passed by the learned Single Judge in S.B. Civil Writ Petition No. 2442/2015, whereby the writ petition came to be partly allowed with the following directions/observation:-

"9. In the aforesaid premises, it is held that the proceedings initiated under the ULC Act, 1976 in respect of the land bearing Khasra No. 194 in question, have stood lapsed in view of the provisions contained in the Repeal Act of 1999, and that the proceedings held for the acquisition of the said Khasra No. 194 under the Land Acquisition Act 1894 have also stood lapsed in view of Section 24(2)(b) of the Act of 2013. However, it is further held that the petitioners are not entitled to any other reliefs as claimed in the petition, and that the respondents shall be at liberty to take action against the petitioners in accordance with law, for the illegal conversion and use of the said land, and also for the illegal encroachment and construction made over the land. The petition stands partly allowed accordingly."

2. Feeling aggrieved, two intra-court appeals have been preferred, namely, D.B. Special Appeal (Writ) No. 1208/2015 by the original writ petitioners (Jhutharam & Ors.) and D.B. Special Appeal (Writ) No. 19/2016 by the respondent–Jaipur Development Authority (JDA).

Facts

3. The material facts, as emerging from the record, are that land bearing Khasra No. 194 measuring 23 bighas and 8 biswas, situated at Village Beed Khatipura, Tehsil Jaipur was purchased by appellant–petitioners No. 1 and 2 on 10.11.1975, who claim to have remained in possession thereof. Upon promulgation of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the 'Act of 1976') a return is stated to have been filed by appellant No. 1 Jhutharam.

4. It appears that in the year 1991, proceedings came to be initiated by the competent authority under the Act of 1976 in respect of the said land. The record indicates that such proceedings had progressed to the stage of issuance/service of notice under Section 10(5) of the Act of 1976.

5. The order was challenged by filing a writ petition before the High Court, pointing out that the land did not fall in the urban area and was an agricultural land and therefore, the Urban Land (Ceiling and Regulation) Act of 1976 could not have been applied. It was submitted that there was no delay in filing the appeal and had been wrongly dismissed by the Divisional Commissioner on the ground of delay. Interim order was passed restraining from dispossession on 06.04.1993, the same continued till the writ petition was allowed on 26.04.1997 and no challenge was made to the said order by the state in appeal.

6. Order dated 06.04.1993 reads as under:

"He argued that the petitioner's land was not situated within the municipal limits and further more the Urban Land Ceiling & Regulation Act was not applicable to the agricultural land of the petitioner. In support of the arguments, Mr. Pareek placed reliance on a judgment of Apex Court passed in Smt. Atia Mohammadi Begum Vs. State of UP and Others, decided on March 15, 1993 in C.A. Nos.297 and 298 of 1993 and another judgment of the Apex Court, reported in AIR 1975 S.C. 1415.

Admit issue notices to the respondents. Notices of the stay application may also be issued. The rule is made returnable within six weeks. Notices may be given 'dasti' to the counsel for the petitioner.

Meanwhile, the petitioner shall not be dispossessed from the disputed land."

7. It would also be apposite to quote the order dated 26.04.1997, as under:

"15. In the case of Ramdas, Chhotu Ram, Bhiwa and another, Jhota ram, Sheo Narain, Shakti Singh, Ghanshyam & another, and Smt. Shyama Devi & others, the petitioners have claimed to be the legal heirs of Chandra S/o Gangaram who has expired on 28.3.1993. It is admitted that a return was filed by him. According to the petitioner no information with regard to proceedings u/s 8, 9 or 10 were received by him while according to the respondents, the notice u/s 8(3) for draft statement was served and so was the position of the notice u/s 9 for final statement. The petitioner was given sufficient time as per provisions of Sec.10(1) and the land vested with the State Government u/s 10(3). The petitioner has not cared to file any of the documents of any of the

proceedings nor have tried to obtain the same. It is stated that the appeal was filed with the Divisional Commissioner which has been dismissed. Even copy of the said order has not been submitted. In the absence of proper documents no adjudication could be made. Since, the order passed by the Competent Authority which are sought to be quashed have not been submitted, I do not consider that it would be appropriate to adjudicate the dispute without looking to those orders only on the basis of Khasra Girdawari. The final order has not been submitted before this Court and it is for the petitioners to bring to the notice of the Competent Authority the interpretation of law as given in this judgment if the final orders have not already been passed, who will act accordingly. The writ petitions are premature at this stage. The writ petitions are dismissed accordingly.

19. In the case of Kailash Chand Jaipuria, the Competent Authority's order is dated 24.6.1991 and that of the Appellate Authority is dated 19.4.1993. The order of Competent Authority was exparte since the petitioner did not appear. The Appellate Authority found that inspite of the opportunities having been given to the petitioner for number of times he did not appear before the Competent Authority and there was no justification in giving him further opportunity. It was also taken into consideration that application under Section 20 of the Act for the land being used for industry, has already been moved by the petitioner and no order has been passed in that application. The learned Advocate General relied upon the decision given in the case of Smt. Darothi Clare Parreira & Ors Vs. State of Maharashtra & Others, (1996) 9 SCC 633, where this point was considered and it was held that the action of publication of notification under Section 10(3) declaring acquisition of excess vacant land by State cannot be deferred till decision is taken on the application submitted by the petitioner for exemption under Sections 20 or 21. In view of this decision if the Government ultimately comes to the conclusion that the exemption is to be granted to the petitioner u/s 20, he may enjoy thereafter. So far as the non-appearance of petitioner before the Competent Authority is concerned, though looking to the conduct of the petitioner he does not deserve any sympathy, but in the interest of justice one more opportunity is given on payment of cost of Rs.2000/- which is to be paid to Mr. B.L. Awasthi, Additional Government Advocate. The writ petition is allowed with the observation that the petitioner would appear on the first date fixed and if he fails to appear, no further opportunity would be given to him."

8. In the meanwhile, JDA issued a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred as the 'Act of 1894') for acquiring the land on 23.10.1991 for the purpose of setting up an Urban Development Scheme known as Chitrakoot

Scheme and khasra No.194 admeasuring 23 bighas and 08 biswas was shown to have been acquired. The award was passed on 27.05.1995.

9. Against the said award, writ petition was filed by the petitioner pointing out that the petitioner had already purchased the land on 10.11.1975, therefore, registered sale deed from Man Mohan Lal and the mutation had also been entered in their favour on 03.01.1976. On 04.09.1995, interim order was passed restraining dispossession of the petitioner from the land, the same was confirmed vide order dated 31.01.1997. However, on 24.04.1997, the writ petition came to be dismissed holding that in the notification, non mentioning of the owners of the land was a procedural irregularity and the challenge has been made after the award has been passed. Appeal No.1398/1997 filed by the petitioner was also dismissed on being found to be belated.

10. Further, the SLP No.21538/2000 was filed before the Supreme Court seeking interference wherein the Supreme Court vide order dated 12.01.2001 directed to maintain the status quo with regards to the possession of the petitioner.

11. The Land Acquisition Officer also communicated to the Deputy Director, JDA, that neither the possession has not been taken nor compensation has been paid.

12. It is the case of the petitioner that the matter was placed before the Settlement Committee of the JDA and the settlement committee vide order dated 10.04.2002 reached to the conclusion that the land could not be treated to be falling under the Act of 1976 and applied the judgment passed in the case of **Atia**

Mohammadi Begam vs State of U.P. and Ors.: (1993) 2 SCC

546 and held that also as per the circular dated 23.07.1994 land was not falling under the urban area. With regard to the award passed under the Act of 1894, it was noticed that the Supreme Court had passed an interim order to maintain the status quo.

13. It was also pointed out by the petitioner that the land adjacent to the khasra No.194, namely 145/247 had been regularized in terms of the Government Circular dated 26.05.2000. It was further submitted that no acquisition had taken place of khasra No.194 and that more than seven years have passed without any scheme being sanctioned or gazette notification being issued. Therefore, the land acquisition stood cancelled.

14. It was admitted by the JDA that neither the possession had been taken nor the compensation had been paid for khasra No.194. It was also a fact that the land would fall under the Chitrakoot Extension Scheme and that, due to the stay order passed by the Court, the scheme had been prevented and no compensation had been paid. It was also stated that so far as the Khasra No.193, 193/245 are concerned, they were part of the acquired land and not covered under the Act. The Settlement Committee reached to the conclusion that so far as the land khasra No.193, 193/245 are concerned, the same had not been acquired under the Land Ceiling Act in accordance with law and as regards khasra No.194, finding was arrived at that although the award was passed on 03.07.1995, possession and cultivation of the land remained with the petitioner and was being used for

agricultural purposes and the Supreme Court had also passed a stay order.

15. It was also noticed that no notice for acquisition had ever been served on the land owners and acquired land was shown to belong to one Man Mohan Lal, who had already sold the land.

16. Taking into consideration the litigation, the Settlement Committee decided that in order to develop the area, the land of the petitioner to be regularized on 25% of the reserved price of the Chitrakoot Scheme. It was noted that the reserved price for Chitrakoot Scheme was Rs.1650/- per square meter. It was directed that the petitioner would deposit at the rate of 25% per square meter and the JDA will thereafter, be bound to regularize the land and JDA would also be free to construct sector road, link road and the same would be applicable only upon the petitioner withdrawing the pending litigation before the Supreme Court as well as the High Court.

17. It was further directed that if the cases are withdrawn, demand letter shall be issued by the JDA within three weeks and the petitioner shall deposit the amount within further three weeks, thereafter, the map of the scheme shall be submitted before the JDA who would pass the scheme within 30 days. In compliance of the said decision, the Appeal No.1324/2002 was withdrawn on 08.05.2002 and the stay was also vacated.

18. It is the case of the petitioners that they had already deposited the amount of Rs.1,45,05,000/-. However, as PIL No.2658/2003 was filed challenging the provisions of Settlement Committee, the implementation order of the Settlement

Committee was kept in abeyance and therefore, the remaining amount was not deposited.

19. It is stated that the said PIL came to be decided on 16.08.2012 after the Settlement Committee was dissolved on 15.09.2004. The matter had also been kept in abeyance on the basis of legal opinion of the Additional Advocate General to not implement the direction of the Settlement Committee vide letter dated 08.09.2003. A letter was sent by the petitioner for implementing the decision of the Settlement Committee. It was conveyed by the JDA to the State Government on 23.05.2007 and the State Government directed the JDA to implement the decision of the Settlement Committee vide letter dated 21.08.2007. However, the same was stayed by the State Government on 16.11.2007.

20. On 13.08.2013, the petitioner, therefore, made another representation to the State Government for implementing the Settlement Committee's decision and pointed out that the amount of 1,45,05,000/- had already been deposited out of the total amount of Rs.3,81,23,291.25/- as demanded on 18.05.2002.

21. In the meanwhile, with the enforcement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the 'Act of 2013') w.e.f. 01.01.2014, a contention had been raised that the acquisition proceedings initiated in the year 1991 stood lapsed in light of Section 24(2) of the Act of 2013, in view of the fact that neither possession had been taken nor compensation had been paid as required under 24(2) of the Act of 2013. It was also

stated that subsequent transfers of portions of the subject land were effected in the year 2014 by way of registered sale deeds dated 21.08.2014 and 25.08.2014 in favour of appellant-petitioner Nos. 3 to 7.

22. Petitioner filed writ petition No.2442/2015, wherein the respondent-JDA took a stand that the land stood vested in the State upon acquisition and the original khatedari rights stood extinguished. It was also stated that the conditions of the Settlement Committee's decision had not been fulfilled and notices for vacating and removing the encroachments on the land had also been issued under Section 72 of the JDA Act.

23. The learned Single Judge framed three questions, while the learned Single Judge decided the question Nos. 1 and 2 in favour of the writ petitioner, proceeded to decide question No.3 in favour of the JDA and dismissed the writ petition.

24. In the present appeal filed by the JDA (D.B. SAW NO. 19/2016), decision of the Single Judge with reference to question Nos.1 and 2 are challenged while the petitioner in his appeal has challenged the third finding.

Submission on behalf of appellants-Jhutharam and Ors.

25. Learned counsel for the appellant-writ petitioners (Jhutharam & Ors.) submitted that D.B. Special Appeal (Writ) No. 1208/2015 assails the impugned order dated 15.10.2015 to the extent of findings on issue No. (iii) concerning rejection of relief against notices under Section 72 of the JDA Act and non-consideration of conversion applications under Section 90-A of the Act of 1956.

26. It is contended that once the learned Single Judge held that the acquisition proceedings had lapsed, there was no basis to treat the subsequent sale deeds as void or the petitioners as trespassers. It is further urged that the entitlement to seek conversion under Section 90-A was not properly considered.

27. It was submitted that the learned Single Judge has rightly held the acquisition proceedings to have lapsed under Section 24(2) of the Act of 2013, inasmuch as the award was passed more than five years prior to 01.01.2014 and there is a categorical finding of fact that neither possession actual or symbolic was taken nor compensation was paid, tendered, or deposited.

28. It is submitted that though **Pune Municipal Corporation v. Harakchand Misirimal Solanki (2014) 3 SCC 183** stood overruled in **Indore Development Authority v. Manoharlal (2020) 8 SCC 129**, the same does not affect the present case. It is urged that **Indore Development Authority** (supra) clarified that both condition, non-taking of possession and non-payment of compensation, must coexist for lapse; and in the present case, the learned Single Judge has recorded a finding that both conditions stand unfulfilled. It is further submitted that even as per **Indore Development Authority** (supra), absence of any memorandum of possession and failure to tender compensation would satisfy the requirement of lapse, and thus the conclusion reached by the learned Single Judge remains legally sustainable on the facts of the case.

29. It is submitted that the Constitution Bench in **Indore Development Authority** (supra) has clarified that the legally recognized mode of taking possession under the Land Acquisition

Act, 1894 is by drawing of a memorandum/panchnama, which constitutes taking of physical possession in the eye of law. The State has candidly admitted that no memo of possession exists on record, and none has been produced either before the learned Single Judge or before this Court. So, in the absence of such memo, being the recognized mode of taking possession, there is no question of either symbolic or actual possession having been taken, and had possession been taken under the ULC Act, there would have been no occasion to initiate acquisition proceedings under the Act of 1894 thereafter.

30. With regards to the plea of implied surrender of possession in terms of the proceedings before the Settlement Committee, learned counsel for the appellant-writ petitioners has countered the same, submitting that no such inference can be drawn either in fact or in law.

31. It is submitted that although the petitioners approached the Settlement Committee, withdrew the SLP, and deposited part amount pursuant to the decision dated 10.04.2002, the said decision was never implemented by the State. On the contrary, the State itself kept the matter in abeyance, later stayed its own decision, ultimately rejecting regularization only in 2014. Thus, the failure to conclude the process is attributable to the State and not the petitioners.

32. With regard to compensation, learned counsel for the appellant-writ petitioners submitted that though the award was passed on 27.05.1995, neither compensation was ever paid, tendered, nor deposited in the treasury or before the reference court, which position stands admitted.

33. It is contended that the record itself demonstrates non-payment, inasmuch as the letter dated 19.01.2002 of the Land Acquisition Officer clearly records that the cheques issued by JDA were returned and were never tendered to the petitioners. It is not even the case of the respondents that the petitioners refused to accept compensation.

34. Learned counsel thus submits that even in light of the law laid down in **Indore Development Authority** (supra), the requirement of "payment" is not satisfied in the present case, as there was neither tender of compensation nor deposit in accordance with law.

35. On the issue of vesting, learned counsel for the appellant-writ petitioners submitted that the contention of the State that the land stood vested and, therefore, could not lapse, is misconceived in law, as no possession, either actual or by way of memo has been taken, the question of vesting does not arise. Reliance is placed on the law laid down in **Indore Development Authority** (supra), to submit that vesting is consequent upon possession, and not otherwise.

36. On the issue of concluded proceedings, learned counsel for the appellant-writ petitioners urged that proceedings can be said to be concluded only when either possession has been taken (leading to vesting under Section 16 of the Act of 1894) or compensation has been paid/tendered, thereby discharging the obligation of the acquiring authority.

37. Learned counsel further submits that even as per the law laid down in **Indore Development Authority** (supra), Section 24(2)

applies only to pending proceedings and not to concluded ones where possession has been taken and compensation paid.

38. It is also respectfully submitted that the impugned judgment is legally unsustainable and self-contradictory. The learned Single Judge, having categorically held that the proceedings under the Urban Land Ceiling Act as well as the Land Acquisition Act, 1894 stood lapsed by operation of law w.e.f. 01.01.2014 in view of Section 24(2) of the Act of 2013, erred in nonetheless declaring the sale deeds executed thereafter as void. The sale deeds dated 21.08.2014, 25.08.2014 and subsequent transactions were valid and could not have been declared void ab initio on the ground of subsisting acquisition. Moreover, the validity of these sale deeds was neither under challenge in the writ petition nor was any relief sought by the respondents in this regard; hence, the findings travel beyond the pleadings and the permissible jurisdiction under Articles 226 and 227 of the Constitution.

39. It is further submitted that the attempt to draw parity with the case of Choturam is wholly misconceived, as in that case there existed a recorded possession memo, findings of forcible possession, and deposit of compensation, whereas in the present case there is a categorical absence of these foundational requirements.

40. Lastly and most importantly, it is submitted that the findings in relation to Section 90-A of the Rajasthan Land Revenue Act amount to usurpation of statutory jurisdiction. Section 90-A is an enabling provision permitting regularization and conversion of land used for non-agricultural purposes upon payment of prescribed charges, and its benefit extends to original khatedars as well as

subsequent transferees. The learned Single Judge failed to consider the proviso to Section 90-A(5), which expressly allows retention and use of land even in cases of prior unauthorized use. The applications filed by the petitioners under Section 90-A were admittedly pending consideration and were not decided due to an interim stay; thus, there was no occasion for the Court to adjudicate upon their merits or hold the petitioners liable for ejectment. Further, the provisions of Section 63 of the Rajasthan Tenancy Act have no application in absence of completed acquisition or lawful vesting.

41. Once the acquisition proceedings stood lapsed, the only legally permissible course was to leave the matter to the competent authority to decide the applications in accordance with law, uninfluenced by any adverse observations. In view of the above, it is most humbly submitted that the appeal preferred by the applicants deserves to be allowed, the findings declaring the sale deeds void and adverse observations against the applicants be set aside, and the applications under Section 90-A be directed to be decided afresh in accordance with law, while the appeal preferred by JDA deserves dismissal.

Submissions on behalf of Jaipur Development Authority

42. Learned counsel appearing for the respondent-JDA, contended that as issue No. (ii) is concerned, the learned Single Judge has proceeded to hold that the Land Acquisition Officer was required to take actual physical possession and not merely symbolic possession, and further that neither such possession had been taken nor compensation paid in the manner prescribed, placing reliance upon **Pune Municipal Corporation (supra)**. It

is submitted by the Learned Counsel that the aforesaid findings are ex facie contrary to the law subsequently and authoritatively laid down in **Indore Development Authority (supra)**, which has clarified the legal position on the aspect, and therefore, the said findings cannot be sustained and deserve to be set aside on the grounds that the findings are full of contradictions.

43. Learned counsel for the respondent-JDA further submitted that the findings recorded by the learned Single Judge are founded upon judgments which no longer hold the field. It was contended that reliance placed upon **Pune Municipal Corporation v. Harakchand Misirimal Solanki (supra)**, **Magnum Promoters Pvt. Ltd. v. Union of India (2015) 3 SCC 327**, and **Shree Balaji Nagar Residents Association v. State of Tamil Nadu (2015) 3 SCC 353**, and also upon **Union of India v. Shiv Raj (2014) 6 SCC 564** for the proposition regarding maintainability at the instance of subsequent purchasers, is misplaced inasmuch as the said judgments stand overruled by the Constitution Bench in **Indore Development Authority (supra)**.

44. Learned counsel for the respondent-JDA, placing reliance upon the Constitution Bench judgment in **Indore Development Authority (supra)**, submitted that the findings recorded by the learned Single Judge on the issue of lapse under Section 24(2) of the Act of 2013 are contrary to the settled legal position. It is contended that an award in the present case stood passed on 27.05.1995 and the acquisition proceedings remained sub judice for a considerable period on account of successive challenges, including proceedings before the Hon'ble Supreme Court, and thus

the period during which interim orders operated is liable to be excluded.

45. It is further submitted that compensation was duly tendered, as is evident from the cheque sent on 19.01.2002, though the same could not be disbursed in view of subsisting interim orders. It is urged that, in terms of **Indore Development Authority** (supra), tendering of compensation satisfies the requirement of "payment" and non-deposit in Court does not result in lapse, particularly where the landowners themselves were litigating or declined to accept the amount.

46. It is further submitted that the conduct of the landholders clearly indicates that the acquisition had attained finality, inasmuch as they themselves invoked the Settlement Committee mechanism in the year 2002, withdrew pending litigation, and, in terms of the policy and order dated 10.04.2002, surrendered the land treating it as Government land, coupled with an obligation to deposit 25% of the reserve price for regularization.

47. It is contended that such surrender and vesting under Section 16 of the Act of 1894 constitute taking of possession in the eye of law, and in any case, as clarified in **Indore Development Authority** (supra), the mode of taking possession is by drawing of memorandum/inquest report and not necessarily by physical dispossession. It is thus urged that the essential conditions for lapse under Section 24(2), namely, failure of the authorities due to inaction to both take possession and pay compensation for a continuous period of five years prior to 01.01.2014 are not satisfied in the present case.

48. It is further contended that the doctrine of election squarely applies, inasmuch as the landholders had the option either to pursue the challenge to acquisition or to accept vesting and seek regularization upon payment; having chosen the latter, they are estopped from asserting otherwise. It is also submitted that the conduct of the petitioners amounts to waiver of compensation, as under the scheme they agreed to pay the prescribed amount without insisting upon compensation, and having partly acted upon the arrangement, they cannot now invoke non-payment to claim lapse. In support of the said propositions, reliance has been placed upon judgments reported in **2013 (5) SCC 470** titled as **The Rajasthan State Industrial Development and Investment Corporation And Anr. vs Diamond and Gem Development Corporation Ltd. And Anr.** (para 16) and **2020 (6) SCC 387** titled as **Bhagwat Sharan (Dead Through Legal Representatives) vs Purushottam & Ors.** (para 26), as well as earlier authorities including **AIR 1922 Privy Council 365** titled as **Fort Press Co. Ltd. v. Municipal Corporation of the City of Bombay** and **(1981) 2 SCC 221** titled as **State of Assam And Another vs Jitendra Kumar Senapati And Others** (paras 9 & 10), to contend that rights relating to compensation can be validly waived and that parties are bound by their election.

49. It is further urged that in view of the authoritative pronouncement in **Indore Development Authority** (supra), Section 24(2) does not revive stale or concluded proceedings, nor permit reopening on the ground of alleged defects in the mode of taking possession or payment of compensation. The petitioners cannot be permitted to approbate and reprobate by

simultaneously relying upon the Settlement Committee's order and challenging the acquisition.

50. Learned counsel for the JDA submits that the findings of the learned Single Judge on Issue No. (iii) are correct and warrant no interference. It is contended that Section 90A(1) of the Rajasthan Land Revenue Act prohibits use of agricultural land for non-agricultural purposes without prior permission, and under Section 90A(5), any such unauthorized use renders the khatedar and subsequent transferees trespassers liable to ejectment. Learned counsel submits that the specific plea of unauthorized commercial use, construction of 43 shops and 4 marriage gardens, remained un rebutted, and is further corroborated by notices issued under Section 72 of the JDA Act. Thus, the petitioners are trespassers by operation of law.

51. It is further submitted that no permission under the proviso to Section 90A(5) was ever obtained prior to execution of sale deeds; hence, such transactions are void ab initio, as a trespasser cannot convey valid title. The applications for conversion were also misconceived, as Section 90A(4) applies only to lawful agricultural use, whereas the petitioners had already put the land to unauthorized commercial use. No application for regularization under Section 90A(5) was ever submitted. Therefore, recourse to ejectment under Section 91 of the Act and Section 72 of the JDA Act was justified.

52. On the issue of alleged lapsing of ULC proceedings, learned counsel submits that the finding of the learned Single Judge is erroneous. It is not in dispute that the land vested under Section 10(3) and notice under Section 10(5) was issued. Reliance is

placed on admissions made by the landholders in their memo of appeal before the Divisional Commissioner acknowledging preparation of possession memo and handing over of possession to JDA in September 1991. In view of Section 58 of the Evidence Act, such admissions require no further proof and clearly establish that possession was taken prior to repeal of the Act of 1999.

53. It is further submitted that, as held in Chhotu Ram (following Banda Development Authority and Bal Mukand Khatri), preparation of a possession memo constitutes valid taking of possession, and the said view has attained finality.

54. Accordingly, it is submitted that Appeal No. 19/2016 deserves to be allowed, while Appeal No. 1208/2015 is liable to be dismissed with costs.

Analysis and findings

55. This court will have to examine all the aspects again which have been considered and decided by the learned Single Judge in view of appeals having been filed by both, the State Government against the findings of the learned Single Judge which are in favour of the writ petitioner, and by the writ petitioner-Jhutharam against the findings arrived at by the learned Single Judge against the writ petitioner. From what has come on record, the following aspects are required to be examined:

(A) Whether the land held by the petitioner could be treated to have been acquired under the Urban Land (Ceiling and Regulation) Act, 1976?

(B) Whether the proceedings under the Land Acquisition Act can be said to have lapsed in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013?

- (C) Whether the petitioner-Jhutharam can be said to have no rights on the land and that the land now belongs to JDA?
- (D) Whether the petitioner-Jhutharam is not entitled to any relief?
- (E) Whether the petitioner can be said to be trespasser and the developments made on the land can be said to be illegal and encroachments and if not what compensation he is entitled to receive?
- (F) Whether the sale deeds executed by the petitioner could have been declared as void ab initio by the learned Single Judge while exercising the writ jurisdiction?
- (G) Whether the petitioner is entitled to claim relief by getting the land converted under the Section 90(A) of the Land Revenue Act?

56. So far as the appeal filed by the JDA is concerned, the JDA has chosen not to challenge the findings of the learned Single Judge with regard to the proceedings under the Urban Land (Ceiling and Regulation) Act, 1976. So far as the Urban Land (Ceiling and Regulation) Act, 1976, is concerned, the findings of the learned Single Judge are that in respect of the land bearing khasra No.194, the proceedings stood lapsed in view of the provisions contained under the Urban Land (Ceiling and Regulation) Repeal Act, 1999.

57. We therefore, in the present appeal hold that the land could not have been treated to have been acquired under the Urban land Ceiling and Regulation Act, 1976. The findings of the learned Single Judge having not been challenged by the JDA, need not be further examined in appeal.

58. The entire crux of the appeal preferred by the JDA is with respect to the Land Acquisition Act and the finding given by the learned Single Judge in regards to the proceedings of Land Acquisition Act having lapsed in view of Section 24(2) of the Act of 2013.

59. We have in the preceding paras noticed the arguments raised by the counsel for the JDA. The main crux of his arguments are that as the judgments passed in the case of **Pune Municipal Corporation v. Harakchand Misirimal Solanki (supra)** have been overruled, the findings of the learned Single Judge would also stand set aside and it cannot be said that the proceedings initiated under the Land Acquisition Act stood lapsed in terms of Section 24(2).

60. In view of the subsequent pronouncement of the judgment passed in the case of **Indore Development Authority (supra)**, following facts, therefore, need to be noticed:

61. Award was passed on 27.05.1995, which reflected that payment of compensation would be contingent on the question of title. As we have noticed, when the action was taken by the State Government under the Urban Land (Ceiling and Regulation) Act, 1976, order was passed on 06.04.1993, restraining from dispossession and the writ was ultimately allowed on 26.04.1997 and no challenge was made to the judgment passed on 26.04.1997 by the State. The said judgment was relating to Urban Land (Ceiling and Regulation) Act, 1976 and the proceeding stood lapsed. The important aspect is that the possession remained with the writ petitioner.

62. As regards the Land Acquisition Act, the JDA issued the notification under Section 4 on 23.10.1991 for khasra No.194 admeasuring 23 bighas and 8 biswas and award was passed on 27.05.1995, admittedly, therefore, as on 27.05.1995, no possession was taken of the land. A stay was operating in relation to the earlier writ petition (supra). Name of the petitioner was also not shown in the award. Although, High Court rejected the writ petition challenging the award, but initially on 04.09.1995 itself, order had been passed by the High Court restraining dispossession.

63. The interim order was continued even by the Supreme Court in SLP No.21538/2000 vide its order dated 12.01.2001. Thus, admittedly, possession of the land had not been taken by the respondents at any given point of time.

64. Thus, on the day when the Settlement Committee passed an order dated 10.04.2002, the possession of the land was with the writ petitioner. It is also an admitted position, that the JDA has never paid any compensation to the land owners.

65. The JDA has admitted in its written submissions that the proceedings of 'acquisition' remained sub judice and under stay in view of the challenge to the award passed on 17.07.1995 and finally before the Hon'ble Supreme Court in an SLP. On 19.01.2002, the JDA did send a cheque for compensation to LAO, which was returned by the LAO in view of the interim order of the Hon'ble Supreme Court.

66. In **Indore Development Authority** (supra), the Apex Court concluded that the word 'or' used in section 24(2) between

possession and compensation has to be read as 'nor' or as 'and'.

The relevant paragraphs of the said judgments are quoted as under:-

"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.

366.4. The expression "paid" in the main part of Section 24(2) of the 2013 Act does not include a deposit of compensation in court. The consequence of non-deposit is provided in the proviso to Section 24(2) in case it has not been deposited with respect to majority of landholdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation under Section 31 of the Land Acquisition Act, 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the 2013 Act has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the 1894 Act.

366.7. The mode of taking possession under the 1894 Act and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).

366.8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the 2013 Act came into force, in a

proceeding for land acquisition pending with the authority concerned as on 1-1-2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years."

67. As noticed above, neither possession was taken of the land from the writ petitioner- Jhutharam nor compensation was ever paid, therefore, in terms of the **Indore Development Authority** (supra) judgment, this Court has no other option, but to hold that land acquisition proceedings under the Act of 2013 stood lapsed in terms of the Section 24(2).

68. The effect and legal consequences of the applications submitted by the land owners before the Settlement Committee still requires independent consideration.

69. Section 83-A of the JDA Act was introduced and the Settlement Committee was constituted. It would be apposite to quote Section 83-A which was inserted vide notification dated 26.05.2001, as it was existing as under:

"[83-A. Constitution of Settlement Committee.— (1) The State Government may, by notification in the Official Gazette, constitute a Settlement Committee consisting of a Chairman and such other members, as it may deem fit, to resolve the disputes between the Authority and other persons and such Committee shall undertake to resolve the dispute whenever so requested by the concerned person.

(2) The Settlement Committee Shall have such powers and follow such procedure as may be prescribed by the State Government.

(3) Any Committee already constituted for this purpose shall be deemed to have been constituted under this Act.

(4) The decision given by such Committee shall be binding on the Authority.]"

70. From the above, it is apparent that the Committee was formed to resolve disputes between the authority and other persons and such Committee was to undertake such exercise on the request of the concerned persons and the decision of the Committee was binding on the Authority. Admittedly, therefore, the application moved by the petitioner-farmer relating to the dispute was to be decided. In this regard, the JDA has relied on the circular of 26.05.2000 which was existing prior to the introduction of Section 83-A under the Act, which of course could not have any application and we, therefore, reject the submission relating to the application of circular dated 26.05.2000 with respect to the decision of the Settlement Committee.

71. As we have already reached to the conclusion that acquisition proceeding stood lapsed under the Act of 2013. The decision of the Settlement Committee of 10.04.2002 which was on the basis of a condition that the land owner shall withdraw his SLP pending before the Supreme Court and shall also deposit 25% of the reserved price of Chitrakoot scheme for the purpose of regularization of his land has lost its significance because it is an admitted position that till the Act of 2013 came into force, neither the possession of the land had been taken by the JDA nor the compensation was paid.

72. We also notice that on the other hand, the farmer was asked to deposit 25% of the reserved price of the urban land by the Settlement Committee with the condition that the JDA will develop the land and make roads and lights. In this regard, the writ petitioner deposited the sum which was more than half of the total

amount demanded, which has remained with the JDA. On the ground that the total amount has not been deposited, the JDA claims the lands to be theirs, whereas, we have already noticed that neither the compensation was paid nor possession was taken of the land by the JDA and we, therefore, fail to understand the submissions raised by the counsel for the JDA, that they are the land owners.

73. We notice that even the learned Single Judge has given a finding that the land acquisition proceedings stood lapsed. The finding was on the basis of judgment which has been overruled, but factually, the learned Single Judge was correct that neither the compensation had been paid nor the possession had been taken by the JDA in any manner even after coming into force of the Act of 2013.

74. We also notice that the JDA itself was not ready to accept the amount of 25% of the reserved price from the petitioner in terms of the Settlement Committee's award of 2002 because of the opinion given by the counsel for the JDA to not implement the decision of the Settlement Committee.

75. However, so far as, the farmer-writ petitioner is concerned, he relied on the promise made by the JDA and withdrew his SLP pending before the Supreme Court, where stay was granted in his favour.

76. These above facts clearly reflects the approach of JDA, it has acting like a private land dealer and has wrongfully claimed the land, which belongs to the writ petitioner.

77. We observe that as the land would have to be treated as an agricultural land, it can only be converted to and used for non-agricultural purposes after the proceedings, which can be taken by the land owner under Section 90A of the Rajasthan Land Revenue Act, which reads as under:

"90A. Use of Agricultural land for Non-Agricultural Purposes.

-(1) No person holding any land for the purpose of agriculture, and no transferee of such land or any part thereof, shall use the same or any part thereof, by the construction of buildings thereon or otherwise, for any other purpose except with the written permission of the State Government obtained in the manner hereinafter laid down and otherwise than in accordance with the terms and conditions of such permission.

(2) Any such person desiring to use such land or any part thereof for any purpose other than that of agriculture shall apply for the requisite permission in prescribed manner and to the prescribed Officer or authority and every such application shall contain the prescribed particulars.

(3) The State Government shall, after making or causing to be made due inquiry in the prescribed manner, either refuse the permission applied for or grant the same subject to the prescribed terms and conditions.

(4) When any such land or part thereof is permitted to be used for any purpose other than that of agriculture, the person to whom such permission is granted shall be liable to pay to the State Government in respect thereof-

(a) an urban assessment levied at such rate and in accordance with such manner as may be laid down in rules to be made in this behalf by the State Government; or

(b) such amount by way of premium as may be prescribed by the State Government; or

(c) both.

(5) If any such land is so used-

(a) without the written permission of the State Government being first obtained, or

(b) otherwise than in accordance with the terms and conditions of such permission, or

(c) after such permission having been refused under sub-section (3), or

(d) without making any of the payments referred to in sub-section (4), the person originally holding the land as aforesaid for the purpose of agriculture as well as

all subsequent transferees, if any, shall be deemed to be trespasser or trespassers, as the case may be, and shall be liable to ejection from such land in accordance with section 91 as if he or they had occupied or continued to occupy such land without lawful authority and to every such proceeding the provisions of section 212 of the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955) shall apply as if such land and were in danger or being wasted, damaged or alienated:

Provided that the State Government may, in lieu of having such person and the subsequent transferees so ejected from the land in question, allow him or them, as the case may be, to retain such land, use the same for any purpose other than that of agriculture on payment to the State Government, in addition to the urban assessment and premium' payable under sub-section (4), of such fine by way of penalty as may be prescribed.

(5A)[Notwithstanding anything contained in any other provision of this section, the agricultural land may be used without permission for such non-agricultural purposes as may be prescribed by the State Government.]

(6)Where permission under this section is sought with respect to a land situated in an urban area, the permission shall be granted only if the desired non-agricultural purpose is permissible in accordance with the law applicable in that area and is in consonance with the master plan or any other development plan or scheme, by whatever name called, in force, if any, in that area.

(7)Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, when an order granting permission under this section is passed with respect to a land situated in an urban area, on and from the date of such order,-

(a)tenancy rights over such land of the person to whom permission under this section is granted shall stand extinguished, and

(b)the land shall be deemed to have been placed at the disposal of the local authority under section 102-A and shall be available for allotment to the person to whom permission is granted under this section, or to the successors, assignees or transferees of such person, by the local authority for any permissible non-agricultural purposes in accordance with the rules, regulations or bye-laws made under the law applicable to the local authority, subject to the payment to the local authority of urban assessment or premium or both leviable and recoverable under sub-section (4).

(8) Notwithstanding anything to the contrary contained in this Act and the Rajasthan Tenancy Act, 1955 (Act No. 3 of 1955) where before 17th June, 1999 any person, holding any land for agricultural purposes in an urban area or within the urbanisable limits or peripheral belt of an urban area, has used or has allowed to be used such land or part thereof for non-agricultural purposes or, has parted with possession of such land or part thereof for consideration by way of sale or agreement to sell and/or by executing power of attorney and/or Will or in any other manner for purported non-agricultural use, the rights and interest of such person in the said land or holding or part thereof, as the case may be, shall be liable to be terminated and the officer authorized by the State Government in this behalf, shall, after affording an opportunity of being heard to such person and recording reasons in writing for doing so, order for termination of his rights and interest in such land and thereupon the land shall vest in the State Government free from all encumbrances and be deemed to have been placed at the disposal of the local authority under section 102-A and shall be available for allotment or regularization by the local authority for any permissible non-agricultural purposes in accordance with the rules, regulations or bye-laws made under the law applicable to the local authority to the persons having the local authority to the persons having possession over such land or part thereof, as the case may be, on the basis of allotment made, or Patta given, by a Housing Co-operative Society or on the basis of any document of sale or agreement to sell or power of attorney or a Will or any other document purporting transfer of land to them either by the person whose rights and interests have been ordered to be terminated under this sub-section or by any other person claiming through such person, subject to the payment to the local authority of urban assessment or premium or both leviable and recoverable under sub-section (4):

Provided that-

(i) nothing in this sub-section shall apply to any land belonging to deity, Devasthan Department, any public trust or any religious or charitable institution or a wakf;

(ii) no proceedings or orders under this sub section shall be initiated or made in respect of lands for which proceedings under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (Central Act No. 33 of 1976), the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (Act No. 11 of 1973) and the Rajasthan Land Reforms and Acquisition of

Land Owners Estate Act, 1963 (Act No. 11 of 1964) are pending.

(9) Any person aggrieved by an order of an officer or authority made under this section may appeal within thirty days from the date of such order to such officer not below the rank of Collector as may be authorized by the State Government in this behalf, who shall, as far as practicable, disposed of such appeal within a period of sixty days from the date of its presentation and if he is unable to dispose of the appeal within the aforesaid period, he shall record reasons therefor. An order passed under this sub-section shall be final."

78. The concept of regularization also needs to be understood. While, the land was in the ownership of the farmers and in his possession, the subject of regulations was to allow it to be regularized as other lands which admittedly were an agricultural land by depositing 25% of the reserved price.

79. If the farmer failed to deposit the amount as stipulated, the land could not have been treated as regularized or converted into urban land and would, therefore, continue to retain its character as agricultural land. However, mere non-payment of the requisite amount could, by no stretch of imagination, result in the land being deemed to have vested in or transferred to the JDA.

80. Any such claim raised by the State authority amounts to an impermissible assertion of ownership de hors the authority of law and would, in effect, partake the character of arbitrary deprivation of private property.

81. We also notice that the State has not challenged the impugned order.

82. We, however, refrain from making any further comment in this regard, but hold that the poor farmers' land cannot be taken

away by using the means, as stated by the JDA in their written brief.

83. We are not impressed by the submission that merely because in another case of Chhotu Ram, who also had applied for settlement of his land and in whose case, the proceedings had not lapsed and the judgment was upheld by the Supreme Court, would be at the same pedestal as that of the writ petitioner. Petitioner's case is clearly different from that of Chhotu Ram in all respects. As in Chhotu Ram, the possession had already been taken over by the JDA and therefore, the proceedings cannot be said to have been lapsed.

84. In the present case, the amount which Jaipur Development Authority has received in terms of the decision of this Settlement Committee also deserves to be returned back to the petitioner.

85. Other contentions which have been made before the learned Single Judge, that the petitioner has used his land for marriage gardens, etc. would not in any manner deprive him of his title over the land.

86. At the best, if he has made some illegal construction on land without getting it converted, the same is required to be demolished. However, so far as the ownership of the land is concerned, the same could not be said to have been handed over to the JDA.

87. The relief as denied by the learned Single Judge based on the submissions advanced and also on the basis of submissions of petitioner having been entered into agreement for selling of his land to various parties would have no effect on the core issue

whether the land has been acquired and has come in the ownership of the JDA is concerned.

88. We, therefore, hold that petitioner-Jhutharam is entitled to the ownership and to have continued possession of his land bearing khasra No.194 admeasuring 23 bighas and 8 biswas and the JDA has no claim on the said land.

89. The amount deposited by Jhutharam in terms of the Settlement Committee decision of 2002 deserves to be returned back with interest at the rate of 12% per annum. The land would have to be treated as an agricultural land and can only be allowed to be used for non agricultural purposes after depositing of the amount required for conversion in terms of Section 90A of the Rajasthan Land Revenue Act.

90. If such an application is moved by petitioner-Jhutharam, JDA may take a decision to convert the land and for the said purpose, charges may be deducted from the amount which we have directed to be refunded as above. In the said event, the JDA may not have to pay any interest on the said amount.

91. Accordingly, D.B. Civil Special Appeal (Writ) No. 1208/2015 filed by the Jhutharam is allowed and D.B. Civil Special Appeal (Writ) No. 19/2016 filed by the Jaipur Development Authority is dismissed.

92. All pending applications also stand disposed of.

(SANGEETA SHARMA),J

(SANJEEV PRAKASH SHARMA),ACTING CJ