Delhi Development Authority vs Godfrey Phillips (I) Ltd. on 6 May, 2022

Author: Hemant Gupta

Bench: V. Ramasubramanian, Hemant Gupta

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3073 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 23418 OF 2017)

DELHI DEVELOPMENT AUTHORITY ...

VERSUS

GODFREY PHILLIPS (I) LTD. & ORS. .....

JUDGMENT

HEMANT GUPTA, J.

1. The challenge in the present appeal is to an order dated 9.12.2016 passed by the High Court of Delhi whereby the writ petition filed by respondent No. 11 was allowed and the proceedings initiated under the Land Acquisition Act, 18942 were declared to have lapsed in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 20133.

2. The process of acquisition of land admeasuring 50,000 Bighas situated in 12 villages for the planned development of Delhi started way back in 1980. The intention to acquire the land was published vide notification dated 5.11.1980 in respect of land 1 For short, the 'purchaser' 2 For short, the 'Act' 3 For short, the '2013 Act' situated in villages of Tughlakabad, Tigri, Deoli, Khanpur, Said-ul-

Ajaib, Neb Sarai, Hauz Khas and Khirki, and vide notification dated 25.11.1980 in respect of the land situated in villages Chattarpur, Satbari Maidangarhi, Sayoorpur and Rajpur Khurd. The declarations under Section 6 of the Act were published on 27.5.1985, 6.6.1985, 7.6.1985 and 26.2.1986 and the

award were announced on 20.5.1987 or thereafter.

3. M/s. Satluj Bhatta Co. through its partners 4 (1) Shri Ishwar Chander Gupta; (2) Shri Hari Chand; and (3) Shri Jai Chand were owners of land admeasuring 58 Bigha 14 Biswa. An agreement to sell was ex- ecuted by them on 25.9.1990 for the land measuring 28 Bigha 08 Biswa with the purchaser. Thereafter, the purchaser is said to have purchased the land in question vide sale deeds dated 30.8.1991 and 27.2.1991.

4. The purchaser for the first time in written synopsis, filed after the conclusion of the arguments, asserted that the original land owners in respect of land measuring 58 Bigha 14 Biswa situated in revenue estate of Village Sayoorpur, had filed a Writ Petition No. 2736 of 1985 titled as Ishwar Chand Gupta v. Union of India before the High Court. We requisitioned the records of the said writ petition from the High Court. It transpires that the writ petition was filed on or about 30.10.1985 on the ground that the notification dated 20.5.1985 under Section 6 of the Act had been published after a period of more than three years of the notification under Section 4 of the Act on 25.11.1980. There is no assertion 4 Hereinafter referred to as "Original land owners" that the original land owners had filed any objections under Section 5A of the Act. The said writ petition was dismissed on 2.12.1985 when the following order was passed:

> "For the reasons recorded in Civil Writ No. 426 of 1981 titled Muni Lal & Others Vs. Lt. Governor of Delhi and others de- cided on 15th November, 1983 and Civil Writ 2850 of 1985 ti- tled Hemant Sharma and Others Vs. Union of India and oth- ers decided on 25th November, 1985, the petition is without merit. Dismissed."
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> 5. The Special Leave Petition (Civil) No. 4169 of 1986 filed against the said order was withdrawn on 12.9.1989 with two other petitions.

The order passed by this Court reads as thus:

> "These three special leave petitions along with several other cases were heard together. They are directed against the judgment of the Delhi High Court rejecting the writ petitions of the present petitioners challenging a notification issued under Section 4 of the Land Acquisition Act. It is stated by Mr. Chitale, the learned counsel for the petitioners in the Special Leave Petition No. 1224 of 1986 that on a subsequent writ petition filed by another interested party, the High Court has struck down the subsequent notification issued under Section 6 of the Act and in the circumstances the present special leave petitions have become infructuous and will not be pressed. The learned counsel on behalf of the respondents has refuted the proposition. He says that the subsequent judgment of the Delhi High Court may be impugned in this Court and if the challenge is successful, the petitioners who are not parties to that case will not be in a position to take any advantage out of the afore-said judgment of the High Court. Alternatively, the learned counsel for the respondents has contended that even if the said notification issued under Section 6 finally stands quashed, the authorities will be entitled to issue a fresh notification

> under Section 6 on the basis of the Section 4 notification which has been unsuccessfully challenged by the petitioners in the present case. We do not consider it necessary to decide the question as to whether the special leave petitions have become infructuous or not and whether on their withdrawal by the petitioners they are going to suffer in the long run as the learned counsel for the petitioners, even after we made this position clear to them, stated that the S.L.Ps. would not be pressed. Since the petitioners are withdrawing the S.L.Ps. at their own risk, the same are dismissed as withdrawn. There will be no order as to costs."
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> 6. The process of acquisition was challenged in a number of other writ petitions before the High Court and stay of dispossession was granted therein even before the notification under Section 6 of the Act was published. One of such writ petitions was Munni Lal v. Lt.

Governor of Delhi5. The validity of the declarations under Section 6 of the Act was challenged inter-alia on the ground that the acquisition proceedings stood lapsed in view of the Central Act No. 68 of 1984 fixing time limit for publication of notification under Section 6 of the Act. Such question was examined by the Full Bench of the High Court in a judgment dated 27.5.1987 reported as Balak Ram Gupta v. Union of India6. The Full Bench held that the period during which the acquisition proceedings were stayed should be excluded while determining the validity of the declaration under Section 6 of the Act. Therefore, it was found that the notification under Section 6 of the Act was within the time fixed by the statute. The matter was remitted to the Division Bench as the Full Bench was of the view that it would not be convenient or possible for the Full Bench to consider and pronounce the numerous contentions which may be raised in each one of the 73 petitions.

7. The Division Bench decided all the writ petitions in the judgment 5 1983 SCC OnLine Del 321 6 For short, the 'Balak Ram-I', 1987 SCC OnLine Del 227 : AIR 1987 Del 239 reported as Shri B.R. Gupta v. Union of India & Ors.7 when the following operative order was passed on 14.10.1988:

> "The orders of Land Acquisition Collectors under Section 5A and the notifications issued by the Lt. Governor under Section 6 of the Land Acquisition Act together with further land acquisition proceedings in all the above writ petition are quashed and set aside with cost. There shall be two set of counsel's fees at Rs. 1,500/- each as the group of petitions were heard mainly in the two writ petitions. The respondents have also not filed the counter affidavits in all the petitions as it was agreed to complete two sets of petitions with counter affidavits. The rule is made absolute. 'Reasons to follow".
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> 8. The High Court upon recording the reasons on 18.11.1988 set aside the notification issued under Section 6 of the Act as the writ petitioner was neither given an opportunity of personal hearing, nor was he actually heard in the objections filed by the landowners under Section 5A of the Act and since there was no record maintained for consideration of large number of objections filed by the writ petitioners/landowners. It was held that the writ petitioner whose land is being taken

by the Government without his consent has a right to know the reasons as to why his claim for exemption was being declined. It was held as under:

"16. We may note that there are number of other contentions raised by the petitioner in the writ petition apart from the ones that are mentioned and considered above. We need not go into all of them and given any finding, since we have already come to the conclusion that reports under Section 5A and orders under Section 6 cannot be sustained in law on the basis of the contentions already noted by us."

9. Many landowners filed writ petitions before the High Court challenging the action of the Delhi Administration to take

7 For short, the 'Balak Ram-II', 1988 SCC OnLine Del 367 : (1989) 37 DLT 150 (DB) possession from them even though the declaration under Section 6 of the Act stood quashed in its entirety in Balak Ram-II. The High Court in a judgment reported as Balbir Singh v. Union of India & Ors.8 held on 15.5.1989 that the action of the respondents to take the possession from the landowners was not sustainable. Thus, the benefit of the judgment was extended to all the landowners as the entire notification under Section 6 of the Act was found to be quashed. The Court passed the following order:

"This order will dispose of CW 1373-75/89.....illegible. Proceedings u/s 5A of the Land Acquisition Act right upto the stage of Award relating to villages, namely, Khan Pur Deoli @ Devli, Tughlakabad, Khirkee, Neb Sarai, Said-ul-Ajaib, Tigri, Shayoor Pur, Satbari, Chattar Pur, Raj Pur Khurd, Maidan Ghari, have been quashed by a Division Bench of this Court in Balak Ram Gupta vs. U.O.I. C.W.P. 1639/85 decided on 14th October, 1988/18th November, 1988. The prayer of the petitioners is that in spite of that Judgment, the respondents are trying to take possession of the land.

2. The Delhi Administration as also the Delhi Development Authority have taken up a very fair stand before us. Their contention is that certain land owners have received compensation and as such they should not be allowed to deal with the land till the compensation is paid back to the Delhi Administration with interest at the rate of 12% per annum from the date they received the payment till the date they have refunded the amount. The contention raised is quite fair and is accepted. It is further stated by learned counsel for the respondents that no effort would be made to take possession of any land from anybody and the possession already taken of these lands will be restored back to the land owners on receipt of the refund of compensation, if made with interest. It is further con-tended that in certain cases, the land owners have been allotted alternate plots in leiu of their land having been acquired and in those cases the alternate plots must be surrendered before the land owners can take advantage of the quashing of the notifications. The counsel for the petitioner accepts

8 1989 SCC OnLine Del 211 : (1989) 39 DLT 233 (DB) this suggestion of the respondents. Consequently, we direct that the possession of the petitioners will not be disturbed except in cases

where the compensation has been received by the land owners or alternate plots have been allotted until the compensation amount and the alternate plot is surrendered. Counsel for the petitioners agree that the land owners who have received compensation or have been allotted alternate plots would surrender the same as indicated above within two months from today. All other land owners who have neither received compensation nor any alternate plot are free to deal with their lands the way they like and their possession will not be disturbed by the respondents. Delhi Administration will see to it that the Revenue records are amended accordingly. The proper authority i.e. the Land Acquisition Collector will receive the refund of compensation with 12 per cent interest per annum as well as the surrender of the alternate plots when and if offered. The writ petitions are disposed of in these terms."

10. The Union of India sought review of the order passed (RA No. 2766 of 1989) in the all the matters. The review was dismissed on 6.7.1990 on the ground that since the entire notification stands quashed, therefore, Union cannot keep the possession.

11. The said judgment and order of the Division Bench in Balbir Singh came up for consideration before this Court in a judgment reported as Delhi Development Authority v. Sudan Singh in Civil Appeal No. 3847 of 1991 and Civil Appeal Nos. 3801- 3847/19919. This Court dismissed the appeals filed by the Union of India or by the Delhi Development Authority on 20.9.1991 except to the extent that the land of Village Saidul Azab was not part of the writ petitions which were decided in Balak Ram-II.

12. The order of the High Court in C.W.P. No. 2657/85 Abhey Ram vs. Union of India dated 2.9.1987 was passed in the writ petition filed by the land owners of Village Khirkee on the ground that the 9 (1997) 5 SCC 430 notification dated 7.6.1985 under Section 6 of the Act has been issued after three years of the publication of the notification under Section 4 of the Act on 5.11.1980. In the said case also, the land owners had not filed any objections under Section 5A of the Act. The writ petition was dismissed. The order of the High Court reads thus:-

> "It transpires that this petition challenges the Notification under Section 6 of the Land Acquisition Act dated 7th June, 1985. The validity of this Notification has already been upheld by a Full Bench of this Court in the case of Balak Ram Gupta Vs. Union of India, CWP No. 1639/85 decided on 27th May, 1987. No other point is pressed. The writ petition is consequently dismissed".
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> 13. The said order was the subject matter of appeal before this Court in a judgment reported as Abhey Ram & Ors. v. Union of India & Ors.10. A three judge Bench in the said judgment inter-alia examined an argument raised that the benefit of quashing of the declaration under Section 6 of the Act by the High Court in Balak Ram-II should be extended to the appellants, though the notification had been quashed qua the writ petitioners before the High Court. This Court examined the question as to whether a declaration under Section 6 of the Act in its entirety stands quashed even when the Court had quashed the declaration in the case of the land owners who had filed writ petitions after their objections were not considered under Section 5-A of the Act. This

> Court noticed that unfortunately, the operative part of the judgment (as reproduced in para 7 of this judgment) in Balak Ram-II had not been brought to the notice of this Court in Sudan

10 (1997) 5 SCC 421 Singh. It was held that such judgment of the High Court has no application to the facts of the case as unless the declaration under Section 6 is quashed in its entirety specifically, it does not mean that the entire declaration has been quashed. It was noticed that the appellants had not filed any objections to the notice issued under Section 5-A. This Court held as under:

> "9. Therefore, the reasons given in B.R. Gupta v. UOI and others, 37(1989) Delhi Law Times 150 are obvious with reference to the quashing of the publication of the, declaration under Section 6 vis-a-vis the writ petitioners therein....
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> 10. The question then arises is: whether the quashing of the declaration by the Division Bench in respect of the other matters would enure the benefit to the appellants also ?

Though, prima facie, the argument of the learned counsel is attractive, on deeper consideration, it is difficult to give acceptance to the contention of Mr. Sachhar. When the Division Bench expressly limited the controversy to the quashing of the declaration qua the writ petitioners before the Bench, necessary consequences would be that the declaration published under Section 6 should stand upheld.

11. It is seen that before the Division Bench judgment was rendered, the petition of the appellants stood dismissed and the appellants had filed the special leave petition in this Court. If it were a case entirely relating to Section 6 declaration as has been quashed by the High Court, necessarily that would enure the benefit to others also, though they did not file any petition, except to those whose lands were taken possession of and were vested in the State under Sections 16 and 17(2) of the Act free from all encumbrances. But it is seen that the Division Bench confined the controversy to the quashing of the declaration under Section 6 in respect of the persons qua the writ petitioners before the Division Bench. Therefore, the benefit of the quashing of the declaration under Section 6 by the Division Bench does not enure to the appellants.

12. It is true that a Bench of this Court has considered the effect of such a quashing in Delhi Development Authority v. Sudan Singh [(1997) 5 SCC 430 : (1991) 45 DLT 602] . But, unfortunately, in that case the operative part of the judgment referred to earlier has not been brought to the notice of this Court. Therefore, the ratio therein has no application to the facts in this case. It is also true that in Yusufbhai Noormohmed Nendoliya case [(1991) 4 SCC 531] this Court had also observed that it would enure the benefit to those petitioners. In view of the fact that the notification under Section 4(1) is a composite one and equally the declaration under Section 6 is also a composite one, unless the declaration under Section 6 is quashed in toto, it does not operate as if the entire declaration requires to be quashed. It is seen that the appellants had not filed any objections to the notice issued under Section 5-A."

14. In Delhi Administration v. Gurdip Singh Uban & Ors.11, this Court held that the three-Judge Bench judgment in Abhey Ram is binding in preference to the judgment of the two Judges in Sudan Singh. This Court held as under:

> "7. We may state that it is true that in Sudan Singh case [(1997) 5 SCC 430 : 45 (1991) DLT 602] a two-Judge Bench of this Court confirmed another judgment of the Delhi High Court wherein the High Court had allowed the writ petition on the basis that the judgment of the Division Bench dated 18-11-1988 had quashed the Section 6 declaration wholly. It is also true that in Sudan Singh case [(1997) 5 SCC 430 : 45 (1991) DLT 602] too no objections were filed by the owners under Section 5-A. But, we are governed by the judgment of the three-Judge Bench in Abhey Ram case [(1997) 5 SCC 421 : JT (1997) 5 SC 354] where the said Bench not only referred to the effect of the Division Bench judgment of the High Court dated 18-11-1988 but also referred to the judgment of the two-Judge Bench of this Court in Sudan Singh case [(1997) 5 SCC 430 : 45 (1991) DLT 602] . The three-Judge Bench in Abhey Ram [(1997) 5 SCC 421 : JT (1997) 5 SC 354] is binding on us in preference to the judgment of the two Judges in Sudan Singh [(1997) 5 SCC 430 : 45 (1991) DLT 602].
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> 8. In connection with owners or persons interested who have not filed objections under Section 5-A, in principle, it must be accepted that they had no objection to the Section 4 notification operating in respect of their property. On the 11 For short, the 'Gurdip Singh Uban-I' (1999) 7 SCC 44 other hand, in respect of those who filed objections, they might have locus standi to contend that the Section 5-A enquiry was not conducted properly. We, therefore, agree in principle with the view of the three-Judge Bench in Abhey Ram case [(1997) 5 SCC 421 : JT (1997) 5 SC 354] that those who have not filed objections under Section 5-A, could not be allowed to contend that the Section 5-A enquiry was bad and that consequently the Section 6 declaration must be struck down and that then the Section 4 notification would lapse. If, therefore, no objections were filed by the respondents, logically the Section 6 declaration must be deemed to be in force so far as they are concerned.
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> 9. But learned Senior Counsel for the respondents contends that the judgment of the Division Bench dated 18-11-1988 in B.R. Gupta case [(1989) 37 DLT 150 (DB)] had quashed the entire Section 5-A proceedings and that even in case the respondents had filed objections, the position would not have been different. We cannot accept this contention. We are of the view that in respect of those who did not object to the Section 4(1) notification by filing objections under Section 5-A, the said notification must be treated as being in force. The writ petitioners cannot be permitted to contend that in some other cases, the notification was quashed and that such quashing would also enure to their benefit.
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> 10. Then coming to the effect of the judgment of the Division Bench dated 18-11-1988 of the High Court, we are of the view that the three-Judge Bench judgment in Abhey Ram case [(1997) 5 SCC 421 : JT (1997) 5 SC 354] has interpreted or declared the

> effect of the said High Court judgment dated 18-11-1988. That judgment is binding on us.

We cannot go by the two-Judge Bench judgment in Sudan Singh case [(1997) 5 SCC 430 : 45 (1991) DLT 602] because we are bound by the judgment of the three-Judge Bench in Abhey Ram case [(1997) 5 SCC 421 : JT (1997) 5 SC 354] . Further, the judgment in Abhey Ram case [(1997) 5 SCC 421 : JT (1997) 5 SC 354] takes notice of Sudan Singh case [(1997) 5 SCC 430 : 45 (1991) DLT 602] and it cannot be contended that they have not looked fully into the judgment in Sudan Singh case [(1997) 5 SCC 430 : 45 (1991) DLT 602] or fully into the judgment of the Division Bench of the High Court dated 18-11-1988 in B.R. Gupta case [(1989) 37 DLT 150 (DB)] . Nor is the dismissal of the special leave petition in B.L. Sharma case a precedent which can outweigh Abhey Ram [(1997) 5 SCC 421 : JT (1997) 5 SC 354] . The opinion of the legal department of the Government or the Delhi Development Authority which is relied upon — apart from not having binding force, cannot override Abhey Ram case [(1997) 5 SCC 421 : JT (1997) 5 SC 354]."

15. In another judgment reported as Delhi Administration v. Gurdip Singh Uban & Ors.16, this Court considered the Interlocutory Applications filed by the landowners in Gurdip Singh Uban-I after the dismissal of review petition on 24-11-1999. This Court, while deciding such applications noticed that the brief operative order in Balak Ram-II in each of the 73 writ petitions was not noticed in Sudan Singh. It was held as under:

> "42. On fresh consideration of the matter, we are of the opinion that Abhey Ram [(1997) 5 SCC 421] was decided correctly — if we may say so with great respect — and that the latter order of the Division Bench in the writ petitions in the batch in Balak Ram Gupta [B.R. Gupta v. Union of India, (1989) 37 DLT 150 (DB) (order dated 14-10-1988)] must be confined to the writ absolute orders dated 14-10-1988 in each of those 73 writ petitions and to the land covered thereby, because the objections filed were personal to each case and there was no argument before the Division Bench or even before us that there was no public purpose or that there was colourable exercise of power. We are of the view that the Division Bench of the High Court in its latter order dated 18-11-1988 containing reasons could not in law have quashed the Section 5-A inquiry and Section 6 declaration covering all other cases not before the Division Bench when no question going to the root and covering all cases arose, and contrary to the writ absolute issued in each case. The order dated 14-10-1988, in our view, would control the order dated 18-11-1988 and would restrict the same."

16. With this background, the facts of the present case need to be ex-

amined. The original land owners entered into agreement to sell on 25.9.1990 for the land measuring 28 Bigha 08 Biswa comprising in Khasra No. 376 (4-6), 377 (4-16),381 (1-2), 383 (4-16), 384 (4-6), 1616 For short, the 'Gurdip Singh Uban-II', (2000) 7 SCC 296 385 (4-6), 386/1 (1-18), 386/2 (2-18), 389 (4-16), 390 (4-6), 391 (4-

6), 392/1 (1-0), 392/2 (3-16), 394 (4-16), 395/1 (0-04), 395/2 (3-0), 396 (4-6) with the purchaser. The agreement to sell inter-alia recites as under:

> "AND WHEREAS some of the owners of the land of the above village challenged the acquisition proceedings in the High Court of Delhi. The Hon'ble Court was pleased to release the entire above lands from acquisition, the main judgment being passed in Civil Writ 1639/85 decided on 14-10/18-11- 1988 titled "Balak Ram Gupta Vs. UOI", Delhi Administration has not filed any appeal and at present the above lands are free from acquisition."

> 17. The agreement further states that the Land Acquisition Collector had taken possession and paid compensation to the owners of Khasra No. 384 (4-6), 385 (4-6) and 390 (4-6) and in terms of the order passed (though not mentioned specifically but the reference is to the order passed in Balbir Singh), the compensation has been paid back and, thus, Khasra Numbers stand released from acquisition.

> 18. Thereafter, the purchaser is said to have purchased the land in question vide sale deeds dated 30.8.1991 and 27.2.1991. Though, it is argued by the appellant that the sale deed was not registered, but Mr. Kapil Sibal, learned senior counsel for the respondent-

purchaser stated that the sale deeds were registered. However, that is not a relevant consideration at this stage for the issues arising in the present appeal as we proceed on the basis that land was purchased by the purchaser.

19. The purchaser filed a writ petition before the High Court reported as Godfrey Phillips v. Union of India12. The said writ petition along with the other two writ petitions were dismissed by the Division Bench of the Delhi High Court on 18.11.2005. The High Court recorded a finding that the vendors of the writ petitioners including the purchasers have not filed any writ petition and have thus accepted the acquisition proceedings. The High Court held as under:

> "13. ...The only inference that can be drawn from these facts is that the predecessors in interest of the petitioners.h1d acquiesced to the proceedings and the petitioners had remained content with their acquiescing only a right to claim compensation for the land purchased by them as they could not acquire by reason of the said purchase the locus to challenge the proceedings. Even if the petitioners could legally maintain petitions to assail the validity of the proceedings, they did nothing from 1991 till 2005 to agitate the matter in any forum or Court to have the proceedings quashed.

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> 24. That apart, the right to challenge the notifications available to the original land owners having been lost by the original owners by their acquiescence and silence till the year 1991 when the land was transferred to the petitioner, there was no question

> of any such right being exercised by the transferees 15 years thereafter. The inaction and acquiescence of the owners before the sale of the land in favour of the petitioners would by itself conclude the controversy. But even if one were to look at the delay from the point of the petitioners also, there is no explanation whatsoever for their silence from 1991 when they purchased the land till 2005 when they actually filed the petitions."

20. The Special Leave Petition (c) No. 4642 of 2006 filed against the said judgment was dismissed on 8.2.2010 along with other Civil Appeals reported as Om Parkash Vs. Union of India13. 12 2005(125) Delhi Law Times 207 13 (2010) 4 SCC 17

21. It was thereafter that the purchaser filed another writ petition after the commencement of the 2013 Act for declaring that the acquisi- tion proceedings stand lapsed under Section 24. The purchaser as- serted that the possession of Khasra Nos. 376 (4-6), 377 (4-16), 381 Min (1-2), 383 (4-16), 386/1 Min (0-4) and 386/2 Min (0-6) were never taken by the revenue authorities, meaning thereby that the physical possession has always been retained by the owners of the said land. The prayer in the writ petition filed was for quashing of the notification under Sections 4 and 6 of the Act, and the award in respect of land measuring 28 Bigha 8 Biswa, forming part of rev- enue estate of Village Sahoorpur falling in Tehsil Saket, Delhi. The purchaser also claimed a Mandamus to handover vacant and peaceful possession of the land measuring 28 Bigha 8 Biswa. The prayer reads thus:

> "(ii) MANDAMUS directing, commanding and requiring' the Respondents to hand over vacant and peaceful possession of the agricultural land Khasra Nos. 376 (4· 6), 377 (4· 16), , 381 Min (1 · 2), 383 (4· 16), 384 (4· 6), 385 (4· 6), 386/1 Min (0· 4), 386/2 Min (O· G) and 390 (4· 6) admeasuring 28 Bighas and 8 Biswa forming part of the revenue estate of Village Sahoorpur falling in Tehsil Saket, New Delhi since the acquisition proceedings in respect thereof have lapsed in terms of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act."

> 22. The stand of the appellant in the counter affidavit before the High Court was that since the acquisition proceedings have attained finality, there cannot be any lapsing of something which has already achieved finality under the Act. The appellant stated as under:

> "(i) I say that the present writ petition is liable to be dismissed since there is no question of the acquisition proceedings having been lapsed. It is submitted that the challenge to the acquisition proceedings of Award no. 10/87- 88 has already attained finality and there can be no Indirect challenge to the acquisition of the land, which has already assumed finality under the provisions of the Land Acquisition Act, 1894.

It would not be out of place to mention here that with the land owners having failed in their challenge to the acquisition under the provisions of 'The Land Acquisition Act, 1894', the petitioner

cannot now turn around and say that the acquisition proceedings was pending and has lapsed.

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l) I say that the physical possession of the acquired land falling in khasra no. 384(4-16), 385(4-06) & 390(4-06) in village Shayoorpur has been handed over to the respondent no. 2-Delhi Development Authority on 14.07.87 by the LAC/Land & Building Department, Govt. of National Capital Territory of Delhi however physical possession of khasra no 386/1 Min. (0-04), 386/2 Min(0-06), 376(4-16), 377 (4-16), 381 Min (1-02), 383(4-16) has not been handed over to the respondent no. 2-Delhi Development Authority by the LAC/Land & Building Department, Govt. of National Capital Territory of Delhi."

23. The High Court vide the order impugned found that an amount of Rs.3,87,360/- was refunded by way of Cheque No. 361656 by the original landowner on 11.7.1989 but since the encashment of cheque was not confirmed, the purchaser offered to deposit the said amount twice over along with interest, which as on 30.11.2016, comes to Rs.16,61,774/-. The High Court accepted the offer made by the purchaser and held that proceedings stand lapsed.

24. The purchaser filed additional documents before this Court by way of I.A. No. 50154 of 2022. It has been asserted as under:

> "(i) Lands of which possession was taken over by way of Possession proceedings (Kabza Karyawahi) on 14.7.1987 by LAC and compensation was paid are bearing Kh. No. 384(4-
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> 16), 385(4-6) & 390(4-6) total measuring 12 Bighas and 18 Biswas of Village Sayoorpur, Delhi.
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> (ii) Lands of which possession has not been taken but allegedly compensation amount was placed in RD with LAC, bear Kh. No. 376(4-6), 377(4-16), 381 min. (1-2), 383 (4-16), 386/1 min. (0-4), 386/2 min. (0-6) total measuring 15 Bighas and 10 Biswas of Village Sayoorpur, Delhi."

25. Learned counsel for the appellant argued that the purchaser has no right to claim lapse of acquisition proceedings in view of judgment of this Court reported as Meera Sahni v. Lt. Governor of Delhi14 and three Judge Bench Judgment in M. Venkatesh v. Bangalore Development Authority15.

26. It was further contended that the judgment in Balbir Singh directing the land owners to deposit the amount of compensation along with interest ceases to be a binding precedent in view of the judgment of this Court in Abhey Ram when the judgment in Sudan Singh was not found to be the correct law. Such proposition that Sudan Singh was not the correct proposition of law was reiterated in Gurdip Singh Uban-I. Once the subsequent judgments in Abhey Ram and Gurdip Singh Uban-I have held that Sudan Singh was not correctly decided, it would necessarily mean that the judgment in Balbir Singh ceases to be of any 14 (2008) 9 SCC 177 15 (2015) 17 SCC 1 relevance or a binding

precedent.

27. On the other hand, Mr. Kapil Sibal argued that the writ petition was disposed of on the short ground of lapsing of the acquisition in view of Section 24 of the 2013 Act but in other similar matters, this Court has remanded back the matters to the High Court for fresh decision after the decision of this Court in Indore Development Authority v. Manoharlal & Ors.17. It was also contended that the subsequent purchaser has a right to claim lapsing of the acquisition proceedings in view of the judgment of this Court in Government (NCT of Delhi) v. Manav Dharam Trust & Anr.18

28. In the written submissions filed, the purchaser made a reference to the land comprising in 384(4-16), 385(4-6) & 390(4-6) 12 Bigha 18 Biswa land as Part A; whereas the land comprising in Khasra Nos. 376(4-6), 377(4-16), 381 min. (1-2), 383 (4-16), 386/1 min. (0-4), 386/2 min. (0-6) total measuring 15 Bigha and 10 Biswa was referred to as Part B land. In respect of Part A land, the argument was that compensation was paid but in view of the order of the High Court in Balbir Singh, the original land owner had paid back the amount of compensation by cheque. It was further submitted, that in the absence of any proof of encashment of cheque, the High Court in the impugned order, directed the purchaser to pay the amount of Rs. 16,61,774/- and such amount stands paid. Therefore, in respect of such land, the compensation had not been paid in law. In respect of Part B land, the argument was that the 17 (2020) 8 SCC 129 18 (2017) 6 SCC 751 amount of compensation had not been paid nor has the possession been taken.

29. We do not find any merit in the arguments raised by the learned counsel for the purchaser. The writ petition was filed after the commencement of the 2013 Act on a short question that the acquisition proceedings stand lapsed. This Court in Indore Development Authority has held that twin conditions have to be satisfied before proceedings can be said to be lapsed i.e., possession not taken and/or compensation not paid. This Court examining the question of payment or deposit in the light of the Standing Order No. 28 issued in 1909 by the State of Punjab and as applicable to Delhi also, provided five modes of payment in Paras 74 and 75. It has been held as under:

> “226.Thus, in our opinion, the word “paid” as used in Section 24(2) does not include within its meaning the word “deposited”, which has been used in the proviso to Section 24(2). Section 31 of the 1894 Act, deals with the deposit as envisaged in Section 31(2) on being “prevented” from making the payment even if the amount has been deposited in the treasury under the Rules framed under Section 55 or under the Standing Orders, that would carry the interest as envisaged under Section 34, but acquisition would not lapse on such deposit being made in the treasury. In case amount has been tendered and the landowner has refused to receive it, it cannot be said that the liability arising from non- payment of the amount is that of lapse of acquisition. Interest would follow in such a case also due to non-deposit of the amount. Equally, when the landowner does not accept the amount, but seeks a reference for higher compensation, there can be no question of such individual stating that he was not paid the amount (he was determined to be entitled to by the Collector). In such case, the landowner would be entitled to the compensation

determined by the Reference Court.

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244. The proviso to Section 24(2) of the 2013 Act, intends that the Collector would have sufficient funds to deposit it with respect to the majority of landholdings. In case compensation has not been paid or deposited with respect to majority of landholdings, all the beneficiaries are entitled for higher compensation. In case money has not been deposited with the Land Acquisition Collector or in the treasury or in court with respect to majority of landholdings, the consequence has to follow of higher compensation as per the proviso to Section 24(2) of the 2013 Act. Even otherwise, if deposit in treasury is irregular, then the interest would follow as envisaged under Section 34 of the 1894 Act.

Section 24(2) is attracted if acquisition proceeding is not completed within 5 years after the pronouncement of award..... The 2013 Act applies only to the pending proceedings in which possession has not been taken or compensation has not paid and not to a case where proceedings have been concluded long back, Section 24(2) is not a tool to revive those proceedings and to question the validity of taking acquisition proceedings due to which possession in 1960s, 1970s, 1980s were taken, or to question the manner of deposit of amount in the treasury. The 2013 Act never intended revival of such claims. In case such landowners were interested in questioning the proceedings of taking possession or mode of deposit with the treasury, such a challenge was permissible within the time available with them to do so. They cannot wake from deep slumber and raise such claims in order to defeat the acquisition validly made. In our opinion, the law never contemplates—nor permits—misuse much less gross abuse of its provisions to reopen all the acquisitions made after 1984, and it is the duty of the court to examine the details of such claims. There are several litigations before us where landowners, having lost the challenge to the validity of acquisition proceedings and after having sought enhancement of the amount in the reference succeeding in it nevertheless are seeking relief arguing about lapse of acquisition after several rounds of litigation.

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247. The question which arises whether there is any difference between taking possession under the 1894 Act and the expression “physical possession” used in Section 24(2). As a matter of fact, what was contemplated under the 1894 Act, by taking the possession meant only physical possession of the land. Taking over the possession under the 2013 Act always amounted to taking over physical possession of the land. When the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any re-entry is made on

the land or someone starts cultivation on the open land or starts residing in the outhouse, etc. is deemed to be the trespasser on land which is in possession of the State. The possession of trespasser always inures for the benefit of the real owner that is the State Government in the case."

30. It was held that under Section 16 of the Act, vesting of title in the Government is complete immediately upon taking of possession, and the acquired land becomes the property of the State under Sections 16 and 17 of the Act without any condition or limitation either as to title or possession. It was held that if once panchnama had been drawn of taking possession, thereafter re-entry or retaining the possession is that of the trespasser. This Court held as under:

> "249. The concept of possession is complex one. It comprises the right to possess and to exclude others, essential is animus possidendi. Possession depends upon the character of the thing which is possessed. If the land is not capable of any use, mere non-user of it does not lead to the inference that the owner is not in possession. The established principle is that the possession follows title. Possession comprises of the control over the property. The element of possession is the physical control or the power over the object and intention or will to exercise the power. Corpus and animus are both necessary and have to co-exist. Possession of the acquired land is taken under the 1894 Act under Section 16 or 17, as the case may be. The Government has a right to acquire the property for public purpose. The stage under Section 16 comes for taking possession after issuance of notification under Section 4(1) and stage of Section 9(1). Under Section 16, vesting is after passing of the award on taking possession and under Section 17 before passing of the award.
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> 345. Section 24(2) is sought to be used as an umbrella so as to question the concluded proceedings in which possession has been taken, development has been made, and compensation has been deposited, but may be due to refusal, it has not been collected. The challenge to the acquisition proceedings cannot be made within the parameters of Section 24(2) once panchnama had been drawn of taking possession, thereafter re-entry or retaining the possession is that of the trespasser. The legality of the proceedings cannot be challenged belatedly, and the right to challenge cannot be revived by virtue of the provisions of Section 24(2). Section 24(2) only contemplates lethargy/inaction of the authorities to act for five years or more. It is very easy to lay a claim that physical possession was not taken, with respect to open land. Yet, once vesting takes place, possession is presumed to be that of the owner i.e. the State Government and land has been transferred to the beneficiaries, corporations, authorities, etc. for developmental purposes and third-party interests have intervened. Such challenges cannot be entertained at all under the purview of Section 24(2) as it is not what is remotely contemplated in Section 24(2) of the 2013 Act."

31. This Court concluded 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.

366.5. In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). The landowners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the 2013 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).

366.9. Section 24(2) of the 2013 Act does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the 2013 Act i.e. 1-1-2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition."

32. Further, this Court in a judgment reported as Shyam Nandan Prasad & Ors. v. State of Bihar & Ors.16 held that the notification under Section 6 of the Act could not have been set aside and should

have individualized justice vis-à-vis each writ petitioner. It was held as under:

> "22. Having thus clarified the law governing the field, we would open doors for streams of equities and discretions to enter in the exercise of power by the High Court under Article 226 of the Constitution. As observed earlier, we are of the view that the High Court should not have upset the notification under Section 6 of the Act as a whole and should have individualised justice vis-a-vis each writ petitioner before it, having regard to the equities interplaying in each case and to the regulation of its discretion keeping in view host of other factors which weigh with the High Court to deny, grant or mould relief even when illegalities in procedure keep staring. Thus for the view afore-expressed, we allow these appeals, set aside the impugned orders of the High Court and remit all these matters back to it with the request that though it may take them up as a batch, it may give individual attention to each case, view the illegalities pointed out by the writ petitioner in their right perspective having regard to the time factor and confine the relief, if due, to him separately. We shall not be taken to have controlled the discretion of the High Court in administering individualised justice and amongst others it may, with the cooperation of the Society and of the State Government, as also the writ petitioners examine the possibility of an equitable solution so that the fist of law and the discretion of the court do not hurt unbearably. We thus remit the matters to the High Court without any order as to costs."

33. In Chairman and Managing Director, Tamil Nadu Housing Board & Anr. v. S. Saraswathy & Ors.17, this Court held that Section 6 declaration cannot be treated to be quashed in entirety unless it is quashed in toto or in its wholeness by the Court 16 (1993) 4 SCC 255 17 (2015) 8 SCC 723 specifically. It was held as under:

> "11. We are respectfully in accord with the observations of Coordinate Benches that unless the declaration under Section 6 or the notification under Section 4 of the Act is not explicitly quashed in toto or in its wholeness by the Court, the benefits of relief granted by the Court would be effective only qua the parties before it. As already adumbrated above, at the time the appeal of A.S. Naidu came to be decided, the three year limitation period to publish a declaration under Section 6 of the Act had already expired, making it impossible for the Government to complete a fresh process culminating in another declaration; and it was for this reason that the acquisition was quashed by the Court.
>
> 12. It has been repeatedly reiterated by this Court that those who have missed the boat in challenging the acquisition proceedings, who sat idle and have let the grass grow under their feet cannot, thereafter, be permitted to jump on the bandwagon of others who entered the portals of the Court at the appropriate time and thereafter obtained favourable orders. Significantly, in Chandrasekaran [(2010) 2 SCC 786 : (2010) 1 SCC (Civ) 553] the Court was alive to the reality of utilisation of large chunks of land by the State for housing scheme; and in this scenario, it was obviously and

> rightly reluctant and facially hesitant to quash the acquisition proceedings in toto, knowing that that would result in grave consequences to society. In this analysis, the respondents including their vendor, P. Velu, cannot be permitted to take any advantage of the orders passed by this Court in A.S. Naidu [A.S. Naidu v. State of T.N., (2010) 2 SCC 801 : (2010) 1 SCC (Civ) 568] ."

34. In another judgment reported as State of Haryana & Anr. v.

Devander Sagar & Ors.18, this Court has held that the acquisition proceedings cannot be quashed of one or two land owners. It is the duty of the land owners to challenge the acquisition proceedings at lease before award is pronounced and possession is taken. It was held as under:

> "11. It would be pertinent to clarify that the quashing of the

18 (2016) 14 SCC 746 entire acquisition proceeding has to be explicitly expressed.

This Court has in Shyam Nandan Prasad v. State of Bihar [Shyam Nandan Prasad v. State of Bihar, (1993) 4 SCC 255] , Delhi Admn. v. Gurdip Singh Uban [Delhi Admn. v. Gurdip Singh Uban, (1999) 7 SCC 44] , Delhi Admn. v. Gurdip Singh Uban [Delhi Admn. v. Gurdip Singh Uban, (2000) 7 SCC 296] and T.N. Housing Board v. S. Saraswathy [T.N. Housing Board v. S. Saraswathy, (2015) 8 SCC 723 : (2015) 4 SCC (Civ) 443] reiterated and restated the established and consistent view that quashing of acquisition proceedings at the instance of one or two landowners does not have the effect of nullifying the entire acquisition. In A.P. Industrial Infrastructure Corpn. Ltd. v. Chinthamaneni Narasimha Rao [A.P. Industrial Infrastructure Corpn. Ltd. v. Chinthamaneni Narasimha Rao, (2012) 12 SCC 797 : (2013) 2 SCC (Civ) 731] this Court has reiterated the established proposition that landowners who are aggrieved by the acquisition proceedings would have to lay a challenge to them at least before an award is pronounced and possession of the land is taken over by the Government. Numerous decisions of this Court have been discussed obviating the need to analyse all of them once again. However, generally speaking, the courts come to the succour of those who approach it. In some instances, equities are equalised by allowing subsequent slothful petitioners, belatedly and conveniently jumping on the bandwagons, to receive, at the highest, compensation granted to others sans interest."

35. The original land owner had filed a writ petition before the Delhi High Court but such writ petition was dismissed on 02.12.1985. The Special Leave Petition was withdrawn on 12.09.1989 even though the reservation was conveyed by the learned counsel appearing for the appellant. Such withdrawal was after the judgment of the High Court in Balbir Singh case. The original land owners have made a conscious decision not to continue with the Special Leave Petitions. Thus, all the objections which were available to the original land owner including the purchaser up to that stage cannot be permitted to be raised again.

36. In Balak Ram-II, the acquisition proceedings were quashed since the objections filed by the land owners were not heard or decided in accordance with law. Thus, Balak Ram-II is a judgment in personam and not in rem, as the grievance of the writ petitioners was specific to them. The

judgment of the High Court in Balbir Singh is based upon the fact that in Balak Ram-II, the entire notification under Section 6 of the Act stands quashed. Such aspect has not found favor in Abhey Ram and Gurdip Singh Uban-I and II. Otherwise also, non-hearing of objections filed would be limited to those land owners who have filed objections. The predecessor-in-interest of the purchaser has not filed any objections under Section 5A of the Act, therefore, the judgment in Balak Ram-II cannot come to the aid of land owners who have never preferred any objections.

37. Therefore, the judgment in Balbir Singh does not confer any right on the other land owners who have not disputed the acquisition proceedings on the ground of lack of effective hearing of objections under Section 5-A of the Act. Since the original land owner never filed any objections under Section 5-A of the Act, the purchaser cannot seek the relief which was not available even to the original land owner.

38. The purchaser has purchased the property knowing fully well that the vendor has not disputed the acquisition proceedings. But on the basis of an order passed in Balbir Singh, it was conveyed and accepted by the purchaser, that the acquisition stands quashed and original land owner was in possession of the land. Since Sudan Singh, affirming the order in Balbir Singh has not been approved by this Court in the three judgments referred hereinabove (Abhey Ram, Gurdip Singh Uban-I and Gurdip Singh Uban-II), no right would accrue to the original land owner or the purchaser. The High Court in the impugned order has not noticed any of the three judgments of this Court in Abhey Ram, Gurdip Singh Uban-I and Gurdip Singh Uban-II nullifying the effect of Balbir Singh and instead ordered the purchaser to deposit twice of the amount paid to the original land owner. The condition of payment of compensation in Balbir Singh by the land owners does not survive in view of the fact that such judgment has not been approved by this Court.

39. In the present case, as per the purchaser itself, the possession of Part A land comprising in Khasra No. 384 (4-6), 385 (4-6) and 390 (4-6) total measuring 12 Bigha and 18 Biswa was taken by the Appellant and the compensation was paid. The argument is that in terms of the impugned orders of the High Court, the purchaser had deposited Rs.16,61,774/-, therefore, the acquisition stand lapsed. Such deposit is in turn based on the order of the High Court in Balbir Singh. The deposit by the purchaser, either in terms of the impugned order or the order passed in Balbir Singh, is wholly inconsequential. The amount of compensation was paid on behalf of the appellant. Therefore, the compensation of the acquired land paid by the appellant cannot lead to lapsing of the acquisition in terms of Indore Development Authority. The purchaser in its written submissions had made no reference to the later judgments of this Court referred to above. The deposit in terms of the order of the High Court will not lead to lapsing of the acquisition proceedings, such orders being absolutely being illegal. Thus, in respect of Part A land, the purchaser cannot take shelter of the order, which had no legal value and stands nullified. Even otherwise, there could not be any direction to deposit the amount now after more than 25 years. The right which has been lost due to passage of time cannot be revived by virtue of deposit of the amount subsequent to orders of the High Court.

40. In respect of Part B land, comprising of Khasra Nos. 376 (4-6), 377 (4-16), 381 Min (1-2), 383 (4-16), 386/1 Min (0-4) and 386/2 Min (0-

6) total 15 Bigha 10 Biswa, the stand of the appellant in the counter affidavit filed before the High Court was that the physical possession of the acquired land falling in khasra no. 384(4-16), 385(4-06) & 390(4-06) in village Shayoorpur had been handed over to the respondent no. 2-Delhi Development Authority on 14.07.87 by the LAC/Land & Building Department, Govt. of National Capital Territory of Delhi, however physical possession of khasra no 386/1 Min. (0-04), 386/2 Min(0-06), 376(4-16), 377 (4-16), 381 Min (1-02), 383(4-16) has not been handed over to the respondent no. 2-Delhi Development Authority by the LAC/Land & Building Department, Govt. of National Capital Territory of Delhi. Still further, the purchaser in its IA had asserted that the lands of which possession has not been taken but compensation amount was placed in RD with LAC, bear Kh. No. 376(4-6), 377(4-16), 381 min. (1-2), 383 (4-16), 386/1 min. (0-4), 386/2 min. (0-6) total measuring 15 Bigha and 10 Biswa of Village Sayoorpur, Delhi. Thus, we find that possession was in fact taken of the entire acquired land and compensation was deposited. If the appellant had not been able to utilize the land on account an order of stay of dispossession in various writ petitions filed, that would not be a material fact to return a finding that the purchaser continues to be in possession. As reiterated above, after the panchnama had been prepared, the possession of the land owners would be that of a trespasser.

41. The purchaser had in fact filed a Writ of Mandamus for delivering the possession of the entire acquired land. Such claim of Mandamus shows that the purchaser is out of possession. Therefore, the condition in Indore Development Authority for lapsing of the acquisition is not satisfied. Therefore, as per the purchaser, the possession has been taken of the part of the land and compensation has been deposited in respect of the remaining land. Thus, the twin conditions as laid down by this Court are not satisfied.

42. Even otherwise, the stand of the appellant is that the possession of the entire land was taken on 14.7.1987 whereas possession of land measuring 12 Bigha 18 Biswa was handed over to it, whereas the possession of the remaining land measuring 15 Bigha 10 Biswa is with the Government of Delhi. Therefore, the purchaser is not entitled to any declaration of lapsing of acquisition proceedings inter alia on the ground that it has purchased the land after vesting of the land with the State and the possession has been taken of the land measuring 28 Bigha 8 Biswa and the compensation has also been deposited in respect of entire land, though the compensation in respect of land admeasuring 12 Bigha 18 Biswa was disbursed. The remaining amount of compensation was with the Land Acquisition Collector.

43. Still further, the purchaser had purchased the property after vesting of the land with the State. In fact, in Manav Dharam Trust, earlier three Judge Bench judgment in M. Venkatesh was not even referred to. The purchaser has no right to claim lapsing of acquisition proceedings in view of the recent larger Bench judgment of this Court reported as Shiv Kumar & Anr. v. Union of India & Ors.19 wherein the judgment rendered by two-Judge Bench in Manav Dharam Trust was not found to be a good law. Hence, the purchaser has no right to claim a declaration sought for. It was held as under:

> “26. In Manav Dharam Trust [State (NCT of Delhi) v. Manav Dharam Trust, (2017) 6 SCC 751 : (2017) 3 SCC (Civ) 611] , even the provisions of the Act of 2013 have not

> been taken into consideration, which prohibits such transactions in particular provisions of Section 11, including the proviso to Section 24(2). Apart from that, it was not legally permissible to a Division Bench to ignore the decisions of the larger Bench comprising of three Judges and of coordinate Bench. They were not per incuriam and were relevant for deciding the issue of taking possession under the 1894 Act, at the instance of purchaser. In case it wanted to depart from the 19 (2019) 10 SCC 229 view taken earlier, it ought to have referred the matter to a larger Bench. It has been ignored that when a purchase is void, then no declaration can be sought on the ground that the land acquisition under the 2013 Act has lapsed due to illegality/irregularity of proceedings of taking possession under the 1894 Act. No declaration can be sought by a purchaser under Section 24 that acquisition has lapsed, effect of which would be to get back the land. They cannot seek declaration that acquisition made under the 1894 Act has lapsed by the challenge to the proceedings of taking possession under the 1894 Act. Such right was not available after the purchase in 2000 and no such right has been provided to the purchasers under the 2013 Act also.

Granting a right to question acquisition would be against the public policy and the law which prohibits such transactions; it cannot be given effect to under the guise of subsequent legislation containing similar provisions. Subsequent legislation does not confer any new right to a person based on such void transaction; instead, it includes a provision prohibiting such transactions without permission of the Collector as provided in Section 11(4).

27. Thus, we have to follow the decisions including that of larger Bench mentioned above, laying down the law on the subject, which still holds the field and were wrongly distinguished. The binding value of the decisions of larger and coordinate Benches have been ignored while deciding Manav Dharam Trust case [State (NCT of Delhi) v. Manav Dharam Trust, (2017) 6 SCC 751 : (2017) 3 SCC (Civ) 611] , it was not open to it to take a different view. The decision in Manav Dharam Trust [State (NCT of Delhi) v. Manav Dharam Trust, (2017) 6 SCC 751 : (2017) 3 SCC (Civ) 611] is per incuriam in light of this decision of this Court in Mamleshwar Prasad v. Kanhaiya Lal [Mamleshwar Prasad v. Kanhaiya Lal, (1975) 2 SCC 232] , A.R. Antulay v. R.S. Nayak [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] , State of U.P. v. Synthetics and Chemicals Ltd. [State of U.P. v. Synthetics and Chemicals Ltd., (1991) 4 SCC 139] , B. Shama Rao v. State (UT of Pondicherry) [B. Shama Rao v. State (UT of Pondicherry), AIR 1967 SC 1480] , MCD v. Gurnam Kaur [MCD v. Gurnam Kaur, (1989) 1 SCC 101] , State of M.P. v. Narmada Bachao Andolan [State of M.P. v. Narmada Bachao Andolan, (2011) 7 SCC 639 : (2011) 3 SCC (Civ) 875 : AIR 2011 SC 1989] , Hyder Consulting (UK) Ltd. v. State of Orissa [Hyder Consulting (UK) Ltd. v. State of Orissa, (2015) 2 SCC 189 : (2015) 2 SCC (Civ) 38] and Sant Lal Gupta v. Modern Coop. Group Housing Society Ltd. [Sant Lal Gupta v. Modern Coop. Group Housing Society Ltd., (2010) 13 SCC 336 : (2010) 4 SCC (Civ) 904]

28. We hold that Division Bench in Manav Dharam Trust [State (NCT of Delhi) v. Manav Dharam Trust, (2017) 6 SCC 751 : (2017) 3 SCC (Civ) 611] does not lay down the law correctly. Given the several binding precedents which are available and the provisions of the 2013 Act, we cannot follow

the decision in Manav Dharam Trust [State (NCT of Delhi) v. Manav Dharam Trust, (2017) 6 SCC 751 : (2017) 3 SCC (Civ) 611] and overrule it. ”

44. In view of the above, the appeal is allowed. The order passed by the High Court is set aside. However, the appellant shall refund the amount of Rs.16,61,774/- to the purchaser, without any interest as such deposit was a voluntary offer to deposit, in accordance with law.

.....J. (HEMANT GUPTA) .....J. (V. RAMASUBRAMANIAN) NEW DELHI;

MAY 06, 2022.