

North Delhi Municipal Corporation ... vs Ram Chnader Singh on 9 February, 2023

Author: M.R. Shah

Bench: M.R. Shah, C.T. Ravikumar, Sanjay Karol

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 733 OF 2023
(@SLP (C) NO. 2478 OF 2023)
(@ DIARY NO. 6958 of 2018)

North Delhi Municipal Corporation

...Appellant(s)

Versus

Ram Chander Singh and Ors.

...Respondent(s)

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Delhi at New Delhi in Writ Petition (C) No. 9333 of 2014 by which the High Court has allowed the said writ petition preferred by the respondents herein and has declared that the acquisition with respect to the land in question is deemed to have lapsed by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 16:10:33 IST Reason:

2013 (hereinafter referred to as “Act, 2013”), the North Delhi Municipal Corporation (NDMC) has preferred the present appeal.

2. In the present case, the lands of village Chowkri Mubarakbad were acquired vide Notification under Section 4 of the Act, 1894 dated 13.11.1959. The Award came to be passed on dated 20.02.1964. One Bodey S/o Munna Singh and Kalu Ram S/o Hetu were the recorded owners.

According to the appellant, actual vacant physical possession of the subject land was taken over and handed over to the requisition agency. Till the writ petition was filed, neither the writ petitioners nor the recorded owners challenged the acquisition proceedings under the Act, 1894.

2.1 That the private respondents herein – original writ petitioners approached the High Court by way of present writ petition for a declaration that the acquisition with respect to the land in question is deemed to have lapsed under Section 24(2) of the Act, 2013. The original writ petitioners claimed the ownership over the land admeasuring 3000 sq. yards, i.e., 6 bigha from the share fallen to Bodey. It was the case on behalf of the original writ petitioners that neither the compensation has been tendered and/or paid to them nor the possession has been taken over and, therefore, entitled to declaration as prayed.

2.2 The Government of NCT of Delhi in its counter affidavit before the High Court has stated as follows:-

"7. That it is submitted that the lands of village Chowkri Mubarakbad were notified vide Notification under Section 4 of the Land Acquisition Act, 1894 dated 13.11.1959 which was followed by the Notification under section 6 of the Act dated 26.12.1962. The Award was also passed vide Award No.1686 dated 20.2.1964 and none of the petitioners and/or the recorded owner/s challenged the same and accepted the acquisition proceedings. In pursuance of the acquisition proceedings, the answering respondent has duly taken the actual vacant physical possession of the subject land falling in khasra number 165 (12-19) which has been bifurcated in two parts as 165 min (6-10) and 165 min (6-09) and the ownership as per the award is of Bodey S/o Munna Singh for (6-10) and for (6-09), the recorded owner has been shown as Kalu Ram S/o Hetu. It is pertinent to mention here that the petitioners have been claiming the relief for the land measuring 3000 square yards i.e. 6 bigha from the share fallen to Bodey i.e. (6- 10):

It is submitted that in W.P.(C) 9333/2014 pursuance of the Award, stated supra, the answering respondent has duly taken the actual vacant physical possession of the subject land falling in khasra number 165 (12-19) on 1.5.1964 and handed over the requisition agency. It is further submitted that the compensation was deposited with the Reference Court vide cheque number 389384 dated 3.9.1965 however the same was returned by the court of Ld. ADJ and thereafter deposited in Treasury vide cheque number 394710 dated 10.3.1967."

2.3 Despite the above, the High Court, by the impugned judgment and order has allowed the writ petition and has declared that the acquisition with respect to the land in question is deemed to have lapsed as the assessed compensation was never paid to the original owners – Bodey Singh or his acknowledged successor-in-interest – Panna Lal and instead the same was deposited sometime in the year 1967 with the Treasury. That thereafter, relying upon the decision of this Court in the case of Pune Municipal Corporation and Anr. Vs. Harakchand Misirimal Solanki and Ors., (2014) 3 SCC 183, the High Court has allowed the writ petition and has declared that the acquisition with respect

to the land in question is deemed to have lapsed under Section 24(2) of the Act, 2013.

3. From the counter affidavit filed before the High Court, it can be seen that it was the specific case on behalf of the appellant and the Government of NCT of Delhi that the possession of the land was duly taken on 01.05.1964 and handed over to the requisition agency. It was also the case on behalf of the appellant that the compensation was deposited with the Reference Court vide cheque number 389384 dated 03.09.1965, however, the same was returned by the Court of Ld. ADJ and thereafter deposited in the Treasury on 10.3.1967. 3.1 From the impugned judgment and order passed by the High Court, it appears that the High Court has not accepted the case on behalf of the appellant that the actual vacant physical possession of the land in question was taken over solely on the ground that the land is vacant and the vacant portions in fact have been mortgaged and who constructed the boundary wall, which cannot be recited in the present proceedings. However, it is required to be noted that it was never the case on behalf of the original writ petitioners that they constructed the boundary wall. Against which, it was the specific case on behalf of the Government of NCT of Delhi that the possession of the land in question was taken over in the year 1964 and handed over to the requisition agency. It has come on record that on some portion, there was a construction and the rest was vacant to be surrounded by boundary wall. Thus, there is no reason to disbelieve the case on behalf of the appellant that in fact the physical possession of the land in question was not taken over on 01.05.1964. 3.2 Even otherwise, the amount of compensation was initially deposited with the Reference Court and thereafter deposited in the Treasury in the year 1967. Nothing is on record that at any point of time, either the recorded owners or his successors had made any grievance with respect to the non-payment of the compensation. 3.3 Even the decision of this Court in the case of Pune Municipal Corporation and Anr. (supra) relied upon by the High Court while passing the impugned judgment and order has been subsequently overruled by the Constitution Bench decision of this Court in the case of Indore Development Authority Vs. Manoharlal and Ors. (2020) 8 SCC 129. In paragraph 365 and 366, the Constitution Bench of this Court has observed and held as under:-

“365. Resultantly, the decision rendered in Pune Municipal Corpn. [Pune Municipal Corpn. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183] is hereby overruled and all other decisions in which Pune Municipal Corpn. [Pune Municipal Corpn. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183] has been followed, are also overruled.

The decision in Sree Balaji Nagar Residential Assn. [Sree Balaji Nagar Residential Assn. v. State of T.N., (2015) 3 SCC 353] cannot be said to be laying down good law, is overruled and other decisions following the same are also overruled. In Indore Development Authority v. Shailendra [(2018) 3 SCC 412], the aspect with respect to the proviso to Section 24(2) and whether “or” has to be read as “nor” or as “and” was not placed for consideration. Therefore, that decision too cannot prevail, in the light of the discussion in the present judgment.

366. In view of the aforesaid discussion, we answer the questions as under:

366.1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1-1-2014, the date of commencement of the 2013 Act, there is no lapse of proceedings. Compensation has to be determined under the provisions of the 2013 Act.

366.2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the 2013 Act under the 1894 Act as if it has not been repealed.

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.

366.6. The proviso to Section 24(2) of the 2013 Act is to be treated as part of Section 24(2), not part of Section 24(1)(b).

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.

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.”

4. Applying the law laid down by this Court in the case of Indore Development Authority (supra) to the facts of the case on hand, the High Court has committed a very serious error in declaring that the acquisition with respect to the land in question, which as such was acquired in the year 1959 is deemed to have lapsed under Section 24(2) of the Act, 2013. Under the circumstances, the impugned judgment and order passed by the High Court is unsustainable.

5. In view of the above and for the reasons stated above, present appeal succeeds. The impugned judgment and order passed by the High Court is hereby quashed and set aside. There shall not be any deemed lapse of the acquisition with respect to the land in question. If the original writ petitioners have any grievance with respect to the compensation and/or if the compensation is not paid to the recorded owners and/or the successors, it will be open for them to claim the same, which may be considered in accordance with law and on merits.

Present appeal is accordingly allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

Pending applications, if any, also stand disposed of.

..... J.
[M.R. SHAH]

NEW DELHI;
FEBRUARY 09, 2023.

..... J.
[C.T. RAVIKUMAR]

