

Rajiv Choudhrie Huf vs Union Of India & Ors on 10 December, 2014

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Bench: C. Nagappan, V. Gopala Gowda

NON REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
I.A. No. 4 of 2014

IN

CIVIL APPEAL NO.8785 OF 2013

RAJIV CHOWDHRIE HUFAPPELLANT

Vs.

UNION OF INDIA & ORS.RESPONDENTS

J U D G M E N T

V.GOPALA GOWDA, J.

This I.A. No.4 of 2014 in Civil Appeal No. 8785 of 2013 is filed by the appellant seeking for issuing direction and pass an order for disposal of this appeal in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short 'the Act of 2013'). The appellant-land owner has come to this Court questioning the correctness of the judgment and order dated 26.03.2010 passed by the Division Bench of the High Court of Delhi in W.P.(C)No. 2161 of 2006, wherein, the High Court dismissed the said petition.

Brief facts of the case are stated hereunder:

The appellant Hindu Undivided Family (for short HUF) purchased land comprising of Khasra Nos. 569, 575, 581, 586, 591, 592 (New Khasra Nos. 27/9, 12, 19, 22, 36/2, 9) on 07.06.1984 in all measuring 27 bighas situated in the revenue estate of village Bamnauli, Tehsil Mehrauli (presently Tehsil Vasant Vihar, Kapashera), New Delhi. On application made by the appellant, the Municipal Corporation of Delhi (MCD) vide Sanction Letter No.972/B/HQ/84 dated 23/01/1985 sanctioned the plan for constructing a farm house on part of the said land. In January 1985, the appellant constructed a farm house on the aforesaid land, which was in accordance with the plan duly sanctioned. After the completion of the construction, the MCD issued a completion certificate dated 06.11.1985 to the appellant.

On 26.11.2004, the Government of National Capital Territory (NCT) issued the notification dated 04.11.2004 under Section 4 of the repealed Land Acquisition Act, 1894 (for short 'the L.A. Act') in respect of land area measuring 2100 bighas and 06 biswas in respect of village Bamnauli, Tehsil Mehrauli. The public purpose mentioned in the notification under Section 4 of the L.A. Act was for construction of Dwarka, Phase II, the land of the appellant was covered in the said notification. The appellant filed his objections under Section 5A of the L.A. Act before the Land Acquisition Collector (for short 'LAC'), South West Delhi opposing the proposed acquisition for public purpose.

Thereafter, on 10.11.2005, the declaration notification under Section 6(1) of the L.A. Act dated 31.10.2005 was published in the government Gazette in respect of the land sought to be acquired including the land owned by the appellant.

The appellant filed Writ Petition (Civil) No. 2161 of 2006 before the High Court of Delhi at New Delhi, challenging the legality of the notifications under Sections 4 and 6 of the L.A. Act. The High Court issued notice and passed an order of "status quo" in respect of the land in question. The other land holders who were similarly situated had also challenged the said two notifications and the High Court upon examining the writ petitions on merits dismissed the same with a direction to the land owners that they were permitted to file a representation to the competent authority under Section 48 of the L.A. Act, to de-notify their land and further held that till such time as their representation for denotification is decided by the NCT, the parties are directed to maintain "status quo" as to nature, title and possession of the land in question. Hence, this appeal.

This Court vide order dated 08.11.2010 passed an interim order to maintain "status quo" in respect of the possession of the land in question, subsequently the same was made absolute till the disposal of the appeal.

It is the case of the appellant that throughout the proceedings before the High Court as well as this Court, it has been in physical possession of the land involved in this appeal. In fact, the actual physical possession of the land was never taken by the respondents. Furthermore, the appellant was protected by various interim orders of "status quo" both by the High Court as well as this Court with respect to the possession of the land in question.

Mr. Chandra Uday Singh, the learned senior counsel appearing on behalf of the appellant placed reliance upon Section 24(2) of the Act of 2013 to support the plea of the appellant that the land acquisition proceedings initiated under the L.A. Act would be deemed to have lapsed where an award was made 5 years prior to the commencement of the Act of 2013 and physical possession of the land has not been taken or the compensation towards the acquired land was not paid to the appellant. Therefore, the above provision of the Act of 2013 provides for lapse of such

acquisition proceedings which provision is aptly applicable to the fact situation. Section 24(2) of the 2013 Act, upon which strong reliance has been placed by the learned senior counsel on behalf of the appellant is extracted as under:-

"(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the LA Act, where an Award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act.

Provided that whether an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries specified in the notifications for acquisition under Section 4 of the said land acquisition and shall be entitled to compensation in accordance with the provisions of this Act."

Having regard to the facts narrated above, it is contended by the learned senior counsel for the appellant that by virtue of Section 24(2) of the Act of 2013, the land acquisition proceedings in the present case on hand initiated under the L.A. Act have lapsed for the reason that the award under Section 11 of the L.A. Act, which was made by the LAC on 06.08.2007 vide Award No.1/2007-2008 more than five years prior to the commencement of the Act of 2013, which has commenced from 01.01.2014 and physical possession of the land in dispute is neither taken nor has the compensation awarded been paid to the appellant in respect of his acquired land.

It has been further contended that the case of the appellant herein is duly covered under the aforesaid provisions of the Act as the appellant has been in continuous possession of the land in question and compensation has not been paid to the appellant while the award was made more than 5 years prior to the commencement of the Act of 2013. Reliance was placed on the three Judge Bench decision of this Court in Pune Municipal Corporation and Anr. Vs. Harakchand Misirimal Solanki & Ors.[1], and the other judgments of this Court in Bharat Kumar v. State of Haryana & Another[2], Bimla Devi & Others v. State of Haryana & Others[3] and Union of India & Others v. Shiv Raj & Others[4], wherein Section 24(2) of the Act of 2013, was examined by this Court at length and held that the land acquisition proceedings initiated under the L.A. Act are deemed to have lapsed, where the award has been made five years or more prior to the commencement of the Act of 2013 and physical possession of the land is not taken or compensation has not been paid to the appellant. It is further contended that the law laid down by this Court in the Pune Municipal Corporation's case (supra) and other cases referred to supra, squarely cover the case on hand in favour of the appellant. Therefore, it is prayed by him that the instant appeal be disposed of since the acquisition proceedings of the land have lapsed in terms of Section 24(2) of the Act of 2013.

On the other hand, it has been contended by the learned counsel for the respondents that the Act of 2013 is prospective in operation by virtue of Section 24 read with Section 114 of the Act of 2013. As provided under Section 24, the effect of Section 6 of the General Clauses Act of 1897, the actions

taken by the respondents in acquiring the land in dispute and passing an award have been saved. By reading the above provisions of the two Sections, it is clear that Legislature wanted to protect and save the acquisition proceedings initiated under the repealed L.A. Act, particularly where either possession of the acquired land has not been taken or compensation has not been paid to the landowners. It is further submitted that the Act of 2013 never intended to destroy entire acquisition proceedings in acquiring the land for the public purpose under the repealed L.A. Act, 1894. It is well settled position of law that the proceedings initiated and culminated under the repealed Act of 1894 are not to be disturbed by applying the interpretation of the provisions of Section 24(2) of the Act of 2013 made by this Court in the above referred cases. By operation of the provisions of Section 16 or 17(1) of the L.A. Act as the case may be, once the possession of the acquired land is taken by the respondents, the land will be vested in the State Government which is absolutely free from all encumbrances. Thereafter, it is not open even for the State Government to denotify and restore the land to the land owner in exercise of its power under Section 48 of the repealed L.A. Act as it is not permissible in law. In the cases reported as Satendra Prasad Jain Vs. State of UP[5]. and Sanjeevanagar Medical and Health Employees' Co-operative Housing Society Vs. Mohd. Abdul Wahab and Ors.[6], this Court has held that once possession is taken by the Land Acquisition Collector in exercise of its statutory power under Section 16 or 17(1) of the repealed L.A. Act, 1894, the land vests with the State Government, free from all encumbrances, even if no compensation has been awarded under Section 11 of the repealed L.A. Act within two years, that is, the statutory period prescribed under the repealed L.A. Act for passing an award. In the aforesaid cases, this Court has also held that Section 11(A) of the repealed L.A. Act is not applicable (which is analogous to Section 24 of the Act of 2013) and further held that in such circumstances, the only consequence provided under the repealed L.A. Act is payment of interest under Section 34 in respect of the acquired land. Therefore, he submits that the acquisition of land cannot be deemed to have lapsed under Section 24(2) of the Act of 2013, in view of the law laid down in the above cases referred to supra. It is contended by the learned counsel on behalf of the respondents that the above said judgments were not brought to the notice of this Court while disposing of the case of Pune Municipal Corporation's case and other cases referred to supra which are strongly relied on behalf of the appellant and therefore the legal question in this regard requires to be referred to a larger Bench of this Court.

Further, it is contended by the respondents that by a careful reading of Section 24(2) of the Act of 2013, it would show that the proceedings initiated under the L.A. Act shall be deemed to have lapsed, if two conditions as mentioned below are not satisfied by the appellant. They are:

- (i) An Award under Section 11 of 1894 Act should have been made five years or more prior to the commencement of Act of 2013;
- (ii) Whether physical possession had not been taken or the compensation has not been paid.

A perusal of the provision of Section 24(2) of the Act reveals that it is in two parts. The first part relates to a positive state of affair, namely, the existence of award for more than five years on the commencement of the New Act, whereas, the second part lays down two negative conditions. Thus, the word 'or' has been used to express an alternative of the terms/conditions enumerated therein.

Therefore, if either of the two negative conditions which are found to be mentioned in Section 24(2) remains unfulfilled by the respondents, the acquisition proceedings in respect of the land be held to be not lapsed, is the legal contention urged on behalf of the respondents by placing reliance upon the decision of this Court in the case of *The Punjab Produce and Trading Co. Ltd. v. CIT, West Bengal, Calcutta*[7]. Neither the said legal issue is considered nor the law laid down in the aforesaid judgment was brought to the notice of this Court at the time of hearing of the case of *Pune Municipal Corporation* and other cases referred to supra and thus have not been considered by this Court while disposing of the cases on which reliance has been placed by the appellant as they have to be referred to the larger Bench for its reconsideration is the submissions of the learned senior counsel on behalf of NCT. Further, it is contended that if the above provisions are read in this manner, then it will be in harmony with the L.A. Act.

Further, it is contended that the appellant had filed writ petition in this Court when this Court was pleased to grant "status quo" in respect of the land in question. Although the High Court has dismissed the Writ Petition on 26.03.2010 but extended the interim order of "status quo" regarding the possession of the land till the representation filed by the appellant for release of the land under Section 48 of the L.A. Act was decided by the Competent Authority of NCT. When the appellant challenged the said order before this Court by way of Special Leave Petition, this Court directed the parties to maintain "status quo" in respect of the land in question resultantly on the strength of the interim order passed by the High Court as well as by this Court the possession of the land could not be taken by the respondents and the same remained with the appellant. In the teeth of the aforesaid fact that the appellant continued to be in possession of the land in question only due to interim order of "status quo" passed in their favour is not proper for the appellant to turn around and contend now at this stage that physical possession of the land has not been taken by the respondents and therefore, the acquisition proceedings of the land are lapsed.

We have carefully gone through the factual and rival legal contentions urged on behalf of both the parties in the backdrop of the case laws cited above. On examining the facts and circumstances of the case on hand, it is an undisputed fact that the award was made 5 years prior to the date of commencement of the Resettlement Act, 2013 i.e. on 06.08.2007 vide Award No. 1/2007-2008 and either physical possession of the land should have been taken or compensation has been paid to the appellant in respect of his acquired land. Therefore, the acquisition proceedings of the land of the appellant are lapsed in view of Section 24(2) of the Act of 2013, which provision has been rightly interpreted by this Court by a three Judge Bench decision in the case of *Pune Municipal Corporation* and other cases referred to supra, the relevant paras of the aforesaid case are extracted hereunder:-

"20.....it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act. It is also admitted position that compensation so awarded has neither been paid to the landowners/persons interested nor deposited in the court. The deposit of compensation amount in the Government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested. We have, therefore, no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the

2013 Act.

21. The argument on behalf of the Corporation that the subject land acquisition proceedings have been concluded in all respects under the 1894 Act and that they are not affected at all in view of Section 114(2) of the 2013 Act, has no merit at all, and is noted to be rejected. Section 114(1) of the 2013 Act repeals the 1894 Act. Sub-section (2) of Section 114, however, makes Section 6 of the General Clauses Act, 1897 applicable with regard to the effect of repeal but this is subject to the provisions in the 2013 Act. Under Section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of the 2013 Act and possession of the land is not taken or compensation has not been paid. The legal fiction under Section 24(2) comes into operation as soon as conditions stated therein are satisfied. The applicability of Section 6 of the General Clauses Act being subject to Section 24(2), there is no merit in the contention of the Corporation."

Further, with regard to the legal contention that physical possession of the land could not have been taken by the respondents in view of the interim order of "status quo" passed by this Court. This Court in the case of *Sree Balaji Nagar Residential Association v. State of Tamil Nadu & Ors.*[8], held that Section 24(2) of the Act of 2013 does not exclude any period during which the land acquisition proceedings might have remained stayed on account of stay or injunction granted by any court. It was conclusively held that the Legislature has consciously omitted to extend the period of five years indicated in Section 24(2) of the Act of 2013 for grant of relief in favour of land owners even if the proceedings had been delayed on account of an order of stay or injunction granted by a court of law or for any reason. Thus, the said period has to be excluded as provided under the amended proviso to Section 6 of the L.A. Act by way of an amendment by the legislature to the above Section 6 through an Amendment Act 68 of 1984, to add Explanation 1 to the Act, for the purpose of excluding the period, when the proceedings suffered stay by an order of the Court, in the context of limitation provided for publishing the declaration notification under Section 6(1) of the Act. The Explanation to Section 11A, which was added by Amendment Act 68 of 1984 was to a similar effect. This Court in the above case has examined this legal contention and held that the legislature in its wisdom made the period of five years under Section 24(2) of the Resettlement Act, 2013, absolute and unaffected by any delay in the proceedings on account of any order of stay by a court of Law. The plain wordings used by the Legislature under the provisions of Section 24(2) are made very clear and do not create any ambiguity or conflict. In such a situation, the court is not required to depart from the literal rule of interpretation, as held by this Court in the case of *C.I.T., Mysore v. The Indo Mercantile Bank Ltd.*[9] as under:-

"10. Lord Macmillan in *Madras & Southern Maharatta Railway Co. v. Bezwada Municipality* laid down the sphere of a proviso as follows:

"The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where, as in the present case, the language of the main

enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it by implication what clearly falls within its express terms.

The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that that is its necessary effect."

Upon examining the aforesaid decisions with reference to the facts and circumstances of the case on hand, we are of the view that physical possession of the land belonging to the appellant has neither been taken by the respondents nor compensation paid to him in respect of the land acquired even though more than five years have lapsed since the award was passed on 06.08.2007, when the Act of 2013 came into force. Therefore, the conditions mentioned in Section 24(2) of the Act of 2013 are satisfied in this case for allowing the plea of the appellant that the land acquisition proceedings are deemed to have lapsed in terms of Section 24(2) of the Act of 2013. The said legal principle laid down by this Court in the case of Pune Municipal Corporation (supra) and other cases referred to supra with regard to the interpretation of Section 24(2) of the Act of 2013, is applicable with all fours to the fact situation in respect of the land covered in this appeal for granting the relief as prayed by the appellant in the application.

In view of the aforesaid findings and reasons recorded by us, the acquisition proceedings in respect of the appellant's land have lapsed. The prayer made in this Interlocutory Application is allowed in the above terms and consequently, the civil appeal is also allowed by quashing the acquisition proceeding notification in so far as the land of the appellant is concerned. There shall be no order as to costs.

.....J. [V. GOPALA GOWDA]
.....J. [C. NAGAPPAN] New Delhi, December 10,2014

- [1] (2014) 3 SCC 183
- [2] (2014) 6 SCC 586
- [3] (2014) 6 SCC 583
- [4] (2014) 6 SCC 564
- [5] (1993) 4 SCC 369
- [6] (1996) 3 SCC 600
- [7] (1971) 2 SCC 540
- [8] 2014 (10) SCALE 388
- [9] AIR 1959 SC 713