

GOVT OF NCT OF DELHI THROUGH SECRETARY, LAND AND BUILDING DEPARTMENT AND ANR. A

v.

RAM PRAKASH SEHRAWAT AND ORS.

(Civil Appeal No. 9201 of 2022) B

DECEMBER 15, 2022

[M. R. SHAH AND S. RAVINDRA BHAT, JJ.]

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013: s.24(2) – Land Acquisition Act, 1894 – Notification under s.4 of LA Act was issued on 23.01.1965 and award was declared – Possession of the land was taken and handed over to the DDA on 22.09.1986 – After a period of 29 years of passing of the award and taking over of possession, Respondent 1 and 2 filed the writ petition before the High Court for declaring that the acquisition of lands in question deemed to be lapsed under s.24(2) of the Act, 2013 – High Court relied on Pune Municipal Corporation and Anr. and declared that the acquisition with respect to the land in question is deemed to have lapsed under s.24(2) solely on the ground that the compensation was not paid to the recorded owners – On appeal, held: The view taken by the High Court relying upon the decision in the case of Pune Municipal Corporation and Anr. is unsustainable – The decision in the case of Pune Municipal Corporation and Anr. which has been relied upon by the High Court while passing the impugned judgment and order has been specifically overruled by the Constitution Bench of this Court in the case of Indore Development Authority v. Manoharlal and Ors. – Impugned judgment declaring that the acquisition with respect to the land in question is deemed to have lapsed under s.24(2) of the Act, 2013 is set aside. C D E F

Indore Development Authority v. Manoharlal and Ors.
(2020) 8 SCC 129 : [2020] 3 SCR 1 – followed. G

Pune Municipal Corporation and Anr. v. Harakchand Misirimal Solanki and Ors. **(2014) 3 SCC 183 : [2014] 1 SCR 783 – referred to.**

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Case Law Reference**[2014] 1 SCR 783****referred to****Para 2****[2020] 3 SCR 1****followed****Para 3.2**

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9201 of 2022.

From the Judgment and Order dated 14.09.2015 of the High Court of Delhi at New Delhi in Writ Petition (C) No. 4952 of 2015.

Atul Kumar, Ms. Sweety Singh, Ms. Archana Kumari, Rahul Pandey, Amitabh Ranjan, Advs. for the Appellants.

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Vishnu Kant, Satya Ranjan Swain, Karan Arora, Kautilya Briat, Rabin Majumder, Ms. Akansha Srivastava, Joydeep Mukherjee, Ms. Mousmi Roy, Nand Ram, Ms. Manika Tripathy, Roshan Kumar, Manish Vashist, Advs. for the Respondents.

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The Judgment of the Court was delivered by

M. R. SHAH, J.

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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. 4952 of 2015 by which the High Court has allowed the said writ petition preferred by the respondent Nos.1 and 2 herein and has declared that the acquisition with respect to the land in question is deemed to have lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as “Act, 2013”), the Govt. of NCT of Delhi (Land and Building Department) and the Land Acquisition Collector have preferred the present appeal.

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2. At the outset, it is required to be noted that in the present case, the notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as “Act, 1894) was issued on 23.01.1965 and the award was declared, followed by Section 12(2) notice on 19.09.1986. As per the counter affidavit filed by the appellants before the High Court, the possession of the land in question was taken and handed over to the DDA on 22.09.1986. After a period of approximately 29 years of passing of the award and taking over of possession, the respondent Nos. 1 and 2 approached the High Court by way of present writ petition and prayed that the acquisition with respect to the land in question is deemed to

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have lapsed under Section 24(2) of the Act, 2013. In the impugned judgment and order, though the High Court has referred to the counter affidavit filed on behalf of the appellants filed before the High Court, in which it was specifically stated that the possession of the land in question was taken over and handed over to the DDA on 22.09.1986, however, thereafter without further entering into the question of taking over the possession, by the impugned judgment and order, the High Court has relied upon the decision of this Court in the case of **Pune Municipal Corporation and Anr. Vs. Harakchand Misirimal Solanki and Ors.** reported in (2014) 3 SCC 183 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 solely on the ground that the compensation has not been paid to the recorded owners.

3. It is the case on behalf of the respondent Nos. 1 and 2 that the actual possession of the land in question was not taken over and that there is an illegal residential colony on the land in question for which the regularization proceedings are going on and a writ petition is pending for the same before the High Court. However, it is required to be noted that it was the specific case on behalf of the appellants and as so mentioned in the counter affidavit filed before the High Court that the possession of the land in question was taken over and handed over to the DDA on 22.09.1986, and, therefore, the alleged possession of the acquired land and the status of the original writ petitioners are nothing but one having illegal possession and unlawful encroachment on the Government land.

3.1 At this stage, it is required to be noted that before the High Court and even before this Court, possession proceedings have been placed on record to show that the possession of the land in question alongwith other lands were taken over and handed over to the Land and Building Department on 22.09.1986. Apart from the same, even, according to the respondent Nos. 1 and 2, a Writ Petition No. 9366 of 2005 for regularization of the illegal construction of the residential colony on the land in question is still pending in the High Court. Meaning thereby, the original writ petitioners – respondent Nos. 1 and 2 admit that the possession and construction on the land in question is illegal. From the aforesaid, it can be seen that there may be an illegal residential colony in which some other persons might be staying. Therefore, it cannot be believed that the respondent Nos. 1 and 2 – original writ petitioners are in possession of the land in question and/or at the relevant time possession was not taken.

- A 3.2 The view taken by the High Court relying upon the decision of this Court in the case of **Pune Municipal Corporation and Anr. (supra)** is unsustainable. It is required to be noted that the decision of this Court in the case of **Pune Municipal Corporation and Anr. (supra)**, which has been relied upon by the High Court while passing the impugned judgment and order has been specifically overruled by the
- B Constitution Bench of this Court in the case of **Indore Development Authority Vs. Manoharlal and Ors.** reported in **(2020) 8 SCC 129**. In paragraphs 365 and 366, the Constitution Bench of this Court in the case of **Indore Development Authority (supra)** has observed and held as under:-
- C “**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
- D 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
- E 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.
- F **366.** In view of the aforesaid discussion, we answer the questions as under:
- G **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.
- H **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.

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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.

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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.

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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

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A 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).

B **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.

C **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.”

D 4. In view of the above and for the reasons stated above and without commenting upon the pending writ petition, pending before the High Court being Writ Petition No. 9366 of 2005, we set aside the impugned judgment and order passed by the High Court in Writ Petition (C) No. 4952 of 2015 declaring that the acquisition with respect to the land in question is deemed to have lapsed under Section 24(2) of the Act, 2013.

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.