

A LAND ACQUISITION COLLECTOR (SOUTH), NEW DELHI
AND ANR.

v.

SURESH B. KAPUR & ORS.

B (Civil Appeal No. 8197 of 2022)

DECEMBER 02, 2022

[M. R. SHAH AND M. M. SUNDRESH, JJ.]

C *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013: s.24(2) – Land Acquisition Act, 1894 – Respondent no.1 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 on the ground that neither possession of the land taken over nor the compensation has been paid – High Court noted that compensation*
D *has been deposited with the court but the possession of the land in question is not taken over – High Court allowed the petition and declared the acquisition proceedings to be lapsed – On appeal, held: The issue was settled by the Constitutional Bench of Supreme Court in Indore Development Authority Vs. Manoharlal and Ors. which*
E *was not considered by High Court – The acquisition proceedings were under the subject matter of litigation due to which authorities were unable to take the possession of the lands – Such non taking of possession cannot be in favour of the landowners – Acquisition proceedings should not deemed to be lapsed – Judgment passed by High Court set aside.*

F **Allowing the appeal, the Court**

HELD: The High Court has not appreciated the reasons why the authority could not take the possession. The acquisition proceedings were under challenge before the High Court as well as thereafter before this Court. The acquisition proceedings have
G **attained finality pursuant to the judgment and order passed by this Court. Therefore, the acquisition proceedings were under challenge and the subject matter of litigation. Therefore, when the acquisition proceedings were the subject matter of litigation and because of that the authority could not take the possession**
H **of the lands in question and as such not taking over the**

LAND ACQUISITION COLLECTOR (SOUTH), NEW DELHI v. 833
SURESH B. KAPUR [M. R. SHAH, J.]

possession cannot be in favour of the landowners, more A
particularly, when the acquisition proceedings have been appealed
upto this Court. [Paras 6.2]

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

Balak Ram Glupta v. Union of India Writ Petition No. B
1639 of 1985; *Gyanender Singh v. Union of India &*
Ors. W.P. (C) No. 1393 of 2014; Pune Municipal
Corporation and Anr. v. Harakchand Misirimal Solanki
and Ors. (2014) 3 SCC 183 : [2014] 1 SCR 783 –
referred to. C

Case Law Reference

[2014] 1 SCR 783	referred to	Para 2.4
[2020] 3 SCR 1	followed	Para 3

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8197 D
of 2022.

From the Judgment and Order dated 06.07.2015 of the High Court
of Delhi at New Delhi in Writ Petition (C) No. 2163 of 2015.

Ms. Sujeeta Srivastava, Adv. for the Appellants.

Rishab Nagar, Raghab Nagar, Gopal Singh Chauhan, Deepak Goel,
Rajiv Ghawana, Ms. Akshita Chhatwal, Ranjit Singh, T. V. S. Raghavendra
Sreyas, Ms. Gayatri Gulati, Siddharth Vasudev, Ms. Sunieta Ojha, Akansh
Singh, Ravi Bharuka, Ankit Agarwal, Nitin Mishra, Ishaan Sharma, Advs.
for the Respondents.

The Judgment of the Court was delivered by

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. 2163 of 2015 by which the High Court has allowed the said writ
petition preferred by the respondent No. 1 herein – original writ petitioner
and has declared that the acquisition with respect to the lands 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

- A Resettlement Act, 2013 (hereinafter referred to as “Act, 2013”), the Land Acquisition Collector has preferred the present appeal.

2. That the dispute is with respect to the land comprised in Khasra Nos. 717 (3-02), 718/1 (3-05), 756/2/1 (2-17) and 757/1 (3-07) measuring 12 bighas and 11 biswas in village Chattarpur, New Delhi. A notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as “Act, 1894”) was issued on 25.11.1980, which was followed by declaration under Section 6 of the Act, 1894 issued vide notification/declaration dated 07.06.1985.
- B

- 2.1 It appears that under the said acquisition proceedings some affected parties challenged the same before the High Court by way of filing Writ Petition No. 1639 of 1985 titled “**Balak Ram Gupta Vs. Union of India**”, which batch of petitions were allowed by the High Court vide judgment and order dated 18.11.1988 and the declaration under Section 6 of the Act, 1894 was quashed. That during the period, this Court while dealing with the impugned acquisition proceedings in the case of **Union of India Vs. Gurdeep Singh Uban** held that the relief of the judgment pronounced in **Balak Ram Gupta (supra)** would be applicable only to the petitioners therein and it would not be a judgment in rem. This Court further held in **Gurdeep Singh Uban (supra)** that quashing of notification in **Balak Ram Gupta (supra)** cannot be treated as quashing of the entire proceedings.
- C
- D
- E

- 2.2 It appears that after the pronouncement of the judgment in **Gurdeep Singh Uban (supra)** sometimes in August, 1999, few of the landowners again filed writ petitions challenging therein the acquisition proceedings. The High Court dismissed the said writ petitions vide judgment and order dated 19.05.2005. That during the period, the then Land Acquisition Collector passed an award. The judgment and order passed by the High Court in the case of **Gurdeep Singh Uban (supra)** dated 19.05.2005 was challenged by the landowners before this Court by way of Special Leave Petition (C) No. 26537 of 2005. This Court dismissed the said special leave petition vide judgment and order dated 08.02.2010. That thereafter the authority deposited the compensation with respect to the land in question with the Court on 30.12.2013.
- F
- G

- 2.3 That thereafter the respondent No. 1 – original writ petitioner filed the writ petition before the High Court in the month of February, 2015 for a declaration that the acquisition with respect to the lands in
- H

question is deemed to have lapsed under Section 24(2) of the Act, 2013 A
contending inter alia that neither the possession of the land in question
has been taken over nor the compensation has been paid.

2.4 By the impugned judgment and order, though, the High Court
has specifically noted that the compensation has been deposited with B
the Court, but the possession of the land in question is not taken over and
relying upon its earlier decision in the case of **Gyanender Singh Vs.
Union of India & Ors., W.P. (C) No. 1393 of 2014** decided on
23.09.2014 by which the High Court took the view that unless and until
the compensation is tendered to the persons interested, mere deposit of C
the compensation in Court would not be sufficient and cannot be regarded
as having been paid. 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 by
the impugned judgment and order has allowed the said writ petition and
has declared that the acquisition with respect to the land in question is D
deemed to have lapsed under Section 24(2) of the Act, 2013. The
impugned judgment and order passed by the High Court is the subject
matter of the present appeal.

3. Ms. Sujeeta Srivastava, learned counsel appearing on behalf of
the appellant has vehemently submitted that the impugned judgment and
order passed by the High Court is just contrary to the decision of the E
Constitution Bench of this Court in the case of **Indore Development
Authority Vs. Manoharlal and Ors., (2020) 8 SCC 129**.

3.1 It is submitted that in the present case and even as noted by
the High Court, the compensation with respect to the land in question
was deposited in the Court. It is submitted that therefore once the F
compensation was deposited in the Court, one of the conditions mentioned
in Section 24(2) of the Act, 2013 is satisfied and therefore, the acquisition
with respect to the lands in question could not have been declared as
deemed to have lapsed.

3.2 It is further submitted that even otherwise, the Hon'ble High G
Court has failed to appreciate that the acquisition proceedings were under
challenge, which came to be appealed upto this Hon'ble Court. It is
submitted that therefore, because of the pendency of the proceedings
challenging the land acquisition proceedings, the possession could not be
taken over and the benefit of that could not be given to the landowners. H

- A It is submitted that the aforesaid aspect ought to have been considered by the High Court while passing the impugned judgment and order.

3.3 It is submitted that the decision of this Court in the case of **Pune Municipal Corporation and Anr. (supra)** has been subsequently overruled by the Constitution Bench of this Court in the case of **Indore**

- B **Development Authority (supra)**.

3.4 Making above submissions, it is prayed to allow the present appeal.

- C 4. Present appeal is vehemently opposed by Shri Rajiv Ghawana, learned counsel appearing on behalf of the respondent No. 1 – original writ petitioner.

- D 4.1 It is submitted that even as mentioned in the counter filed on behalf of the appellant, the possession of the land in question was not taken over. It is submitted that as rightly observed by the Hon'ble High Court that unless and until the possession is taken, the compensation even if it is lying deposited in a Court or in any designated account maintained, would not come to the aid of the appellant/authority.

- E 4.2 It is further submitted that the decision of the Delhi High Court in the case of **Gyanender Singh (supra)**, which has been relied upon by the High Court while passing the impugned judgment and order, the appeal against the same has been dismissed by this Court vide order dated 31.08.2016.

- F 4.3 It is further submitted that the original writ petitioner was never offered or tendered the compensation by the Land Acquisition Collector. It is submitted that the Land Acquisition Collector has failed to disclose whether the respondent No. 1 was offered compensation by the land Acquisition Collector at any point of time and whether it was paid to him or not.

- G 4.4 It is submitted that therefore when neither the possession was taken over nor the compensation was actually paid to the respondent No. 1 – original writ petitioner, the Hon'ble High Court has not committed any error in declaring the acquisition with respect to the land in question is deemed to have lapsed under Section 24(2) of the Act, 2013.

5. We have heard the learned counsel for the respective parties at length.

H

6. We have gone through the impugned judgment and order passed by the High Court. By the impugned judgment and order, the High Court has declared that the acquisition with respect to the lands in question is deemed to have lapsed under Section 24(2) of the Act, 2013 solely on the ground that the possession of the lands in question has not been taken over. From the impugned judgment and order passed by the High Court, it appears that though it was the case on behalf of the authority that the compensation was deposited in the Court, thereafter, the High Court has declared that the acquisition deemed to be lapsed by observing that the question of compensation lying deposited in the Court only arise in a case where possession has been taken over. That thereafter the High Court relying upon its earlier decision in the case of **Gyanender Singh (supra)**, in which the High Court held that unless and until the compensation is tendered to the persons interested, mere deposit of the compensation in Court would not be sufficient and cannot be regarded as having been paid.

6.1 By the impugned judgment and order, the High Court has declared the acquisition as deemed to have lapsed, however, it is required to be noted that the decision of the High Court in the case of **Gyanender Singh (supra)** and even the view taken by the High Court in the impugned judgment and order is just contrary to the decision of the Constitution Bench of this Court in the case of **Indore Development Authority (supra)**. In paragraphs 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.

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

B **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.

C **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.

D **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.

E **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.

H

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.”

In the case of **Indore Development Authority (supra)**, the decision of this Court in the case of **Pune Municipal Corporation and Anr. (supra)** has been specifically overruled.

- A 6.2 Now, so far as the submission on behalf of the respondent No. 1 – original writ petitioner that the decision of the High Court in the case of **Gyanender Singh (supra)**, which has been relied upon by the High Court while passing the impugned judgment and order, against which, special leave petition has been dismissed by this Court is concerned, at the outset, it is required to be noted that at the relevant time when the
- B appeal was dismissed by this Court, the issue was not settled, which has been settled by the Constitution Bench of this Court in the case of **Indore Development Authority (supra)**. Under the circumstances, no reliance can be placed upon the decision of the High Court in the case of **Gyanender Singh (supra)** and/or dismissal of the appeal against the
- C said order in light of the decision of this Court in the case of **Indore Development Authority (supra)**. Even the High Court has also not appreciated the reasons why the authority could not take the possession. The acquisition proceedings were under challenge before the High Court as well as thereafter before this Court. The acquisition proceedings have attained finality pursuant to the judgment and order passed by this Court.
- D Therefore, the acquisition proceedings were under challenge and the subject matter of litigation. Therefore, when the acquisition proceedings were the subject matter of litigation and because of that the authority could not take the possession of the lands in question and as such not taking over the possession cannot be in favour of the landowners, more
- E particularly, when the acquisition proceedings have been appealed upto this Court.

7. In view of the above and for the reasons stated above and more particularly, in view of the decision of the Constitution Bench of this Court in the case of **Indore Development Authority (supra)**, the
- F view taken by the High Court in the impugned judgment and order is unsustainable. The impugned judgment and order passed by the High Court deserves to be quashed and set aside and is accordingly quashed and set aside.

Present appeal is accordingly allowed. No costs.

- G Pending applications, if any, also stand disposed of.