

A GOVERNMENT OF NCT DELHI & ORS.

v.

KRISHAN KUMAR & ORS.

(Civil Appeal No. 946 of 2023)

B FEBRUARY 17, 2023

[M. R. SHAH, C.T. RAVIKUMAR & SANJAY KAROL, JJ.]

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – s.24(2) –

- C *High Court relying on the decision of Supreme Court in Pune Municipal Corporation and Anr. v. Harakchand Misirimal Solanki and Ors. reported as allowed the writ petition and declared that the acquisition w.r.t the lands in question is deemed to have lapsed by virtue of s.24(2) – On appeal, held: Decision in Pune Municipal Corporation case has been overruled by the Constitution Bench in*
- D *Indore Development Authority v. Manoharlal and Ors. reported as – Further, no finding was given by High Court w.r.t the case on behalf of the Land Acquisition Collector (LAC) that the possession of the disputed lands in question was taken and handed over to the beneficiary department-DDA immediately – Even the original writ petitioners admitted that they were not in possession, otherwise they would not have asked for return of the possession – The possession proceedings produced on record by LAC were as per the law laid down in the Indore Development Authority case – Applying the law laid down therein to the facts of the case on hand, there shall not be any deemed lapsed as held by the High Court – Impugned judgment setaside – Land Acquisition Act, 1894.*
- E *Pune Municipal Corporation and Anr. vs. Harakchand Misirimal Solanki and Ors. (2014) 3 SCC 183 : [2014] 1 SCR 783 – referred to.*

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

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

Case Law Reference

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

CIVIL APPELLATE JURISDICTION : Civil Appeal No.946 of A
2023.

From the Judgment and Order dated 14.03.2016 of the High Court of Delhi at New Delhi in WP (C) No.1178 of 2015.

Ms. Sujeta Srivastava, Adv. for the Appellants.

Gurukrishna Kumar, Sr. Adv., Nitin Mishra, Ishaan Sharma, N. P. Sahni, Ms. Misha Rohatgi Mohta, Bharat Monga, Rajender Pd. Saxena, Ashwani Kumar, Anshay Dhatwalia, 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 dated 14.03.2016 in Writ Petition (C) No. 1178 of 2015 by which the High Court has allowed the said writ petition 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 Resettlement Act, 2013 (hereinafter referred to as “Act, 2013”), the Government of NCT of Delhi and Ors. have preferred the present appeal.

2. From the impugned judgment and order passed by the High Court and even from the counter affidavit filed by the Land Acquisition Collector (LAC) before the High Court, it appears that it was the specific case on behalf of the Land Acquisition Collector – GNCTD that the lands in question of Village Molarband were acquired vide Notification under Section 4 dated 04.04.1964, award was declared by the LAC on 19.10.1981 and the possession of the land falling in subject Khasra Nos. 154/2 (3-05) and 155/2 (4-12) was taken on 10.04.1997 after preparing the possession proceeding on the spot and the same was handed over to the beneficiary department, i.e., DDA immediately. In paragraph 4 of the counter affidavit, it was stated as under:-

“4. That it is submitted that the lands of village Molarband were notified vide Notification under section 4 of the Land Acquisition Act dated 4.4.1964 which was followed by Notification under section 6 of the said Act vide Notification dated 7.12.1966. That the then Land Acquisition Collector passed an Award bearing No. 1934-D dated 19.10.81 and the possession of the land falling in

- A subject khasra number 154/2 (3-05) and 155/2 (4-12) was taken on 10.04.1997 after preparing Possession Proceeding on the spot, the same was handed over to the beneficiary department, i.e., DDA immediately. The compensation of the land under reference however could not be paid to the recorded owners and is lying deposited in RD on 30.1.82. It is submitted that the petitioners are also admitting that the government has taken the actual vacant physical possession of the subject land as there is no averment in the writ petition regarding having possession of the petitioners and rather the petitioner has averred that the Government is liable to return the said land to the petitioner on page 19. The petitioners have raised grievance of non-payment of compensation only.”
3. Despite the above and 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** and on the ground that the compensation has not been paid, the High Court has allowed the writ petition and 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. No finding is given by the High Court with respect to the case on behalf of the LAC that the possession of the disputed lands in question was taken over on 10.04.1997 and was handed over to the beneficiary department, i.e., DDA immediately. Even from the averment in para (I) in the writ petition, it was the case on behalf of the original writ petitioners that the possession of the land comprising of Khasra Nos. 154/2 (3-05) and 155/2 (4-12) is liable to be returned to the petitioners as the entire land acquisition proceedings are deemed to have lapsed. Meaning thereby, the original writ petitioners admitted that they were not in possession, otherwise they would not have asked for return of the possession. Be that it may, the LAC had produced on record the possession proceedings, which had sufficient compliance as per the law laid down by this Court in the case of **Indore Development Authority Vs. Manoharlal and Ors., (2020) 8 SCC 129**.
4. As observed hereinabove, in the present case, while allowing the writ petition, the High Court has mainly relied upon the decision of this Court in the case of **Pune Municipal Corporation and Anr. (supra)**, which decision has been overruled by the Constitution Bench decision 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 Corpн. [Pune Municipal Corpн. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183] is hereby overruled and all other decisions in which Pune Municipal Corpн. [Pune Municipal Corpн. 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.

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- A **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.
- B **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.
- C **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).
- D **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).
- E **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
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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.”

5. 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 impugned judgment and order passed by the High Court declaring that the acquisition with respect to the lands in question is deemed to have lapsed under Section 24(2) of the Act, 2013 is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. There shall not be any deemed lapsed as observed and held by the High Court.

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

Pending application, if any, also stands disposed of.

Divya Pandey
(Assisted by : Abhishek Pratap Singh, LCRA)

Appeal allowed.