

GOVT. OF NCT OF DELHI & ANR.

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v.

KHAJAN SINGH & ANR.

(Civil Appeal No. 361 of 2023)

JANUARY 20, 2023

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[M. R. SHAH AND C. T. RAVIKUMAR, JJ.]

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – S. 24(2) – High Court relying upon the decision in Pune Municipal Corporation & Anr. v. Harakchand Misrimal Solanki & Ors observed that though possession of the land in question was taken over but as compensation was not paid, the acquisition proceedings in respect of land in question deemed to have lapsed u/s. 24(2) of 2013 Act – On appeal, held: The decision in Pune Municipal Corporation & Anr. v. Harakchand Misrimal Solanki & Ors has been specifically overruled by the Constitution Bench in the case Indore Development Authority v. Manoharlal and Ors. – The case of Indore Development Authority, for lapsing of acquisition u/s. 24(2) of the Act, 2013, twin conditions, namely, possession not taken and compensation not tendered are required to be satisfied – It is observed and held that even if one of the conditions is not satisfied, in that case also, there shall not be any lapsing u/s. 24(2) of the Act, 2013 – In the present case, admittedly the possession of the land in question was taken over on the different dates as mentioned in the returns / counter affidavit before the High Court – Therefore, impugned judgment and order passed by the High Court unsustainable – Appeal allowed.

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Indore Development Authority vs Manoharlal & Ors.

(2020) 8 SCC 129 : [2020] 3 SCR 1 – followed.

Pune Municipal Corporation & Anr. Vs Harakchand Misrimal Solanki & Ors (2014) 3 SCC 183 : [2014] 1 SCR 783 – referred to.

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Case Law Reference

[2020] 3 SCR 1

followed

Para 2.1,2.2, 3

[2014] 1 SCR 783

referred to

Para 2.1

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- A CIVIL APPELLATE JURISDICTION : Civil Appeal No.361 of 2023.

From the Judgment and Order dated 17.04.2017 of the High Court of Delhi at New Delhi in WP (C) No.6719 of 2015.

- B Atul Kumar, Ms. Sweety Singh, Ms. Archana Kumari, Rahul Pandey, Avs Kadyan, Rajiv Ranjan, Mishra Saurabh, Ms. Sujeeta Srivastava, Nishit Agrawal, Ms. Kanishka Mittal, Ms. Vanya Agrawal, Ashwani Kumar, Anshay Dhatwalia, Ms. Binu Tamta, Ms. Smita Maan, Nitin Mishra, Ishaan Sharma, Mohit Kumar Gupta, Shekhar Yadav, Ms. Iti Sharma, Rahul Bhatia, Rachita Kadyan, N. S. Vashist, Gagan Gupta, C Ms. Astha Tyagi, Dinesh Chander Trehan, Ms. Diksha Narula, Advs. for the appearing parties.

The Judgment of the Court was delivered by

M. R. SHAH, J.

- D 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. 6719 of 2015 by which the High Court has allowed the said writ petition and has declared that the acquisition proceedings initiated under the Land Acquisition Act, 1894 (hereinafter referred to as “Act, 1894”) with regard to the land in question is deemed to have lapsed E 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 Government of NCT of Delhi and Anr. have preferred the present appeal.

- F 2. We have heard the learned counsel for the respective parties at length.

- G 2.1 From the impugned judgment and order passed by the High Court, it appears that while passing the impugned judgment and order, the High Court has relied upon the earlier decision of this Court in the case of **Pune Municipal Corporation and Anr. Vs. Harakchand Misirimal Solanki and Ors., (2014) 3 SCC 183** and has observed that though the possession of the land in question was taken over on specific dates mentioned in the returns /counter affidavit but as the compensation was not tendered, the acquisition is deemed to have lapsed. Therefore, even the High Court has also not disputed that the original writ petitioners – original landowners were dispossessed on specific

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dates mentioned in the returns / counter affidavit. Even in the writ petition also, the original writ petitioners have specifically admitted that they were dispossessed. However, they claimed the lapse of acquisition solely on the ground that the compensation was not paid / tendered relying upon the decision of this Court in the case of **Pune Municipal Corporation and Anr. (supra)**, which decision of this Court has been specifically overruled by the Constitution Bench of this Court in the case of **Indore Development Authority Vs. Manoharlal and Ors., (2020) 8 SCC 129**. 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 Corp. [Pune Municipal Corp. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183] is hereby overruled and all other decisions in which Pune Municipal Corp. [Pune Municipal Corp. 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.

- A **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.
- C **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.
- F **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 A
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 B
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 C
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 E
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.” F

2.2 Even as per the law laid down by this Court in the case of G
Indore Development Authority (*supra*), for lapsing of acquisition
under Section 24(2) of the Act, 2013, twin conditions, namely, possession
not taken and compensation not tendered are required to be satisfied. It
is observed and held that even if one of the conditions is not satisfied, in
that case also, there shall not be any lapsing under Section 24(2) of the
Act, 2013. In the present case, admittedly the possession of the land in
question was taken over on the different dates as mentioned in the returns
/ counter affidavit before the High Court.

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A 3. In view of the above and applying the law laid down by this Court in the Constitution Bench decision 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 is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside.

B Present appeal is accordingly allowed. No costs.
Pending applications, if any, also stand disposed of.

Ankit Gyan
(Assisted by : Abhishek Pratap Singh, LCRA)

Appeal allowed.