

A LAND ACQUISITION COLLECTOR

v.

JAI PRAKASH TYAGI & ORS.

(Civil Appeal No. 1300 of 2023)

B FEBRUARY 24, 2023

[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) –

- C *High Court relying on the decision of Supreme Court in Pune Municipal Corporation and Anr. v. Harakchand Misirimal Solanki and Ors. declared that the acquisition proceedings w.r.t the entire land in question are deemed to have lapsed u/s.24(2) – It was the specific case on behalf of the Land Acquisition Collector that the possession with respect to some portion of the lands could not be taken over*
- D *due to stay – Held: Despite the same and without going into the controversy of physical possession, the High Court mainly relying on Pune Municipal Corporation case passed the impugned judgment – Decision in the said case has been overruled by the Constitution Bench in Indore Development Authority v. Manoharlal and Ors. –*
- E *Applying the law laid down therein to the present case, the High Court materially erred in declaring that the acquisition proceedings with respect to the entire land are deemed to have lapsed – There shall be no deemed lapse w.r.t the acquisition proceedings of the lands in question – Impugned judgment set aside.*

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

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

G Case Law Reference

[2014] 1 SCR 783	referred to	Para 2
[2020] 3 SCR 1	followed	Para 3

H

CIVIL APPELLATE JURISDICTION : Civil Appeal No.1300 A
of 2023.

From the Judgment and Order dated 06.07.2015 of the High Court of Delhi at New Delhi in WP (C) No.2198 of 2015.

Ms. Astha Tyagi, Dinesh Chander Trehan, Advs. for the Appellant.

B

Anil Kumar Sharma, Apoorv Sharma, Anuj Sharma, Archit Upadhayay, Ms. Charu Sharma, Ms. Manika Tripathy, Ms. Ishaan Sharma, Ashutosh Kaushik, Manish Vashist, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

C

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. 2198 of 2015, by which, the High Court has allowed the said writ petition and has declared that the acquisition proceedings with respect to the subject lands in question comprised in Khasra Nos. 35/2/2 (6-04), 36/2/2 (4-13) and 40/2/2 (5-01) total measuring 15 bighas 18 biswa situated in revenue estate of village Wazirabad are 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 Land Acquisition Collector, New Delhi has preferred the present appeal.

D

2. From the impugned judgment and order passed by the High Court and from the counter affidavit filed on behalf of the LAC (Land Acquisition Collector) before the High Court, it appears that it was the specific case on behalf of the LAC that the possession of Khasra No. 35/2/2 measuring 6 bighas 04 biswa was taken over on 22.09.1997; as regards Khasra No. 36/2/2 measuring 4 bighas 13 biswa possession was taken over in respect of 3 bighas of land on 22.09.1997, however, the possession of 1 bigha 13 biswa out of that Khasra could not be taken and so far as Khasra No. 40/2/2 is concerned, the possession was not taken over. It was the case on behalf of the LAC that the possession with respect to some portion of the lands could not be taken over due to stay in writ petitions Nos. 2506/1982 and 3631/1982. Despite the above and without going into the controversy of physical possession, mainly relying upon the earlier decision of this Court in the case of **Pune Municipal Corporation and Anr. Vs. Harakchand Misirimal**

F

G

H

- A **Solanki and Ors., reported in (2014) 3 SCC 183**, 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.
 - 3. The decision of this Court in the case of **Pune Municipal Corporation (supra)** which has been heavily 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 Vs. Manoharlal and Ors., reported in (2020) 8 SCC 129** and in paragraphs 365 and 366, this Court has observed and held as under: -
- C “**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.
- F **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.
- H

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.

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.

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

- 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. 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 High Court has materially erred in declaring that the acquisition proceedings with respect to the entire land i.e., 15 bigha 18 biswa are deemed to have lapsed is unsustainable.
- E F 5. In view of the above and for the reasons stated above and applying the law laid down by this Court in the case of **Indore Development Authority (supra)**, the impugned judgment and order passed by the High Court is hereby quashed and set aside. There shall
- G be no deemed lapse with respect to the acquisition proceedings of the lands in question under Section 24(2) of the Act, 2013. Consequently, the writ petition preferred by the original writ petitioner(s) before the High Court stands dismissed. However, while allowing the present appeal, it is observed that if the original land owners/recorded owners or the person(s) interested are not paid the compensation, they may be paid
- H the compensation with respect to the lands in question in accordance

LAND ACQUISITION COLLECTOR v. JAI PRAKASH TYAGI 17
& ORS. [M. R. SHAH, J.]

with the provisions of the Land Acquisition Act, 1894 and their prayer(s) A be considered in accordance with law and on their own merits.

Present appeal is accordingly allowed. No costs.

Pending applications, if any, also stand disposed of.

Divya Pandey
(Assisted by : Abhishek Pratap Singh and Roopanshi Virang, LCRAs)Appea