

THE SECRETARY, LAND & BUILDING DEPT. GOVT. OF NCT OF DELHI & ORS. A

v.

OM PRAKASH (DEAD) THROUGH LRS. & ORS.

(Civil Appeal No.424 of 2023) B

20th JANUARY 2023

[M. R. SHAH AND HIMA KOHLI JJ.]

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013: s. 24(2) – Land acquisition, when deemed to have lapsed – Writ petition by the private respondent-writ petitioner seeking declaration that acquisition proceedings pertaining to subject land is deemed to have lapsed in view of s.24(2) – High Court held the acquisition is deemed to have lapsed on the ground that compensation with respect to the land was not tendered – Sustainability of – Held: Not sustainable – Possession of the land was taken over and handed over to the beneficiary department in the year 1981 – Applying the law laid by this Court in Indore Development Authority’s case, the twin conditions of not taking possession and not paying compensation has to be satisfied and if one of the conditions is not satisfied, there shall not be any lapse u/s. 24(2) – Furthermore, the grievance with respect to not tendering the full compensation was made after a period of 24 years from the date of passing of the award and on the Act of 2013 coming into force, and it was the specific case on behalf of the department that payment of compensation with respect to the lands could not be ascertained due to torn condition of Naksha Muntzamin – Applying the law laid down in the Indore Development Authority’s case, the order passed by the High Court is quashed and set aside – Land Acquisition Act, 1894. C D E F

Indore Development Authority Vs. Manoharlal and Ors,
(2020) 8 SCC 129 – followed. G

Case Law Reference

(2020) 8 SCC 129 followed Para 2.3,

CIVIL APPELLATE JURISDICTION: Civil Appeal No.424 of 2023.

A From the Judgment and Order dated 18.07.2017 of the High Court of Delhi at New Delhi in WP (C) No.5664 of 2014.

With

Civil Appeal No.423 of 2023.

B Ms. Manika Tripathy, Ashutosh Kaushik, Manish Vashist, Roshan Kumar, Ms. Sujeeta Srivastava, Advs. for the Appellants.

Ms. A. Sahitya Veena, Ms. Supriya Juneja, Nitin Mishra, Ishaan Sharma, Advs. for the Respondents.

The Judgment of the Court was delivered by

C **M. R. SHAH, J.**

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 18.07.2017 passed by the High Court of Delhi at New Delhi in Writ Petition (C) No. 5664 of 2014, by which, the High Court has allowed the said writ petition and has declared that the acquisition proceedings with respect to the land(s) 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 Government of NCT of Delhi and Delhi Development Authority have preferred the present appeals.

2. In the present case, the notification under Section 4 of the Land Acquisition Act, 1894 was issued as far back as on 23.01.1965. Award was declared on 09.01.1981. According to the Govt. of NCT of Delhi and as per the counter affidavit filed before the High Court, possession of the land in question was taken over and handed over to the beneficiary department on 23.09.1981. However, payment of compensation with respect to the land(s) in question could not be ascertained due to torn condition of the *Naksha Muntzamin*.

2.1 That after a period of approximately 24 years, from the date of passing of the Award and on the Act, 2013 coming into force, to take the benefit of the said Act, the respondent(s) herein – original writ petitioners filed the writ petition(s) before the High Court in the year 2014, for declaration that the acquisition with respect to the lands in question is deemed to have lapsed under Section 24(2) of the Act, 2013, contending, *inter-alia*, that full compensation in accordance with the Land Acquisition Act, 1894 was not tendered.

2.2 However, without taking into consideration the fact that possession of the lands in question was taken over and handed over to the beneficiary department on 23.09.1981, the High Court, by the impugned judgment and order has declared that the acquisition with respect to the lands in question is deemed to have lapsed to the extent of original writ petitioners share, as it appears from the counter affidavit that it cannot be clearly ascertained as to whether compensation in accordance with law was tendered to the land owners. A B

2.3 The view taken by the High Court is unsustainable in view of the decision of the Constitution Bench of this Court in the case of **Indore Development Authority Vs. Manoharlal and Ors., (2020) 8 SCC 129**. In paragraph 366, the Constitution Bench of this Court has observed and held as under: - C

“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. D

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. E

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. F G

366.4. The expression “paid” in the main part of Section 24(2) of the 2013 Act does not include a deposit of compensation H

A 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.

D **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.

F **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).

G **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).

H **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.

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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.”

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2.4 Thus, as per the decision of this Court in the case of **Indore Development Authority (supra)** for attracting Section 24(2) of the Act, 2013, twin conditions of not taking possession and not tendering compensation have to be satisfied. It is observed and held that if one of the conditions is not satisfied, there shall not be any lapse under Section 24(2) of the Act, 2013.

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2.5 Even otherwise, the High Court has not properly appreciated the fact that the grievance with respect to not tendering the full compensation was made for the first time in the year 2014 i.e., after a period of 24 years from the date of passing of the Award and it was the specific case on behalf of the department that payment of compensation with respect to the lands could not be ascertained due to torn condition of *Naksha Muntzamin*. Nothing is on record to demonstrate that at any point of time till the writ petition was filed before the High Court, any grievance was made with respect to non-tendering of the full compensation. Be that as it may, fact remains that possession of the lands in question was taken over and handed over to the beneficiary department on 23.09.1981. Under the circumstances, 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 unsustainable.

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3. In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court in Writ Petition

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A (C) No. 5664/2014 declaring that the acquisition with respect to the lands in question is deemed to have lapsed, is hereby quashed and set aside. Civil Appeal preferred by the Land and Building Department, Govt. of NCT of Delhi accordingly stands allowed. No costs.

4. In view of the order passed in Civil Appeal preferred by the Land and Building Department, Govt. of NCT of Delhi, allowing the said appeal and quashing and setting aside the judgment and order passed by the High Court in Writ Petition (C) No. 5664/2014 as above, no further order is required to be passed in Civil Appeal preferred by the Delhi Development Authority which stands disposed of in terms of the present order.

C Pending application, if any, also stands disposed of.

Nidhi Jain
(Assisted by : Abhishek Pratap Singh, LCRA)

Appeals disposed of.