

GOVT. OF NCT OF DELHI & ANR.

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v.

RATI RAM & ANR.

(Civil Appeal No. 399 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 Pune Municipal Corporation & Anr. vs Harakchand Misrimal Solanki & Ors allowed the writ petition preferred by the respondents/original writ petitioner and held that 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. – Possession of the land in question was taken over by drawing the possession receipt on the spot – Applying the law laid by Supreme Court in Indore Development Authority to the facts of the case – Order of the High Court set aside – 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 2.2, 4

[2014] 1 SCR 783 referred to Para 2.2

CIVIL APPELLATE JURISDICTION : Civil Appeal No.399 of 2023.

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From the Judgment and Order dated 30.11.2017 of the High Court of Delhi at New Delhi in Writ Petition (C) No.12145 of 2015.

Ms. Sujeeta Srivastava, Adv. for the Appellants.

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A Nitin Mishra, Ishaan Sharma, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

B 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. 12145 of 2015 by which the High Court has allowed the said writ petition preferred by the respondent No. 1 herein 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 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 Govt. of NCT of Delhi and Anr. have preferred the present appeal.

D 2. We have heard the learned counsel appearing on behalf of the respective parties at length and perused the impugned judgment and order passed by the High Court.

E 2.1 From the impugned judgment and order passed by the High Court, it appears that before the High Court, the appellant and the original respondents challenged the locus of the original writ petitioner to challenge the acquisition proceedings. It was the specific case on behalf of the department that the recorded owner was the Gaon Sabha. Before the High Court, it was also the specific case on behalf of the department / Land Acquisition Collector (LAC) that the possession of the land in question was taken over by preparing the possession proceedings on 25.01.2000 and handed over to the Delhi Development Authority (DDA).
F In paragraphs 4, 6 and 7, it was stated in the counter affidavit as under:-

G “4. That the present writ petition is further liable to be dismissed as the petitioners have not placed on record any document showing therein their entitlement over the subject land as they are not the recorded owners in the revenue records thus the petitioners are not entitled to any relief before the Hon’ble Court under the writ jurisdiction. The petitioner is claiming to be one of the successors of Late Sh. Harkesh who was having bhoomidari rights, however no Surviving Membership Certificate has been filed along with the writ petition. It is submitted that under the bhoomidari rights, the land remained under the ownership of Gaon Sabha as such in
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the present case as well, the recorded owner of the land is A
Gaon Sabha which has not been made as a necessary party in
the present writ petition.

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6. That it is submitted that for the purpose of planned B
development of Delhi, the answering respondent issued a
Notification under Section 4 of the Land Acquisition Act, 1894
on 23.6.1989 which was followed by Notification under Section
6 of the said Act dated 20.06.1990 for planned development of
Delhi for the acquisition of the lands falling in village Garhi
Mendu. That an Award bearing No. 13/92-93 dated 19.6.1992 C
was also passed and the actual vacant physical possession of
the subject land including other lands of the said notification
was taken on the spot by preparing possession proceedings
dated 25.1.2000 and handed over to the DDA on the spot. The
petitioners have also admitted about the execution of the
possessing proceedings by the Government as the petitioners D
have admitted that symbolic possession of the subject land was
taken by the Government. Needless to say that the petitioners
never challenged the acquisition proceedings and the possession
report which became final and binding on the petitioners as the
land vested with the Government absolutely without any
encumbrances. E

7. That it is submitted that the petitioners were never
entitled to claim any compensation as the recorded owner of
the subject land was Gaon Sabha, as such, the assertion by the
petitioners that no compensation has been paid to them finds
no merits and the writ petition deserves to be dismissed. The F
compensation was however not paid to the Gaon Sabha as
well.“

2.2 Thereafter, 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 has G
allowed the writ petition and has declared that the acquisition with respect
to the land in question is deemed to have lapsed under Section 24(2) of
the Act, 2013. However, the earlier decision of this Court in the case of
Pune Municipal Corporation and Anr. (supra) has been subsequently
overruled by the Constitution Bench decision of this Court in the case of
Indore Development Authority Vs. Manoharlal and Ors., (2020) H

A **8 SCC 129.** In paragraphs 365 and 366, the Constitution Bench of this Court has observed and held as under:-

B “**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.

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

E **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.

F **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.

G **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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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). 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

A 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.

B **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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3. Even otherwise, without considering the title of the original writ petitioner in the land in question, when it was the specific case on behalf of the department / LAC that the recorded owner was the Gaon Sabha and the fact that the possession of the land in question was taken over by drawing the possession receipt on the spot, the High Court has committed a very serious error in entertaining the writ petition at the instance of the original writ petitioner and to declare that the acquisition with respect to the land in question is deemed to have lapsed.

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E 4. In any case, 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.

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Present appeal is accordingly allowed. The original writ petition preferred by the respondent No. 1 herein – original writ petitioner stands dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

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