

GOVT. OF NCT DELHI & ORS.

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v.

DHANNU & ANR.

(Civil Appeal No.942 of 2023)

FEBRUARY 17, 2023

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

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – s.24(2) – 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 filed by the original writ petitioner-respondent no.1 herein and declared that the acquisition proceeding w.r.t the land in question is deemed to have lapsed u/ s.24(2) – On appeal, held: Decision in Pune Municipal Corporation case has been overruled by the Constitution Bench in Indore Development Authority v. Manoharlal and Ors. reported as – Applying the law laid down therein and as admittedly the land belongs to Gram Sabha and the original writ petitioner was not the recorded owner and/or even the owner, the High Court ought not to have entertained the writ petition– Impugned judgment set aside.

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Indore Development Authority vs. 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.

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Case Law Reference

[2014] 1 SCR 783

referred to

Para 2

[2020] 3 SCR 1

followed

Para 2.1

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CIVIL APPELLATE JURISDICTION : Civil Appeal No.942 of 2023.

From the Judgment and Order dated 16.11.2017 of the High Court of Delhi at New Delhi in WP (C) No.3158 of 2015.

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A Atul Kumar, Ms. Sweety Singh, Ms. Archana Kumari, Rahul Pandey, Rajiv Ranjan, Advs. for the Appellants.

C. N. Sreekumar, Sr. Adv., Arjun Verma, Ms. Anupama Kumar, Ishaan Sharma, Nitin Mishra, Advs. for the Respondents.

B The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 16.11.2017 passed by the High Court of Delhi at New Delhi in Writ Petition (C) No. 3158 of 2015 by which the High Court has allowed the said writ petition preferred by the respondent no.1 herein – original writ petitioner (now represented through his heirs) and has declared that the acquisition with respect 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 Government of NCT of Delhi has preferred the present appeal.

2. From the impugned judgment and order passed by the High Court it appears that while allowing the writ petition the High Court has relied upon and/or followed 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** on the ground that the possession of the subject land could not be taken. It is required to be noted that before the High Court it was the specific case on behalf of the appellant that the land belongs to Gram Sabha and therefore the original writ petitioner had no locus to pray for declaration that the acquisition with respect to subject land is deemed to have lapsed by virtue of Section 24(2) of the Act, 2013. However, without deciding the question of ownership and keeping the same open, the High Court has entertained the said writ petition preferred by the respondent no.1 – original writ petitioner. At this stage, it is required to be noted that even before the High Court the learned counsel appearing on behalf of the original writ petitioner did not dispute that the land belongs to Gram Sabha. In that view of the matter when the land belongs to Gram Sabha which was even admitted on behalf of the original writ petitioner, the High Court ought not to have entertained the said writ petition at the instance of the original writ petitioner who was not even the recorded owner. Even the question with respect to the compensation to be paid

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would arise only in favour of recorded owner and/or in favour of a person who had a title. A

2.1 Even otherwise it is required to be noted that the decision of this Court in the case of **Pune Municipal Corporation and Anr. (supra)**, which has been relied upon by the High Court has been specifically over-ruled by the Constitution Bench of this Court in the case of **Indore Development Authority versus Manoharlal and others reported in (2020) 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. C D E

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. 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”. H

- A 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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- 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.
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- 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.

- G **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).

- H **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). A

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. B 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

3. Applying the law laid down by this Court in the case of **Indore Development Authority (supra)** and as observed hereinabove that the land belongs to Gram Sabha which was admitted on behalf of the original writ petitioner and the original writ petitioner was not the recorded owner and/or even the owner, the High Court ought not to have entertained the writ petition. 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. E F

Present appeal is accordingly allowed. No costs.