

GOVT. OF NCT OF DELHI

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v.

SUNIL JAIN & ORS.

(Civil Appeal No. 280 of 2023)

JANUARY 13, 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)– Land acquisition, when deemed to have lapsed– Writ petition by the respondent-original writ petitioners, being subsequent purchasers seeking declaration that acquisition proceedings pertaining to subject land is deemed to have lapsed in view of s.24(2) – High Court in view of the fact that the possession has not been taken over and the compensation is not paid and relying upon the decision of this Court in Pune Municipal Corporation’s case allowed the writ petition– Sustainability of – Held: Not sustainable – Subsequent purchaser has no locus to challenge the acquisition and/or lapsing of the acquisition–Furthermore, possession could not be taken over due to the pending litigation initiated by the original land owner challenging the acquisition which ended upto this Court, they cannot be entitled to the benefit of lapse – Also, Pune Municipal Corporation and Anr’s case has been overruled in the Indore Development Authority’s case – Thus, order passed by the High Court is quashed and set aside – Land Acquisition Act, 1894.

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

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Pune Municipal Corporation and Anr. Vs. Harakchand Misirimal Solanki and Ors. (2014) 3 SCC 183:[2014] (1) SCR 783; Shiv Kumar and Anr. Vs. Union of India and Ors., (2019) 10 SCC 229, Delhi Development Authority Vs. Godfrey Philips (I) Ltd. & Ors., - Civil Appeal No. 3073 of 2022, Delhi Administration Thr. Secretary, Land and Building Department & Ors. Vs. Pawan Kumar & Ors., - Civil Appeal No. 3646 of 2022 - referred to.

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Case Law Reference

(2014) 1 SCR 783	referred to	Para 2
(2019) 10 SCC 229	referred to	Para 2.2, Para 2.3
(2020) 8 SCC 129	followed	Para 2.2. 2.3

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CIVIL APPELLATE JURISDICTION : Civil Appeal No.280 of 2023.

From the Judgment and Order dated 17.07.2017 of the High Court of Delhi at New Delhi in Civil Writ Petition No.2989 of 2016.

C Ms. Astha Tyagi, Dinesh Chander Trehan, Ms. Diksha Narula,
D. P. Singh Yadav, Advs. for the Appellant.

Ms. Sunieta Ojha, Ishaan Sharma, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

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1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 17.07.2017 passed by the High Court of Delhi at New Delhi in Writ Petition (Civil) No.2989 of 2016 by which the High Court has allowed the said writ petition preferred by the private respondents herein – original writ petitioners and has declared that the acquisition with respect to the land in question is deemed to have lapsed under

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Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as ‘the Act 2013’), the Government of NCT of Delhi has preferred the present appeal.

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2. Having gone through the impugned judgment and order passed by the High Court and para 5, it appears that the original writ petitioners being the subsequent purchasers of the land in question they do not derive any right or title to the land at the time of Award and thereafter cannot challenge the acquisition proceedings. Therefore, it was the specific case that the original petitioners had no locus to file the writ

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petition and seek any relief with respect to the acquisition. From the counter filed before the High Court it appears that it was also the case on behalf of the appellant and so stated in the counter affidavit that the possession of the land in question could not be taken over due to the pending litigation which ended upto this Court upholding the acquisition proceedings. However, thereafter and despite the above and without

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even considering the locus of the original writ petitioners to challenge

the acquisition/lapsing of the acquisition, solely relying upon the fact that the possession has not been taken over and the compensation is not paid and 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 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.

2.1 Now so far as the locus of the original writ petitioners being subsequent purchasers is concerned, the said issue is now not *res integra* in view of the decision of the three Judge Bench of this Court in the case of **Shiv Kumar & Anr. Vs. Union of India & Ors. (2019) 10 SCC 229** which has been subsequently followed by this Court in the case of **Delhi Administration Through Secretary, Land and Building vs. Pawan Kumar & Ors., Civil Appeal No.3646 of 2022** and **Delhi Development Authority versus Godfrey Phillips (I) Ltd. & Ors., Civil Appeal No.3073 of 2022**. In the aforesaid decisions this Court has specifically observed and held that the subsequent purchaser has no locus to challenge the acquisition and/or lapsing of the acquisition. In that view of the matter the High Court has materially erred in entertaining the writ petition preferred by the writ petitioners - subsequent purchasers and declaring that the acquisition with respect to the land in question is deemed to have lapsed.

2.2 Even otherwise on merits also the impugned judgment and order passed by the High Court is unsustainable. Before the High Court it was the specific case on behalf of the appellant that the possession could not be taken over due to the pending litigation initiated by the original land owners challenging the acquisition which ended upto this Court. As observed and held by this Court in the case of **Indore Development Authority versus Manoharlal and others** reported in **(2020) 8 SCC 129** the period during the stay is to be excluded. If the acquiring body/beneficiary was not able to take the possession due to pending litigation in a proceeding initiated by the land owner, thereafter the land owner cannot be permitted to take the benefit/advantage of the same and thereafter to contend that as the possession is not taken over (may be due to the pending litigation) still they are entitled to benefit of lapse.

2.3 Even the decision of this Court in the case of **Pune Municipal Corporation and Anr. (supra)** which has been relied upon by the High

A Court, has been subsequently specifically over-ruled by the Constitution Bench of this Court in the case of **Indore Development Authority versus Manoharlal and others, (2020) 8 SCC 129**. In paragraph 366, the Constitution Bench of this Court has observed and held as under:-

B **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.

C **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.

D **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.

E **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

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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. A

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. B

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). C

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). D

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. E F

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.” G

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A 3. In view of the above and for the reason stated above, 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 set aside. Consequently, the original writ petition filed by original writ petitioners praying for lapse of the acquisition proceedings accordingly stands dismissed.

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Present appeal is accordingly allowed. No costs.

Nidhi Jain

(Assisted by : Abhishek Agnihotri, LCRA)

Appeal allowed.