

[2023] 3 S.C.R. 107

NATIONAL CAPITAL TERRITORY OF DELHI & ANR.

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v.

SUBHASH CHANDER KHATRI & ORS.

(Civil Appeal No.1353 of 2023)

FEBRUARY 24, 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 on the decision of Supreme Court in Pune Municipal Corporation and Anr. v. Harakchand Misirimal Solanki and Ors. reported as[2014] 1 SCR 783, allowed the writ petition and declared that the acquisition proceedings initiated w.r.t the subject land are deemed to have lapsed – On appeal, held: Decision in Pune Municipal Corporation case has been overruled by the Constitution Bench of Supreme Court in Indore Development Authority v. Manoharlal and Ors. reported as [2020] 3 SCR 1 – Applying the law laid down therein, more particularly, the fact that physical possession of the subject land was taken over and in fact was put to use by the beneficiary department-Irrigation and Flood Control Board for construction of Bankner Link Drain which was duly built, there shall not be any lapse of the acquisition w.r.t the subject land – Impugned judgment being contrary to the decision in the Indore Development Authority case is quashed and setaside – Writ petition before the High Court is dismissed – Land Acquisition Act,1894.

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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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<u>Case Law Reference</u>		
[2014] 1 SCR 783	referred to	Para 2
[2020] 3 SCR 1	followed	Para 2

**CIVIL APPELLATE JURISDICTION : Civil Appeal No.1353
of 2023.**

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A From the Judgment and Order dated 03.01.2018 of the High Court of Delhi at New Delhi in WP (C) No.12118 of 2015.

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

B Abhimanyu, Kunal Mann, Ms. Mridula Ray Bharadwaj, Ms. Manika Tripathy, 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. 12118 of 2015, by which, the High Court has allowed the said writ petition and has declared that the acquisition proceedings initiated under the Land Acquisition Act, 1894 with regard to the subject land are

D deemed to have lapsed and that the original writ petitioners are entitled to the compensation as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as “Act, 2013”), Secretary, Land and Building Department, NCT of Delhi and Land Acquisition Collector have preferred the present appeal.

E 2. From the impugned judgment and order passed by the High Court and even as per the counter affidavit(s) filed by LAC (Land Acquisition Collector) and Irrigation and Flood Control Department – beneficiary of the subject land before the High Court, the possession of the lands in question had been taken over and the land has been put to

F use for construction of Bankner Link Drain. From the impugned judgment and order, it appears that the original writ petitioners as such never disputed the case on behalf of the original respondents that the physical possession of the subject land has been taken over and the land has been put to use. That the original writ petitioners restricted the prayer for grant of

G compensation as per the Act, 2013. However, thereafter, relying upon the earlier decision of this Court in the case of **Pune Municipal Corporation and Anr. Vs. Harakchand Misirimal Solanki and Ors., reported in (2014) 3 SCC 183**, the impugned judgment and order has been passed by the High Court declaring that the acquisition proceedings with regard to the subject land are deemed to have lapsed and therefore,

H the original writ petitioners shall be entitled to the compensation as per

the Act, 2013 on the ground that the compensation has not been paid. However, the decision of this court in the case of **Pune Municipal Corporation and Anr. (supra)** has been 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, it is observed and held as under: -

“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.

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.

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

- A 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.
- B **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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- E **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.
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- 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).

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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3. Applying the law laid down by this Court in the case of **Indore Development Authority (supra)** to the facts of the case on hand, more particularly, the fact that physical possession of the subject land has been taken over and in fact the subject land has been put to use by the beneficiary department – Irrigation and Flood Control Board for construction of Bankner Link Drain which has been duly built, there shall not be any lapse of the acquisition with regard to the subject land as observed and held by the High Court. The impugned judgment and order passed by the High Court is just contrary to the decision of the Constitution Bench of this Court in the case of **Indore Development Authority (supra)**, which is unsustainable.

4. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the High Court is hereby quashed and set aside. The writ petition before the High Court stands dismissed.

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Present appeal is accordingly allowed. No costs.

Pending applications, if any, also stand disposed of.