

Manjesh Kumar Vohra vs Government Of Nct Of Delhi & Ors on 18 August, 2022

Author: Yashwant Varma

Bench: Yashwant Varma

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 11318/2022

MANJESH KUMAR VOHRA

..... Petitioner

Through: Mr. Saurabh Kirpal, Senior Advocate
with Mr. Manohar Malik, Mr. Samir
Rohatgi, Mr. Nikhil Arora and Ms.
Tahima Gaur, Advocates

versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondent

Through: Mr. Anupam Srivastava, ASC for
GNCTD and Ms. Sarita Pandey &
Mr. Ujjwal Malhotra, Advocates for
R-1
Ms. Soumya Dutta, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA
ORDER

% 18.08.2022

1. Heard learned counsels for parties.

2. The instant writ petition has been preferred impugning the action of the Sub-Registrar in refusing to register a sale deed dated 11 July 2022 executed by the petitioner. The order of 14 July 2022 in terms of which the refusal was communicated to the petitioner only refers to the fact that a status report/NOC from the Tehsildar (Notification) had not been submitted. It was additionally observed that a Land Status Report is required.

3. The record of the present petition would indicate that the land forming subject matter of the instrument was subject matter of acquisition proceeding initiated under the erstwhile Land Acquisition Act, 1894 ["the 1894 Act"]. The petitioner appears to have taken the position that the aforesaid acquisition proceedings would be deemed to have lapsed in light of the provisions made in Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Seeking a declaration to the aforesaid effect, they

approached this Court by means of W.P.(C) 442/2015 which came to be allowed by a Division Bench of the Court on 20 April 2015 and the following operative observations entered:

"2. By way of this writ petition the petitioners seek the benefit of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as „the 2013 Act) which came into effect on 01.01.2014. The petitioners, consequently, seek a declaration that the acquisition proceeding initiated under the Land Acquisition Act, 1894 (hereinafter referred to as „the 1894 Act) and in respect of which Award No.15/1987- 88 dated 05.06.1987 was made, inter alia, in respect of the petitioners land comprised in khasra nos. 1237/2 (1-02), 1241 (0-5), 1242/1 (2-04), 1241/2 (2-08), 1243 (4-16), 1253 (4-16), 1254 (4-16), 1282 (4-16), 1283 (4-16) and 1284 (4-15) measuring 34 bighas 14 biswas in village Chhattarpur, New Delhi, shall be deemed to have lapsed.

3. It is an admitted position that neither physical possession of the subject lands has been taken by the land acquiring agency, nor has any compensation been paid to the petitioners. The award was made more than five years prior to the commencement of the 2013 Act. All the ingredients of section 24(2) of the 2013 Act as interpreted by the Supreme Court and this Court in the following decisions stand satisfied:-

(i) Pune Municipal Corporation and Anr v. Harakchand Misirimal Solanki and Ors: (2014) 3 SCC 183;

(ii) Union of India and Ors v. Shiv Raj and Ors: (2014) 6 SCC 564;

(iii) Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors: Civil Appeal No. 8700/2013 decided on 10.09.2014; and

(iv) Surender Singh v. Union of India and Ors.: W.P.(C) 2294/2014 decided 12.09.2014 by this Court.

4. As a result the petitioners are entitled to a declaration that the said acquisition proceedings initiated under the 1894 Act in respect of the subject lands are deemed to have lapsed. It is so declared.

5. The writ petition is allowed to the aforesaid extent. There shall be no order as to costs."

4. The aforesaid declaration as entered by the Court on the aforesaid writ petition has admittedly attained finality consequent to the dismissal of the Special Leave Petitions which were taken. It is in the aforesaid backdrop that the decision of the Sub-Registrar is liable to be examined.

5. The restrictions which are placed on transfer of land and the consequent registration of instruments that may be executed in respect thereof is undisputedly governed by the provisions contained in the Delhi Lands (Restrictions on Transfer) Act, 1972 ["the Act"]. For the purposes of

the present matter, it would be pertinent to advert to Sections 3 and 4 of the Act which read thus:

"3. Prohibition on transfer of lands acquired by Central Government.

--No person shall purport to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof situated in the Union territory of Delhi, which has been acquired by the Central Government under the Land Acquisition Act, 1984 (1 of 1984), or under any other law providing for acquisition of land for a public purpose.

4. Regulation on transfer of lands in relation to which acquisition proceedings have been initiated.--No person shall, except with the previous permission in writing of the competent authority, transfer or purport to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof situated in the Union territory of Delhi, which is proposed to be acquired in connection with the Scheme and in relation to which a declaration to the effect that such land or part thereof is needed for a public purpose having been made by the Central Government under section 6 of the Land Acquisition Act, 1894 (1 of 1894), the Central Government has not withdrawn from the acquisition under section 48 of that Act."

6. The Act thereafter in Section 5 lays in place the procedure which is to be followed for a person to obtain permission in respect of land which may be covered under Section 4. It becomes pertinent to note that both Sections 3 and 4 put in place restraints on persons entering into transactions relating to land which may form part of acquisition proceedings under the 1894 Act. It is thus manifest that the restrictions that are placed stand restricted to such category of land only. However, the aforesaid issue pales into insignificance in the facts of the present case bearing in mind the declaration which had come to be entered by the Court which while taking note of the provisions of Section 24(2) had held in categorical terms that the acquisition would be deemed to have lapsed.

7. The Court notes that dealing with an identical question this Court in *Manzoor-Ul-Haq vs. Government of NCT of Delhi and Others* [2021 SCC OnLine Del 4874] made the following pertinent observations:

"7. The Court bears in mind the fact that the judgment in *Dinesh Kumar Himatsingka* is a clear authority for the proposition that once the provisions of Section 24(2) of the 2013 Act are found to be applicable and the acquisition proceedings initiated under the erstwhile 1894 Act are deemed to have lapsed, the restrictions as carried in the 1972 Act would not apply and that in any case the Registering Authority would not be justified in refusing to register an instrument which is presented before it. Before the Court, it is not disputed that on the earlier writ petitions preferred by the petitioner here, the Division Bench had categorically come to record an unambiguous finding that neither physical possession of the subject land had been taken by the land acquiring authority nor had any compensation been paid to the petitioner. In fact, the Division Bench had referred to the aforesaid as being the "admitted position".

8. The Court notes that the Constitution Bench in *Indore Development Authority v. Manoharlal* [(2020) 8 SCC 129] while explaining the ambit of Section 24 of the 2013 Act held:--

191. Section 24(1)(a) operates where no award is made in a pending acquisition proceeding; in such event all provisions of the new Act relating to determination of compensation would apply. Section 24(1)(b) logically continues with the second situation i.e. where the award has been passed, and states that in such event, proceedings would continue under the 1894 Act.

Section 24(2) -- by way of an exception, states that where an award is made but requisite steps have not been taken for five years or more to take possession nor compensation has been paid then there is lapse of acquisition. If one of the steps has been taken, then the proviso can operate. Time is the essence. It is on the basis of time-lag that the lapse is provided and in default of payment for five years as provided on failure to deposit higher compensation is to be paid. It is based on that time-lag higher compensation has to follow. It is not the mere use of colon under Section 24(2) but the placement of the proviso next to Section 24(2) and not below Section 24(1)(b). Thus, it is not permissible to alter a placement of the proviso more so when it is fully in consonance with the provisions of Section 24(2). Section 24(2) completely obliterates the old regime to the effect of its field of operation. Under Section 24(1)(a), there is a partial lapse of the old regime because all proceedings, till the stage of award are preserved. The award, in such proceedings, made after coming into force of the 2013 Act has to take into account its provisions, for determination of compensation. Thus, proceedings up to the stage of the award are deemed final under the old Act. In the case under Section 24(1)(b), the old regime prevails. The proviso is an exception to Section 24(2) and in part the new regime for payment of higher compensation in case of default for 5 years or more after award."

9. From a reading of the aforesaid extract of the decision in *Indore Development Authority* it is evident that once the provisions of Section 24(2) of the 2013 come into play and are established to apply, it "obliterates" the steps that may have been taken under the 1894 Act. More fundamentally, as this Court reads the provisions of Sections 4 and 5 of the *Delhi Land (Restrictions on Transfer) Act, 1972* it is clear that the injunctions embodied therein are to apply provided the land forming subject matter of the instrument is subject to acquisition. The apparent intent of those provisions is to restrain the transfer of property while it forms part of an acquisition and to not affect registration of instruments executed in respect of property that may form part of an acquisition exercise. Here on the other hand and as the recordal of facts would undoubtedly establish, no proceedings for acquisition subsist and any proceedings that may have been initiated earlier would be deemed to have lapsed and resultantly stand effaced. Once the specter of acquisition stands erased, there appears to be no justification for the Registering Authority to not proceed further in accordance with law. The fact that the acquisition proceedings no longer encumber the property or impede the right of the petitioner is indubitably established in light of the declaration entered by this Court on the judgment rendered inter partes.

10. In view of the aforesaid, it is manifest that the decision of the respondents impugned in the present writ petition would not sustain.

11. Accordingly, the writ petition is allowed. The impugned memorandum of 31.12.2018 shall stand quashed. Respondent No. 4 is hereby directed to take further steps for registration of the Sale Deed submitted by the petitioner for registration in accordance with law."

8. In view of the aforesaid, the Court finds itself unable to sustain the order of 14 July 2022.

9. The writ petition is accordingly allowed. The concerned Sub- Registrar is consequently directed to attend to the application of the petitioner for registration of the sale deed in question. While doing so, the Sub-Registrar shall stand restrained from requiring the petitioner to obtain a No Objection Certificate from the concerned Land Department.

YASHWANT VARMA, J.

AUGUST 18, 2022 rsk