

Surender Mohan Chopra vs Government Of National Capital ... on 3 December, 2024

Author: Yashwant Varma

Bench: Yashwant Varma, Dharmesh Sharma

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 9930/2018, CM APPL. 60169/2023 (Direction) & C
APPL. 60170/2023 (Dismissal of Rev. Pet.)

SURENDER MOHAN CHOPRA

.....Petitio

Through: Mr. Kamlesh Kr. Mishra, Ms.
Snigdha Anand, Ms. Shivani
Verma and Ms. Swagata Gupta,
Advs.

versus

GOVERNMENT OF NATIONAL CAPITAL TERRITORY
OF DELHI AND ORS.

.....Respo

Through: Mr. Sunil Kumar Jha, Mr. M
Akhtar and Mr. Sami Sameer
Sidiqqi, Advs. for R-1 & 2
Mr. Sanjay Poddar, Sr. Adv
with Ms. Shobhna Takiar, A
for MCD.
Ms. Shobhana Takiar, Scand
Mr. Sanjay Poddar, Sr. Adv
with Mr. Prateek Dhir, Mr.
Shivam Takiar and Mr. Kulj
Singh, Advs. for DDA.
Mr. Naman Saraswat, Adv. f
R-4/NHAI.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% 03.12.2024 REVIEW PET. 130/2020 (04-04-2019)

1. The present review petition has come to be preferred pursuant to the liberty accorded by the Supreme Court in terms of its order dated 17 July 2020 in SLP (Civil) Diary No. 9546/2020 and which reads as:-

"Delay condoned.

W.P.(C) 9930/2018 The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded

from the DHC Server on 20/12/2024 at 23:17:52 After hearing learned counsel for the petitioner for sometime, we deem it appropriate to allow the petitioner to file review petition before the High Court to raise all contentions as noted in the Special Leave Petition including in light of the recent decision of the Constitution Bench of this Court on the subject matter.

The Review Petition if filed within four weeks from today, the High Court to decide the same on merits and not to non-suit the petitioner on the ground of limitation. In other words, delay in filing the review petition be condoned.

All contentions available to the petitioner are left open. The Special Leave Petition is disposed of with liberty to the petitioner to challenge the impugned order and the order in review petition by way of a fresh special leave petition before this Court if necessary. Ordered accordingly.

Pending applications, if any, stand disposed of."

2. Appearing in support of the review petition, Mr. Poddar, learned senior counsel, draws our attention to the extracts from the counter affidavit of the Land Acquisition Collector¹, which had been noticed by us while disposing of the writ petition on 04 April 2019. What appears to have weighed upon the Court at that stage was that since compensation had neither been tendered nor deposited, the petitioner would be entitled to the benefits flowing from Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013².

3. However, and from the extracts of the counter affidavit which were taken into consideration at that stage, it becomes apparent that the respondents had asserted that possession of a large tract of land forming subject matter of the original acquisition notifications had already been taken over although actual vacant physical possession of LAC 2013 Act W.P.(C) 9930/2018 The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 20/12/2024 at 23:17:52 the land of the petitioner could not be taken on account of status quo orders which operated. At this stage, it is apposite to note that the acquisition pertained to land admeasuring 1950 Bighas and 04 Biswa in village Mohammad Pur Majri, out of which the land of the petitioner measured 2 Bigha and 11 Biswas. The acquisition proceedings pertained to Rohini Development Scheme under planned development of Delhi.

4. We take note of the following principles that came to be enunciated by the Supreme Court in Banda Development Authority v. Moti Lal Agarwal³:-

"37. The principles which can be culled out from the abovenoted judgments are:

(i) No hard-and-fast rule can be laid down as to what act would constitute taking of possession of the acquired land.

(ii) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.

(iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

(iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

(v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the court may reasonably presume that possession of the acquired (2011) 5 SCC 394 W.P.(C) 9930/2018 The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 20/12/2024 at 23:17:52 land has been taken."

5. The said principles were further expounded by the Constitution Bench in Indore Development Authority v. Manoharlal:-

"274. It was submitted on behalf of landowners that under Section 24 the expression used is not possession but physical possession. In our opinion, under the 1894 Act when possession is taken after award is passed under Section 16 or under Section 17 before the passing of the award, land absolutely vests in the State on drawing of panchnama of taking possession, which is the mode of taking possession. Thereafter, any re-entry in possession or retaining the possession is wholly illegal and trespasser's possession inures for the benefit of the owner and even in the case of open land, possession is deemed to be that of the owner. When the land is vacant and is lying open, it is presumed to be that of the owner by this Court as held in Kashi Bai v. Sudha Rani Ghose [Kashi Bai v. Sudha Rani Ghose, AIR 1958 SC 434] . Mere re-entry on government land once it is acquired and vests absolutely in the State (under the 1894 Act) does not confer any right to it and Section 24(2) does not have the effect of divesting the land once it vests in the State.

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278. We have seen the blatant misuse of the provisions of Section 24(2). Acquisitions that were completed several decades before even to say 50-60 years ago, or even as far back as 90 years ago were questioned; cases filed were dismissed. References were sought claiming higher compensation and higher compensation had been ordered. Now, there is a fresh bout of litigation started by erstwhile owners even after having received the compensation in many cases by submitting that possession has not been taken and taking of possession by drawing a panchnama was illegal and they are in physical possession. As such, there is lapse of proceedings.

279. The Court is alive to the fact that there are a large number of cases where, after acquisition land has been handed over to various corporations, local authorities, acquiring bodies, etc. After depositing compensation (for the acquisition) those bodies and authorities have been handed possession of lands. They, in turn, after development of such acquired lands have handed over properties; third-party interests have intervened and now declaration is sought under the cover of Section 24(2) to invalidate all such actions. As held by us, Section 24 does not intend to cover such cases at all and such gross misuse of the provisions of law must stop. Title once vested, cannot be obliterated, without an (2020) 8 SCC 129 W.P.(C) 9930/2018 The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 20/12/2024 at 23:17:53 express legal provision; in any case, even if the landowners' argument that after possession too, in case of non-payment of compensation, the acquisition would lapse, were for arguments' sake, be accepted, these third-party owners would be deprived of their lands, lawfully acquired by them, without compensation of any sort. Thus, we have no hesitation to overrule the decisions in Velaxan Kumar [Velaxan Kumar v. Union of India, (2015) 4 SCC 325 : (2015) 2 SCC (Civ) 599] and Narmada Bachao Andolan [State of M.P. v. Narmada Bachao Andolan, (2011) 7 SCC 639, paras 78-85 : (2011) 3 SCC (Civ) 875] with regard to mode of taking possession. We hold that drawing of panchnama of taking possession is the mode of taking possession in land acquisition cases, thereupon land vests in the State and any re-entry or retaining the possession thereafter is unlawful and does not inure for conferring benefits under Section 24(2) of the 2013 Act."

280. On behalf of the acquiring authorities, it was submitted that period spent during the interim stay or injunction by which the authorities have not been able to take possession or to make payment, has to be excluded from computing the period of 5 years or more as provided in Section 24(2). It was submitted that in case the authorities are restrained by interim order passed by the court in a pending litigation, the land acquisition cannot lapse by including the period for which interim stay order preventing the authorities from taking action has operated. Reliance has been placed on the principles contained in maxim "actus curiae neminem gravabit". It was also submitted that even in the absence of the provisions specifically excluding the period of interim stay/injunction having been made in Section 24(2) of the 2013 Act, the aforesaid principles are attracted and the

period has to be excluded.

281. The landowners, on the other hand, argued that there is no valid reason to exclude the period spent during the interim order by the court from the prescribed period of 5 years under Section 24(2) of the 2013 Act. For the main reason that the legislature has not specially provided for exclusion of such period in Section 24 and secondly, where Parliament has desired to exclude the period of interim order has made provision for exclusion of such period in the proviso to Section 19 and Explanation to Section 69 of the 2013 Act. In the 1894 Act, there was a similar provision made in Section 6 and Explanation to Section 11-A. During the process of consultation of the stakeholders while enacting the 2013 Act, the Government of NCT of Delhi had suggested that an explanation be added in the provisions of Section 24 to exclude the period of interim order passed by the court. The suggestion was not accepted by the Department of Land Reforms on the ground that same would be in conflict with the retrospective effect of the clause. Ultimately, in the final recommendation, the period of interim order of the court was not made. Thus, it is "casus omissus" which W.P.(C) 9930/2018 The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 20/12/2024 at 23:17:53 cannot be applied by the Court. The maxim "actus curiæ neminem gravabit" is not applied and is rare if ever applied to interpret the statute.

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289. In the opinion of this Court it is not the intendment of the 2013 Act that those who have litigated should get benefits of higher compensation as contemplated under Section 24 benefit is conferred on all beneficiaries. It is not intended by the provisions that in piecemeal the persons who have litigated and have obtained the interim order should get the benefits of the provisions of the 2013 Act. Those who have accepted the compensation within 5 years and handed over the possession too, are to be benefited, in case amount has not been deposited with respect to majority of holdings. There are cases in which projects have come up in part and as per plan rest of the area is required for planned development with respect to which interim stays have been obtained. It is not the intendment of the law to deliver advantage to relentless litigants. It cannot be said hence, that it was due to the inaction of the authorities that possession could not be taken within 5 years. Public policy is not to foment or foster litigation but put an end to it. In several instances, in various High Courts writ petitions were dismissed by the Single Judge Benches and the writ appeals were pending for a long time and in which, with respect to part of land of the projects, efforts were made to obtain the benefit of Section 24(2). Parliament in our view did not intend to confer benefits to such litigants for the aforementioned reasons. Litigation may be frivolous or may be worthy. Such litigants have to stand on the strength of their own case and in such a case provisions of Section 114 of the 2013 Act and Section 6 of the General Clauses Act, 1897, are clearly attracted and such proceedings have to be continued under the provisions of the old Act that would be in the spirit of Section 24(1)(b) itself of the 2013 Act. Section 6(b) of the General Clauses Act, 1897, provides that repeal will not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder. Section 6(c) states that repeal would not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. When there is a provision itself in Section 24(1)(b) of continuance of the proceedings where award has been passed under the 1894 Act, for the

purposes of Section 24 as provided in Section 24(b), the provisions of Section 114 is clearly attracted so as the provisions of Section 6 of the General Clauses Act, 1897, to the extent of non obstante clause of Section 24, where possession has not been taken nor payment has been made, there is a lapse, that too by the inaction of the authorities. Any court's interim order cannot be said to be inaction of the authorities or agencies; thus, time period is not to be included for counting the 5 years period as envisaged in W.P.(C) 9930/2018 The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 20/12/2024 at 23:17:53 Section 24(2). As per the proviso to Section 24(2), where possession has been taken, but compensation has not been paid or deposited with respect to majority of landholdings, all the beneficiaries would be entitled for higher compensation only to that extent, the provisions of Section 114 of the 2013 Act, would be superseded but it would not obliterate the general application of Section 6 of the General Clauses Act, 1897, which deals with effect of repeal except as provided in Section 24(2) and its proviso.

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306. When the authorities are disabled from performing duties due to impossibility, would be a good excuse for them to save them from rigour of provisions of Section 24(2). A litigant may be right or wrong. He cannot be permitted to take advantage of a situation created by him of interim order. The doctrine "commodum ex injuria sua nemo habere debet" that is convenience cannot accrue to a party from his own wrong. Provisions of Section 24 do not discriminate litigants or non-litigants and treat them differently with respect to the same acquisition, otherwise, anomalous results may occur and provisions may become discriminatory in itself.

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329. There can be no doubt that when parties are before court, the final decision has to prevail, and they succeed or fail based on the merits of their relative cases. Neither can be permitted to take shelter under the cover of court's order to put the other party in a disadvantageous position. If one has enjoyed under the court's cover, that period cannot be included towards inaction of the authorities to take requisite steps under Section 24. The State authorities would have acted but for the court's order. In fact, the occasion for the petitioners to approach the court in those cases, was that the State or acquiring bodies were taking their properties. Ultimately case had to stand on its merit in the challenge to the acquisition or compensation, and no right or advantage could therefore be conferred (or accrue) under Section 24(2) in such situations.

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334. For all these reasons, it is held that the omission to expressly enact a provision, that excludes the period during which any interim order was operative, preventing the State from taking possession of acquired land, or from giving effect to the award, in a particular case or cases, cannot result in the inclusion of such period or periods for the purpose of reckoning the period of 5 years. Also, merely because timelines are indicated, with the consequence of lapsing, under Sections 19 and 69 of the 2013 Act, per se does not mean that omission to factor such time (of subsistence of

interim orders) has any special legislative intent.

W.P.(C) 9930/2018 The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 20/12/2024 at 23:17:53 This Court notices, in this context, that even under the new Act (nor was it so under the 1894 Act) no provision has been enacted, for lapse of the entire acquisition, for non-payment of compensation within a specified time; nor has any such provision been made regarding possession. Furthermore, non-compliance with payment and deposit provisions (under Section 77) only results in higher interest pay-outs under Section 80. The omission to provide for exclusion of time during which interim orders subsisted, while determining whether or not acquisitions lapsed, in the present case, is a clear result of inadvertence or accident, having regard to the subject-matter, refusal to apply the principle underlying the maxim *actus curiae neminem gravabit* would result in injustice."

6. We also bear in consideration the subsequent decision of the Supreme Court in Delhi Development Authority v. Sunil Khatri⁵ where the following observations were made:-

"24. The learned counsel for the landowners has referred to a counter-affidavit dated 9-7-2018 filed by the State in Verinder Kaur v. State (NCT of Delhi) [Verinder Kaur v. State (NCT of Delhi), 2019 SCC OnLine Del 12026] to the effect that the amount of compensation in respect of Village Chattarpur was withdrawn for the purpose of award in Village Kakrola. However, the said writ petition was dismissed by the Division Bench of the High Court inter alia on the ground that the petitioner did not challenge the acquisition proceedings for more than 3 decades. It was held as under : (SCC OnLine Del para 7)

"7. The fact of the matter is that as far as the petitioner is concerned she never came forward to challenge the land acquisition proceedings at any stage. While certain others came to the Court and got interim orders in their favour, the petitioner did not challenge the proceedings at any stage. The inability of the respondents to take possession is explained by the fact that an interim order was passed in one set of petitions which continued for a long time. Interfering with the land acquisition proceedings at this stage when the petitioner has not shown any interest in challenging them for more than three decades would encourage an abuse of the process of law. Entertaining the petition would be contrary to the decision by a three-Judge Bench of the Supreme Court in Indore Development Authority v. Shailendra [Indore Development Authority v. Shailendra, (2018) 3 SCC 412 : (2018) 2 SCC (Civ) 426] ."

(2022) 17 SCC 399 W.P.(C) 9930/2018 The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 20/12/2024 at 23:17:53

25. In another judgment of this Court reported as DDA v. Rajan Sood [DDA v. Rajan Sood, (2022) 12 SCC 177 : (2023) 3 SCC (Civ) 415] , the landowner had the benefit of stay in his favour when the 2013 Act came into force. There was a direction issued in the writ petition filed by the landowner on

9-11-2011 to consider the application under Section 48 of the Act. It was held that Section 48 of the Act would be applicable as the possession of land is not taken over by the acquiring authority and thus the landowners would be deemed to be in possession of the same. It was held as under : (SCC pp. 183-84, paras 9-10 & 12) "9. It is the case on behalf of the original writ petitioners that a purported letter dated 23-9-1986 allegedly taking symbolic possession was never disclosed by appellants in the proceedings conducted before the High Court on two separate occasions and the same has been filed for the first time in the present proceedings. The aforesaid is not correct. Even in the impugned order itself in para 2, the High Court has noted the submissions on behalf of the appellants to the effect that the possession was taken over on 23-9-1986. Therefore, it cannot be said such a plea is taken for the first time before this Court.

10. It is the case on behalf of the original writ petitioners, relying upon the earlier order passed by the High Court dated 9-11-2011 in *Rajan Sood v. LAO* [*Rajan Sood v. LAO*, 2011 SCC OnLine Del 5732] that, the original writ petitioners continue to be in possession and the actual possession has never been taken over. However, it is required to be noted that even in the order dated 9-11- 2011 [*Rajan Sood v. LAO*, 2011 SCC OnLine Del 5732] , there was no specific finding given by the High Court that the original writ petitioners are in possession of the land in question. On the contrary, it is observed that the authority to consider the application under Section 48 of the Act, 1894 on merits on the assumption of the possession being with the original writ petitioners. Therefore, while passing the order dated 9-11-2011 [*Rajan Sood v. LAO*, 2011 SCC OnLine Del 5732] also, the High Court assumed the original writ petitioners are in possession hence as such no specific finding was given to the effect that the original writ petitioners are in possession.

12. Be that as it may. Assuming for the sake of argument that the original writ petitioners are found to be in possession and the compensation was not tendered, in that case also as can be seen from the order passed by the High Court on 9-11-2011 in *Rajan Sood v. LAO* [*Rajan Sood v. LAO*, 2011 SCC OnLine Del 5732] , the authority W.P.(C) 9930/2018 The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 20/12/2024 at 23:17:53 was restrained from taking any coercive action in respect of the land in question. Therefore, in view of the subsequent decision of this Court in *Indore Development Authority [Indore Development Authority (Lapse-5 J.) v. Manoharlal, (2020) 8 SCC 129 : (2020) 4 SCC (Civ) 496]* (para 366.8), the period, during which the interim order is/was operative, has to be excluded in the computation of five years' period. In the present case even, it is the contention on behalf of the original writ petitioners that the order of no coercive action was directed to be continued till the application under Section 48 of the 1894 Act was decided."

26. In another judgment in *DDA v. Bhim Sain Goel* [*DDA v. Bhim Sain Goel*, (2022) 17 SCC 580] , Notifications dated 21-3-2003 and 18-3-2004 under Sections 4 and 6 of the Act respectively were the subject-matter of consideration. The award was passed by the Land Acquisition Collector on 22-8-2005. In a writ petition filed challenging the Section 6 notification, the High Court directed to maintain status quo with regard to nature, title and possession of the land in question. The writ

petition was dismissed but in appeal before this Court, there was an interim order of stay. During the pendency of the appeal, the 2013 Act came to be enacted. The landowners filed a writ petition to declare the proceedings as lapsed. Such writ petition was allowed on 2-2-2016 [Bhim Sain Goel v. State (NCT of Delhi), 2016 SCC OnLine Del 798] which was then challenged before this Court. This Court held as under :

(Bhim Sain Goel case [DDA v. Bhim Sain Goel, (2022) 17 SCC 580] , SCC pp. 588 & 592, paras 17, 31 & 33) "17. On the application of the aforesaid principles to the facts of this case, there cannot be any doubt that the respondents cannot take shelter under Section 24(2) of the 2013 Act. This is for the simple reason that it is by their conduct in approaching the Courts and obtaining interim orders that the appellant was prevented from taking possession of the lands. We are clear in our minds that this is indeed one such case where the respondents have launched litigation, obtained orders and it has clearly prevented the appellant from taking possession and therefore, the impugned judgment [Bhim Sain Goel v. State (NCT of Delhi), 2016 SCC OnLine Del 798] of the High Court would have to be set aside.

31. The principle which has appealed to the Constitution Bench of this Court is squarely applicable to the facts of this case. The public authority which had set the law in motion under the earlier regime cannot be put to a loss when at the end of the day or on the day of reckoning it is W.P.(C) 9930/2018 The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 20/12/2024 at 23:17:53 found that they must succeed in law. Here we have found that the appellant is fully justified in contending that but for the orders passed by the High Court and this Court, the possession would have been taken, and the land would have vested under the law. We must proceed on the basis that but for the interim orders passed which cannot survive the final disposal of the cases, the land would have stood vested with the Government under the earlier regime.... ***

33. It is clear as daylight that it would be completely antithetical to public interest were the Government be compelled to shell out public funds under the 2013 Act to acquire land which already belongs to it. We cannot be oblivious to the said sublime principle as well."

27. Pertinent to note, though the High Court in Balak Ram (2) [B.R. Gupta v. Union of India, 1988 SCC OnLine Del 367 : (1989) 37 DLT 150] had not quashed the notification under Section 6 of the Act, but in some of the subsequent judgments such as in Balbir Singh [Balbir Singh v. Union of India, 1989 SCC OnLine Del 211 :

(1989) 39 DLT 233] , the High Court held that the notification stands quashed and the land stood reverted back to the landowners.

Therefore, an option was given to the landowners to refund the compensation. Such judgment of Balbir Singh [Balbir Singh v. Union of India, 1989 SCC OnLine Del 211 : (1989) 39 DLT 233] was affirmed by this Court in DDA v. Sudan Singh [DDA v. Sudan Singh, (1997) 5 SCC 430 : (1991) 45 DLT 602] . The Delhi High Court in Gurdip Singh Uban [Gurdip Singh Uban v. Union of India, 1996 SCC OnLine Del 879] , etc. relied upon Sudan Singh [DDA v. Sudan Singh, (1997) 5 SCC 430 :

(1991) 45 DLT 602] to hold that the notification under Section 6 of the Act stands quashed. However, Sudan Singh [DDA v. Sudan Singh, (1997) 5 SCC 430 : (1991) 45 DLT 602] was specifically found to be laying down not good law in Abhey Ram [Abhey Ram v. Union of India, (1997) 5 SCC 421] , Gurdip Singh Uban (1) [Delhi Admn. v. Gurdip Singh Uban, (1999) 7 SCC 44] and Gurdip Singh Uban (2) [Delhi Admn. v. Gurdip Singh Uban, (2000) 7 SCC 296] . There was a stay in the writ petition filed by the landowners themselves which continued to operate till the 2013 Act came into force. Therefore, it was the order of the High Court itself which prevented the appellant to take possession. However, such position got clarified only after the judgment in Gurdip Singh Uban (1) [Delhi Admn. v. Gurdip Singh Uban, (1999) 7 SCC 44] , later clarified in Gurdip Singh Uban (2) [Delhi Admn. v. Gurdip Singh Uban, (2000) 7 SCC 296] , but in the meantime, there was an interim order granted in favour of the landowners.

W.P.(C) 9930/2018 The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 20/12/2024 at 23:17:53

28. This Court in Indore Development Authority (Lapse-5 J.) v. Manoharlal [Indore Development Authority (Lapse-5 J.) v. Manoharlal, (2020) 8 SCC 129 : (2020) 4 SCC (Civ) 496] held that the twin conditions of failure to take possession or payment of compensation alone can lead to the lapse of notification under Section 24(2) of the 2013 Act. This Court has held as under :

(Manoharlal case [Indore Development Authority (Lapse-5 J.) v. Manoharlal, (2020) 8 SCC 129 : (2020) 4 SCC (Civ) 496] , SCC pp. 354 & 358-59, paras 306-307, 314 & 316) "306. When the authorities are disabled from performing duties due to impossibility, would be a good excuse for them to save them from rigour of provisions of Section 24(2). A litigant may be right or wrong. He cannot be permitted to take advantage of a situation created by him of interim order. The doctrine "commodum ex injuria sua nemo habere debet" that is convenience cannot accrue to a party from his own wrong. Provisions of Section 24 do not discriminate litigants or non-litigants and treat them differently with respect to the same acquisition, otherwise, anomalous results may occur and provisions may become discriminatory in itself.

307. In Union of India v. Shiv Raj [Union of India v. Shiv Raj, (2014) 6 SCC 564 : (2014) 3 SCC (Civ) 607] , this Court did not consider the question of exclusion of the time. In Karnail Kaur v. State of Punjab [Karnail Kaur v. State of Punjab, (2015) 3 SCC 206 : (2015) 2 SCC (Civ) 259] and in Sree Balaji Nagar Residential Assn.v. State

of T.N. [Sree Balaji Nagar Residential Assn. v. State of T.N., (2015) 3 SCC 353 : (2015) 2 SCC (Civ) 298] , various aspects including the interpretation of provisions of Section 24 were not taken into consideration.

Thus, the said rulings cannot be said to be laying down good law.

314. The maxim "lex non cogit ad impossibilia" means that the law does not expect the performance of the impossible. Though payment is possible but the logic of payment is relevant. There are cases in which compensation was tendered, but refused and then deposited in the treasury. There was litigation in court, which was pending (or in some cases, decided); earlier references for enhancement of compensation were sought and compensation was enhanced. There was no challenge to acquisition proceedings or taking possession, etc. In pending matters in this Court or in the High Court even in proceedings relating to compensation, Section 24(2) was invoked to state that proceedings have lapsed due to non- deposit of compensation in the court or to deposit in the W.P.(C) 9930/2018 The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 20/12/2024 at 23:17:53 treasury or otherwise due to interim order of the court needful could not be done, as such proceedings should lapse.

316. Another Roman Law maxim "nemo tenetur ad impossibilia", means no one is bound to do an impossibility. Though such acts of taking possession and disbursement of compensation are not impossible, yet they are not capable of law performance, during subsistence of a court's order; the order has to be complied with and cannot be violated. Thus, on equitable principles also, such a period has to be excluded."

29. Therefore, the period of 5 years had not lapsed on 1-1-2014 which could lead to lapsing of the acquisition proceedings. The appellant was prevented by the interim orders in a number of writ petitions filed to take possession. Therefore, prior to the commencement of the 2013 Act, there was no stay free period of 5 years which could lead to a declaration that the proceedings stand lapsed. Still further, the notifications under Section 6 of the Act quashed on 15-5-1989 and 17-12-1996 were set aside in Gurdip Singh Uban (1) [Delhi Admn. v. Gurdip Singh Uban, (1999) 7 SCC 44] and Gurdip Singh Uban (2) [Delhi Admn. v. Gurdip Singh Uban, (2000) 7 SCC 296] but before that, there was an order of stay of dispossession granted in favour of the landowner on 27-9- 1999. Therefore, on account of setting aside of notification under Section 6 of the Act, the State could not take possession in view of the orders passed by the High Court."

7. Mr. Poddar, also drew our attention to the decision of the Court in Monika Shukla and Ors. vs. Delhi Development Authority and Ors⁶. and wherein our Court while disposing the writ petition had passed the following order:-

"1. The prayer in this petition is for a declaration that the land acquisition proceedings in respect of the lands described in para 2 of the writ petition have lapsed in view of the Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 („the 2013 Act).

2. There are 47 Petitioners. As noted by the Petitioner himself in para 3, the public purpose for which the lands were required was the „Rohini Residential Scheme under Plan Development of Delhi.

3. There are petitions pending in the Supreme Court, where in W.P(C) 5670/2015 dated 05 December 2018 W.P.(C) 9930/2018 The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 20/12/2024 at 23:17:53 respect of lands acquired for the Rohini Residential Scheme, the Supreme Court has categorically held that there can be no interim orders passed by this Court and has asked that all such orders be vacated. It has also been made clear that even lands of which possession could not be taken, have to be surrendered by those in occupation of such lands. By its orders dated 18th October, 2016 and 10th March, 2015 in in SLP (C) Nos. 16385-16388/2012 (Rahul Gupta v. Delhi Development Authority), the Supreme Court has held that the DDA will be deemed to be in possession of such lands.

4. In view of the above development, the question of the Petitioners in this case being entitled to a declaration as sought for does not arise.

5. Learned counsel for the Petitioners then submits that the Petitioner will be satisfied if their claim for compensation is processed in terms of the 2013 Act.

6. In that view of the matter, it is directed that subject to each of the Petitioners satisfying the concerned Land Acquisition Collector of their status and entitlement to receive compensation by producing the chain of the property title/authorisation, the LAC will pass separate orders in respect of each of such claims, in terms of the 2013 Act, within twelve weeks of the complete documentation being provided to the LAC.

7. No further orders are called for in this petition. If any of the Petitioners is dissatisfied with the order passed by the LAC, it will be open to such Petitioner to seek appropriate remedy in accordance with law.

8. The petition is disposed of in the above terms."

In this regard, Mr. Poddar submitted that the Court had accepted that acquisition of lands which were required for the Rohini Residential Scheme had not lapsed by virtue of the beneficiary being in deemed possession, and the Court had only passed orders for compensation.

8. Our attention was then drawn to the decision of the Supreme Court in Delhi Development Authority vs. Monika Shukla and Ors⁷, wherein the direction for compensation was set aside in the following terms:-

Civil Appeal No. 2534 of 2023 decided on 10 April 2023 W.P.(C) 9930/2018 The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 20/12/2024 at 23:17:53 "1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 05.12.2018 passed by the High Court of Delhi at New Delhi in Writ Petition (C) No.5670 of 2015, by which the High Court has disposed of the said Writ Petition and has directed that the original writ petitioners, who had represented through the original petitioner No.1, be paid the compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the 2013 Act), the Delhi Development Authority has preferred the present appeal.

3. NHAI has also filed an application being I.A.No.147639/2021 for impleadment.

4. From the impugned judgment and order passed by the High Court, it appears that even the High Court has also noted that pursuant to the orders passed by this Court dated 18th October, 2016 and 10th March, 2015 in SLP (C) Nos.16385-16388/2012, the DDA will be deemed to be in possession of the land in question. Thereafter, it will not be open for any of the original writ petitioners to claim any possession. Therefore, once the DDA was held to be in deemed possession of the land in question there shall not be any lapse of the acquisition under Section 24(2) of the 2013 Act. Once there is no deemed lapse of acquisition, there is no question of payment of any compensation to the original land owners under the 2013 Act.

5. Under the circumstances, the impugned judgment and order passed by the High Court directing to pay the compensation under the 2013 Act is unsustainable. At this stage, the learned counsel appearing on behalf of respondent No.1 and other respondents prayed that in that case, the concerned writ petitioners be paid the compensation even under the Land Acquisition Act, 1894 (for short, `the 1894 Act) as per the Award declared by the Land Acquisition Collector. Therefore, it is directed that subject to each of the original writ petitioners satisfying the concerned Land Acquisition Collector of their status and entitlement to receive compensation by producing the chain of the property title/authorisation, the compensation under the 1894 Act be paid to them in accordance with law and as per its own merit. However, the impugned judgment and order passed by the High Court directing to pay compensation under the 2013 Act is unsustainable.

6. In view of the above and for the reasons stated above, the present appeal succeeds and the impugned judgment and order passed by the High Court directing to pay the compensation under the 2013 Act is hereby quashed and set aside.

7. The present appeal is, accordingly, allowed to the aforesaid W.P.(C) 9930/2018. The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 20/12/2024 at 23:17:53 extent. No costs.

8. As a sequel thereto, pending interlocutory application, including the application for impleadment, stand disposed of."

9. In view of the aforesaid and since the parties would have to be heard bearing in mind the factual position which would have to be reviewed as also bearing in mind the decision of the Constitution Bench in Indore Development Authority, we allow the instant review petition and recall our order of 04 April 2019.

10. The writ petition consequently stands restored on our board to be heard afresh.

W.P.(C) 9930/2018, CM APPL. 60169/2023 (Direction) & CM APPL. 60170/2023 (Dismissal of Rev. Pet.)

11. Let the writ petition be called again on 24.01.2025.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

DECEMBER 03, 2024/DR W.P.(C) 9930/2018 The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 20/12/2024 at 23:17:53