

Tej Singh vs Union Of India And Ors on 27 November, 2024

Author: Yashwant Varma

Bench: Yashwant Varma, Dharmesh Sharma

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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 8943/2018
TEJ SINGH

Through:

versus

UNION OF INDIA AND ORS.

.....Respondent

Through: Mr. Rajneesh Sharma, Mr.
Siddharth Panda, Mr. Rita
Kumar and Mr. Anil Pandey
Advs. for R-1 & 2.
Mr. Arun Birbal and Mr. S
Singh, Advs. for DDA.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% 27.11.2024

1. This writ petition has been preferred seeking the following reliefs:

"(i) issue a writ of Mandamus in favour of the petitioner and against the respondents thereby declaring the entire acquisition proceedings in respect of and in relation to the petitioners land measuring 200 square yards, comprised in Khasra No. 18/2/2 situated in the area of Village- Mubarikpur Dabas, Delhi, abadi known as Inder Enclave--II, Delhi-110081 to have lapsed; and

(ii) issue a writ of Certiorari, in favour of the petitioner and against the respondents thereby quashing the Impugned Notification(s) No. F.11 (19)/2001/L&B/LA/20112 dated 21.03.2003 issued under Section 4, Notification No. F. 11(20)/2004/L&B/LA/28176 dated 19.3.2004 issued under Section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'old land acquisition act') and award No. 16/2005-06/DC/N-W dated 14.09.2005, with respect land measuring 200 square yards, comprised in Khasra No. 18/2/2 situated in the area of Village-Mubarikpur Dabas, Delhi, abadi known as Inder Enclave--II, Delhi-110081 falling in the list of 895 This is a digitally signed order.

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 02/12/2024 at 21:59:57 unauthorized colonies, pending consideration for regularization with Government of Delhi as illegal, null and void being against the mandate of law;

pass any other relief, which this Hon'ble Court may deem fit and proper in favour of the petitioner and against the respondents."

2. From the disclosures made in the writ petition, we find that the petitioner asserts to have obtained a right and interest in the subject property sometime in 2012 and more particularly by way of a General Power of Attorney dated 20 December 2012.

3. Such a transaction cannot possibly be countenanced in light of the decision of the Supreme Court in Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana¹, where the following was observed:-

"16. Section 54 of the TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. This Court in Narandas Karsondas v. S.A. Kamtam[(1977) 3 SCC 247] observed: (SCC pp. 254-55, paras 32-33 & 37) "32. A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act. (See Ram Baran Prasad v. Ram Mohit Hazra[AIR 1967 SC 744 :

(1967) 1 SCR 293] .) The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein.

33. In India, the word „transfer“ is defined with reference to the word „convey“. ... The word „conveys“ in Section 5 of the Transfer of Property Act is used in the wider sense of conveying ownership.

37. ... that only on execution of conveyance, ownership passes from one party to another...."

(2012) 1 SCC 656 This is a digitally signed order.

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17. In *Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra* [(2004) 8 SCC 614] this Court held: (SCC p. 619, para 10) "10. Protection provided under Section 53-A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed into service against a third party."

18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter.

20. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1-A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.

21. In *State of Rajasthan v. Basant Nahata* [(2005) 12 SCC 77] this Court held: (SCC pp. 90 & 101, paras 13 & 52) "13. A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another This is a digitally signed order.

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 02/12/2024 at 21:59:58 person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience. ***

52. Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers of Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of attorney only

acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee."

An attorney-holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor.

22. A will is the testament of the testator. It is a posthumous disposition of the estate of the testator directing distribution of his estate upon his death. It is not a transfer inter vivos. The two essential characteristics of a will are that it is intended to come into effect only after the death of the testator and is revocable at any time during the lifetime of the testator. It is said that so long as the testator is alive, a will is not worth the paper on which it is written, as the testator can at any time revoke it. If the testator, who is not married, marries after making the will, by operation of law, the will stands revoked. (See Sections 69 and 70 of the Succession Act, 1925.) Registration of a will does not make it any more effective.

23. Therefore, an SA/GPA/will transaction does not convey any title nor creates any interest in an immovable property. The observations by the Delhi High Court in *Asha M. Jain v. Canara Bank* [(2001) 94 DLT 841], that the "concept of power-of-attorney sales has been recognised as a mode of transaction" when dealing with transactions by way of SA/GPA/will are unwarranted and not justified, unintentionally misleading the general public into thinking that SA/GPA/will transactions are some kind of a recognised or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognise or accept SA/GPA/will transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.

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24. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of "GPA sales" or "SA/GPA/will transfers" do not convey title and do not amount to transfer, nor can they be recognised or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognised as deeds of title, except to the limited extent of Section 53-A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in municipal or revenue records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered assignment of lease. It is time that an end is put to the pernicious practice of SA/GPA/will transactions known as GPA sales."

4. We additionally take note of the following disclosures which are made by the respondents. The subject land formed part of a Notification under Section 4 of the Land Acquisition Act, 18942 which

had been issued on 21 March 2003. This was followed by a declaration under Section 6 of the 1894 Act which came to be published on 19 March 2004. The Award in respect of that acquisition came to be rendered on 14 September 2005.

5. According to the disclosures made by the Land Acquisition Collector³ in these proceedings, the recorded tenure holders at the time of acquisition were those detailed in para 5 which reads thus:-

"5. It is submitted that in the land acquisition proceeding with respect to any agricultural land, the land acquisition collector has to exercise his function by placing reliance on the revenue records. It is respectfully submitted that as per revenue records available before the answering Respondent, the Petitioner herein is not the recorded owner, rather the name of the recorded owners of the Land in Question, are as follows:

i. Sh. Jai Parkash S/o Sh. Chander (1/2 share) ii. Sh. Dayanand (1/6th share) 1894 Act LAC This is a digitally signed order.

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6. The affidavit of the LAC also provides details of the compensation which came to be awarded to the original land holders. We deem it apposite to extract para 7 of the counter affidavit in this regard:-

"7. It is further also submitted that the compensation In terms of 1 bigha and 8 biswa has already been dispensed with to the recorded owners. Break up of the award compensation paid to the recorded owners is as follows:

i. Rs. 3,65,994/- to Sh. Jai Prakash S/o Chander . vide cheque no. 921938 dated March 26, 2007 ii. Rs. 1,21,998/- · to Dayanand vide cheque no. 921939 dated March 26, 2007 iii. Rs. 1,21,998/- - to Rajbir vide cheque nO.921940 dated March 26, 2007 iv. Rs. 1,21,998/- to Rambir Singh vide cheque no. 921941 dated March 26, 2007"

7. We are thus of the considered opinion that the petitioner is clearly not entitled to any relief not merely on the basis of him being a subsequent purchaser, but also on the ground of the writ petition constituting a "stale claim".

8. We, in this regard bear in mind the following pertinent observations that came to be rendered by Supreme Court in Mahavir and Ors. vs. Union of India and Ors.⁴ Dealing with the assertion of stale claims and in the context of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013⁵, the Supreme Court in Mahavir had held as follows:

"21. The Court is duty-bound to prevent the abuse of the process of law in the cases which have been concluded several decades (2018) 3 SCC 588 2013 Act This is a digitally signed order.

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22. In our opinion, the cases in which there is deliberate action of the owners for not collecting the compensation and they do not want to receive it, Section 24(2) of the 2013 Act does not come to their rescue as provisions are to help those persons who are deprived of compensation but not for those who deliberately had not received it and litigated for decades for quashing of proceedings avoiding to receive compensation by wilful act. The failure to deposit in court under Section 31(1) in such cases would attract only interest as envisaged under Section 34 of the Act and the provisions of Section 24 cannot be so invoked in such cases.

23. In the instant case, the claim has been made not only belatedly, but neither the petitioners nor their previous three generations had ever approached any of the authorities in writing for claiming compensation. No representation had ever been filed with any authority, none has been annexed and there is no averment made in the petition that any such representation had ever been filed. The claim appears not only stale and dead but extremely clouded. This we are mentioning as additional reasons, as such claims not only suffer from delay and laches but courts are not supposed to entertain such claims. Besides such claims become doubtful, cannot be received for consideration being barred due to delay and laches.

24. The High Court has rightly observed that such claims cannot be permitted to be raised in the court, and cannot be adjudicated as they are barred. The High Court has rightly observed that such claims cannot be a subject-matter of inquiry after the lapse of a reasonable period of time and beneficial provisions of Section 24 This is a digitally signed order.

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25. The High Court has observed that Raisina is a part of the Lutyens zone of Delhi. It is prime locality of New Delhi and government offices, etc. are located. The petitioners asked the High Court to infer and conclude that in the absence of some indication of the record being made available by them that their ancestors have not ever received any compensation. How the petitioners came to know that their ancestors had not received compensation has not been disclosed in the petition. The High Court has rightly declined to entertain such claims. The protective umbrella of Section 24 is not available to barred claims. If such claims are entertained under Section 24, it would be very-very difficult to distinguish with the frivolous claim that may be made even after tampering the records, etc. or due to non-availability of such record after so much lapse of time. Once right had been lost due to delay and laches or otherwise, it cannot be revived under provisions of Section 24 of the 2013 Act. The intendment of the 2013 Act is not to revive stale and dead claims and in the concluded case when rights have been finally lost. If there is delay and laches or claim is otherwise barred, it is not revived under Section 24(2) of the 2013 Act. The provision does not operate to revive legally barred claims.

26. The provision of Section 24 does not invalidate courts judgments/orders in which right have been finally lost or due to inaction is barred. Law does not permit examination of barred or totally fraudulent claims. The provisions of the law cannot be permitted to be defrauded or misused. Section 24(2) of the 2013 Act cannot be invoked in such cases. The High Court has rightly declined to entertain the writ petitions filed by the petitioners. It is not conceivable how the petitioners could file such a petition in a laconic manner relating to the prime locality at New Delhi that too for hundreds of acres with the delay of more than 100 years.

27. The prayers that have been made in writ petition are not only misconceived, there is an attempt to stop the ongoing construction activity. It has also been mentioned that government offices, etc. have come up and the Government has leased property to private parties also but still, the prayer has been made to stop the construction activity. It passes comprehension how such relief could ever be asked for. No authority had ever been approached by the petitioners or by their ancestors. As such the petition is aimed at the total misuse of the process of law. Even for a moment, such a petition could not have been received for consideration.

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28. We have seen in a large number of cases that the acquisition had attained finality, compensation had been tendered but not received and development had also taken place. The petitions are being filed in the courts under the provisions of Section 24(2) of the 2013 Act that they have not been paid any compensation. In fact, if there is any such grievance, they themselves are responsible for not collecting the compensation that was offered and tendered to them. The provision of Section 24 is not intended to apply and extend help in such cases."

9. We consequently find no justification to entertain the writ petition. The writ petition shall stand dismissed.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

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