

Delhi Development Authority vs Jagan Singh on 13 July, 2023

Author: Abhay S. Oka

Bench: Abhay S. Oka, Sanjay Karol

2023 INSC 620

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4335 OF 2023

Delhi Development Authority

... Appellant

versus

Jagan Singh & Ors.

... Respondents

JUDGMENT

ABHAY S. OKA, J.

Interlocutory Application No.37319 of 2022

1. We have recorded reasons for condoning the delay in the main judgment.

FACTUAL ASPECTS

2. The first respondent filed a Writ Petition under Article 226 of the Constitution of India before the High Court of Delhi for questioning the acquisition of the lands subject matter of the Writ Petition. The acquisition was under the provisions of the 17:22:31 IST Reason:

Land Acquisition Act, 1894 (for short, 'the 1894 Act'). The notification under sub□ Section (1) of Section 4 of the 1894 Act was issued on 23rd June 1989, which culminated in an award under Section 11 of the 1894 Act, which was made on 18 th June 1992. In the meanwhile, in the year 1990, the first respondent filed a Writ Petition challenging the acquisition proceedings, which was dismissed on 20 th May 2005. On 19th January 2006, the appellant took over possession of the acquired land. With effect from 1st January 2014, the 1894 Act was repealed and the provisions of the Right to Fair Compensation and Transparency in Land Acquisition,

Rehabilitation and Resettlement Act, 2013 (for short, 'the 2013 Act') were brought into force. On 25th May 2015, the first respondent filed a Writ Petition contending that in view of sub-Section (2) of Section 24 of the 2013 Act, the acquisition shall be deemed to have lapsed. By the impugned judgment and order dated 11th August 2016, by relying upon a decision of this Court in the case of *Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & Ors.*¹, the High Court held that sub-Section (2) of Section 24 of the 2013 Act will apply as the compensation has not been paid to the first respondent although physical possession of the acquired 1 (2014) 3 SCC 183 land has been taken over by the appellant. The High Court, however, directed the appellant to pay compensation to the first respondent in accordance with the 2013 Act.

3. On 6th March 2020, a Constitution Bench of this Court in the case of *Indore Development Authority v. Manoharlal & Ors.*² expressly overruled its earlier decision in the case of *Pune Municipal Corporation & Anr.*¹ and all other decisions based on the said decision. It was held by the Constitution Bench that another decision of this Court in the case of *Sree Balaji Nagar Residential Association v. State of Tamil Nadu & Ors.* 3 was not correct. Even this decision was relied upon in the impugned judgment.

4. The Constitution Bench in the case of *Indore Development Authority*² interpreted sub-Section (2) of Section 24 of the 2013 Act. Sub-Section (2) of Section 24 of the 2013 Act reads thus:

“24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases.— (1)

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition 2 (2020) 8 SCC 129 3 (2015) 3 SCC 353 proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act.

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.” (emphasis added)

5. In paragraph 366.3 of the decision of the Constitution Bench in the case of *Indore Development Authority*², it was held thus:

“366. In view of the aforesaid discussion, we answer the questions as under:

366.1.

366.2.

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.

366.4.” (emphasis added)

6. In the present case, as recorded in the impugned judgment, there is no dispute that the possession of the acquired land was taken over on 19th January 2006. Therefore, in terms of the decision of the Constitution Bench in the case of Indore Development Authority², sub-Section (2) of Section 24 of the 2013 Act will have no application even though the compensation has not been paid.

7. Now, we propose to record reasons for condoning the delay. The main question is whether the delay of 1231 days in approaching this Court should be condoned. On factual aspects, it must be noted that paragraph 2 of the impugned judgment records that the acquired land has been utilised for the third respondent—Delhi Metro Rail Corporation (DMRC) for its car maintenance depot at Kalindi Kunj under the MRTS Project (Phase—II). By the order dated 17th February 2023, this Court directed the appellant to file on record the present status of the acquired land. Along with the affidavit filed on 13 th April 2023, photographs have been placed on record which are not disputed by the learned counsel appearing for the first respondent. Therefore, we can proceed on the footing that the acquired land has been utilised for a public purpose by DMRC for the metro depot as correctly recorded in paragraph 2 of the impugned judgment.

SUBMISSIONS

8. The submission of the learned counsel for the appellant is that the acquired land has already been put to use for public purposes. He urged that now the acquisition cannot be declared as lapsed based on a decision which has been expressly overruled. He urged that the reasons for the delay have been properly explained.

9. The strong opposition by the first respondent to the application for condonation of delay is firstly on the ground that for a long delay of 1231 days, there is absolutely no explanation. His submission is that in fact, the conduct of the appellant as well as the Government of NCT of Delhi shows that they acquiesced to the impugned judgment. He submitted that while dealing with the application under Section 5 of the Limitation Act, 1963, the Court cannot be oblivious of the fact that the

successful litigant has acquired valuable rights on the basis of the judgment which is the subject matter of challenge. He submitted that it is well settled that the Courts cannot adopt a different approach while dealing with the applications for condonation of delay made by the State or its agencies and instrumentalities and that they should be treated on par with other litigants. He submitted that merely because the judgment in the case of *Pune Municipal Corporation & Anr.*¹ was overruled by a subsequent judgment of the Constitution Bench, the appellant cannot succeed unless the long delay is explained by showing sufficient cause.

10. The learned counsel appearing for the first respondent has relied upon the order dated 22nd December 2017 of the appellant which contains a policy dealing with the question of initiating fresh acquisition proceedings where the acquisition has been declared as lapsed under sub-Section (2) of Section 24 of the 2013 Act. He submitted that in view of the policy and since the acquired land has been already utilised for public purposes, the direction of the High Court in the impugned judgment to pay compensation to the first respondent in accordance with the 2013 Act, needs to be upheld.

OUR VIEW

11. There cannot be any dispute about the proposition of law canvassed by the learned counsel appearing for the first respondent. However, there cannot be any hard and fast rule to decide whether sufficient cause exists. It all depends on the facts and circumstances of each individual case.

12. Over the years, this Court has repeatedly held that a liberal and justice-oriented approach needs to be adopted in the matters of condonation of delay so that the substantive rights of the parties are not defeated only on the ground of delay. The power under Section 5 of the Limitation Act, 1963 must be exercised in a very meaningful manner which will serve the ends of justice.

13. It is true that the fact that the decision on which the impugned judgment is based has been overruled is by itself no ground to condone a long delay. In the facts of this case, it is true that the Special Leave Petition has been filed two years and three days after the date of the decision of the Constitution Bench in the case of *Indore Development Authority*².

14. In this case, admittedly, the acquired land has been used by DMRC for the metro depot and the metro depot exists on the acquired land as noted in the impugned judgment. Thus, when the Writ Petition was filed invoking sub-Section (2) of Section 24 of the 2013 Act, the acquired land was already put to use for an important public purpose of the metro depot. The use of the land for public purposes for the last several years is certainly a relevant factor for adopting a liberal approach while considering the prayer for condoning the delay. We may also note here that the petition invoking sub-Section (2) of Section 24 of the 2013 Act was filed by the appellant nearly seventeen months after the 2013 Act came into force. In a case where the land was not put to use for a public purpose, the approach of this Court while deciding the application for condonation of a long delay in such a case would have been different.

15. The policy incorporated in the notification dated 22 nd December 2017 will apply to those cases where the acquisition has been validly held to have lapsed. Therefore, in the facts of the case, the

said policy is of no help to the first respondent.

16. We find that the application for condonation of delay has been drafted rather casually. However, considering the peculiar facts of the case, which we have discussed above, by adopting a justice□ oriented and liberal approach, the delay will have to be condoned.

17. The High Court has issued a direction to pay compensation to the first respondent in terms of the 2013 Act. The said direction was issued in the context of the fact that the Court was declaring the acquisition as lapsed notwithstanding the fact that the acquired land was already used for an important public purpose. Once it is held that the acquisition under the 1894 Act continues to be valid, the first respondent is disentitled to claim compensation payable in terms of the 2013 Act which was not applicable to the acquisition. However, the appellant is entitled to receive compensation already determined under the award made under the 1894 Act.

18. Before we part with the judgment, while looking at the photographs of the metro depot constructed on the acquired land which have been produced along with an affidavit dated 15 th April 2023, we noticed that a part of the pavement abutting the metro depot which is a part of the acquired land has been already occupied by “a car clinic” and other vendors. A citizen has lost his valuable property by way of compulsory acquisition. The compulsory acquisition has been made for a public purpose and therefore, the appellant and all the concerned authorities cannot allow the pavement to be used for any purpose except for allowing people to walk. We hope and trust that either the appellant takes immediate action on this behalf or calls upon the authorities empowered to take action to do the needful immediately in accordance with the law.

19. Though, the appeal succeeds, considering the conduct of the appellant, we saddle the appellant with costs of 50,000/□

20. Accordingly, we allow the Appeal on the following terms:

a.We quash and set aside the impugned judgment and order dated 11th August 2016;

b.The Writ Petition (C) No.3819 of 2015 filed by the first respondent before the High Court of Delhi stands dismissed; c.We direct the appellant to pay costs quantified at 50,000/□to the first respondent within a period of one month from today;

d.We direct the first respondent to furnish his Bank Account details along with a photocopy of a cancelled cheque of the said account to the advocate for the appellant. The appellant shall make online payment of the amount of costs by transferring the same to the account of the first respondent;

e.If the compensation determined as per the Award made under Section 11 of the 1894 Act has not been yet paid till date, the appellant and /or the second respondent shall pay the same to the first respondent in the manner provided in clause (d) as above within a period of one month from today.

21. We hope and trust that the appellant and all other concerned authorities shall take serious note of the observations made by us in paragraph 18 above and take necessary action in accordance with law.

.....J. (Abhay S. Oka)J. (Sanjay Karol) New Delhi;

July 13, 2023.