

# Land And Building Department Thr. ... vs Attro Devi on 11 April, 2023

**Author: Rajesh Bindal**

**Bench: Abhay S. Oka, Rajesh Bindal**

D.No.23608/2021

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

Civil Appeal No.2749/2023

(arising out of S.L.P.(Civil) No.7510/2023

(arising out of S.L.P.(Civil) D.No.23608/2021)

LAND AND BUILDING DEPARTMENT  
THROUGH SECRETARY & ANR.

...APPELLANT(S)

VS.

ATTRO DEVI & ORS.

...RESPONDENT(S)

JUDGMENT

Rajesh Bindal, J.

1. Delay condoned.

2. Leave granted.

3. The appellants have challenged the order dated 20.12.2017 passed by the High Court of Delhi. Vide aforesaid order, writ petition filed by the respondents was allowed holding that in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short “the 2013 Act”), the acquisition in respect to the land in dispute, has lapsed.

4. From the facts of the case as are available on record, it is evident that vide notification dated 23.06.1989 issued under Section 4 of the Land Acquisition Act, 1894 large chunk of the land

including the land of petitioner comprised in Khasra No.1 Etc/57/1 and Khasra No.1 Etc/58/1, situated in revenue estate of village Ghonda, Chauhan Khadar, New Delhi was sought to be acquired for planned development of Delhi. It was followed by the notification issued under Section 6 dated 20.06.1990. The Award was announced on 19.06.1992.

5. A writ petition was filed in the High Court invoking Section 24(2) of the 2013 Act claiming that the acquisition in question has lapsed as neither possession has been taken nor the compensation therefor has been paid. The appellant's stand before the High Court was that the possession of the land was taken on 06.12.2012 and handed over to the DDA on the spot. The compensation could not be paid to the recorded land owners as they never came forward to claim the same.

6. The High Court relying upon the judgment of this Court in *Pune Municipal Corporation & Anr. v. Misirimal Solanki & Ors.* (2014) 3 SCC 183 held that since the compensation was not paid to the landowners, i.e., the respondents herein, the acquisition in question has lapsed.

7. The arguments raised by learned counsel appearing for the appellants are that in view of the Constitution Bench judgment of this Court in *Indore Development Authority v. Manoharlal and Others* (2020) 8 SCC 129 whereby earlier judgment of this Court in *Pune Municipal Corporation & Anr.'s case* (supra) was overruled, the order passed by the High Court is liable to be set aside. It was opined by the Constitution Bench that compliance of either of the two conditions i.e. taking over of possession of the land or payment of compensation, is good enough to sustain the acquisition. From the undisputed facts available on record it is evident that in the present case, the possession of land in dispute was taken after the acquisition was complete.

8. Additionally, an important fact brought to our attention is that the subject land is required by NHAI for construction of the Delhi-Saharanpur-Dehradun Highway starting from Akshardham Junction to Delhi/UP Border, in the State of Delhi in Phase I of Bharatmala Pariyojana. Even the contractors have been appointed to execute the project, which may be delayed due to pendency of the present appeal. The subject land is therefore a part of the project which is of national importance.

9. On the other hand, the arguments raised by learned counsel for the respondents are that the writ petition having been decided on the basis of law as existing on the date of decision by the High Court cannot be set aside on the basis of the subsequent judgment of this Court. The High Court had held that compensation having not been paid, as per the interpretation of Section 24(2) of the 2013 Act by this Court in *Pune Municipal Corporation's case* (supra), the acquisition proceedings lapsed. It is a matter of fact which has been noticed in the order passed by the High Court that the possession of the land had already been taken by the authority concerned.

10. Heard learned counsel appearing for the parties and perused the records.

11. The Constitution Bench of this Court in *Indore Development Authority's case* (supra) had opined that satisfaction of either of the conditions namely either taking possession of the acquired land or payment of compensation to the landowners would be sufficient to save the acquisition from being

lapsed in terms of Section 24(2) of the 2013 Act. Various questions posed before the Constitution Bench of this Court were also answered. Relevant para Nos. 362 and 366 are extracted below:

“362. Resultantly, the decision rendered in Pune Municipal Corporation & Anr. (supra) is hereby overruled and all other decisions in which Pune Municipal Corporation (supra) has been followed, are also overruled. ... ..

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<sup>st</sup> 1<sup>st</sup> 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 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.

(emphasis supplied) 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.

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.

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).

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□□2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years. 366.9. Section 24(2) of the 2013 Act does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the 2013 Act i.e. 1□□2014. It does not revive stale and time□barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.”

12. The issue as to what is meant by "possession of the land by the State after its acquisition" has also been considered by Constitution Bench of Hon'ble Supreme Court in Indore Development Authority's case (supra). It is opined therein that after the acquisition of land and passing of award, the land vests in the State free from all encumbrances. The vesting of land with the State is with possession. Any person retaining the possession thereafter has to be treated trespasser. When large chunk of land is acquired, the State is not supposed to put some person or police force to retain the possession and start cultivating on the land till it is utilized. The Government is also not supposed to start residing or physically occupying the same once process of the acquisition is complete. If after the process of acquisition is complete and land vest in the State free from all encumbrances with possession, any person retaining the land or any re□entry made by any person is nothing else but trespass on the State land. Relevant paragraphs 244, 245 and 256 are extracted below:

"244. Section 16 of the Act of 1894 provided that possession of land may be taken by the State Government after passing of an award and thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of urgency in Section 17(1). The word "possession" has been used in the Act of 1894, whereas in Section 24(2) of Act of 2013, the expression "physical possession" is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2) requires actual physical possession to be taken, not the possession in any other form. When the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has no right to possess the land which

vests in the State free from all encumbrances.

245. The question which arises whether there is any difference between taking possession under the Act of 1894 and the expression "physical possession" used in Section 24(2). As a matter of fact, what was contemplated under the Act of 1894, by taking the possession meant only physical possession of the land. Taking over the possession under the Act of 2013 always amounted to taking over physical possession of the land. When the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any re-entry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc., is deemed to be the trespasser on land which is in possession of the State. The possession of trespasser always inures for the benefit of the real owner that is the State Government in the case.

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256. Thus, it is apparent that vesting is with possession and the statute has provided under Sections 16 and 17 of the Act of 1894 that once possession is taken, absolute vesting occurred. It is an indefeasible right and vesting is with possession thereafter. The vesting specified under Section 16, takes place after various steps, such as, notification under Section 4, declaration under Section 6, notice under Section 9, award under Section 11 and then possession. The statutory provision of vesting of property absolutely free from all encumbrances has to be accorded full effect. Not only the possession vests in the State but all other encumbrances are also removed forthwith. The title of the landholder ceases and the state becomes the absolute owner and in possession of the property. Thereafter there is no control of the landowner over the property. He cannot have any animus to take the property and to control it. Even if he has retained the possession or otherwise trespassed upon it after possession has been taken by the State, he is a trespasser and such possession of trespasser enures for his benefit and on behalf of the owner."

(emphasis supplied)

13. It is also a fact to be noticed and taken care of that large chunk of land is acquired for planned development to take care of immediate need and also keep buffer for future requirements. Such portion of land may be lying vacant also. As has been observed in Indore Development Authority's case (supra) by this Court, the State agencies are not supposed to put police force to protect possession of the land taken after process of acquisition is complete. As far as the case in hand is

concerned, the land even if was lying vacant, is required now for a project of national importance for construction of the Delhi-Saharanpur-Dehradun Highway starting from Akshardham Junction to Delhi/UP Border, in the State of Delhi in Phase of Bharatmala Pariyojana.

14. It is the undisputed fact on the record, as has been noticed in the impugned order passed by the High Court, the possession of the land was taken over by the Land Acquisition Collector and handed over to Delhi Development Authority. Report of possession proceedings dated 06.12.2012 has also been placed on record. Hence, one of the conditions being satisfied, we need not examine any other argument.

15. Keeping in view the aforesaid fact and the law laid down by the Constitution Bench of this Court in Indore Development Authority's case (supra), in our opinion the order passed by the High Court cannot be legally sustained and the same is accordingly set aside. However, the respondents shall be entitled to receive compensation as per their entitlement. The Land Acquisition Officer should also take steps to pay the same to the rightful owner.

16. The appeal is disposed of accordingly.

.....J. [Abhay S. Oka] .....J. [Rajesh Bindal] New Delhi;

11.04.2023.