

Shivkumar vs Union Of India on 14 October, 2019

Author: Arun Mishra

Bench: B.R. Gavai, M.R. Shah, Arun Mishra

1

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8003 OF 2019
(ARISING OUT OF S.L.P. (C) NO.24726/2019
D.NO.25495 OF 2019)

SHIV KUMAR & ANR.

...APPELLANT(S)

VERSUS

UNION OF INDIA & ORS.

...RESPONDENT(S)

JUDGMENT

ARUN MISHRA, J.

1. The question involved in the matter is whether a purchaser of the property after issuance of notification under section 4 of the Land Acquisition Act, 1894 (for short, "the 1894 Act"), can invoke the provisions contained in section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, "the Act of 2013").

2. Notification No.F.10(29)/96/L&B/LA/11394, dated 27.10.1999, was issued for the acquisition of the land situated in the revenue estate of Village Pansali, Delhi, for the public purpose of the Rohini Residential Scheme under planned development of Delhi. It was Reason:

followed by the declaration under section 6 issued on 3.4.2000.

Possession was taken on 12.5.2000. Subsequently, the petitioners purchased the land on 5.7.2001 by way of Registered Sale Deed executed by one Satya Narain, the Power of Attorney holder of original owners. The purchasers then participated in the proceedings for the determination of compensation under sections 9 and 10 of the

1894 Act. The award was passed on 3.4.2002. In the meanwhile, an unauthorized colony came up with the name of Deep Vihar, Pansali, Pooth Kalan, Delhi. The petitioners claimed that they continued in the actual physical possession of the land even after passing of the award on 17.09.2008 and the same formed part of the unauthorized colony.

The Government of NCT of Delhi provisionally regularised the colony.

The Act of 2013 came in force from 1.1.2014. The respondents never took the actual physical possession of the land; as such, the acquisition has lapsed. The purchasers/petitioners filed a writ petition at the High Court of Delhi. A Division Bench of the High Court has dismissed the writ application.

3. Learned counsel appearing on behalf of the purchasers submitted that the High Court has erred in rejecting the writ application on the ground that the purchasers after issuance of notification under section 4 of the 1894 Act cannot question the land acquisition. The decision runs contrary to the dictum laid down by this Court in Government (NCT of Delhi) v. Manav Dharam Trust & Anr. (2017) 6 SCC 751. Learned counsel further submitted that the High Court has also erred in dismissing the writ application on the ground that petitioners have admitted that the property is part of the unauthorized colony of Deep Vihar.

4. Shri K.M. Natraj learned Additional Solicitor General has supported the impugned judgment and order and submitted that the purchase made after the notification issued under section 4 of the 1894 Act and declaration under section 6 is void. The purchasers had acquired no right, and they cannot question the land acquisition, nor they can invoke the provisions contained in section 24 of the Act of 2013. It was further submitted that decision in Manav Dharam Trust (supra) is per incuriam because of a large number of decisions of this Court holding that sale made after issuance of notification under section 4 is void.

5. It is crystal clear that for seeking the relief under section 24, the proceedings for taking possession under Act of 1894 have been put into question as illusory one, and possession continues with appellants. The decision in Manav Dharam Trust (supra) has been mainly relied upon by the learned counsel appearing on behalf of the purchasers/petitioners in which a Division Bench opined that subsequent purchasers are affected by the acquisition. Therefore, they are entitled to seek a declaration of the lapse of acquisition under the Act of 2013. It has further opined that since declaration is sought, the challenge is not to the acquisition proceedings. Because of the operation of section 24(2) of the 2013 Act, the ratio of the various cases decided by this Court under the Act of 1894, has no application to such situations. It has observed thus:

“21. All the decisions cited by the learned Senior Counsel appearing for the appellants, no doubt, have categorically held that the subsequent purchasers do not have locus standi to challenge the acquisition proceedings. However, in the present case, the challenge is not to the acquisition proceedings; it is only for a declaration that the acquisition proceedings have lapsed because of the operation of Section

24(2) of the 2013 Act, and therefore, the ratio in those cases has no application to these cases.

22. It is one thing to say that there is a challenge to the legality or propriety or validity of the acquisition proceedings and yet another thing to say that by virtue of the operation of subsequent legislation, the acquisition proceedings have lapsed.

23. In all the decisions cited by the learned Senior Counsel for the appellants, which we have referred to above, this Court has protected the rights of the subsequent purchaser to claim compensation, being a person interested in the compensation, despite holding that they have no locus standi to challenge the acquisition proceedings.

28. Thus, the subsequent purchaser, the assignee, the successor in interest, the power-of-attorney holder, etc., are all persons who are interested in compensation/landowners/affected persons in terms of the 2013 Act and such persons are entitled to file a case for a declaration that the land acquisition proceedings have lapsed by virtue of operation of Section 24(2) of the 2013 Act. It is a declaration qua the land wherein indisputably they have an interest, and they are affected by such acquisition. For such a declaration, it cannot be said that the respondent-writ petitioners do not have any locus standi."

6. First, we advert to the legal position concerning the purchases made on 5.7.2001, made after notification under Section 4 had been issued under the Act of 1894. Law is well settled in this regard by a catena of decisions of this Court that an incumbent, who has purchased the land after section 4 notification, has no right to question the acquisition.

6(a). In U.P. Jal Nigam, Lucknow through its Chairman & Anr. v. Kalra Properties (P) Ltd., Lucknow & Ors. (1996) 3 SCC 124 it was observed :

"3.That apart, since M/s. Kalra Properties, the respondent had purchased the land after the notification under Section 4(1) was published, its sale is void against the State, and it acquired no right, title, or interest in the land. Consequently, it is settled law that it cannot challenge the validity of the notification or the regularity in taking possession of the land before the publication of the declaration under Section 6 was published."

6(b). In Sneh Prabha (Smt.) & Ors. v. State of U.P. & Anr. (1996) 7 SCC 426 it has been laid down that subsequent purchaser cannot take advantage of land policy. It was observed:

"5. Though at first blush, we were inclined to agree with the appellant but on a deeper probe, we find that the appellant is not entitled to the benefit of the Land Policy. It is settled law that any person who purchases land after the publication of the

notification under Section 4(1), does so at his/her peril. The object of publication of the notification under Section 4(1) is notice to everyone that the land is needed or is likely to be needed for a public purpose, and the acquisition proceedings point out an impediment to anyone to encumber the land acquired thereunder. It authorizes the designated officer to enter upon the land to do preliminaries, etc. Therefore, any alienation of land after the publication of the notification under Section 4(1) does not bind the Government or the beneficiary under the acquisition. On taking possession of the land, all rights, titles, and interests in land stand vested in the State, under Section 16 of the Act, free from all encumbrances, and thereby, absolute title in the land is acquired thereunder. If any subsequent purchaser acquires land, his/her only right would be subject to the provisions of the Act and/ or to receive compensation for the land. In a recent judgment, this Court in *Union of India v. Shri Shivkumar Bhargava and Ors.* [1995] 1 SCR 354 considered the controversy and held that a person who purchases land subsequent to the notification is not entitled to an alternative site. It is seen that the Land Policy expressly conferred that right only on that person whose land was acquired. In other words, the person must be the owner of the land on the date on which notification under Section 4(1) was published. By necessary implication, the subsequent purchaser was elbowed out from the policy and became disentitled to the benefit of the Land Policy."

6(c). In *Meera Sahni v. Lieutenant Governor of Delhi & Ors.* (2008) 9 SCC 177, the Court had relied upon the decision described above and observed thus:

"21. In view of the aforesaid decisions, it is by now well-settled law that under the Land Acquisition Act, the subsequent purchaser cannot challenge the acquisition proceedings and that he would be only entitled to get the compensation."

6(d). In *V. Chandrasekaran & Anr. v. Administrative Officer & Ors.* (2012) 12 SCC 133, the Court has considered various decisions and opined that the purchaser after Section 4 notification could not challenge land acquisition on any ground whatsoever. The Court observed:

"15. The issue of maintainability of the writ petitions by the person who purchases the land subsequent to a notification being issued under Section 4 of the Act has been considered by this Court time and again. In *Leela Ram v. Union of India AIR 1975 SC 2112*, this Court held that anyone who deals with the land subsequent to a Section 4 notification being issued, does so, at his own peril. In *Sneh Prabha v. State of Uttar Pradesh AIR 1996 SC 540*, this Court held that a Section 4 notification gives a notice to the public at large that the land in respect to which it has been issued, is needed for a public purpose, and it further points out that there will be "an impediment to anyone to encumber the land acquired thereunder." The alienation after that does not bind the State or the beneficiary under the acquisition. The purchaser is entitled only to receive compensation. While deciding the said case, reliance was placed on an earlier judgment of this Court in *Union of India v. Shiv Kumar Bhargava and Ors.* (1995) 2 SCC 427.

18. In view of the above, the law on the issue can be summarized to the effect that a person who purchases land subsequent to the issuance of a Section 4 notification with respect to it, is not competent to challenge the validity of the acquisition proceedings on any ground whatsoever, for the reason that the sale deed executed in his favour does not confer upon him, any title and at the most he can claim compensation on the basis of his vendor's title." (emphasis supplied) 6(e). In Rajasthan State Industrial Development and Investment Corp.

v. Subhash Sindhi Cooperative Housing Society, Jaipur & Ors. (2013) 5 SCC 427, it is laid down:

"13. There can be no quarrel with respect to the settled legal proposition that a purchaser, subsequent to the issuance of a Section 4 Notification in respect of the land, cannot challenge the acquisition proceedings, and can only claim compensation as the sale transaction in such a situation is Void qua the Government. Any such encumbrance created by the owner, or any transfer of the land in question that is made after the issuance of such a notification would be deemed to be void and would not be binding on the Government. (Vide: Gian Chand v. Gopala and Ors. (1995) 2 SCC 528; Yadu Nandan Garg v. State of Rajasthan and Ors. AIR 1996 SC 520; Jaipur Development Authority v. Mahavir Housing Coop. Society, Jaipur, and Ors. (1996) 11 SCC 229; Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain and Ors. (1997) 1 SCC 35; Meera Sahni v. Lieutenant Governor of Delhi and Ors. (2008) 9 SCC 177; Har Narain (Dead) by L.Rs. v. Mam Chand (Dead) by L.Rs. and Ors. (2010) 13 SCC 128; and V. Chandrasekaran and Anr. v. The Administrative Officer and Ors. JT 2012 (9) SC

260)."

(emphasis supplied) 6(f). A Three-Judge Bench in Rajasthan Housing Board v. New Pink City Nirman Sahkari Samiti Ltd. & Anr., (2015) 7 SCC 601, in the context of section 4 as well as section 42 of the Rajasthan Tenancy Act which also prohibited the transactions from being entered into with SC/ST persons, has observed:

"33. The other decision relied upon by the Society is V. Chandrasekaran and Anr. v. Administrative Officer and Ors. 2012 (12) SCC 133] wherein this Court laid down thus:

17. In Ajay Kishan Singhal v. Union of India: AIR 1996 SC 2677; Mahavir and Anr. v. Rural Institute, Amravati and Anr. (1995) 5 SCC 335; Gian Chand v. Gopala and Ors. (1995) 2 SCC 528; and Meera Sahni v. Lieutenant Governor of Delhi and Ors. (2008) 9 SCC 177, this Court categorically held that a person who purchases land after the publication of a Section 4 notification with respect to it, is not entitled to challenge the proceedings for the reason, that his title is void and he can at best claim compensation on the basis of vendor's title. In view of this, the sale of land after

issuance of a Section 4 notification is void, and the purchaser cannot challenge the acquisition proceedings. (See also: Tika Ram v. the State of U.P. (2009) 10 SCC 689).

18. In view of the above, the law on the issue can be summarized to the effect that a person who purchases land subsequent to the issuance of a Section 4 notification with respect to it, is not competent to challenge the validity of the acquisition proceedings on any ground whatsoever, for the reason that the sale deed executed in his favour does not confer upon him, any title and at the most he can claim compensation on the basis of his vendor's title.

34. Reliance has been placed on Dossibai Nanabhoy Jeejeebhoy v. P.M. Bharucha 1958 (60) Bom.LR 1208] so as to contend that the 'person interested' in the land under Section 9 of the Land Acquisition Act would include a person who claims interest in compensation to be paid on account of acquisition of land ad the interest contemplated Under Section 9 is not restricted to legal or proprietary estate or interest in the land but such interest as will sustain a claim to apportionment, is the owner of the land. In our opinion, the decision is of no avail.

The instant transaction being void as per Section 42 of the Rajasthan Tenancy Act, and the property was inalienable to non-SC. Obviously, the logical corollary has to be taken that no right in apportionment to compensation can be claimed by the Society."

6(g). In M. Venkatesh & Ors. v. Commissioner, Bangalore Development Authority, etc. (2015) 17 SCC 1, a three-Judge Bench has opined:

"16. That brings us to the question of whether Prabhaudas Patel and other respondents in SLP (C) No. 12016 of 2013 were entitled to any relief from the Court. These respondents claim to have purchased the suit property in terms of a sale deed dated 22-8-1990, i.e., long after the issuance of the preliminary Notification published in July 1984. The legal position about the validity of any such sale, post-issuance of preliminary notification, is fairly well settled by a long line of the decisions of this Court. The sale in such cases is void and non-est in the eye of the law giving to the vendee the limited right to claim compensation and no more. Reference may in this regard be made to the decision of this Court in U.P. Jal Nigam v. Kalra Properties (P) Ltd, wherein this Court said: (SCC pp. 126-27, para 3) "3. ... It is settled law that after the notification under Section 4(1) is published in the gazette, any encumbrance created by the owner does not bind the Government, and the purchaser does not acquire any title to the property. In this case, Notification under Section 4(1) was published on 24-3-1973; possession of the land admittedly was taken on 5-7-1973, and the pumping station house was constructed. No doubt, declaration under Section 6 was published later on 8-7- 1973. Admittedly power under Section 17(4) was exercised dispensing with the inquiry under Section 5-A and on service of the notice under Section 9 possession was taken, since urgency was acute viz. pumping station house was to be constructed to drain out floodwater. Consequently,

the land stood vested in the State under Section 17(2) free from all encumbrances. It is further settled law that once possession is taken, by operation of Section 17(2), the land vests in the State free from all encumbrances unless a notification under Section 48(1) is published in the gazette withdrawing from the acquisition. Section 11-A, as amended by Act 68 of 1984, therefore, does not apply, and the acquisition does not lapse. The notification under Section 4(1) and the declaration under Section 6, therefore, remain valid. There is no other provision under the Act to have the acquired land divested, unless, as stated earlier, notification under Section 48(1) was published, and the possession is surrendered pursuant thereto. That apart, since M/s Kalra Properties, the respondent had purchased the land after the notification under Section 4(1) was published, its sale is void against the State, and it acquired no right, title, or interest in the land. Consequently, it is settled law that it cannot challenge the validity of the notification or the regularity in taking possession of the land before the publication of the declaration under Section 6 was published.

(emphasis supplied)"

7. It has been laid down that the purchasers on any ground whatsoever cannot question proceedings for taking possession. A purchaser after Section 4 notification does not acquire any right in the land as the sale is ab initio void and has no right to claim land under the Policy.

8. When we ponder as to beneficial provisions of the Act of 2013, they also intend to benefit landowners mentioned in the notification under Section 4, not for the benefit of such purchasers who purchase the land after it has been vested in the State.

9. Sub□section 4 of Section 11 of the Act of 2013, which is akin to section 4 of the Act of 1894, contains a prohibition that no person shall make any transaction or cause any transaction of land or create any encumbrance on land from the date of publication of such notification. Section 11(4) is extracted hereunder:

“11. Publication of preliminary notification and power of officers thereupon.—xxxxx
(4) No person shall make any transaction or cause any transaction of land specified in the preliminary notification or create any encumbrances on such land from the date of publication of such notification till such time as the proceedings under this Chapter are completed:

Provided that the Collector may, on the application made by the owner of the land so notified, exempt in special circumstances to be recorded in writing, such owner from the operation of this subsection: Provided further that any loss or injury suffered by any person due to his wilful violation of this provision shall not be made up by the Collector.” Without seeking exemption from the Collector, there is a total prohibition on any transaction of land. Whereas the legal position under the Act of 1894 was that a transaction effected after section 4 notification was illegal and void.

10. When we consider other provisions, the 'affected family' has been defined under section 3(c) of the 2013 Act. The definition reads as under:

"3. Definitions.—In this Act, unless the context otherwise requires,—

(c) "affected family" includes—

(i) a family whose land or other immovable property has been acquired;

(ii) a family which does not own any land but a member or members of such family may be agricultural labourers, tenants including any form of tenancy or holding of usufruct right, share-croppers or artisans or who may be working in the affected area for three years prior to the acquisition of the land, whose primary source of livelihood stand affected by the acquisition of land;

(iii) the Scheduled Tribes and other traditional forest dwellers who have lost any of their forest rights recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) due to acquisition of land;

(iv) family whose primary source of livelihood for three years prior to the acquisition of the land is dependent on forests or water bodies and includes gatherers of forest produce, hunters, fisherfolk and boatmen, and such livelihood is affected due to acquisition of land;

(v) a member of the family who has been assigned land by the State Government or the Central Government under any of its schemes and such land is under acquisition;

(vi) a family residing on any land in the urban areas for preceding three years or more prior to the acquisition of the land or whose primary source of livelihood for three years prior to the acquisition of the land is affected by the acquisition of such land;" The affected family includes landowners for whose benefit land is held before the acquisition. A person acquiring interest after section

11 notification cannot be said to be included in the "affected family" at all.

11. Definition of 'family' is in section 3(m), it is extracted hereunder:

"3. Definition.—In this Act, unless the context otherwise requires,—

(m) "family" includes a person, his or her spouse, minor children, minor brothers and minor sisters dependent on him: Provided that widows, divorcees, and women deserted by families shall be considered separate families;

Explanation.—An adult of either gender with or without spouse or children or dependents shall be considered as a separate family for the purposes of this Act.”

12. The definition of 'landowner' is in section 3(r), the same is extracted hereunder:

“3. Definition.—In this Act, unless the context otherwise requires,—

(r) "landowner" includes any person,— (i) whose name is recorded as the owner of the land or building or part thereof, in the records of the authority concerned; or

(ii) any person who is granted forest rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) or under any other law for the time being in force; or

(iii) who is entitled to be granted Patta rights on the land under any law of the State including assigned lands; or (iv) any person who has been declared as such by an order of the court or Authority;” Landowner is a person who is recorded as the owner of land or building. The record of date of issuance of preliminary notification under section 11 is relevant. A purchaser after section 11 cannot be said to be a landowner within the purview of section 3(r).

13. Person interested is defined in section 3(x) thus :

“3. Definition.—In this Act, unless the context otherwise requires,—

(x) “person interested” means—

(i) all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act;

(ii) the Scheduled Tribes and other traditional forest dwellers, who have lost any forest rights recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007);

(iii) a person interested in an easement affecting the land;

(iv) persons having tenancy rights under the relevant State laws including share-croppers by whatever name they may be called; and

(v) any person whose primary source of livelihood is likely to be adversely affected;”

14. A rehabilitation and resettlement scheme has to be prepared under Section 16. Section 17 deals with the review of such a scheme. An approved scheme to be made public under Section 18. Section 19 deals with the publication of declaration and summary of rehabilitation and resettlement scheme.

After inquiry, Award is passed by the Collector under Section 23. The Collector is required to consider, among other things, the interest of the person claiming the compensation, rehabilitation, and resettlement while making an award.

15. Section 24 of the Act of 2013, which deals with land acquisition made under the Act of 1894, is also relevant. The same is extracted hereunder:

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases – (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition 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 supplied)

16. Section 24 (2) provides that in case the award has been passed five years or more prior to the commencement of the 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. It is not the case set up that compensation had not been paid to purchasers/owners. The only case set up is that physical possession has not been taken and proceedings of taking over possession have been questioned to take advantage of provisions under Section 24(2) of the Act of 2013. Whereas, averment in the writ petition itself indicates that possession had been taken over in the year 2000 and that unauthorized colonies have come up in the area. Thus, it is clear that possession, if any, is illegal, and in fact, the actual physical possession had been taken, and re-entering in possession in an unauthorized manner can confer no right. There is nothing to doubt that actual physical

possession had been taken in 2000. Thus, Section 24(2) is not attracted in the case.

17. Even otherwise, proviso to Section 24(2) does not recognize a purchaser after Section 4 notification inasmuch as it provides that where an award has been made, and the 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 issued under the Act of 1894, shall be entitled to compensation under the provisions of the Act of 2013. The proviso makes it clear that in case of compensation concerning the majority of landholding has not been deposited, then recorded owner(s) at the time of issuance of notification under section 4 of the Act of 1894 shall have the right to receive the compensation. Purchasers after section 4 notification have not been given the right to receive the higher compensation under the provisions contained in the act of 2013

18. The Act of 2013 presupposes that a person is required to be rehabilitated and resettled. Such a person who has purchased after section 4 notification as sale deed is void under the Act of 1894, cannot claim rehabilitation and resettlement as per policy envisaged under the Act of 2013, as his land has not been acquired, but he has purchased a property which has already been acquired by the State Government, he cannot claim even higher compensation, as per proviso to section 24(2) under the Act of 2013. An original landowner cannot be deprived of higher value under the Act of 2013, which higher compensation was not so contemplated when the void transaction of sale had been entered, and right is conferred under proviso to Section 24(2) on recorded owners under Act of 1894. We have come across instances in which after notifications under section 4 were issued and, the property was purchased at throwaway prices by the builders and unscrupulous persons, such purchases are void and confer no right even to claim higher compensation under Section 24(2) of the Act of 2013 as it is to be given to the owner as mentioned in the notification.

19. Given that, the transaction of sale, effected after section 4 notification, is void, is ineffective to transfer the land, such incumbents cannot invoke the provisions of section 24. As the sale transaction did not clothe them with the title when the purchase was made; they cannot claim 'possession' and challenge the acquisition as having lapsed under section 24 by questioning the legality or regularity of proceedings of taking over of possession under the Act of 1894. It would be unfair and profoundly unjust and against the policy of the law to permit such a person to claim resettlement or claim the land back as envisaged under the Act of 2013. When he has not been deprived of his livelihood but is a purchaser under a void transaction, the outcome of exploitative tactics played upon poor farmers who were unable to defend themselves.

20. Thus, under the provisions of Section 24 of the Act of 2013, challenge to acquisition proceeding of the taking over of possession under the Act of 1894 cannot be made, based on a void transaction nor declaration can be sought under section 24(2) by such incumbents to obtain the land. The declaration that acquisition has lapsed under the Act of 2013 is to get the property back whereas, the transaction once void, is always a void transaction, as no title can be acquired in the land as such no such declaration can be sought. It would not be legal, just and equitable to give the land back to purchaser as land was not capable of being sold which was in process of acquisition under the Act of 1894. The Act of 2013 does not confer any right on purchaser whose sale is ab initio void. Such void transactions are not validated under the Act of 2013. No rights are conferred by the provisions

contained in the 2013 Act on such a purchaser as against the State.

21. 'Void is, ab initio,' a nullity, is inoperative, and a person cannot claim the land or declaration once no title has been conferred upon him to claim that the land should be given back to him. A person cannot enforce and ripe fruits based on a void transaction to start claiming title and possession of the land by seeking a declaration under Section 24 of the Act of 2013; it will amount to conferment of benefit never contemplated by the law. The question is, who can claim declaration/rights under section 24(2) for the restoration of land or lapse of acquisition. It cannot be by a person with no title in the land. The provision of the Act of 2013 cannot be said to be enabling or authorizing a purchaser after Section 4 to question proceeding taken under the Act of 1894 of taking possession as held in U.P. Jal Nigam (*supra*) which is followed in M. Venkatesh (*supra*) and other decisions and consequently claim declaration under Section 24 of the Act of 2013. What cannot be done directly cannot be permitted in an indirect method.

22. The provisions of the Act of 2013 aimed at the acquisition of land with least disturbance to the landowners and other affected families and to provide just and fair compensation to affected families whose land has been acquired or proposed to be acquired or are affected and to make adequate provisions for such affected persons for their rehabilitation and resettlement. The provisions of Act of 2013 aim at ousting all intermeddlers from the fray by ensuring payment in the bank account of landholders under section 77 of the Act.

23. The intendment of Act of 2013 is to benefit farmers etc. Subsequent purchasers cannot be said to be landowners entitled to restoration of land and cannot be termed to be affected persons within the provisions of Act of 2013. It is not open to them to claim that the proceedings have lapsed under Section 24(2).

24. Apart from that the claims have been made on transactions based on the power of attorneys, agreements, etc.; as such also they are not entitled to any indulgence and cannot invoke provisions of section 24(2) of the 2013 Act. The Court has considered the question of the validity of transactions in the form of power of attorney in Suraj Lamp and Industries Pvt. Ltd. through Director v. State of Haryana & Anr. (2012) 1 SCC 656, and has held that no rights could be accrued on such transactions as this is not a legal mode of transfer. This Court has observed :

"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 a creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of the grantor, which when executed will be binding on the grantor as if done by him (see Section 1A 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 Nehata 2005 (12) SCC 77 this Court held:

"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 person. A deed of power of attorney is executed by the principal in favor of the agent. The agent derives a right to use his name and all acts, deeds, and things are 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.

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 done to act on his behalf. Except in cases where power of attorney is coupled with an interest, it is revocable. The done 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 done.

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

Scope of Will

14. A will is the testament of the testator. It is a posthumous disposition of the estate of the testator directing the distribution of his estate upon his death. It is not a transfer inter vivo. 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 be 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 Indian Succession Act, 1925). Registration of a will does not make it any more effective.

Conclusion

15. Therefore, a SA/GPA/WILL transaction does not convey any title nor create any interest in an immovable property. The observations by the Delhi High Court, in Asha M. Jain v. Canara Bank 94 (2001) DLT 841 that the "concept of power of attorney sales have been recognized as a mode of transaction"

when dealing with transactions by way of SA/GPA/WILL are unwarranted and not justified, unintended misleading the general public into thinking that SA/GPA/WILL transactions are some kind of a recognized or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognize or accept SA/GPA/WILL transactions as concluded

transfers, as contrasted from an agreement to transfer, are not good law.

16. 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 recognized 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 recognized as deeds of title, except to the limited extent of Section 53A of the Transfer of Property 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.

17. It has been submitted that making declaration that GPA sales and SA/GPA/WILL transfers are not legally valid modes of transfer is likely to create hardship to a large number of persons who have entered into such transactions, and they should be given sufficient time to regularize the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship." No right can be claimed based on a transfer made by way of execution of Power of Attorney, Will, etc., as it does not create any interest in immovable property.

25. In Manav Dharam Trust (supra), even the provisions of the Act of 2013 have not been taken into consideration, which prohibits such transactions in particular provisions of section 11, including the proviso to section 24(2). Apart from that, it was not legally permissible to a Division Bench to ignore the decisions of the larger Bench comprising of three Judges and of Co~~ord~~inate Bench. They were not per incuriam and were relevant for deciding the issue of taking possession under Act of 1894, at the instance of purchaser. In case it wanted to depart from the view taken earlier, it ought to have referred the matter to a larger bench. It has been ignored that when a purchase is void, then no declaration can be sought on the ground that the land acquisition under the Act of 2013 has lapsed due to illegality/irregularity of proceedings of taking possession under the Act of 1894. No declaration can be sought by a purchaser under Section 24 that acquisition has lapsed, effect of which would be to get back the land. They cannot seek declaration that acquisition made under the Act of 1894 has lapsed by the challenge to the proceedings of taking possession under the Act of 1894. Such right was not available after the purchase in 2000 and no such right has been provided to the purchasers under the Act of 2013 also. Granting a right to question acquisition would be against the public policy and the law which prohibits such transactions; it cannot be given effect to under the guise of subsequent legislation containing similar provisions. Subsequent legislation does not confer any new right to a person based on such void transaction; instead, it includes a provision prohibiting such transactions without permission of the Collector as provided in Section 11(4).

26. Thus, we have to follow the decisions including that of larger Bench mentioned above, laying down the law on the subject, which still holds the field and were wrongly distinguished. The binding value of the decision of larger and coordinate Benches have been ignored while deciding the Manav

Dharam Trust case (*supra*), it was not open to it to take a different view. The decision in *Manav Dharam Trust* (*supra*) is per incuriam in light of this decision of this Court in *Mamleshwar Prasad v. Kanahaiya Lal*, (1975) 2 SCC 232, *A.R. Anutulay v. R.S. Nayak*, (1988) 2 SCC 602, *State of Uttar Pradesh v. Synthetics and Chemicals Ltd.*, (1991) 4 SCC 139, *State of B. Shama Rao v. Union Territory of Pondicherry*, AIR 1967 SC 1480, *Municipal Corporation of Delhi v. Gurnam Kaur*, (1989) 1 SCC 101, *Narmada Bachao Andolan (III) v. State of Madhya Pradesh*, AIR 2011 SC 1989, *Hyder Consulting (UK) Ltd. v. State of Odisha*, (2015) 2 SCC 189 and *Sant Lal Gupta v. Modern Coop. Societies Ltd.* 2010 13 SCC 336.

27. We hold that Division Bench in *Manav Dharam Trust* (*supra*) does not lay down the law correctly. Given the several binding precedents which are available and the provisions of the Act of 2013, we cannot follow the decision in *Manav Dharam Trust* (*supra*) and overrule it. Shri S.N. Bhatt, learned counsel submitted that in case this Court does not agree with the *Manav Dharam Trust* (*supra*), the case may be referred to Hon'ble the Chief Justice of India under the provisions of Order VI Rule 2 of the Supreme Court Rules, 2013. He has relied upon the decision of this court in *Vineeta Sharma v. Rakesh Sharma* (2019) 6 SCC 162 in which, in view of the conflict of opinion of two Division Bench judgments of this Court as to the interpretation of section 6 of the Hindu Succession Act, 1956 the matter was referred to the Hon'ble the Chief Justice of India, for constituting an appropriate Bench. However, in the instant case, the issue is different, whether we have to follow the decision in *Manav Dharam Trust* (*supra*) or the earlier decisions of this Court mentioned above. It is apparent that the decisions of the Three Judges Bench are binding on us, and in view of other consistent decisions of this Court, we have to follow them. It is not appropriate to refer the case to larger Bench under Order VI Rule 2 of Supreme Court Rules. We find no fault in the Judgments laying down the law that the purchase after section 4 is void as against the State. We are not impressed with the submission raised on behalf of the purchasers to refer the matter for the constitution of a Larger Bench to the Hon'ble Chief Justice. When decisions of Larger Bench and other Division Bench are available, the case cannot be referred to a Larger Bench.

28. Concerning the illegal colony, averments have been made that the colony is an unauthorized and provisional order was passed to regularise it. The plea taken is contradictory and shows the falsity of the claim raised by the purchasers. That, apart predecessors of the purchaser obtained the land based on Power of Attorney, Agreement to Sell, and Will on 9.12.1982. As per averments made in the writ application, Bijender Singh, who was owning ½ share, sold the share to Satya Narain by the documents like Agreement to Sell, Power of Attorney, or Will. It has also been averred that Om Prakash sold the remaining ½ share to Satya Narain on 11.3.1984 by way of Agreement to Sale, Power of Attorney, or Will. The purchase made through Agreement to Sale, Power of Attorney, or Will by Satya Narain did not confer a title upon him to transfer it to the purchasers apart from the fact that it was void in view of purchase after Section 4. Based on purchase made from such owners whose title was not perfect, purchasers had no derivative title in the eye of law. There was no legally recognized title deed in favor of Satya Narain.

29. Resultantly, we hold that no interference is called for in the judgment and order passed by the High Court. Accordingly, the appeal is dismissed.

..... J.

(ARUN MISHRA) J.

(M.R. SHAH) J.

(B.R. GAVAI) NEW DELHI;

OCTOBER 14, 2019.