

Supreme Court of India

Govt. Of Nct Of Delhi vs Ravinder Kumar Jain on 18 May, 2023

Author: Abhay S. Oka

Bench: Abhay S. Oka, Rajesh Bindal

CA No. 3621/2023

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

Civil Appeal No.3621 of 2023

Government of NCT of Delhi

Versus

... Appellant

Ravinder Kumar Jain & Ors.

... Respondents

JUDGMENT

Rajesh Bindal, J.

1. Challenge in the present appeal is to the order passed by the High Court of Delhi in W.P.(C) No.6912 of 2014 vide which the writ petition filed by the respondent no.1 invoking Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as “the 2013 Act”) was allowed and it was held that the acquisition in question had lapsed for the reason that neither the possession of the land was taken nor the compensation therefor was paid. Signature Not Verified

2. Digitally signed by SNEHA DAS Date: 2023.05.18 The argument raised by the learned counsel 17:33:57 IST Reason:

appearing on behalf of the appellant is that the original owner CA No. 3621/2023 of the land challenged the acquisition by filing W.P.(C) No.1229 of 1986 which was dismissed for non-prosecution on 09.12.2004. The respondent No.1 claimed that he had purchased the land in question from the original owner in terms of the no objection certificate granted to him under Section 8 of the Delhi Lands (Restrictions on Transfer) Act, 1972 (hereinafter referred to as “the 1972 Act”), vide sale deed dated 18.06.2023. The respondent No.1 also filed writ petition challenging the acquisition, after the purchase of the land, bearing W.P.(C) No.3701 of 2008, which was dismissed on 22.10.2008 leaving it open to the respondent no.1 to file review/recall of the order dated 09.12.2004, vide which the writ petition filed by the original owner, challenging the acquisition of land, was dismissed. It was submitted that the aforesaid application was also dismissed. Referring to the judgment of this Court in Shiv Kumar and Ors. v. Union of India and Ors.1, it was submitted that a subsequent buyer of the land after the process of acquisition is complete does not have any locus to invoke Section 24(2) of the 2013 Act, to claim that the

acquisition in question has lapsed. Hence, the writ petition 1 2019 (10) SCC 229 CA No. 3621/2023 itself being not maintainable deserves to be dismissed. The order passed by the High Court be set aside.

3. On the other hand, learned counsel appearing on behalf of the respondent no.1 submitted that it is a case where neither the compensation has been paid nor the possession of the land has been taken. The respondent no.1 has already constructed his house on the land in question and living there for more than a decade. He is assessed to house tax, which is being paid regularly. At this stage, disturbing his possession will be quite harsh as he would be deprived of shelter on his head. He further submitted that the sale deed in the case was registered after due permission from the authorities under the provisions of the 1972 Act. Hence, at this stage, he should not be deprived of his possession. The appeal be dismissed.

4. Heard learned counsel for the parties and perused the paper book.

5. The basic facts which are not in dispute are that the process of acquisition of land in question started with the issuance of notification of Section 4 of the 1894 Act on 25.11.1980. Subsequently, notification under Section 6 was issued on 27.05.1985. The owner of the land at that stage CA No. 3621/2023 challenged the acquisition by filing W.P.(C) No.1229 of 1986.

Award under Section 11 of the 1894 Act was announced by the Land Acquisition Collector on 05.06.1987. The writ petition was dismissed for non-prosecution on 09.12.2004. The High Court also recorded that the issue raised in the petition is otherwise also covered by various judgments.

6. The respondent no.1, Ravinder Kumar Jain had purchased the land in question vide registered sale deed dated 18.06.2003. The fact that he had knowledge about the acquisition of land, is evident from two facts. Firstly, that it was sought to be pointed out by the learned counsel appearing on behalf of the respondent no. 1 that he had obtained permission from the competent authority in terms of the provisions of the 1972 Act for transfer of the land, which had already been acquired. Though, in para 13 of the sale deed a vague averment has been made in that regard, however, no such certificate was produced. Even production thereof may not be of any help to the respondent no. 1. Secondly, the writ petition was filed by the respondent no. 1 bearing W.P.(C) No.3701 of 2008 challenging the acquisition proceedings. The same was dismissed as withdrawn on 22.10.2008 with liberty to the CA No. 3621/2023 petitioner therein to avail of the remedy of review/ recall of the order dated 09.12.2004 vide which the writ petition filed by the predecessor in interest of the respondent no.1, challenging the acquisition, was dismissed for non-prosecution. It is the admitted position that an application filed by the respondent No.1 for reviewing/ recalling was dismissed.

7. As regards the locus of a subsequent purchaser to invoke Section 24(2) of the 2013 Act to claim that the acquisition had lapsed, the law is well settled. The three Judge Bench of this Court in Shiv Kumar (supra) while deciding the point in law has held as follows:

“18. Even otherwise, proviso to Section 24(2) does not recognise 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 landholdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition issued under the 1894 Act, shall be entitled to compensation under the provisions of the 2013 Act. The proviso makes it clear that in case of compensation concerning the majority of landholdings has not been deposited, then CA No. 3621/2023 recorded owner(s) at the time of issuance of notification under Section 4 of the 1894 Act 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 2013 Act.

19. The 2013 Act 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 1894 Act, cannot claim rehabilitation and resettlement as per policy envisaged under the 2013 Act, 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 2013 Act. An original landowner cannot be deprived of higher value under the 2013 Act, which higher compensation was not so contemplated when the void transaction of sale had been entered, and right is conferred under the proviso to Section 24(2) on recorded owners under the 1894 Act. 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 CA No. 3621/2023 and confer no right even to claim higher compensation under Section 24(2) of the 2013 Act as it is to be given to the owner as mentioned in the notification.

20. 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 1894 Act. 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 2013 Act. 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.

21. Thus, under the provisions of Section 24 of the 2013 Act, challenge to acquisition proceeding of the taking over of possession under the 1894 Act cannot be made, based on a void transaction nor declaration can be sought under Section 24(2) by CA No. 3621/2023 such incumbents to obtain the land. The declaration that acquisition has lapsed under the 2013 Act 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 1894 Act. The 2013 Act does not confer any right on purchaser whose sale is ab initio void. Such void transactions are not validated under the 2013 Act. No rights are conferred by the provisions contained in the 2013 Act on such a purchaser as against the State.

22. “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 2013 Act; 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 CA No. 3621/2023 be by a person with no title in the land. The provision of the 2013 Act cannot be said to be enabling or authorising a purchaser after Section 4 to question proceeding taken under the Act of 1894 of taking possession as held in U.P. Jal Nigam [U.P. Jal Nigam v. Kalra Properties (P) Ltd., (1996) 3 SCC 124] which is followed in M. Venkatesh [M. Venkatesh v. BDA, (2015) 17 SCC 1 : (2017) 5 SCC (Civ) 387] and other decisions and consequently claim declaration under Section 24 of the 2013 Act. What cannot be done directly cannot be permitted in an indirect method.

23. The provisions of the 2013 Act 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 the 2013 Act aim at ousting all inter-meddlers from the fray by ensuring payment in the bank account of landholders under Section 77 of the Act.

24. The intendment of the 2013 Act is to benefit farmers, etc. Subsequent purchasers cannot be said to be landowners entitled to restoration of CA No. 3621/2023 land and cannot be termed to be affected persons within the provisions of the 2013 Act. It is not open to them to claim that the proceedings have lapsed under Section 24(2).”

26. In Manav Dharam Trust [State (NCT of Delhi) v. Manav Dharam Trust, (2017) 6 SCC 751 : (2017) 3 SCC (Civ) 611] , 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 coordinate Bench. They were not per incuriam and were relevant for deciding the issue of taking possession under the 1894 Act, 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 2013 Act has lapsed due to illegality/irregularity of proceedings of taking possession under the 1894 Act. 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 1894 Act has CA No. 3621/2023 lapsed by the challenge to the proceedings of taking possession under the 1894 Act. Such right was not available after the purchase in 2000 and no such right has been provided to the purchasers under the 2013 Act 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).

27. 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 decisions of larger and coordinate Benches have been ignored while deciding Manav Dharam Trust case [State (NCT of Delhi) v. Manav Dharam Trust, (2017) 6 SCC 751 : (2017) 3 SCC (Civ) 611], it was not open to it to take a different view. The decision in Manav Dharam Trust [State (NCT of Delhi) v. Manav Dharam Trust, (2017) 6 SCC 751 : (2017) 3 SCC (Civ) 611] is per incuriam in light of this decision of this Court in Mamleshwar Prasad v. Kanhaiya Lal CA No. 3621/2023 [Mamleshwar Prasad v. Kanhaiya Lal, (1975) 2 SCC 232], A.R. Antulay v. R.S. Nayak [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372], State of U.P. v. Synthetics and Chemicals Ltd. [State of U.P. v. Synthetics and Chemicals Ltd., (1991) 4 SCC 139], B. Shama Rao v. State (UT of Pondicherry) [B. Shama Rao v. State (UT of Pondicherry), AIR 1967 SC 1480], MCD v. Gurnam Kaur [MCD v. Gurnam Kaur, (1989) 1 SCC 101], State of M.P. v. Narmada Bachao Andolan [State of M.P. v. Narmada Bachao Andolan, (2011) 7 SCC 639 : (2011) 3 SCC (Civ) 875 : AIR 2011 SC 1989], Hyder Consulting (UK) Ltd. v. State of Orissa [Hyder Consulting (UK) Ltd. v. State of Orissa, (2015) 2 SCC 189 : (2015) 2 SCC (Civ) 38] and Sant Lal Gupta v. Modern Coop. Group Housing Society Ltd. [Sant Lal Gupta v. Modern Coop. Group Housing Society Ltd., (2010) 13 SCC 336 : (2010) 4 SCC (Civ) 904]

28. We hold that Division Bench in Manav Dharam Trust [State (NCT of Delhi) v. Manav Dharam Trust, (2017) 6 SCC 751 : (2017) 3 SCC (Civ) 611] does not lay down the law correctly. Given the several binding precedents which are available and the provisions of the 2013 Act, we cannot follow the decision in Manav Dharam Trust [State (NCT of Delhi) v. Manav Dharam Trust, (2017) 6 SCC 751 : (2017) 3 SCC (Civ) 611] and overrule it. Shri S.N. Bhatt, learned counsel submitted that in case this Court CA No. 3621/2023 does not agree with the Manav Dharam Trust [State (NCT of Delhi) v. Manav Dharam Trust, (2017) 6 SCC 751 : (2017) 3 SCC (Civ) 611], the case may be referred to the Hon'ble the Chief Justice of India under the provisions of Order 6 Rule 2 of the Supreme Court Rules, 2013. He has relied upon the decision of this Court in Vineeta Sharma v. Rakesh Sharma [Vineeta Sharma v. Rakesh Sharma, (2019) 6 SCC 162 : (2019) 3 SCC (Civ) 171] in which, in view of the conflict of opinion of two Division Bench judgments [Prakash v. Phulavati, (2016) 2 SCC 36 : (2016) 1 SCC (Civ) 549], [Danamma v. Amar, (2018) 3 SCC 343 : (2018) 2 SCC (Civ) 385] 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 [State (NCT of Delhi) v. Manav Dharam Trust, (2017) 6 SCC 751 : (2017) 3 SCC (Civ) 611] or the earlier decisions of this Court mentioned above. It is apparent that the decisions of the three-Judge 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 6 Rule 2 of the Supreme Court Rules. We find no fault in the judgments laying down the law that the purchase after Section 4 CA No. 3621/2023 notification 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 the Chief Justice. When decisions of larger Bench and other Division Bench are available, the case cannot be referred to a larger Bench.” (emphasis supplied)

8. The earlier judgment of this Court in State (NCT of Delhi) v. Manav Dharma Trust<sup>2</sup> was held to be not laying down good law.

9. Subsequent thereto, Constitution Bench of this Court in Indore Development Authority v. Manoharlal and Others<sup>3</sup> had reiterated the same legal position that a subsequent buyer of the property after issuance of the notification under Section 4 of the 1894 Act has no locus to invoke Section 24(2) of the 2013 Act. Reference can be made to the relevant paragraph of the judgement.

“340. .... The beneficiaries i.e. landowners contemplated under the proviso to Section 24(2), are the ones who were so recorded as 2 (2017) 6 SCC 751 3 2020 SCC OnLine SC 316 CA No. 3621/2023 beneficiaries as on the date of issuance of notification under Section 4 of the 1894 Act. The provision is not meant to be invoked on the basis of void transactions, and by the persons who have purchased on the basis of power of attorney or otherwise, they cannot claim the benefit under Section 24 as is apparent from the proviso to Section 24(2) and the decision in Shiv Kumar v. Union of India”.

(emphasis supplied)

10. In the case in hand it is the admitted position on record that notification under Section 4 of 1894 Act was issued on 25.11.1980 and the sale deed in favour of the respondent no. 1 was registered on 18.6.2003. Rather it is evident from the affidavit filed by the Land Acquisition Collector in the High Court that the respondent no.1 purchased the land from Behl Brothers vide registered sale deed dated 18.06.2003, who had purchased the same from M/s. Ansal Housing and Estates (P) Ltd. vide sale deed dated 09.06.1981, which itself was after the issuance of notification under Section 4 of the 1894 Act on 25.11.1980. Hence, the respondent will not have right to invoke jurisdiction of the High Court to claim that the CA No. 3621/2023 acquisition in question had lapsed in view of Section 24(2) of the 2013 Act.

11. For the aforementioned reasons, the appeal is allowed. The impugned order passed by the High Court is set aside and the writ petition filed by the respondent No.1 in the High Court is dismissed.

\_\_\_\_\_, J.

(Abhay S. Oka) \_\_\_\_\_, J.

(Rajesh Bindal) New Delhi May 18, 2023.

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