

Supreme Court of India

Delhi Development Authority vs Anita Singh on 1 May, 2023

Author: Abhay S. Oka

Bench: Abhay S. Oka, Rajesh Bindal

Civil Appeal No.2994/2023

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 2994 of 2023

Delhi Development Authority

... Appellant

Versus

Anita Singh & Ors.

... Respondents

JUDGMENT

Rajesh Bindal, J.

1. The order dated 22.08.2017 passed by the High Court of Delhi in Writ Petition (C) No.5339/2016 has been impugned before this Court. Vide aforesaid order, 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 its Signature Not Verified Digitally signed by Indu Marwah was opined that acquisition in question has lapsed. Date: 2023.05.01 16:52:28 IST Reason:

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2. The facts of the case as are available on record are that the Respondent no.1 had filed a writ petition stating that she had purchased 100 square yards bearing Khasra No.140/9/1 situated in the Revenue Estate of Village Dichaun Kalan Delhi by virtue of sale deed dated 04.03.2005. The said land was subject matter of acquisition. A Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as “the 1894 Act”) was issued on 07.04.2006 which was followed by a Notification under Section 6 of the 1894 on 04.04.2007. The Award was announced by the Land Acquisition Collector on 30.12.2008 under Section 11 of the 1894 Act.

3. The writ petition was filed in the year 2016 invoking Section 24(2) of the 2013 Act claiming that neither the compensation has been paid to the Respondent no.1 nor the possession of the land had been taken by the acquiring authority, hence, the acquisition lapsed.

4. The stand taken by the Land Acquisition Collector in the counter affidavit filed before the High Court was that the possession of the acquired land was taken on 10.02.2012 except 3 biswas of land on which certain structure had been build up. The Respondent no.1 not being the recorded owner of Civil Appeal No.2994/2023 land, the compensation for the land, including the cases where there was dispute regarding ownership, was deposited with the Reference Court on 27.12.2013.

5. The High Court found that one of the conditions laid down in Section 24(2) of the 2013 Act having not been complied with regarding payment of compensation to the Respondent no.1, the acquisition has lapsed.

6. The learned counsel for the appellant submitted that in view of the Constitution Bench judgment of this Court in Indore Development Authority v. Manoharlal and Others¹, whereby the earlier judgment of this Court in Pune Municipal Corporation & Anr. v. Misirimal Solanki & Ors.² was overruled. The order passed by the High Court cannot be legally sustained. 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 sufficient to sustain the acquisition. In the case in hand, it is the admitted case of the Respondent no.1 that she was not the recorded owner of the land though she claimed that the plot in question was purchased by her vide sale deed dated 1 (2020) 8 SCC 129 2 (2014) 3 SCC 183 Civil Appeal No.2994/2023 04.03.2005. The land is being utilized by the Government for construction of 100 Meter wide Road, under Planned Development of Delhi. The land is required for UER-II, which is connecting NH-1, NH-10 and NH-8 further connecting it to NH-2. The said project is of great public importance and has to be completed before 15 August 2023 in light of Amrit Mahotsav (75 years of Independence). This will help in de-congestion of Delhi and provide better connectivity to the public. As there was dispute regarding ownership, the amount of compensation was deposited with the Reference Court on 27.12.2013. The same will amount to tendering the compensation as in case of dispute of ownerships it could not have been paid to anyone.

Learned counsel for the appellant further submitted that the Respondent no.1 herself had filed application on 06.05.2009 before the Land Acquisition Collector for release of compensation. She clearly stated therein that though she is not the recorded owner of the land, as she had purchased the same through general power of attorney, the compensation should not be paid to the recorded owner of the plot. This was admission on the part of the Respondent no.1 that she had Civil Appeal No.2994/2023 knowledge about acquisition of land. The order passed by the High Court is liable to be set aside.

7. Heard learned counsel for the parties and perused the paper books.

8. The Constitution Bench of this Court in Indore Development Authority's case (supra) has 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 1-1-

Civil Appeal No.2994/2023 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 Civil Appeal No.2994/2023 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 Civil Appeal No.2994/2023 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 1-1-2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

Civil Appeal No.2994/2023 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. 1-1-2014. 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.”

9. It is the admitted case of Respondent no.1 that she was not the recorded owner of the land at the time of issuance of Notification under Section 4 of 1894 Act or even at the time of the passing of the Award. This is even mentioned in the application dated 06.05.2009 filed by her to the Land Acquisition Collector for release of compensation. This establishes knowledge of acquisition and passing of award. On account of fact that there was dispute of ownership, the amount of compensation was deposited by the Land Acquisition Collector with the Reference Court under Section 30/31 of the 1894 Act. On the issue of deposit of compensation with the Reference Court, the position of law has been settled in Indore Civil Appeal No.2994/2023 Development Authority’s case (supra). Paras 117, 118 and 119 thereof, which are extracted below:

“117. Payment of compensation under the 1894 Act is provided for by Section 31 of the Act, which is to be after passing of the award under Section 11. The exception, is in case of urgency under Section 17, is where it has to be tendered before taking possession. Once an award has been passed, the Collector is bound to tender the payment of compensation to the persons interested entitled to it, as found in the award and shall pay it to them unless “prevented” by the contingencies mentioned in sub-section (2) of Section 31. Section 31(3) contains a non obstante clause which authorises the Collector with the sanction of the appropriate Government, in the interest of the majority, by the grant of other lands in exchange, the remission of land revenue on other lands or in such other way as may be equitable.

118. Section 31(1) enacts that the Collector has to tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay such amount to a person interested in the land, unless he (the Collector) is prevented from Civil Appeal No.2994/2023 doing so, for any of the three contingencies provided by sub-section (2). Section 31(2) provides for deposit of compensation in court in case the State is prevented from making payment in the event of:

- (i) refusal to receive it;
- (ii) if there be no person competent to alienate the land;
- (iii) if there is any dispute as to the title to receive the compensation; or
- (iv) if there is dispute as to the apportionment.

In such exigencies, the Collector shall deposit the amount of the compensation in the court to which a reference under Section 18 would be submitted.

119. Section 34 deals with a situation where any of the obligations under Section 31 is not fulfilled i.e. when the amount of compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon @ 9% p.a. from the time of so taking possession until it shall have been so paid or deposited; and after one year from the date on which possession is taken, interest payable shall be @ 15% p.a. The scheme of the 1894 Act clearly makes it out that when the award is passed under Section 11, thereafter possession is taken as provided under Section 16, land vests in the State Government. Under Civil Appeal No.2994/2023 Section 12(2), a notice of the award has to be issued by the Collector. Taking possession is not dependent upon payment. Payment has to be tendered under Section 31 unless the Collector is “prevented from making payment”, as provided under Section 31(2). In case of failure under Section 31(1) or 31(3), also Collector is not precluded from making payment, but it carries interest under Section 34 @ 9% for the first year from the date it ought to have been paid or deposited and thereafter @ 15%. Thus, once land has been vested in the State under Section 16, in case of failure to pay the compensation under Section 31(1) or to deposit under Section 31(2), compensation has to be paid along with interest, and due to non-compliance of Section 31, there is no lapse of acquisition. The same spirit has been carried forward in the 2013 Act by providing in Section 24(2). Once possession has been taken though the payment has not been made, the compensation has to be paid along with interest as envisaged under Section 34, and in a case, payment has been made, possession has not been taken, there is no lapse under Section 24(2). In a case where possession has been taken under the 1894 Act as provided by Section 16 or 17(1) the land vests absolutely in the State, free from all encumbrances, if compensation is not Civil Appeal No.2994/2023 paid, there is no divesting there will be no lapse as compensation carries interest @ 9% or @ 15% as envisaged under Section 34 of the 1894 Act. The proviso to Section 24(2) makes some wholesome provision in case the amount has not been deposited with respect to majority of landholdings, in such an event, not only those persons but all the beneficiaries, though for minority of holding compensation has been paid, shall be entitled to higher compensation in accordance with the provisions of the 2013

Act. The expression used is “all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act” i.e. the 1894 Act, means that the persons who are to be paid higher compensation are those who have been recorded as beneficiaries as on the date of notification under Section 4. The proviso gives effect to, and furthers the principle that under the 1894 Act, the purchases made after issuance of notification under Section 4 are void. As such, the benefit of higher compensation under the proviso to Section 24(2) is intended to be given to the beneficiaries mentioned in the notification under Section 4 of the 1894 Act.” (emphasis supplied)
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10. Further, with reference to Section 24(2) of the 2013 Act, the position is summed up in para 208 of Indore Development Authority’s case (supra), which is extracted below:

“208. In our opinion, when amount has been tendered, the obligation has been fulfilled by the Collector. Landowners cannot be forced to receive it. In case a person has not accepted the amount wants to take the advantage of non-payment, though the amount has remained (sic unpaid) due to his own act. It is not open to him to contend that the amount has not been paid to him, as such, there should be lapse of the proceedings. Even in a case when offer for payment has been made but not deposited, liability to pay amount along with interest subsist and if not deposited for majority of holding, for that adequate provisions have been given in the proviso also to Section 24(2). The scheme of the 2013 Act in Sections 77 and 80 is also the same as that provided in Sections 31 and 34 of the 1894 Act.” (emphasis supplied)

11. The issue as to what is meant by "possession of the land by the State after its acquisition" has also been considered Civil Appeal No.2994/2023 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 Civil Appeal No.2994/2023 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 Civil Appeal No.2994/2023 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 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 Civil Appeal No.2994/2023 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)

12. As per the stand taken by the appellant, the land in question is being utilised for UER-II, which is connecting NH-1, NH-10 and NH-8 further connecting it to NH-2. The said project is of great public importance and has to be completed before 15.08.2023 in light of Amrit Mahotsav (75 years of Independence). This will help in de-congestion of Delhi.

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13. From the facts as are available on record, it is evident that Respondent no.1 was admittedly not the recorded owner of the land at time of acquisition thereof or pronouncement of Award by the Land Acquisition Collector. The amount of compensation was deposited with the Reference Court in term of Section 30/31 of the 1894 Act as the same could not be paid to Respondent no.1. Hence, one of the conditions being satisfied, in our view the order passed by the High Court cannot be legally sustained whereby the acquisition has been held to have lapsed in terms of Section 24(2) of the 2013 Act.

14. The appeal is accordingly allowed and the impugned order passed by the High Court is set aside. 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 01, 2023.

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