

M/S. COMPETENT AUTOMOBILES CO. LTD.

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v.

UNION OF INDIA & ORS.

(Civil Appeal No. 5054 of 2008)

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FEBRUARY 26, 2015

[VIKRAMAJIT SEN AND PRAFULLA C. PANT, JJ.]

Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013: s.24(2) – Declaration of lapse of acquisition u/s.24(2) – In these appeals, questions whether award u/s.11 of LA Act, 1894 was passed on or before 1.1.2009; that compensation was not paid or possession was not taken over by the acquirer were not answered – If the award is over 5 years old; the compensation has not been paid; or possession of the land has not been taken, the acquisition is liable to be quashed – In all these appeals, submission of land owners was that either possession was still with them or compensation was not tendered by the State, consequently the land owners proposed to initiate proceedings founded on s.24 of 2013 Act – Appeal is disposed of without entering into merits by granting liberty to the land owners to pray for revival of the appeals in the event that orders u/s.24 of 2013 Act are adverse to their interest – Land owners are permitted to initiate appropriate proceedings in the proper forum/court seeking the benefit of s.24 of 2013 Act – Land Acquisition Act, 1894.

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Pune Municipal Corporation v. Harakchand Misrimal Solanki (2014) 3 SCC 183; 2014 (1) SCR 783; Union of

- A *India v. Shiv Raj* (2014) 6 SCC 564; *Bimla Devi v. State of Haryana* (2014) 6 SCC 583 – relied on.

Case Law Reference

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| B | 2014 (1) SCR 783 | relied on. | Para 4 |
| | (2014) 6 SCC 564 | relied on. | Para 4 |
| | (2014) 6 SCC 583 | relied on. | Para 4 |

- C CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5054 of 2008.

- D From the Judgment and Order dated 25.08.2005 of the High Court of Delhi at New Delhi in W. P. (C) No. 4703 of 2002.

with

- E C. A. Nos. 5050, 5051, 5052, 5053, 5100, 5101-5104, 5105-5124, 5125, 5127-5129, 5283 of 2008, 3278, 3279 and 3280 of 2012.

- F Dhruv Mehta, K. Radhakrishnan, Sanjay Poddar, Yashraj Singh Deora, Sapna Sinha, Anupam Dhurve, Chandra Bhushan Prasad, M. A. Chinnasamy, Manoj Swarup, Som Dutt Sharma, Ajay Kumar, Ashish Wad (for J. S. Wad & Co.), P. S. Sudheer, Sudhir Kumar Gupta, Dushyant Parashar, Surya Kant, Shankar Divate, Vijay K. Jain, Kaveeta Wadia, Shanshak Tripathi, Surya Kant, Indra Sawhney, Kiran Bhardwaj, Sushma Suri, P. Parameswaran, V. K. Verma, Rachna Srivastava, Utkarsh Sharma, Govind Kumar, Anshuman Nayak, Vishnu B. Saharya, Viresh B. Saharya (for Saharya & Co.), for the appearing parties.

- H The Order of the Court was delivered by

VIKRAMAJIT SEN, J. 1. All of these Appeals were admitted before the commencement of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013. After commencement thereof, the Appellants changed the tack of their challenge – originally framed under the Land Acquisition Act, 1894 - and impugned the acquisition proceedings *in toto*, by evoking the deemed lapse of proceedings under Section 24(2) of the 2013 Act. Any determination under this provision must proceed sequentially. First, the factum of an Award under Section 11 of the Land Acquisition Act, 1894, must be clearly established. The said Award must predate the commencement of the Act, i.e., 01.01.2014., by at least five years (or more), i.e., the Award must have been passed on or before 01.01.2009. This having been established, if possession is found to not have been taken, or compensation not paid, then the proceedings shall be deemed to have lapsed. Thereafter, the appropriate Government, if it so chooses, may reinitiate acquisition proceedings in respect of the same land, but under the 2013 Act's regime.

2. Each and every deeming operation under Section 24(2) requires unambiguously and unvaryingly that a factual conclusion be drawn about the passing of the Award under Section 11, of the 1894 Act, on or before 01.01.2009; further, the absence of compensation having been paid or the absence of possession having been taken by the acquirer, either of these, must be a proven point of fact, as a threshold requirement attracting the lapse.

3. From the record, these Appeals do not unambiguously answer these indispensable queries, which inarguably must precede any declaration of lapse of

A acquisition under Section 24(2). Each of these Appeals must factually satisfy this Court on the ingredients of Section 24(2), before this Court may pass a declaration in recognition of the statutory lapse of acquisition.

B 4. This Court has in a number of decisions including Pune Municipal Corporation vs. Harakchand Misirimal Solanki (2014) 3 SCC 183, Union of India vs. Shiv Raj (2014) 6 SCC 564 and Bimla Devi vs. State of Haryana (2014) 6 SCC 583, clarified the manner in which the new provision is to be interpreted viz., that the acquisition lapses.

D 5. It has been contended in other Appeals before this Court that the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Settlement Ordinance, 2014, issued on 31st December, 2014, clarifies that if possession of the acquired land has not been taken owing to interim Orders passed in this regard the acquisition may be protected and insulated from the purpose and intendment of Section 24 of the 2013 Act.

E This Court has now clarified in Radiance Fincap (P) Ltd. v. Union of India & Ors. [Civil Appeal No. 4283 of 2011 decided on 12.01.2015] that the Ordinance shall have prospective operation only. This Court therein held as under:

F "The right conferred to the land holders/owners of the acquired land under Section 24(2) of the Act is the statutory right and, therefore, the said right cannot be taken away by an Ordinance by inserting proviso to the abovesaid sub-Section without giving retrospective effect to the same."

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H The legal position has been subsequently reiterated by this Court in Arvind Bansal v. State of Haryana (Civil Appeal Nos.417-418 of 2015 decided on 13.01.2015) and Karnail Kaur v. State of Punjab [Civil Appeal No. 7424 of 2013

decided on 22.01.2015]. We are in respectful agreement with all these decisions. In the event that there is no ambiguity that (a) the Award is over five years old and (b) that compensation has not been paid or (c) that possession of the land has not been taken, the acquisition is liable to be quashed. In *Rajiv Chowdhrie HUF v. Union of India* [Civil Appeal No.8786 of 2013, decided on 06.02.2015], noting that the physical possession of the land had not been taken by the Respondents, nor compensation paid by the Respondents to the Appellant in respect whereof the Award was passed on 6.08.2007, the acquisition proceedings had been declared as having lapsed. The same position was arrived at in *Rajiv Chowdhrie HUF v. Union of India* in Civil Appeal No.8785 of 2013 decided on 10.12.2014 by a different Bench of this Court.

5. In all these Appeals, the submission of the land owners is that either possession is still with them, or compensation has not been tendered by the State. Consequently, the land owners propose to initiate proceedings founded on Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the 2013 Act').

6. Having heard all the learned counsel, we are persuaded to dispose of these proceedings, without entering on the merits, by granting liberty to the land owners before us to pray for the revival of the Appeals in the event that Orders under Section 24 of the 2013 Act are adverse to their interest. We, therefore, permit the land owners to initiate appropriate proceedings in the proper forum/court, seeking the benefit of Section 24 of the 2013 Act, within eight weeks from today. We clarify that, in the event that any land owners have already approached the High Court

- A concerned, their plea under Section 24 of the 2013 Act shall be decided on merits.

7. It is in these circumstances that all these Appeals are disposed of with liberty to the parties to revive these Appeals in the event that the Orders under Section 24 of the 2013 Act are seen as adverse to their interest. Interim protection, if already granted, shall continue for a period of 90 days from today.

8. It is further clarified that the parties desirous of reviving the Appeal must approach this Court within 90 days of the passing of the High Court's orders.

9. The Appeals stand disposed of with the aforesaid observations and directions.

Devika Gujral

Appeals disposed of.