

DELHI DEVELOPMENT AUTHORITY

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v.

KUSHAM JAIN AND ANOTHER

(Civil Appeal No. 8477 of 2016)

AUGUST 31, 2016

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[KURIAN JOSEPH AND R.F NARIMAN, JJ.]

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – s.24(2) – Lapse of land acquisition proceedings under the 1894 Act – Deeming provision – Acquisition of respondent's land in 1986 – Compensation not paid to the land owner but deposited in Court in December, 2013 – Apparently, no case for contingency as contemplated u/s. 31(2) of the 1894 Act compelling the said deposit made out – Held: Such deposit in Court cannot be treated as a payment of compensation to land owners for the purpose of s.24(2) of the 2013 Act – Payment of compensation/deposit in Court has to be made as per the provisions under the 1894 Act and in no other way – The payment/deposit admittedly having not been made in terms of the 1894 Act, the deeming provision of lapse u/s. 24(2) of the 2013 Act would operate – However, in peculiar facts and circumstances of the case, appellant given a period of one year to initiate fresh steps for acquisition of the subject land – Land Acquisition Act, 1894 – s.31(2).

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Dismissing the appeal, the Court

HELD: 1. In terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in the event either the possession not being taken 5 years prior to 1.1.2014, or the compensation not paid to the land owners as on 1.1.2014, the acquisition proceedings shall be deemed to have lapsed. [Para 5] [753-F]

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2. The question of deposit in Court arises only in the event of a contingency as provided under Section 31(2) of the Land Acquisition Act, 1894. There is no case for the appellant that any of the contingencies enumerated in Section 31(2) of Land Acquisition Act, 1894 had arisen compelling the Land Acquisition

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- A Collector for depositing the amount of compensation in Court. What was deposited in Court in the year 2013 was the amount in terms of the Award passed in the year 1986, without any interest as provided under the Act for the intervening period. In any case, such deposit in Court which is not contemplated or permitted under Land Acquisition Act, 1894 cannot be treated as a payment of compensation to land owners for the purpose of Section 24(2) of the 2013 Act. The payment of compensation/deposit in court has to be made as per the provisions under the 1894 Act, and, in no other way. The payment or deposit having not admittedly been done in terms of the 1894 Act, the deeming provision on lapse under Section 24(2) of the 2013 Act has to operate. [Paras 6, 7] [754-B, F-H; 755-A-B]**

Pune Municipal Corporation and Anr. v. Harakchand Misirimal Solanki and Ors. (2014) 3 SCC 183 : 2014 (1) SCR 783 – followed.

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Case Law Reference

2014 (1) SCR 783 followed Para 7

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8477 of 2016.

- E From the Judgment and Order dated 10.11.2014 of the High Court of Delhi at New Delhi in W. P. (C) No. 4232 of 2014.**

Amerendra Sharan, Sr. Adv., Vishnu B. Saharya, Viresh B. Saharya, (For M/s. Saharya & Co.), Ms. Binu Tamta, Advs. for the Appellant.

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Ms. Pinky Anand, ASG., Ajit Kumar Sinha, Sr. Adv., Ms. Alka Agrawal, Vijay Prakash, A. Deb Kumar, Sudhakar Dwivedi, Ms. Soumya Ratore, Karan Seth, Rajesh Ranjan, D. S. Mahra, Kedar Nath Tripathy, Ms. Rachana Srivastava, Advs. for the Respondents.

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The Judgment of the Court was delivered by

KURIAN, J. 1. Leave granted.

2. The appellant is aggrieved by the judgment dated 10.11.2014 passed by the High Court of Delhi in Writ Petition (Civil) No. 4232 of 2014. The High Court has granted a declaration that the land acquisition proceedings culminating in the Award dated 19.9.1986 in respect of 1

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bigha 4 biswas of land in Khasra No. 89/23/2 in village Palam, New Delhi has lapsed. At paragraph 2 of the judgment, the admitted position of non payment of compensation has been recorded by the High Court. Paragraph 2 of the judgment reads as under :- A

“2. Though the respondents claimed that possession of the said land was taken on 04.01.2002, the petitioner disputes this and maintains that physical possession has not been taken. However, insofar as the issue of compensation is concerned, it is an admitted position that it has not been paid.” B

3. Shri Amrendra Sharan, learned senior counsel appearing for the appellant-Delhi Development Authority submits that the requisitioning authority had already paid the amounts to the Land Acquisition Collector and the appellant may not be visited with adverse consequences for the delay, if any, on the part of the Land Acquisition Collector in disbursing the amount. Shri Sharan submits that in any case, the payment has been made prior to 1.1.2014, the date on which the 2013 Act came into force, by depositing the same in Court in December, 2013. C D

4. We are afraid that the above submissions cannot be appreciated. Even going by the list of dates as given in the SLP paper book, it is only on 22.2.2002, the appellant had made the payment of Rs.1,60,000,00,00/- (rupees on hundred and sixty crores only) to the Land Acquisition Collector on account of compensation to be paid to the land owners. The Award was passed in the year 1986, and the possession, even according to the appellant had been taken on 04.01.2002 but the payment to the Land Acquisition Collector was made only on 22.2.2002. E

5. Be that as it may, in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short, the Act), in the event either the possession not being taken 5 years prior to 1.1.2014, or the compensation not paid to the land owners as on 1.1.2014, the acquisition proceedings shall be deemed to have lapsed. The question of depositing in treasury even according to the Standing Orders arises only in case the land owner does not receive the same when the Award is passed, or when the land owner does not turn up despite notice for receipt of the amount, or in the event of any inter se dispute. There is no case for the appellant that there was any offer of payment of money at the time of passing the Award. There is also no case for the appellant that after the Award, notice was issued to the land owners requesting them to receive the F G H

- A compensation. There is also no case that any effort was taken by the Land Acquisition Collector, in terms of the Standing Orders for disbursing the compensation to the land owners. Only in the above-mentioned circumstances, the Standing Orders contemplate deposit in treasury.

- B 6. The question of deposit in Court arises only in the event of a contingency as provided under Section 31(2) of the Land Acquisition Act, 1894. Section 31(2) of the Act reads as under:-

“31. Payment of compensation or deposit of same in Court.-

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- C (2). If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of compensation in the Court to which a reference under Section 18 would be submitted.

- D Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

- E Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.”

- F 7. There is no case for the appellant that any of such contingencies had arisen compelling the Land Acquisition Collector for depositing the amount of compensation in Court. Quite strangely, what is deposited in Court in the year 2013 is the amount in terms of the Award passed in the year 1986, without any interest as provided under the Act for the intervening period. Had there been a deposit in 1986, the land owner could have sought for an investment of the money in interest bearing deposits or other approved securities, as per Section 33 of the 1894 Act. In any case, such deposit in Court which is not contemplated or permitted under Land Acquisition Act, 1894 cannot be treated as a payment of compensation to land owners for the purpose of Section 24(2) of the 2013 Act. The payment of compensation/deposit in court has to be made
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as per the provisions under the 1894 Act, and, in no other way, as held by this Court in *Pune Municipal Corporation and Anr. Versus Harakchand Misirimal Solanki and Ors.* reported in (2014) 3 SCC 183. The payment or deposit having not admittedly been done in terms of the 1894 Act, the deeming provision on lapse under Section 24(2) of the 2013 Act has to operate. A

8. Shri Sharan submits that the possession having been taken long back and in some cases, since various developments have also taken place, the appellant – Delhi Development Authority and third parties will be visited with very serious consequences. B

9. We do not find any substance in the above submission as well. Section 24(2) itself has given sufficient protection in such cases. In the event of any lapsing of the acquisition proceedings under Section 24(2), it is open to the appropriate Government, if they choose so, to initiate proceedings for acquisition of such land afresh but the only rider is that the acquisition should be in accordance with the provisions under 2013 Act. C D

10. Therefore, without prejudice to the liberty available to the appellant to initiate steps afresh for acquisition of the subject land under the provisions of the 2013 Act, this appeal is dismissed.

11. In the peculiar facts and circumstances of this case, the appellant is given a period of one year to exercise its liberty granted under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for initiation of the acquisition proceedings afresh. E

12. We make it clear that in case no fresh acquisition proceedings are initiated within the said period of one year from today, by issuing a Notification under Section 11 of the 2013 Act, the appellant shall return the physical possession of the land to the original land owner. F

13. Pending applications, if any, stand disposed of.