

DELHI DEVELOPMENT AUTHORITY

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v.

ISLAMUDDIN & ORS.

(Civil Appeal No. 11826 of 2016 etc.)

NOVEMBER 29, 2016

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

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, Resettlement Act, 2013 – s. 24(2) – Acquisition proceedings under Land Acquisition Act, 1894 – Lapse of – Declaration – Entitlement to – Held: Since compensation has not been paid, owners are entitled to declaration u/s. 24(2).

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Locus Standi – Acquisition proceedings – In respect of land in Delhi – Challenged – By the purchaser of the land – Plea of State that the purchaser had no locus to challenge the proceedings as the purchase/transfer of land after Notification u/s. 4(1) of Land Acquisition Act, 1894 was void – Held: Under Delhi Lands (Restrictions on Transfer) Act, 1972, restriction on transfer is only after the Declaration u/s. 6(1) of 1894 Act – In the present case, the transfer was prior to s. 6(1) Declaration, though after s. 4(1) Notification – Hence the transfer was not void – Therefore, owners cannot be non-suited for having no locus standi – Land Acquisition Act, 1894 – ss. 4(1) and 6(1) – Delhi Lands (Restrictions on Transfer) Act, 1972 – ss. 3 and 4.

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Dismissing the appeals, the Court

HELD: 1.1 Under the Delhi Lands (Restrictions on Transfer) Act, 1972, the restriction on transfer is only after publication of Notification under Section 6 of the Land Acquisition Act, 1894. Being a special law as far as Delhi is concerned, this will, in no case, prevail over any other general law on restriction on transfer after initiation of acquisition proceedings. [Paras 5, 6] [732-F; 733-B-C]

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1.2 In the instant case, the transfer is prior to Section 6(1) declaration, though after Section 4(1). Therefore, it is not correct to say that the writ petitioners did not have any *locus standi* to challenge the land acquisition on account of transfer being void

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A as the transfer was made after initiation of land acquisition proceedings. Therefore, the respondent cannot be non-suited on the ground that he has no *locus standi*. [Paras 7, 8] [733-C-D, F]

B 2. The benefit under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation Resettlement Act, 2013 Act is available in the event of two circumstances - (i) The compensation has not been paid though the Award has been passed under the provisions of the 1894 Act prior to 01.01.2014; (ii) Despite passing an Award and payment of compensation, possession had not been taken
C five years prior to 01.01.2014. As far as the compensation part is concerned, there is no dispute that the same has not been paid. Hence, the writ petitioner is entitled to have the declaration under Section 24(2) of the 2013 Act. [Para 8] [733-E-F]

D 3. 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. [Para 9] [733-G]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11826 of 2016.

From the Judgment and Order dated 22.12.2014 of the High Court of Delhi at New Delhi in Writ Petition (C) No. 7875 of 2014.

F WITH
Civil Appeal No. 11827 of 2016.

G P. S. Narasimha, ASG, Ajit Kumar Sinha, Mahabir Singh, Ravinder Sethi, Amrender Saran, Anoop Baghi, Jitendra Mohan Sharma, P.P. Malhotra, A. K. Sanghi, Sr. Advs., Praneet Pranav, Ms. Binu Tamta, Shadman Ali, Ms. Rashmi Malhotra, Vibhu Shanker Mishra, R. S. Nagar, Raj Bahadur Yadav, Ms. Meera Bhatia, M. P. Gupta, Dev Kumar, B. K. Prasad, D. S. Mahra, N.S. Vasisht, Vishal Singh, Ms. Jyoti Kataria, M.P. Bhargava, Pradeep Misra, S.K. Rout, Onkar Prasad, Meera Bhatia, Nitin Mishra, Rakesh Dahiya, Satyavan Kudalwal, Aditya Dahiya, Rajiv Kumar Ghawana, T.V.S. Raghavendra Sreyas, Puneet Sharma, Bankey
H Bihari, Ms. Smita Maan, B.S. Maan, Vishal Maan, Naresh Maan, R.K.

Shokeen, Roopansh Purohit, Sumit Bansal, Ateev Mathur, Ms. Richa Oberoi, Vikas Kumar, Preetik Kohli, Manish Paliwal, Vanshaja Shukla, Ritika Jhuniani, Anup Kumar, B. Tripathy, Naresh Kaushik, Randhir Pandey, Gaurav Goel, Praveen Sehrawat, Sumeer Sodhi, Arjun Nanda, T. Mahipal, Ms. Bushra Parveen, Ms. Minali Deswal, Ms. Rachana Srivastava, Atul Kumar, Ashwani Kumar, Rahul Bhatia, Ms. Richa Kapoor, Ms. Mallika Parmar, Ms. Seema Patnaha, Manoj K. Mishra, Sandeep Kr. Dwivedi, Umesh Dubey, Ms. Meghna Kalra, Ms. Madhubala, S.K. Pathak, Alok Gupta, Dinesh Kumar Garg, Deepak Mishra, Ashok Kumar Bhardwaj, N.S. Dalal, D.P. Singh, R. C. Kaushik, Amitabh Kumar Verma, Rajesh Singh Chauhan, Sanchit Garg, Adnan Siddiqui, Ajit Sharma, Amit Gupta, Ms. Mansi Kukreja, Anant Pavgi, (for Mitter & Mitter Co.), Yasir Rauf, Mohan Prasad Gupta, R.K. Rathore, Shadman Ali, R.R. Rajesh, Vikash, M. K. Maroria, Ms. Monika, Sukrit R. Kapoor, Manish K. Bishnoi, Venkat Poonia, Ms. Sushma Suri, Gaurav Sarin, Mrs. Charul Sarin, Mrs. Ranjeeta Rohatgi, Navin Chawla, Ms. Nidhi Mohan Prashar, Rupeshwar Sandhu, Rajendra Prasad Saxena, N.P. Sahani, Anil Kaushik, Raghvendra Verma, Rajinder Singh, Abhishek Mishra, Ms. Arunima Dwivedi, R.K. Singh, Ms. Deepa Rai, Kedar Nath Tripathy, Atul Kumar, Vikas Pandey, Ms. Sweety Singh, Tushar Duneja, Girish Chandra, Ms. Minali Deswal, Rajiv Sharma, Ms. Archana Kumari, Jamnesh Kumar, Vishnu B. Saharya, Viresh B. Saharya, (for M/s Saharya & Co.), Jagjit Singh, Chhabra, Anirudh Kumar, Sakshim Maheshwari, Ms. Iti Sharma, Piyush Sharma, Ms. Priya Puri, Govind Goel, Ankit Goel, Bharat Beriwal, Rajiv Ranjan Dwivedi, Ashish Garg, T. L. Garg, Alok Bhachawat, Ms. Tanishi Chandra, Ms. Amita Singh Kalkal, Ms. Garima Prashad, Ms. S. Janani, Mohit D. Ram, Neeraj Kumar Sharma, Ms. Jasmine Damkewala, Ms. Meenakshi Chauhan, Ram Naresh Yadav, Bharat Bhushan, Rabin Majumder, Gagan Gupta, K. B. Rohtagi, Rajat Bhardwaj, Ms. Jyoti Mendiratta, Dhananjay Garg, Advs. for the appearing parties.

The Judgment of the Court was delivered by

KURIAN, J. 1. Leave granted.

2. The appellant – Delhi Development Authority is aggrieved by the Judgment dated 22.12.2014 passed by the High Court of Delhi, whereby the High Court declared that the acquisition proceedings in question have lapsed on account of operation of Section 24(2) of the

- A Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short, “2013 Act”).

3. In the case before us, the High Court has taken note of the fact that the compensation has never been paid to the owners. Be that as it may, the main contention urged is that the writ petitioner has no *locus standi* to file a Writ Petition for the declaration that the proceedings have lapsed.

4. Heavy reliance is placed on a decision of this Court in *Star Wire (India) Ltd. Vs. State of Haryana and Others*, reported in (1996) 11 SCC 698. It was a case where the land acquisition proceedings were initiated under Section 4(1) of the Land Acquisition Act, 1894 (in short, “1894 Act”). The Notification was issued on 01.06.1976. Section 6 Declaration was published on 16.02.1977 and the Award was passed on 03.07.1981. Section 18 Reference had also become final. Thereafter, the Writ Petition was filed on 21.01.1994. The Writ Petitioner therein contended that he was the person who had purchased the property after the Section 4(1) Notification was issued. In that context, it was held that “*Any encumbrance created by the erstwhile owner of the land after publication of the notification under Section 4(1) does not bind the State if the possession of the land is already taken over, after the award came to be passed.*” It was also held that such a purchaser does not acquire any valid title and in such circumstances, it was held that those subsequent purchasers have no right to challenge the acquisition proceedings, much less the Award.

5. Under the Delhi Lands (Restrictions on Transfer) Act, 1972, restriction on transfer is only after the Declaration under Section 6(1) of the 1894 Act is published. There is also a prohibition under Section 3 which pertains to transfer of land already acquired by Central Government. What is relevant is Section 4, which reads as follows :-

“4. Regulation on transfer of lands in relation to which acquisition proceedings have been initiated – No person shall, except with the previous permission in writing of the competent authority, transfer or purport to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof situated in the Union Territory of Delhi, which is proposed to be acquired in connection with the Scheme and in relation to which a declaration to the effect that such land or part thereof is needed for a public purpose having been made by the Central

Government under section 6 of the Land Acquisition Act, 1894, the Central Government has not withdrawn from the acquisition under section 48 of that Act." A

6. Section 9 deals with penalty for contravention of the provisions of Section 3 or Section 4. Therefore, under the statutory scheme, the restriction on transfer is only after publication of Notification under Section 6 of the 1894 Act. Being a special law as far as Delhi is concerned, this will, in no case, prevail over any other general law on restriction on transfer after initiation of acquisition proceedings. B

7. In the instant case, the property is situated in Delhi and the contention of the appellant on *locus standi* is based on the alleged void transfer after initiation of the land acquisition proceedings. Such transfers would be void in Delhi only in case the same is made after the declaration under Section 6(1). In the instant case, the transfer is prior to Section 6(1) declaration, though after Section 4(1). Therefore, there is no merit in the contention advanced by the appellant that the writ petitioners did not have any locus standi to challenge the land acquisition. C D

8. The writ petitioner approached the High Court contending that neither the compensation was paid nor the possession taken and hence, sought for a declaration under Section 24(2) of the 2013 Act. The benefit under Section 24(2) of the 2013 Act is available in the event of two circumstances - (i) The compensation has not been paid though the Award has been passed under the provisions of the 1894 Act prior to 01.01.2014; (ii) Despite passing an Award and payment of compensation, possession had not been taken five years prior to 01.01.2014. As far as the compensation part is concerned, there is no dispute that the same has not been paid. Hence, the writ petitioner is entitled to have the declaration under Section 24(2) of the 2013 Act. Since the respondent cannot be non-suited on the ground that he has no locus standi, there is no merit in the appeal and it is, accordingly, dismissed. E F

9. 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. G

10. 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 H

- A Notification under Section 11 of the Act, the appellant, if in possession, shall return the physical possession of the land to the owner.

No costs.

CIVIL APPEAL NO. 11827 OF 2016 [@SPECIAL LEAVE
PETITION (C) NO. 11352 OF 2016

B

1. Leave granted.

2. In terms of the Judgment passed in Civil Appeal No. 11826 of 2016 [@SLP (C) No. 19207 of 2015], as above, this civil appeal is dismissed.

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Kalpana K. Tripathy

Appeals dismissed.