A GOVT. OF NCT OF DELHI AND ANR.

v.

SHIV DUTT SHARMA AND ANR.

(Civil Appeal No. 8198 of 2022)

B NOVEMBER 24, 2022

[M. R. SHAH AND M. M. SUNDRESH, JJ.]

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – s.24(2) – High Court relied upon the Supreme Court decision in case of Pune C Municipal Corporation and Anr. v. Harakchand Misirimal Solanki *and Ors. and gave a specific finding that the possession of the subject land was taken, however compensation was not paid, therefore, declared the acquisition with respect to the land in question has lapsed u/s. 24(2) of the Act of 2013 – Held: The case relied on by* D *High Court has been overruled by the subsequent decision in* Indore Development authority v. Manoharlal and Ors. *in which the Constitution Bench of the Supreme Court held that in case possession has been taken and compensation has not been paid then there is no lapse – Therefore, judgment of the High Court set aside – Appeals allowed.*

E *Indore Development Authority v. Manoharlal and Ors.* **(2020) 8 SCC 129 : [2020] 3 SCR 1 – followed.**

Pune Municipal Corporation and Anr. v. Harakchand Misirimal Solanki and Ors. **(2014) 3 SCC 183 : [2014] 1 SCR 783 – referred to.**

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Case Law Reference

[2014] 1 SCR 783	**referred to**	**Para 3**
[2020] 3 SCR 1	**followed**	**Para 3.1**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8198 G of 2022.

From the Judgment and Order dated 05.02.2018 of the High Court of Delhi at New Delhi in Civil Writ Petition No. 1870 of 2016.

With

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Civil Appeal No. 8248 of 2022.

Ms. Astha Tyagi, Dinesh Chander, Ms. Diksha Narula, Manish K. Bishnoi, Nirmal Prasad, Ms. Jasleen Chahal, Nishit Agrawal, Ishaan Sharma, Ms. Kanishka Mittal, Advs. for the appearing parties.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Delhi at New Delhi in Writ Petition (C) No. 1870 of 2016 by which the High Court has allowed the said writ petition preferred by the respondent No.1 herein and has declared that the acquisition with respect to the land in question has lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "Act, 2013"), the Government of NCT of Delhi as well as the Land Acquisition Collector have preferred the present appeals.

2. We have heard Ms. Astha Tyagi and Shri Nishit Agrawal, learned counsel appearing on behalf of the respective appellants and Shri Manish K. Bishnoi, learned counsel appearing on behalf of the respondent No.1.

3. At the outset, it is required to be noted that while passing the impugned judgment and order, the High Court has relied upon the decision of this Court in the case of **Pune Municipal Corporation and Anr. Vs. Harakchand Misirimal Solanki and Ors. (2014) 3 SCC 183** and has declared that the acquisition with respect to the land in question has lapsed under Section 24(2) of the Act, 2013 as the compensation has not been paid/tendered to the original writ petitioner. However, there is a specific finding given by the High Court that the possession of the subject land has been taken over, however, the compensation has not been paid to the recorded owner.

3.1 It is the case on behalf of the respondent No.1 that the actual possession of the land in question has not been taken over as the land in question is occupied by the encroachers and that the area in question is known as 'Sanjay Mohalla'. However, it is required to be noted and as observed hereinabove, in paragraph 8, the High Court has specifically observed that there is a categorical assertion made in the counter affidavit filed by the Land Acquisition Collector that the possession of the subject

land has been taken over, however, the compensation has not been paid to the recorded owner. It may be that there may be **illegal occupants and / or encroachers**, but that does not mean that the possession of the land in question was taken over and/or handed over to the beneficiary department on 21.06.1973. As per the case on behalf of the Land Acquisition Collector, in any case, the landowner can be permitted to take the benefit of the encroachment made on the land in question. Be that it may, as observed hereinabove, while passing the impugned judgment and order, the High Court has relied upon the decision of this Court in the case of **Pune Municipal Corporation and Anr. (supra)** and the said decision in the case of **Pune Municipal Corporation and Anr. (supra)** has been subsequently specifically overruled by the Constitution Bench of this Court in the case of **Indore Development Authority Vs. Manoharlal and Ors. (2020) 8 SCC 129.** In paragraphs 365 and 366, it is observed and held as under:-

> "**365.** Resultantly, the decision rendered in Pune Municipal Corpn. [Pune Municipal Corpn. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183] is hereby overruled and all other decisions in which Pune Municipal Corpn. [Pune Municipal Corpn. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183] has been followed, are also overruled. The decision in Sree Balaji Nagar Residential Assn. [Sree Balaji Nagar Residential Assn. v. State of T.N., (2015) 3 SCC 353] cannot be said to be laying down good law, is overruled and other decisions following the same are also overruled. In Indore Development Authority v. Shailendra [(2018) 3 SCC 412], the aspect with respect to the proviso to Section 24(2) and whether "or" has to be read as "nor" or as "and" was not placed for consideration. Therefore, that decision too cannot prevail, in the light of the discussion in the present judgment.
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> **366.** In view of the aforesaid discussion, we answer the questions as under:
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> **366.1.** Under the provisions of Section 24(1)(a) in case the award is not made as on 1-1-2014, 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.
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> **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.

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 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 proceedings had lapsed under Section 24(2) of the 2013 Act.

A **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 B 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 C 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 D computation of five years.

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. E 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."

F 4. In view of the above and for the reasons stated above, and, more particularly, considering the subsequent decision of the Constitution Bench of this Court in the case of **Indore Development Authority (supra)**, the impugned judgment and order passed by the High Court is unsustainable and the same deserves to be quashed and set aside and is G accordingly quashed and set aside.

The submission on behalf of the respondents that the encroachment on the land in question is being regularized is concerned, that is not the subject matter before this Court. It is ultimately for the appropriate court to take appropriate decision. However, so far as the impugned judgment H and order passed by the High Court is concerned, the same is

unsustainable in view of the decision of this Court in the case of **Indore Development Authority (supra)** and as observed hereinabove. The present appeals are accordingly allowed. No costs. A

Pending application, if any, also stands disposed of.

Ankit Gyan
(Assisted by : Aarsh Choudhary, LCRA)

Appeals allowed.