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GOVT. OF NCT OF DELHI

v.

MOHD. MAQBOOL & ORS.

(Civil Appeal No. 9229 of 2022)

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DECEMBER 15, 2022

[M. R. SHAH AND S. RAVINDRA BHAT, JJ.]

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013: s.24(2) – Land acquisition proceedings under Land Acquisition Act, 1894 – Respondent no.1 filed a writ petition before the High Court challenging the acquisition proceedings and also for a declaration that the acquisition with respect to the land is deemed to have been lapsed by virtue of s.24(2) of the Act, 2013 – According to the Land Acquisition Collector and so stated in the counter affidavit before the High Court, the possession of the disputed land in question along with the other lands were taken over and handed over to DDA on 04.03.1983 – High Court, on the ground, that the compensation was not tendered to the land owner, allowed writ petition and declared that the acquisition with respect to the land in question is deemed to have lapsed under s.24(2) of the Act, 2013 – Hence instant appeal – Held: As per the recent decision of the Constitution Bench of this Court in the case of Indore Development Authority v. Manoharlal and others for the purpose of lapse under s.24(2) of the Act, 2013, twin conditions of not taking over possession and not tendering/paying the compensation are required to be satisfied and that if one of the conditions is not satisfied, there shall not be lapse of the acquisition proceedings under s.24(2) of the Act, 2013 – According to the possession certificate and the specific case on behalf of the appellant and the Land Acquisition Collector that the possession of the land in question was taken over on 04.03.1983 and handed over to DDA, the impugned judgment and order passed by the High Court is unsustainable and the same deserves to be quashed.

Allowing the appeal, the Court

HELD: 1. As per the recent decision of the Constitution Bench of this Court in the case of *Indore Development Authority*

v. Manoharlal and others for the purpose of lapse under Section 24(2) of the Act, 2013 twin conditions of not taking over possession and not tendering/paying the compensation are required to be satisfied. As per the decision in the case of *Indore Development Authority* if one of the conditions is not satisfied, there shall not be lapse of the acquisition proceedings under Section 24(2) of the Act, 2013. In the case of *Indore Development Authority*, the Constitution Bench of this Court has specifically overruled the decision of this Court in the case of *Pune Municipal Corporation and Anr.* which has been relied upon by the High Court while passing the impugned judgment and order. [Para 3.1][805-C-E]

2. According to the possession certificate and the specific case on behalf of the appellant and the Land Acquisition Collector that the possession of the land in question was taken over on 04.03.1983 and handed over to DDA, the impugned judgment and order passed by the High Court is unsustainable and the same deserves to be quashed and set aside. [Para 4][807-H; 808-A]

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.

Case Law Reference

[2014] 1 SCR 783	referred to	Para 2	F
[2020] 3 SCR 1	followed	Para 3.1	

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9229 of 2022

From the Judgment and Order dated 01.12.2015 of the High Court of Delhi at New Delhi in Writ Petition (C) No. 27 of 2015.

Chandra Prakash, C. P. Rajwar, Vivek Singh, Pushkar Anand, Advs. for the Appellant.

Nishit Agrawal, Ishaan Sharma, Ms. Kanishka Mittal, Advs. for the Respondents.

A The Judgment of the Court was delivered by

M. R. SHAH, J.

B 1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 01.12.2015 passed by the High Court of Delhi at New Delhi in Writ Petition (C) No.27 of 2015 by which the High Court has allowed the said writ petition preferred by the respondent no.1 – original writ petitioner and has declared that the acquisition with respect to the land in question is deemed to have 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 ‘the Act 2013’), the Government of NCT of Delhi has preferred the present appeal.

D 2. A Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as ‘the Act, 1894’) with respect to the land in question was issued as far as back on 10.11.1960 followed by the declaration under Section 6 of the Act, 1894 dated 06.01.1969. The award was declared on 31.01.1983. According to the Department and the Land Acquisition Collector and so stated in the counter affidavit on behalf of the original respondent nos. 1 & 2 before the High Court the possession of the disputed land in question along with the other lands were taken over and handed over to DDA on 04.03.1983. That in the year 2015 the respondent no.1 filed a writ petition before the High Court challenging the acquisition proceedings including the Notification under Section 4 of the Act, 1894 and also for a declaration that the acquisition with respect to the land in question is deemed to have been lapsed by virtue of Section 24(2) of the Act, 2013.

F 2.1 Though it was the specific case on behalf of the appellant and the Land Acquisition Collector and so stated in the counter affidavit before the High Court that the possession of the land was taken on 04.03.1983 and the same was handed over to DDA, without going into the controversy of the physical possession, by the impugned judgment and order and relying 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 on the ground that the compensation has not been tendered to the land owner, the High Court has allowed the writ petition and has declared that the acquisition with respect to the land in question is deemed to have lapsed under Section 24(2) of the Act, 2013. Hence, the present appeal.

3. As observed hereinabove, it was the specific case on behalf of the appellant and the Land Acquisition Collector before the High Court that the possession of the land in question was taken over on 04.03.1983 and the same was handed over to the DDA. It is required to be noted that the original acquisition is of the year 1960 and the writ petition was preferred challenging the acquisition in the Notification under Sections 4 & 6 after a period of almost 55 years. By the impugned judgment and order the High Court has allowed the writ petition relying upon the decision of this Court in the case of **Pune Municipal Corporation (supra)** observing that the compensation has not been tendered.

3.1 However, as per the recent decision of the Constitution Bench of this Court in the case of **Indore Development Authority versus Manoharlal and others** reported in (2020) 8 SCC 129 for the purpose of lapse under Section 24(2) of the Act, 2013 twin conditions of not taking over possession and not tendering/paying the compensation are required to be satisfied. As per the decision in the case of **Indore Development Authority (supra)** if one of the conditions is not satisfied, there shall not be lapse of the acquisition proceedings under Section 24(2) of the Act, 2013. In the case of **Indore Development Authority (supra)** the Constitution Bench of this Court has specifically over-ruled the decision of this Court in the case of **Pune Municipal Corporation and Anr. (supra)** which has been relied upon by the High Court while passing the impugned judgment and order. In paragraphs 365 and 366, the Constitution Bench of this Court has 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.

A **366.** In view of the aforesaid discussion, we answer the questions as under:

B **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.

C **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.

D **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.

E **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.

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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.

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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).

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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).

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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.

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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.”

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4. In view of the above and according to the possession certificate and the specific case on behalf of the appellant and the Land Acquisition Collector that the possession of the land in question was taken over on

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- A 04.03.1983 and handed over to DDA, the impugned judgment and order passed by the High Court is unsustainable and the same deserves to be quashed and set aside.

- Accordingly, the impugned judgment and order passed by the High Court allowing the Writ Petition (C) No.27 of 2015 and declaring the acquisition proceedings with respect to the land in question is deemed to have lapsed under Section 24(2) of the Act, 2013 is hereby quashed and set aside.
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Present appeal is accordingly allowed. No costs.

Pending applications, if any, also stand disposed of.

Devika Gujral

Appeal allowed.