

Government of NCT of Delhi v. Dayanand, 2023 PLRonline 0002 = 2023 PLRonline 413600

Supreme Court of India

JUSTICE M.R. SHAH JUSTICE C.T. RAVIKUMAR

Government of NCT of Delhi & Anr. v. Dayanand & Anr.

CIVIL APPEAL NO. 481 OF 2023

13.03.2023

Land Acquisition Act S. 12(2)- Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 - S.24(2) -Once the notice under Section 12(2) of the LA Act was issued and served upon the original writ petitioner and he was called upon to collect the compensation and thereafter, when he did not come to collect the compensation and then the compensation was sent to the revenue deposit, thereafter it would not be open for the original writ petitioner to contend that as the compensation has not been paid the acquisition proceedings are deemed to have lapsed - The original writ petitioner cannot be permitted to take the benefit of his own conduct/wrong.

Cases referred to :

Para 2: Sree Balaji Nagar Residential Assn. v. State of T.N., (2015) 3 SCC 353

Para 2: Indore Development Authority v. Shailendra, [(2018) 3 SCC 412]

Para 2: Pune Municipal Corporation and Anr. v. Harakchand Misirimal Solanki and Ors., (2014) 3 SCC 183

Para 2: Indore Development Authority v. Manoharlal and Ors., (2020) 8 SCC 129

Petitioner Counsel: SUJEETA SRIVASTAVA, Respondent Counsel: NITIN MISHRA, SMITA MAAN

JUDGEMENT

M.R. SHAH, J. - . 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. 1754 of 2015, by which, the High Court has allowed the said 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 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 & Anr. have preferred the present appeal.

2. From the impugned judgment and order passed by the High Court and from the counter

affidavit filed by the Land Acquisition Collector (LAC) before the High Court which is reproduced in paragraph 3 of the impugned judgment by the High Court, it was the specific case on behalf of the LAC that out of total land comprised in Khasra No. 115 (1-0) possession of 19 biswa was taken but possession of remaining 01 biswa could not be taken due to built up. It was also the case on behalf of the LAC that after the award was declared the original writ petitioner was issued a notice under Section 12(2) of the Land Acquisition Act, 1894 (LA Act) for collecting the compensation amount vide registered post No. 4065 dated 27.02.2009 and when he did not come to collect the compensation, it was sent to Revenue Deposit. Thus, as per the LAC the possession of the major portion of the land acquired was taken by drawing possession proceedings dated 13.04.2009, despite the above and relying upon the earlier decision of this Court in the case of Pune Municipal Corporation and Anr. v. Harakchand Misirimal Solanki and Ors., (2014) 3 SCC 183, 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 by observing that “even though respondent No.2/LAC claims that possession was taken in respect of the major portion of the land i.e., 19 biswa, there is no categorical statement that payment of compensation was made in accordance with law declared to be applicable i.e., in the case of Pune Municipal Corporation (supra).”

2.1 The decision of this Court in the case of Pune Municipal Corporation (supra) which has been relied upon by the High Court has been overruled by the Constitution Bench of this Court in the case of Indore Development Authority v. Manoharlal and Ors., (2020) 8 SCC 129. 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.

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

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.

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.

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 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 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.

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."

3. Even otherwise, it is required to be noted that in the present case the possession was taken in respect of the major portion of the land i.e., 19 biswa out of 20 biswa and the possession of one (01) biswa could not be taken due to built-up. Even the notice under Section 12(2) was issued upon the original writ petitioner vide registered post No. 4065 dated 27.02.2009, however, when the original writ petition did come to collect the compensation, it was sent to the revenue deposit. Once the notice under Section 12(2) of the LA Act was issued and served upon the original writ petitioner and he was called upon to collect the compensation and thereafter, when he did not come to collect the compensation and then the compensation was sent to the revenue deposit, thereafter it would not be open for the original writ petitioner to contend that as the compensation has not been paid the acquisition proceedings are deemed to have lapsed. The original writ petitioner cannot be permitted to take the benefit of his own conduct/wrong.

4. Applying the law laid down by this Court in the case of Indore Development Authority (supra) and considering the facts narrated hereinabove and more particularly, when the major portion of the land in question was taken as far as back on 13.04.2009 by drawing possession proceedings which is held to be permissible in the case of Indore Development Authority (supra) and taking into consideration the fact that the notice under Section 12(2) of the LA Act was issued and served upon the original writ petitioner but he did not collect the compensation and therefore, the same was again sent to the revenue deposit, the impugned judgment and order passed by the High Court declaring that the acquisition in respect of land in question is deemed to have lapsed is unsustainable.

5. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the High Court allowing the writ petition and declaring that the acquisition in respect of the land in question is deemed to have lapsed under Section 24(2) of the Act, 2013 is hereby quashed and set aside. The original writ petition before the High Court stands dismissed. There shall be no deemed lapse of the acquisition with respect to the land in question under Section 24(2) of the Act, 2013.

Present appeal is accordingly allowed. No costs.

Pending applications, if any, also stand disposed of.