

Delhi Development Authority Vs. Amit Jain & Ors.

Civil Appeal No. 1360 of 2023 @ SLP (C) No. 4000 of 2023 @ Diary No. 25773 of 2022

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Full judgment text

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[Civil Appeal No. 1360 of 2023 @ SLP (C) No. 4000 of 2023 @ Diary No. 25773 of 2022]

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. 5061 of 2016, by which, the High Court has allowed the said writ petition and has declared that the acquisition of suit land measuring 3 bighas and 18 biswas in Khasra Nos. 10/20/2/1 (2-00) and 21/1 (1-18) and 17/1 (1-9) and land measuring 1 bigha and 9 biswas in Khasra No. 17/1/1 (2-01) vide award No. 04/2008-09 dated 31.10.2008 is deemed to have lapsed by virtue of 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 Delhi Development Authority has preferred the present appeal.

2. From the impugned judgment and order passed by the High Court and from the counter affidavit filed by the Govt. of Delhi through LAC before the High Court, it appears that it was the specific case on behalf of the LAC that the physical possession of the property/land bearing Khasra Nos. 17/1/1 min (1-18), 10/20/2/1 (2-0), 21/1 (1-18) was duly taken over by the Government on 29.01.2010.

However, remaining 3 biswa land comprised in Khasra No. 17/1/1 was not taken over due to builtup. Despite the above and thereafter following the earlier decision of this Court in the case of Pune Municipal Corporation and Anr. Vs. Harakchand Misirimal Solanki and Ors., (2014) 3 SCC 183, on the ground that the compensation with respect to the lands in question is not paid/tendered to the land owners, the High Court has allowed the writ petition and has declared that the entire acquisition with respect to the land measuring 3 bighas and 18 biswas in Khasra Nos. 10/20/2/1 (2- 00) and 21/1 (1-18) and 17/1 (1-9) and land measuring 1 bigha and 9 biswas in Khasra No. 17/1/1 (2-01) is deemed to have lapsed under Section 24(2) of the Act, 2013.

3. Learned counsel appearing on behalf of the original writ petitioners disputed the actual taking over of possession and submitted that the possession was taken over by drawing proceedings. However, as observed and held by this Court in the case of Indore Development Authority Vs. Manoharlal and Ors., (2020) 8 SCC 129 taking over the physical possession by drawing the punchnama/possession proceedings can be said to be sufficient compliance.

Therefore, except the remaining 3 biswa land comprised in Khasra No. 17/1/1 which was not taken over due to built-up, the possession of the other lands in question were taken by the Government on 29.01.2010. Under the circumstances, the acquisition with respect to the entire lands in question could not have been declared as deemed lapse under Section 24(2) of the Act, 2013.

4. In the case of Indore Development Authority (supra) in paragraph 366, the Constitution Bench of this Court has observed and held as under:-

"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 nondeposit 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."

5. Applying the law laid down by this Court to the facts of the case on hand and considering the fact that except the 3 biswa land comprised in Khasra No. 17/1/1 which was not taken due to builtup, the possession of the other lands in question was taken over by the Government on 29.01.2010, there shall be no deemed lapse with respect to the entire acquisition of the lands in question under Section 24(2) of the Act, 2013.

Under the circumstances, the impugned judgment and order passed by the High Court is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. Present appeal is accordingly allowed. No costs.

Pending applications, if any, also stand disposed of.

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