

Delhi Development Authority Vs. Narvada Devi and Ors.

Civil Appeal No. 735 of 2023 @ SLP (C) No. 2486 of 2023 @ Diary No. 23396 of 2022
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Full judgment text

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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. 3383 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 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 (DDA) has preferred the present appeal.

2. Before the High Court, the respondent No. 1 - original writ petitioner claimed the relief for a declaration that the acquisition proceedings pertaining to land measuring 504 sq. yards out of Khasra No.49/14 situated in the area of Village Pehladpur Bangar, National Capital Territory of Delhi are deemed to have lapsed in view of Section 24(2) of the Act, 2013 as neither physical possession of the subject land has been taken nor the compensation has been tendered to the petitioner.

2.1 Before the High Court and so stated in the counter affidavit, it was the case on behalf of the appellant - DDA that as such the payment of compensation in respect of the award amounting to Rs. 80,40,76,004/- was released to L & B Department, GNCTD by cheque dated 09.08.2005.

It was also the case on behalf of the DDA that the land measuring area 457 Bigha 08 Biswa, Village Pehladpur Bangar is in possession of the DDA but the remaining area is in illegal occupation in the nature of residential houses, factories, Katha Jat along with boundary wall and the steps are taken by the DDA to remove them but on and off the land grabbers encroach upon the DDA land. It was also the case on behalf of the appellant - DDA that so far as the original writ petitioner is concerned, he has encroached on the Government land claiming himself to be the owner.

2.2 Despite the above and without appreciating the reasons for not taking the actual vacant possession of the remaining land, though as per the possession proceedings dated 31.08.2005, physical possession of the land measuring 457 Bigha was taken over and handed over to the DDA, 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.

3. The view taken by the High Court is just contrary to the Constitution Bench decision of this Court in the case of Indore Development Authority Vs. Manoharlal and Ors. (2020) 8 SCC 129. 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."

4. Applying the law laid down by this Court in the case of Indore Development Authority (supra) to the facts of the case on hand and the stand taken by the DDA in the counter filed before the High Court, the impugned judgment and order passed by the High Court is unsustainable.

4.1 At this stage, it is required to be noted that the High Court was conscious of the fact that the actual physical possession is not capable of being taken due to illegal occupation by the encroachers. Though, the High Court has granted the declaration that the acquisition proceedings with respect to the subject lands are deemed to have lapsed, the High Court has observed that the original writ petitioner would only be entitled to compensation as per Act, 2013.

4.2 As observed and held hereinabove, the original writ petitioner shall not be entitled to the relief of declaration of lapsing of the acquisition proceedings. Once that be so, there is no question of payment of any compensation to the original writ petitioner as per the Act, 2013. Under the circumstances also, the impugned judgment and order passed by the High Court is unsustainable.

5. In view of the above and for the reasons stated above, present appeal succeeds. The impugned judgment and order passed by the High Court is hereby quashed and set aside.

Consequently, the original writ petition being Writ Petition (C) No. 3383 of 2016 stands dismissed. Present appeal is accordingly allowed.

However, in the facts and circumstances of the case, there shall be no order as to costs. Pending applications, if any, also stand disposed of.

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