

Delhi Development Authority Vs. Shyamo & Ors.

Civil Appeal No. 365 of 2023 @ SLP (C) No. 1503 of 2023 @ Diary No. 7125 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 dated 20.12.2017 passed by the High Court of Delhi at New Delhi in Writ Petition (Civil) No.12174 of 2015 by which the High Court has allowed the said writ petition preferred by the respondent no.1 herein - 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 Delhi Development Authority has preferred the present appeal.

2. From the impugned judgment and order passed by the High Court it appears that it was the specific case on behalf of the LAC before the High Court and so stated in the counter affidavit filed by the LAC that a notification under Section 4 of the Land Acquisition Act, 1894 was issued on 23.09.1989 for planned development of Delhi for the acquisition of the lands falling in Village Ghonda Gujaran Khadar. That award was declared on 19.06.1992 and the actual vacant physical possession of the subject land was taken on 21.03.2007, out of which the original petitioner has been claiming 1/12th share on the spot and handed over to the DDA after preparing possession proceedings on the spot.

It was also stated that the recorded owners/heirs never came forward to receive any compensation and hence the same is lying unpaid. However, thereafter without even deciding the question of ownership and title of the original writ petitioner and leaving the same open and relying upon its earlier decision in the case of Gyanender Singh & Ors. vs. Union of India & Ors. in W.P. (C) No.1393 of 2014 decided on 23.09.2014, the High Court has passed the impugned judgment and order and has declared the acquisition proceedings deemed to have lapsed on the ground that the compensation was not tendered to the original writ petitioner.

2.1 However, it is required to be noted that while deciding the Gyanender Singh (supra) the High Court has relied upon 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. It is to be noted that the decision of this Court in the case of Pune Municipal Corporation and Anr. (supra) has been overruled by the Constitution Bench of this Court in the case of Indore Development Authority versus Manoharlal and others reported in (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.

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 nondeposit 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 timebarred 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. 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 more particularly when the possession of the land in question was taken over by drawing the panchnama and preparing the possession proceedings and the same was handed over to the DDA and that the original writ petitioner was not the recorded owner and therefore there was no question of tendering any compensation to him at the relevant time, the impugned judgment and order passed by the High Court declaring that the acquisition with respect to the land in question is deemed to have lapsed is unsustainable.

4. At this stage it is also required to be noted that the original writ petitioner was claiming 1/12th share in the land in question. However, without deciding the ownership and title of the original writ petitioner the High Court has entertained the writ petition filed by the respondent no.1 herein - writ petitioner and has declared that the acquisition with respect to the land in question is deemed to have lapsed.

While deciding any ownership and title of the original writ petitioner in the land in question, the High Court was not justified in entertaining the writ petition. For entertaining any writ petition the ownership and title has to be first established and proved and only thereafter a person claiming ownership and title can be permitted to file the writ petition challenging the acquisition/lapse of acquisition proceedings. 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 reason 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 filed by respondent no.1 herein - original writ petitioner filed before the High Court stands dismissed.

Present appeal is accordingly allowed. No costs.

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