

Delhi Development Authority Vs. Chandermal & Ors.

Civil Appeal No. 9115 Of 2022 @ S.L.P. (C) No. 23141 of 2022 @ Diary No. 22292 of 2022
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Full judgment text

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Govt. of NCT of Delhi & Anr. Vs. Chandermal & Ors.

[Civil Appeal No. 9123 Of 2022 @ S.L.P. (C) No. 23184 of 2022 @ Diary No. 2650 of 2022]

M.R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 03.10.2018 passed by the High Court of Delhi at New Delhi in Writ Petition (C) No. 2255 of 2016 by which the High Court has allowed the said writ petition preferred by the respondents herein and has declared that the acquisition with respect to the lands 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 Delhi Development Authority (DDA) as well as the Government of NCT of Delhi have preferred the present appeals.

2. By the impugned judgment and order, the High Court has declared that the acquisition with regard to the subject land is deemed to have lapsed under Section 24(2) of the Act, 2013 on the ground that the compensation in respect of the subject land has not been tendered to the original writ petitioners - respondents herein. However, it is required to be noted that before the High Court, it was the specific case on behalf of the appellants, more particularly, the Land Acquisition Collector (LAC) that the possession of the land in question was taken by the LAC and was handed over to the DDA. The High Court has also believed the taking over of the possession by the LAC, but thereafter on the ground that the compensation has not been tendered to the original writ petitioners, the High Court has declared that the acquisition is deemed to have lapsed.

3. Referring to the possession certificate dated 26.05.1998 relied upon on behalf of the appellants (Annexure P/4), learned counsel appearing on behalf of the original writ petitioners has submitted that in the said possession certificate, there is no reference of "taking over of the possession of the subject land" by the LAC from the original writ petitioners - predecessors. It is submitted that it only mentions "handing over of possession by the Tehsil staff to the Land and Building Department".

It is submitted that as per Section 16 of the Land Acquisition Act, 1894 only the Collector was empowered to take possession and possession taken by his subordinate cannot be said to be lawful. It is submitted that therefore the possession so alleged to be taken on 26.05.1998 cannot be said to be lawful possession. Reliance is placed on the decision of this Court in the case of E.A. Aboobacker and Ors. Vs. State of Kerala and Ors., (2018) 18 SCC 560. It is further submitted that as such the contesting respondents herein disputes the actual taking over of possession and according to them, they are in possession of the land in question.

4. We have heard the learned counsel appearing for the respective parties at length.

5. At the outset, it is required to be noted that before the High Court, a counter affidavit was filed by LAC as well as DDA and in which it was specifically mentioned that the land in question was handed over to DDA on 26.05.1998 and therefore, the acquisition is complete and the lands vest in the Government and free from any encumbrances. Nothing is on record that any rejoinder affidavit was filed on behalf of the original writ petitioners to the counter affidavit filed by the LAC or DDA. Nothing is on record that at any point of time, the original writ petitioners - predecessors made any grievance that the possession taken over on 26.05.1998 was not lawful. Even the High Court in the impugned judgment and order has believed the stand taken by the LAC that the possession of the subject land has been taken over. Under the circumstances, it is too late and/or not permissible on the part of the original writ petitioners to now contend that the possession taken over on 26.05.1998 was not lawful.

5.1 As observed and held hereinabove, solely on the ground that the compensation in respect of the subject land has not been tendered to the original writ petitioners, the High Court has declared that the acquisition proceedings with respect to the land in question is deemed to have been lapsed under Section 24(2) of the Act, 2013. It is required to be noted that in the present case, a notification under Section 4 of the Land Acquisition Act, 1894 was issued in 1964 and the award was declared on 10.12.1997 and the possession was handed over to DDA on 26.05.1998.

So far as the submission on behalf of the original writ petitioners that "in the possession certificate dated 26.05.1998, there was no mention of taking over of possession of the subject lands by the Land Acquisition Collector from the original writ petitioners - predecessors" is concerned, mere non-mention of taking over of possession cannot be a ground not to believe the possession certificate in which it is specifically mentioned that the possession of the land in question is handed over to the DDA. What is relevant is handing over of the possession to the DDA.

5.2 The view taken by the High Court that the acquisition is deemed to have lapsed under Section 24(2) of the Act, 2013 on the ground that though the possession of the subject lands has been taken over but the compensation in respect of the subject lands has not been tendered 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, it is observed and held by this Court 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."

6. In view of the above and for the reasons stated above, 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 appeals are 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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