

Delhi Development Authority Vs. Dayanand & Ors.

Civil Appeal No. 9005 of 2022 @ SLP (C) No. 22561 of 2022 @ Diary No. 22931 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. 3357 of 2016 by which the High Court has allowed the said writ petition preferred by the original writ petitioner - subsequent purchaser and has declared that the acquisition proceedings initiated under the Land Acquisition Act, 1894 (hereinafter referred to as "Act, 1894") with regard 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 Delhi Development Authority (DDA) has preferred the present appeal.

2. We have heard Shri Nitin Mishra, learned counsel appearing on behalf of the appellant and Shri Amit Kumar, learned counsel appearing on behalf of respondent No. 1.

3. From the impugned judgment and order passed by the High Court, and even as per the counter affidavit filed by the Land Acquisition Collector and the DDA, it appears that the possession of the subject land had been taken on 26.11.2012 and was handed over to DDA. However, thereafter, the High Court 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 solely on the ground that the compensation in respect of the entire area of the subject land has not been paid to the original writ petitioner.

At this stage, it is required to be noted that as such the original writ petitioner is the subsequent purchaser and the maintainability of the writ petition at his instance was raised before the High Court, however, the High Court has overruled the said petition relying upon the decision in the case of Government (NCT of Delhi) Vs. Manav Dharam Trust and Anr., (2017) 6 SCC 751.

3.1 So far as locus of the subsequent purchaser to challenge the acquisition proceedings is concerned, it is not res integra now in view of the subsequent decision of this Court in the case of Delhi Development Authority Vs. Godfrey Philips (I) Ltd. & Ors., - Civil Appeal No. 3073 of 2022, which has been subsequently followed in the case of Delhi Administration Thr. Secretary, Land and Building Department & Ors. Vs. Pawan Kumar & Ors., - Civil Appeal No. 3646 of 2022.

3.2 In the case of Godfrey Philips (I) Ltd. & Ors. (supra), it is observed and held that the subsequent purchaser is not entitled to claim lapsing of the proceedings under the Act, 2013. In that view of the matter, the original writ petitioner - subsequent purchaser had no locus to file the writ petition to claim lapsing of the acquisition proceedings under Section 24(2) of the Act, 2013.

3.3 Even otherwise, on merits also, the impugned judgment and order passed by the High Court is unsustainable in view of the Constitution Bench decision of this Court in the case of Indore Development Authority Vs. Manoharlal and Ors., (2020) 8 SCC 129. In the said decision, it is observed and held that for lapsing of the acquisition under Section 24(2) of the Act, 2013, twin conditions, of not taking over the possession and not paying / tendering the compensation, are required to be satisfied. In the said decision, it is further observed and held that if one of the conditions is not satisfied, there shall not be deemed lapse of the acquisition proceedings under Section 24(2) of the Act, 2013. 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. 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 is hereby quashed and set aside. The original writ petition filed before the High Court stands dismissed. However, it is observed that if the compensation is not paid to the recorded owner, as and when, recorded owner and/or the person entitled to claim compensation under the Act, 1894, approaches for claiming compensation, the same be paid in accordance with law. Present appeal is accordingly allowed. No costs.

Pending applications, if any, also stand disposed of.

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