

Lucknow Development Authority Vs. Mehdi Hasan (D) through LR.s. & Ors.

Civil Appeal No. 8887 of 2022
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Full judgment text

Lucknow Development Authority Vs. Mehdi Hasan (D) through LR.s. & Ors.

[Civil Appeal No. 8887 of 2022]

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 03.07.2017 passed by the High Court of Judicature at Allahabad, Lucknow Bench in Misc. Bench No.4149 of 2006 by which the High Court has allowed the said writ petition to the extent of Plot No.219, 1 bigha, 10 biswa and 10 biswansi, Village Malesemau, Tehsil & District Lucknow and has declared that the acquisition with respect to the said land is deemed to have lapsed under Sub-section (2) of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the Act 2013'), the Lucknow Development Authority has preferred the present appeal.

2. Having heard the learned counsel appearing on behalf of the respective parties including Shri R. Basant, learned Senior Advocate appearing on behalf of the subsequent purchasers and having considered the decision of this Court in the case of Indore Development Authority Vs. Manoharlal and Ors., (2020) 8 SCC 129 and as it is reported that the possession of the land in question was already taken over in 2003, delay caused in preferring the appeal condoned which as such was already condoned vide earlier order dated 25.11.2022.

3. Before the High Court the original writ petitioners questioned the acquisition proceedings in relation to separate plots of land belonging to them, however during pendency of the writ petition an application was filed in the writ petition restricted to the plot no.219 only area 1 bigha, 10 biswa and 10 biswansi of village Malesemau, Tehsil & District Lucknow.

3.1 From the impugned judgment and order passed by the High Court and even taking into consideration the counter affidavit filed on behalf of the respondent nos. 2 and 3 - Collector and the Lucknow Development Authority filed before the High Court, it appears that it was the specific case on behalf of the appellant - Authority that the possession of the land in question was duly taken on 13.02.2003 by the Special Land Acquisition Officer and was delivered to the Lucknow Development Authority vide Possession Certificate dated 13.02.2003. It was also stated that the compensation has now been deposited in the Court of District Judge under Section 30(2) of the Land Acquisition Act, 1894.

Without discussing anything on the possession taken by the Special Land Acquisition Officer delivered to the Lucknow Development Authority on 13.02.2003, thereafter the High Court has allowed the writ petition and has declared the acquisition with respect to the land in question deemed to have lapsed under Section 24(2) of the Act, 2013 solely on the ground that the compensation was not tendered/paid to the original land owners under Section 30(2) of the Land Acquisition Act, 2013 at the time when the Act, 2013 came into force. However, the fact remains that the possession of the land in question as per the Land Acquisition Officer and the Lucknow Development Authority was duly taken on 13.02.2003 and was delivered to the Lucknow Development Authority on 13.02.2003 itself.

That once the possession was taken much prior to Act 2013 came into force. As per the law laid down by this Court in the case of Indore Development Authority (supra), it cannot be said that the land proceedings are deemed to have lapsed. As per the law laid down by this Court to attract Section 24(2) of the Act, 2013 twin conditions of not taking possession and not tendering/payment of compensation are required to be satisfied. As per the law laid down by this Court in the aforesaid decision if one of the conditions is not satisfied, the acquisition proceedings are not deemed to have been lapsed under Section 24(2) of the Act, 2013.

3.2 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 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 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 as per the Special Land Acquisition Officer as the possession was taken on 13.02.2003 and was handed over to the Lucknow Development Authority on 13.02.2003 and in view of the decision of this Court in the case of Indore Development Authority (supra), the impugned judgment and order passed by the High Court is unsustainable. Consequently, the impugned judgment and order passed

by the High Court is hereby quashed and set aside.

Present appeal is accordingly allowed. The original writ petition filed before the High Court stands dismissed. No costs.

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