

Delhi Development Authority Vs. Rajan Sood & Ors.

Civil Appeal No. 1927 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 30.08.2016 passed by the High Court of Delhi at New Delhi in Writ Petition (C) No. 1034/2015, by which the High Court has allowed the said writ petition preferred by the private respondents herein - original writ petitioners and has declared that the acquisition proceedings initiated under the Land Acquisition Act, 1894 (hereinafter referred to as the Act, 1894) in respect of the subject lands are deemed to have lapsed under subsection (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), Delhi Development Authority (DDA) and Government of NCT of Delhi have preferred the present appeals.

2. Private respondent No.1 and 2 herein original writ petitioners filed the writ petition before the High Court for a declaration that the acquisition proceedings initiated under the Act, 1894 in respect of the subject lands are deemed to have lapsed under subsection (2) of section 24 of the Act, 2013. It was the case on behalf of the original writ petitioners before the High Court that as the possession of the land in question is with them and no compensation has been paid, the land acquisition proceedings are deemed to have lapsed. Heavy reliance was placed on the decision of this Court in the case of Pune Municipal Corporation and Anr. Vs. Harakchand Misirimal Solanki and Ors, (2014) 3 SCC 183.

2.1 The petition was opposed by the appellants herein and others. It was the specific case on behalf of the DDA that as such the compensation was tendered to one Shiv Kumar S/o Devi Chand. Relying upon the decision of this Court in the case of Pune Municipal Corporation (supra), the High Court, by the impugned judgment and order has allowed the said writ petition and has declared that the acquisition proceedings initiated under the Act, 1894 in respect of the subject lands are deemed to have lapsed under subsection (2) of section 24 of the Act, 2013. 2.2 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, DDA and Government of NCT of Delhi have preferred the present appeals.

3. Learned counsel appearing on behalf of the DDA has vehemently submitted that in the facts and circumstances of the case the High Court has materially erred in declaring that the acquisition proceedings have lapsed under subsection (2) of section 24 of the Act, 2013.

3.1 It is submitted on behalf of the DDA that in the present case as such the possession was already taken over by the Authority on 23.09.1986 after following the due procedure as required and even a punchnama was also drawn, which was the requirement while taking over possession.

3.2 It is urged that even the compensation was tendered to the recorded owner Shri Shiv Kumar through notice under section 12(2) of the Act, 1894 but recorded owner never came forward to accept the same. It is submitted that therefore, the original writ petitioners cannot be permitted to take the benefit under subsection (2) of section 24 of the Act, 2013.

3.3 It is further submitted that even the amount of compensation of Rs.2.00 crores was deposited by the DDA with the Land and Building Department towards compensation. Therefore, the original writ petitioners are not entitled to the benefit of deemed lapse.

3.4 It is further contended by learned counsel appearing on behalf of the DDA and the Government of NCT of Delhi that as such the original writ petitioners were not having any locus to file the writ petition as their title to the property is shrouded with fraud and investigation is pending with the AntiCorruption Branch. It is submitted that as the possession of the land in question was already taken over as far as back on

23.09.1986 and even compensation of Rs.2.00 crores was deposited with the Land and Building Department, in view of the subsequent decision in the case of Indore Development Authority Vs. Manoharlal and Ors., (2020) 8 SCC 129, it cannot be said the acquisition proceedings have lapsed under subsection (2) of section 24 of the Act, 2013.

3.5 It is further submitted on behalf of the appellants that while passing the impugned judgment and order, the High Court has relied on the decision of this Court in the case of Pune Municipal Corporation (supra). That, the said decision has been subsequently overruled by the Constitution bench of this Court in the case of Indore Development Authority (supra).

3.6 In the alternative, it is submitted by the learned counsel appearing on behalf of the respective appellants that assuming, without admitting that the possession of the land in question remain with the original writ petitioners, in that case also, as there was an order of stay granted by the High Court in the year 2011, in the writ petition filed by the original writ petitioners and the High Court granted the interim order of taking no coercive action/order qua the land, therefore, in view of the decision of this Court in the case of Indore Development Authority (supra), the period under which the stay was operative is to be excluded. Reliance is placed on para 366.8 of the decision of this Court in the case of Indore Development Authority (supra).

3.7 Making the above submission and relying upon the aforesaid decision, it is prayed to allow the present appeals.

4. Both these appeals are vehemently opposed by Ms. Pinky Anand, learned Senior Advocate appearing on behalf of the original writ petitioners. Counter affidavits have been filed on behalf of private respondent No.1 and 2 - original writ petitioners opposing the present appeals.

4.1 It is vehemently submitted by Ms. Anand, learned Senior Advocate appearing on behalf of the original writ petitioners that as such there are specific findings recorded by the High Court that the original writ petitioners continue to be in physical possession and therefore, as neither the actual possession of land in question was taken over nor any compensation was paid and/or even tendered to the original writ petitioners. It is rightly held that acquisition proceedings have lapsed.

4.2 It is urged that in fact in the earlier order passed by the High Court on 09.11.2011 in writ petition No.7714/2011, the Division Bench directed the authority to consider their application under section 48 of the Act, 1894 and to decide it on merits. That as per section 48 of the Act, 1894 only in a case where possession of the land is not taken over by the acquiring authority, then only, the application under section 48 of the Act, 1894 would be maintainable. It is submitted therefore, when the Division Bench directed the authority to consider the application of the petitioners under section 48 of the Act, 1894 on merits, it is to be presumed that only original writ petitioners continue to remain possession.

It is contended that the authority might have taken exparte possession on paper as alleged on 23.09.1986, however, the original writ petitioners remained in possession actually. It is further submitted by learned Senior Advocate appearing on behalf of the original writ petitioners that there is also a specific finding recorded by the High Court that the authorities have failed to prove that any amount of compensation was paid and/or tendered to the original writ petitioners or even deposited with the treasury.

It is submitted that when the original writ petitioners remain in possession and neither the compensation was tendered nor it was paid, the twin conditions to declare the acquisition proceedings as having lapsed under subsection (2) of section 24 of the Act, 2013 have been satisfied. It is therefore submitted that the High Court has not committed any error in declaring that the acquisition proceedings in respect of the subject lands are deemed to have lapsed under subsection (2) of section 24 of the Act, 2013

5. We have heard learned counsel appearing on behalf of the respective parties at length.

6. By the impugned judgment and order the High Court has held and declared that the land acquisition proceedings in respect of the land in question are deemed to have lapsed under subsection (2) of section 24 of the Act, 2013. While holding and declaring so the High Court has relied upon decision of this Court in the case of Pune Municipal Corporation (supra). However, the said decision of this Court has been subsequently overruled by the decision of this Court in the case of Indore Development Authority (supra). In paragraph 365 to 366, this Court in the case of Indore Development Authority (supra) has 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 : (2014) 2 SCC (Civ) 274] is hereby overruled and all other decisions in which Pune Municipal Corpn. [Pune Municipal Corpn. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183 : (2014) 2 SCC (Civ) 274] 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 : (2015) 2 SCC (Civ) 298] 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 [Indore Development Authority v. Shailendra, (2018) 3 SCC 412 : (2018) 2 SCC (Civ) 426] , 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 112014, 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 nondeposit 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. Nondeposit 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 nonpayment 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 112014. 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. 112014. 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."

7. The High Court while passing the impugned judgment and order has observed that the possession of the land in question continued with the original writ petitioners and that the compensation was neither paid nor even tendered to the original writ petitioners. However, by holding that the original writ petitioners have continued to remain in possession, the High Court has relied upon the earlier order dated 09.11.2011 passed in writ petition No.7714/2011, by which the High Court directed the authority to consider their application under section 48 of the Act, 1894 on merits. However, it was the specific case on behalf of the authority before the learned Single Judge that the possession of the land in question was already taken over on 23.09.1986 and even the compensation amount of Rs.2.00 crores was deposited with the land and building department.

7.1 It is the case on behalf of the original writ petitioners that a purported letter dated 23.09.1986 allegedly taking symbolic possession was never disclosed by appellants in the proceedings conducted before the High Court on two separate occasions and the same has been filed for the first time in the present proceedings. The aforesaid is not correct. Even in the impugned order itself in paragraph 2, the High Court has noted the submissions on behalf of the appellants to the effect that the possession was taken over on 23.09.1986.

Therefore, it cannot be said such a plea is taken for the first time before this Court. It is the case on behalf of the original writ petitioners, relying upon the earlier order passed by the High Court dated 09.11.2011 in writ petition No.7714/2011 that, the original writ petitioners continue to be in possession and the actual possession has never been taken over. However, it is required to be noted that even in the order dated 09.11.2011, there was no specific finding given by the High Court that the original writ petitioners are in possession of the land in question.

On the contrary, it is observed that the authority to consider the application under section 48 of the Act, 1894 on merits on the assumption of the possession being with the original writ petitioners. Therefore, while passing the order dated 09.11.2011 also, the High Court assumed the original writ petitioners are in possession hence as such no specific finding was given to the effect that the original writ petitioners are in possession.

7.2 It is next contented on behalf of the original writ petitioners that the alleged possession on 23.09.1986 is illegal and it was a paper possession. However, it is submitted on behalf of the appellants that possession of land in question was taken over by drawing the punchnama which can be said to be sufficient compliance of the requirement while taking possession. The High Court has also doubted the compensation being tendered as contended on behalf of the appellant.

7.3 Be that as it may. Assuming for the sake of argument that the original writ petitioners are found to be in possession and the compensation was not tendered, in that case also as can be seen from the order passed by the High Court on 09.11.2011 in writ petition No.7714/2011, the authority was restrained from taking any coercive action in respect of the land in question. Therefore, in view of the subsequent decision of this Court in the case of Indore Development Authority (supra paragraph 366.8), the period, during which the interim order is/was operative, has to be excluded in the computation of five years' period.

In the present case even, it is the contention on behalf of the original writ petitioners that the order of no coercive action was directed to be continued till the application under section 48 of the Act, 1894 was decided. It is the specific case on behalf of the original writ petitioners before this Court and even so stated in the written submissions that till date no decision is taken on the application under section 48 of the Act, 1894. Meaning thereby the direction/stay granted by the High Court while passing the order dated 09.11.2011 in writ petition No.7714/2011 continued when the Act, 2013 came into force.

7.4 In that view of the matter and considering the decision of this Court in case of Indore Development Authority (supra), it cannot be said that the land acquisition proceedings are deemed to have lapsed under subsection (2) of section 24 of the Act, 2013.

8. Applying the law laid down by this Court in the case of Indore Development Authority (supra), more particularly, paragraph 366, it cannot be said that the land acquisition proceedings are deemed to have

lapsed.

9. In view of the above and for the reasons stated above and on the aforesaid ground alone that at the time when the Act, 2013 came into force there was a stay granted by the High Court vide order dated 09.11.2011 in writ petition No.7714/2011 restraining the authority taking any coercive action in respect of the land in question, the impugned judgment and order passed by the High Court declaring that the land acquisition proceedings are deemed to have lapsed under subsection (2) of section 24 of the Act, 2013, is unsustainable.

10. In view of the above and for the reasons stated above, the present appeals are allowed. The impugned judgment and order passed by the High Court in Writ Petition (C) No.1043/2015 declaring that the land acquisition proceedings under the Act, 1894 with respect to the land in question are deemed to have lapsed under subsection (2) of section 24 of the Act, 2013, is hereby quashed and set aside. The present appeals are allowed to the aforesaid extent, accordingly. There shall be no order as to costs.

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