

Delhi Development Authority Vs. Asha Jain & Ors.

Civil Appeal No. 8088 of 2022
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Full judgment text

Delhi Development Authority Vs. Asha Jain & Ors.

[Civil Appeal No. 8088 of 2022]

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. 2987 of 2016 by which the High Court has allowed the said writ petition preferred by the respondent No. 1 herein and has declared that the acquisition with respect to the land in question is deemed to have lapsed by virtue of 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 the learned counsel for the respective parties at length.

3. At the outset, it is required to be noted that in the present case and even as observed by the High Court, the possession of the land in question was taken over in the year 2005, however, observing that as the compensation has not been paid and/or tendered to the recorded owners / petitioners, relying upon the decision of this Court in the case of Pune Municipal Corporation and Anr. Vs. Harakchand Misirimal Solanki and Ors., (2014) 3 SCC 183, the High Court has allowed the writ petition and 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.

3.1 The decision of this Court in the case of Pune Municipal Corporation and Anr. (supra) relied upon by the High Court while passing the impugned judgment and order has been subsequently overruled by this Court in the Constitution Bench decision of this Court in the case of Indore Development Authority Vs. Manoharlal and Ors. (2020) 8 SCC 129. In paragraph 365 and 366, the Constitution Bench of this Court 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] 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 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." In that view of the matter, the impugned judgment and order passed by the High Court is unsustainable.

4. Even otherwise, it is required to be noted that in the present case, the notification under Section 4 of the Land Acquisition Act, 1894 was issued on 25.11.1980; acquisition was for a public purpose, namely, planned development of Delhi by which the large chunk of land in 13 villages of South Delhi including Village Neb Sarai was sought to be acquired. As per the record, the land in question originally is the part of Khasra No. 675 recorded in the name of M/s. Laxmichand Bhagaji Limited - a non-banking company. Therefore, M/s. Laxmichand Bhagaji Limited was the recorded owner.

From the material on record, it appears that even according to the original writ petitioner, she acquired the right in the land in question pursuant to the Agreement to Sell dated 09.05.2005. Thus, the original writ petitioner was claiming the right in the land in question pursuant to the Agreement to Sell dated 09.05.2005.

4.1 As per the settled position of law, Agreement to Sell by itself does not confer any right, title, or interest. In any case, the original writ petitioner can be said to be subsequent purchaser and/or has acquired the right subsequently. In the recent decision of this Court in the case of Delhi Development Authority Vs. Godfrey Phillips (I) Ltd. & Ors., Civil appeal No. 3073 of 2022 after considering the other decisions on the right of the subsequent purchaser to claim lapse of acquisition proceedings, i.e., Meera Sahni Vs. Lieutenant Governor of Delhi & Ors., (2008) 9 SCC 173 and M. Venkatesh & Ors. Vs. Commissioner, Bangalore Development Authority, (2015) 17 SCC 1, it is specifically observed and held that subsequent purchaser has no right to claim lapse of acquisition proceedings. Similar view has been expressed by the Larger Bench

judgment of this Court in the case of Shiv Kumar & Anr. Vs. Union of India & Ors., (2019) 10 SCC 229.

4.2 Under the circumstances also, the High Court has erred in entertaining the writ petition at the instance of the original writ petitioner being subsequent purchaser, praying for a declaration that the acquisition is deemed to have lapsed in view of Section 24(2) of the Act, 2013. 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 reasons stated above, present appeal succeeds. 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 under Section 24(2) of the Act, 2013, is hereby quashed and set aside. Consequently, the writ petition filed by the original writ petitioner before the High Court being Writ Petition (C) No. 2987 of 2016 stands dismissed.

Present appeal is accordingly allowed. No costs.

Pending application, if any, also stands disposed of.

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