

Delhi Development Authority Vs. Damini Wadhwa & Ors.

Civil Appeal No. 7962 of 2022
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Full judgment text

Delhi Development Authority Vs. Damini Wadhwa & Ors.

[Civil Appeal No. 7962 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. 11735 of 2016 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 with respect to the lands in question has 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. That the respondent No. 1 herein - original writ petitioner filed a writ petition before the High Court seeking declaration that the acquisition with respect to the suit lands, i.e., Khasra No. 589 (1-8), 1 bigha and 8 biswas (out of 4 bighas) situated in the Revenue Estate of Village Maidan Garhi, NCT of Delhi, is deemed to have lapsed by virtue of Section 24(2) of the Act, 2013.

2.1 At the outset, it is required to be noted that the lands in question alongwith other agricultural lands were notified to be acquired under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "Act, 1894") on 25.11.1980; declaration under Section 6 of the Act, 1894 was issued on 07.06.1985; and award came to be declared by the Collector on 17.06.1987.

2.2 There were number of litigations initiated by various landowners with respect to the acquisition in question. The acquisition proceedings initiated by the aforesaid notification/declaration were challenged by the interested persons by filing various writ petitions wherein interim protection was granted by the High Court.

2.3 Various rounds of litigations were fought in respect of the abovementioned notifications. The High Court dismissed the writ petitions vide judgment and order dated 25.11.2004 and upheld the acquisition proceedings. It appears that in one set of writ petitions, there was difference of opinion and these cases were referred to the third Judge, which came to be dismissed on 11.05.2007. These cases were decided in favour of the landowners and the notification under Section 6 and subsequent acquisition proceedings were quashed. However, subsequently, by reported judgment in the case of Om Parkash Vs. Union of India and Ors., (2010) 4 SCC 17, this Court upheld the acquisition proceedings. Thus, the acquisition qua the lands in question attained finality. That thereafter the private respondent herein - original writ petitioner filed the present writ petition before the High Court for the aforesaid reliefs.

2.4 A detailed counter was filed on behalf of the Delhi Development Authority - the appellant herein inter alia challenging the locus of the original writ petitioner. It was the case on behalf of the Delhi Development Authority that the possession at the relevant time could not be taken over due to the various litigations pending with respect to the notification / declaration. Though, it was also the case on behalf of the Delhi Development Authority that the substantial possession with respect to most of the lands to be acquired were taken over, however, with respect to some portion of the acquisition, the possession could not be taken over due to the pending litigations.

Despite the above and even without considering the objections on the locus of the original writ petitioner, by the impugned judgment and order, the High Court has declared that the acquisition proceedings with respect to the lands in question is deemed to have been lapsed by virtue of Section 24(2) of the Act, 2013, as neither the compensation has been paid nor the possession of the lands in question has been taken over. The impugned judgment and order passed by the High Court is the subject matter of present appeal.

3. Ms. Manika Tripathy, learned counsel appearing on behalf of the appellant - DDA has submitted that as such the original writ petitioner had no locus at all to file the writ petition before the High Court challenging the acquisition and/or praying for declaration. It is submitted that the original writ petitioner filed the writ petition on the basis of the Agreement to Sell dated 22.05.2016, which does not inspire any confidence.

It is submitted that even otherwise the said Agreement to Sell was much after the acquisition proceedings were initiated under the provisions of the Act, 1894. It is submitted that therefore as held by this Hon'ble Court in the case of Delhi Development Authority Vs. Godfrey Phillips (I) Ltd. & Ors., Civil appeal No. 3073 of 2022, subsequent purchaser is not entitled to claim lapsing of acquisition proceedings under the Act, 2013. It is submitted that therefore the aforesaid aspect has not been at all considered and/or dealt with by the High Court while passing the impugned judgment and order.

3.1 It is further submitted by the learned counsel appearing on behalf of the appellant - DDA that even on merits also, the Hon'ble High Court has erred in holding and/or declaring that the acquisition with respect to the lands in question has lapsed by virtue of Section 24(2) of the Act, 2013. It is submitted that the Hon'ble High Court has not at all appreciated the fact that the possession of the substantial portion of the lands acquired was taken over. However, with respect to small parcels of lands, the possession could not be taken over because of the pending litigations challenging the acquisition proceedings. It is submitted that as observed and held by this Hon'ble Court in the case of Indore Development Authority Vs. Manoharlal and Ors. (2020) 8 SCC 129, once the authority could not take the possession due to pending litigations, there is no question of attracting Section 24(2) of the Act, 2013.

3.2 Making above submissions and relying upon the above decisions, it is prayed to allow the present appeal.

4. Shri N.S. Vasisht, learned counsel appearing on behalf of the original writ petitioner - respondent No. 1 while opposing the present appeal has vehemently submitted that considering the fact that neither the possession was taken over nor the compensation was paid/tendered, as rightly observed and held by the Hon'ble High Court, Section 24(2) of the Act, 2013 shall be attracted and, therefore, there shall be deemed lapse of the acquisition. It is submitted that therefore, no error has been committed by the Hon'ble High Court in allowing the writ petition.

5. Ms. Sujeeta Srivastava, learned counsel appearing on behalf of the respondent Nos. 4 and 5 has supported the appellant.

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

7. At the outset, it is required to be noted that from the counter filed on behalf of the DDA, which is on record, it appears that the respondent No. 1 - original writ petitioner filed the writ petition and claimed the right, title, or interest in the lands in question on the basis of the Agreement to Sell dated 22.05.2016. As per the settled position of law, Agreement to Sell by itself does not confer any right, title, or interest. Even in the counter affidavit, the appellant doubted the genuineness of the transaction of the Agreement to Sell dated 22.05.2016. A specific plea was taken on behalf of the DDA on the locus of the original writ petitioner.

However, the High Court has not at all dealt with and/or considered the issue with respect to the locus of the original writ petitioner. Be that it may, even considering the fact that the Agreement to Sell was of the year 2016 and considering the fact that the notification under Section 4 of the Act, 1894 was issued on 25.11.1980, therefore, it is apparent that the original writ petitioner allegedly derived the interest in the lands in question much after the acquisition proceedings were initiated and therefore, the respondent No. 1 - original writ petitioner can be said to be subsequent purchaser.

In the recent decision of this Court in the case of Godfrey Phillips (I) Ltd. & Ors. (supra) 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.

7.1 Under the circumstances and even accepting the case on behalf of the original writ petitioner that she might have acquired some interest on the basis of the Agreement to Sell dated 22.05.2016, being a subsequent purchaser and/or having acquired the interest in the lands in question subsequently, she was

not having any right to claim lapse of acquisition proceedings under Section 24(2) of the Act, 2013. Under the circumstances, the High Court erred in entertaining the writ petition preferred by the respondent No. 1 - original writ petitioner claiming lapse of acquisition proceedings under the Act, 2013.

7.2 Even otherwise on merits also, the High Court has erred in declaring / ordering lapse of acquisition under Section 24(2) of the Act, 2013. The High Court has not at all appreciated the fact that the large parcels of the lands were acquired, which were under the same notification/ different notifications. The acquisition proceedings under the Act, 1894 were the subject matter of litigations and the acquisition proceedings came to be confirmed by this Court. The possession of some parcels of the land could not be taken over because of the pending litigations and even the compensation could not be deposited due to pending litigations.

Under the circumstances and as observed and held by this Court in the case of Indore Development Authority (supra), there cannot be any lapse of acquisition under Section 24(2) of the Act, 2013 on the ground of possession could not be taken over by the authority and/or the compensation could not be deposited / tendered due to the pending litigations. Under these circumstances also, the High Court has erred in allowing the writ petition and declaring that the acquisition with respect to the lands in question is deemed to have lapsed under Section 24(2) of the Act, 2013. The impugned judgment and order passed by the High Court is unsustainable both on facts as well as on law.

8. In view of the above and for the reasons stated above, present appeal succeeds. The impugned judgment and order passed by the High Court dated 25.07.2017 in Writ Petition (Civil) No. 11735 of 2016 is hereby quashed and set aside. Consequently, the writ petition before the High Court being Writ Petition (C) No. 11735 of 2016 stands dismissed.

Present appeal is accordingly allowed.

No costs. Pending application(s), if any, also stand disposed of.

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