

(2023) 01 SC CK 0033

In the Supreme Court Of India

Case No : Civil Appeal No. 9287 Of 2022

Delhi Development Authority

APPELLANT

Vs

Beena Gupta (D) Through Lrs. & Ors.

RESPONDENT

Date of Decision : 16-01-2023

Acts Referred:

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24, 24(1)(a), 24(1)(b), 24(2)
Land Acquisition Act, 1894 — Section 4, 6, 16, 31, 31(1), 34

Citation : (2023) 1 Scale 787

Hon'ble Judges : M. R. Shah, J;C.T. Ravikumar, J

Bench : Division Bench

Advocate : Malvika Kapila, Tanwangi Shukla, Chand Qureshi, Nitin Jain, Sanjay Saini, Rahul Mohod, Pradeep Mohod, Shiv Kumar Vats, Sujeeta Srivastava

Final Decision : Allowed

Judgement

M.R. Shah, J

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 01.11.2018 passed by the High Court of Delhi at New Delhi in Writ Petition (Civil) No.3986 of 2018 by which the High Court has allowed the said writ petition preferred by the respondent no.1 herein – original writ petitioner and has declared that the acquisition with respect 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 'the Act 2013'), the Delhi Development Authority has preferred the present appeal.

2. At the outset, it is required to be noted that vide Notification dated 17.06.2005 issued under the provisions of Section 4 of the Land Acquisition Act, 1894 large tract of the land measuring about 200 Bighas falling in Village Mundaka was sought to be acquired. A declaration under Section 6 of the Act was issued and published thereafter on 31.05.2006. In the present case the

dispute is with respect to the land measuring 1 Bigha and 2 Biswas out of Khasra No. 65/22/1. That, vide sale deed dated 17.06.2005, the said land was purchased by one Ashok Kumar and Raj Kumar Sharma. Thereafter, vide order dated 01.08.2005, the aforesaid persons came to be mutated in the revenue records. That thereafter vide GPA, Will, Affidavit, Agreement to sell and Receipt dated 11.05.2010 the aforesaid Raj Kumar Sharma sold 275 sq. yds. land, out of 11 Biswas owned by him, to respondent no.1 herein – original writ petitioner. Thus, the respondent no.1 – original writ petitioner can be said to be subsequent purchaser who acquired the right, title or interest in the land in question much after the land acquisition proceedings and the award was declared, which was declared on 31.05.2007.

2.1 The respondent no.1 herein – original writ petitioner filed the writ petition before the High Court to declare that the acquisition with respect to the land in question is deemed to have lapsed under Section 24(2) of the Act, 2013 on the ground that the compensation with respect to the land in question is not paid.

2.2 Though it was specifically the case on behalf of the appellant before the High Court so stated in the counter affidavit that the possession of the land in question was taken over on 15.12.2007 by drawing the panchnama and that the original writ petitioner being subsequent purchaser had no locus to challenge the acquisition, by the impugned judgment and order the High Court has entertained the writ petition preferred by respondent no.1 – original writ petitioner 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.

2.3. As held by this Court in the case of Shiv Kumar & Anr. Vs. Union of India & Ors. (2019) 10 SCC 229 which has been subsequently followed by this Court in the case of Delhi Administration Through Secretary, Land and Building vs. Pawan Kumar & Ors., Civil Appeal No.3646 of 2022 and Delhi Development Authority versus Godfrey Phillips (I) Ltd. & Ors, Civil Appeal No.3073 of 2022, the subsequent purchaser had no locus to challenge the acquisition and/or lapsing of the acquisition under the Act, 2013. Under the circumstances the High Court has seriously erred in entertaining the writ petition preferred by the respondent no.1 – original writ petitioner – subsequent purchaser who had acquired the right, title or interest in the land in question subsequent to the acquisition proceedings, subsequent to passing of the award. Under the circumstances the impugned judgment and order passed by the High Court is unsustainable.

2.4 Even otherwise on merits also and in light of the subsequent decision of the Constitution Bench of this Court in the case of Indore Development Authority versus Manoharlal and others reported in (2020) 8 SCC 129 the impugned judgment and order passed by the High Court declaring the acquisition with respect to the land in question is deemed to have lapsed is unsustainable.

2.5 As observed hereinabove it was the specific case on behalf of the appellant before the High Court and so stated in the counter before the High Court that the

possession of the land in question was taken over on 15.12.2007.

2.6 In the case of Indore Development Authority (supra) the Constitution Bench of this Court in paragraph 366 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."

2.7 Applying the law laid down by this Court in the case of Indore Development Authority (*supra*), on merits also the impugned judgment and order passed by the High Court declaring that the acquisition with respect to land in question is deemed to have lapsed under Section 24(2) of the Act, 2013 is unsustainable.

3. In view of the above and for the reason stated above the present appeal succeeds. The impugned judgment and order passed by the High Court declaring that the acquisition with respect to the land is deemed to have lapsed under Section 24(2) of the Act, 2013 is accordingly quashed and set aside. Consequently, the original writ petition filed by respondent no.1 filed before the High Court stands dismissed.

Present appeal is accordingly allowed. No costs.