

(2015) 05 SC CK 0071

In the Supreme Court Of India

Case No : C.A. No. 4254 of 2015 (Arising out of SLP (C) No. 1188 of 2011), C.A. No. 4255 of 2015 (Arising out of SLP (C) No. 27659 of 2010) and C.A. No. 4256 of 2015 (Arising out of SLP (C) No. 5360 of 2011)

Karan Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 05-05-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 11
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24, 24(2)

Citation : (2016) 1 RCR(Civil) 637 : (2015) 7 SCALE 191

Hon'ble Judges : Vikramajit Sen, J; Abhay Manohar Sapre, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Leave granted. These Appeals were originally filed seeking relief on the basis of provisions in the Land Acquisition Act, 1894. Subsequently, upon the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short "the New Act"), the Appeal grounds herein metamorphosed into proceedings Under Section 24(2) of the New Act, seeking lapse of the acquisition proceedings thereunder.

2. Similar positioned Appeals i.e. Civil Appeal No. 5054 of 2008 and other connected Appeals, i.e. Civil Appeal Nos. 5100, 5283, 5105-5124, 5101-5104, 5053, 5050, 5052 of 2008, 3279, 3280 of 2012, 5127-5129, 5125, 5051 of 2008 and 3278 of 2012, have been disposed of with these observations and directions, which seem to us to remain the commendable approach-

"All of these Appeals were admitted before the commencement of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013. After commencement thereof, the Appellants changed the tack of their challenge-originally framed under the Land Acquisition Act, 1894

- and impugned the acquisition proceedings in toto, by evoking the deemed lapse of proceedings Under Section 24(2) of the 2013 Act. Any determination under this provision must proceed sequentially. First, the factum of an Award Under Section 11 of the Land Acquisition Act, 1894, must be clearly established. The said Award must predate the commencement of the Act, i.e., 01.01.2014, by at least five years (or more), i.e., the Award must have been passed on or before 01.01.2009. This having been established, if possession is found to not have been taken, or compensation not paid, then the proceedings shall be deemed to have lapsed. Thereafter, the appropriate Government, if it so chooses, may reinstitute acquisition proceedings in respect of the same land, but under the 2013 Act's regime."

3. Each and every deeming operation Under Section 24(2) of the New Act requires unambiguously and unvaryingly that a factual conclusion be drawn about the passing of the Award Under Section 11 of the 1894 Act, on or before 01.01.2009; further, the absence of compensation having been paid or the absence of possession having been taken by the acquirer, either of these, must be a proven point of fact, as a threshold requirement attracting the lapse.

4. From the record, these Appeals do not unambiguously answer these indispensable queries, which inarguably must precede any declaration of lapse of acquisition Under Section 24(2) of the New Act. Each of these Appeals must factually satisfy this Court on the ingredients of Section 24(2) of the New Act, before this Court may pass a declaration in recognition of the statutory lapse of acquisition.

5. This Court has in a number of decisions including *Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others*, AIR 2014 SC 982 : (2014) AIRSCW 787 : (2014) 3 JT 283 : (2014) 1 RCR(Civil) 880 : (2014) 1 SCALE 618 : (2014) 3 SCC 183 , *Union of India (UOI) and Others Vs. Shiv Raj and Others*, AIR 2014 SC 2242 : (2014) AIRSCW 3388 : (2014) 6 SCC 564 and *Bimla Devi Vs. State of Haryana*, (2014) 7 SCALE 215 : (2014) 6 SCC 583 , clarified the manner in which the new provision is to be interpreted viz., that the acquisition lapses.

6. It has been contended in other Appeals before this Court that the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Settlement Ordinance, 2014, issued on 31st December, 2014, clarifies that if possession of the acquired land has not been taken owing to interim Orders passed in this regard the acquisition may be protected and insulated from the purpose and intendment of Section 24 of the New Act. This Court has now clarified in *Radiance Fincap (P) Ltd. Vs. Union of India (UOI)*(2015) 1 SCALE 677 that the Ordinance shall have prospective operation only. This Court therein held as under:

"The right conferred to the land holders/owners of the acquired land Under Section 24(2) of the Act is the statutory right and, therefore, the said right

cannot be taken away by an Ordinance by inserting proviso to the above said sub-section without giving retrospective effect to the same."

The legal position has been subsequently reiterated by this Court in Arvind Bansal and Others Vs. State of Haryana and Others(2015) 3 SCALE 200 and Karnail Kaur Vs. State of Punjab(2015) 2 AD 429 : (2015) 1 RCR(Civil) 786 : (2015) 1 SCALE 598 : (2015) 3 SCC 206 : (2015) 2 SCJ 271 . We are in respectful agreement with all these decisions. In the event that there is no ambiguity that (a) the Award is over five years old and (b) that compensation has not been paid or (c) that possession of the land has not been taken, the acquisition is liable to be quashed. In Rajiv Choudhrie HUF Vs. Union of India (UOI) and Others(2015) 3 SCALE 203 , noting that the physical possession of the land had not been taken by the Respondents, nor compensation paid by the Respondents to the Appellant in respect whereof the Award was passed on 6.08.2007, the acquisition proceedings had been declared as having lapsed. The same position was arrived at in Rajiv Chowdhrie Huf Vs. Union of India (UOI), (2015) 1 RCR(Civil) 368 : (2014) 10 SCJ 620 by a different Bench of this Court.

7. In all these Appeals, the submission of the land owners is that either possession is still with them, or compensation has not been tendered by the State. Consequently, the land owners propose to initiate proceedings founded on Section 24 of the New Act.

8. Having heard all the learned Counsel, we are persuaded to dispose of these proceedings, without entering on the merits, by granting liberty to the land owners before us to pray for the revival of the Appeals in the event that Orders Under Section 24 of the New Act are adverse to their interest. We, therefore, permit the land owners to initiate appropriate proceedings in the proper forum/court, seeking the benefit of Section 24 of the New Act, within eight weeks from today. We clarify that, in the event that any land owners have already approached the High Court concerned, their plea Under Section 24 of the New Act shall be decided on merits.

9. It is in these circumstances that all these Appeals are disposed of with liberty to the parties to revive these Appeals in the event that the Orders Under Section 24 of the New Act are seen as adverse to their interest. Interim protection, if already granted, shall continue for a period of 90 days from today.

10. It is further clarified that the parties desirous of reviving the Appeal must approach this Court within 90 days of the passing of the High Court's orders. These Appeals are also disposed of in the above terms.