

(2022) 03 DEL CK 0243

In the Delhi High Court

Case No : Civil Writ Petition No. 706 Of 2017

M/S Orchid Realtors (P) Ltd

APPELLANT

Vs

Union Of India And Ors.

RESPONDENT

Date of Decision : 29-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 4, 6, 9, 10, 16, 31

Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 24, 24(2)

Delhi Lands (Restriction on Transfer) Act, 1972 &mdash Section 4

Citation : (2022) 03 DEL CK 0243

Hon'ble Judges : Mukta Gupta, J;Neena Bansal Krishna, J

Bench : Division Bench

Advocate : N. S. Vasisht, Jyoti Kataria Bajaj, Manika Tripathy, Ashutosh Kaushik, Manish Vashist, Sidharth Panda, Ritank Kumar

Final Decision : Dismissed

Judgement

Neena Bansal Krishna, J

1. The petitioner by way of present writ petition under Article 226 of the Constitution of India seeks quashing of Notification No.F.9 (16)/80-L&B dated 25th November, 1980 under Section 4, Notification No.F.9(28)/85-L&B dated 18th June, 1985 under Section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Old Act") and Award No.23/87-88 in respect of his agricultural land situated in the revenue estate of village Maidan Garhi, New Delhi and also various acts continuing with the acquisition of the land of the petitioners after notification under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the New Land Acquisition Act").

2. The respondents issued the Notification under Section 4 dated 25th November, 1980 and Notification under Section 6 dated 18th June, 1985 and pursuant

thereto, Award No.23/87-88 was made for the acquisition of the land ad measuring 5 Bighas and 15 Biswas of agricultural land forming part of Khasra No.618 situated in the revenue estate of the village Maidan Garhi, New Delhi, for public purpose of planned development of Delhi. The petitioner has asserted that he purchased the said land from the erstwhile owners, namely, Sh. Mahinder, Sh. Rajinder, Sh. Inder, all sons of Sh. Prabhu Dayal, Sh. Jagdish, Sh. Manohar, Smt. Roopwati, Sh. Hoshiar Singh, Sh. Mukhtiar Singh vide Agreement to Sell dated 22nd August, 2005, General Power of Attorney and eight registered Wills, all dated 23rd August, 2005 and took the possession vide letter dated 22nd August, 2005. After the purchase of the said land, the petitioner has become the owner and has been in continuous peaceful possession of the said land.

3. The petitioner has claimed that though the Award was made in the year 1986, the possession of the said land was never acquired by the respondents. It is asserted that possession of the said land has always remained with the predecessors of the petitioner and thereafter, with him continuously till date. The Notification No. F.9(16)/80/L&B dated 25th November, 1980 for acquisition was issued in the year 1980; however, despite of the lapse of 34 years, no planned development for revenue estate of village Maidangarhi in the NCT of Delhi has been envisaged in the 'Master Plan for Delhi-1962' and it remains the same even in the 'Master Plan for Delhi-2021'. Moreover, no compensation has ever been paid or deposited in the court as mandated under Section 31 of the Old Act. Under Chapter 4, Section 24 of the New Land Acquisition Act, the State Acquisition proceedings are declared null and void and lapsed under two contingencies, namely, where the Award has been made five years or more prior to the commencement of the New Land Acquisition Act which came into effect from 01st January, 2014, and the possession of the land has not been taken over or where the compensation has not been paid. The entire acquisition proceedings are thus deemed to have lapsed under the New Land Acquisition Act and have become null and void. Once the acquisition has lapsed, the Government has to initiate fresh acquisition proceedings under the New Land Acquisition Act as held by Hon'ble Supreme Court in *Pune Municipal Corporation & Anr. Vs. Harak Chand Misiri Mal Solanki & Ors* in Civil Appeal No.877/2014. Similar observations have been made in identical situations in *Bharat Kumar vs. State of Haryana* [Civil Appeal No.3871/2014], *Bimla Devi & Ors. vs. State of Haryana & Ors.* [Civil Appeal No.3871/2014] and *Union of India & Ors. vs. Shivraj & Ors.* [Civil Appeal No.5478-5483/2014]. It is asserted that the respondents have failed to accept the mandate of law and are refusing to accept that the acquisition has lapsed.

4. Therefore, prayer is made that a Writ of Certiorari or any other writ may be issued declaring the entire acquisition to have lapsed and further direct the respondents not to disturb or hinder the possession and enjoyment of the petitioner over the said land.

5. The respondent Nos. 4 and 5 in their counter affidavits have explained that pursuant to Notification under Section 4 dated 25th November, 1980 and

Declaration under Section 6, dated 18th June, 1985, notices under Section 9 and 10 of the Old Act were issued to the interested persons, inviting the claims which were considered and thereafter, Land Acquisition Collector passed the Award No.23/87-88 dated 17th June, 1987. The Notification/Declaration and the acquisition proceedings were challenged by the interested persons by filing various writ petitions. Finally, the acquisition proceedings were upheld by this Court. Various rounds of litigations were fought in respect of the above mentioned Notification, but the acquisition proceedings were finally upheld on 25th November, 2004. However, one set of writ petitions where there was a difference of opinion was referred to a third Judge, who decided the same on 11th May, 2007 in favour of the land owners and thereby the Declaration under Section 6 and subsequent acquisition proceedings were quashed. Both, the land owners as well as Union of India preferred an appeal before the Hon'ble Supreme Court. The appeal preferred by land owners titled Om Prakash vs. Union of India along with other appeals was dismissed by the Hon'ble Supreme Court which was reported in 2010 (4) SCC 17, thereby upholding the acquisition proceedings. The appeals titled Union of India vs. Shivraj and Ors. along with connected appeals were dismissed by the Hon'ble Supreme Court on 07th May, 2014.

6. It has been further explained that the recorded owners never challenged the acquisition proceedings. The possession of the land was taken on 16th July, 1987 and handed over to the beneficiary Department and the compensation was paid to the recorded owners, namely, Hoshiar Singh and Mukhtiar Singh vide Cheque Nos. 82766 and 82767 dated 24th September, 1987 for Rs. 209940.75 respectively. The present petitioner is subsequent purchaser who despite having knowledge about the status of the land in question having been acquired under the Old Act, entered into a transfer which was done in violation of Section 4 of Delhi Lands (Restriction on Transfer) Act, 1972 without first obtaining the permission of the competent authority under the Act. They have no locus to challenge the acquisition proceeding by virtue of Section 24(2) of the New Land Acquisition Act as has been settled in K.N. Aswath Narayana Setty (D) through LRs vs. State of Karnataka & Ors (2014) 15 SCC 394 and Meena Sahni vs. Lt. Governor of Delhi & Ors. (2008) 9 SCC 177. It is, therefore, submitted that the allegations made by the petitioner are baseless and concocted and the writ petition is liable to be dismissed.

7. The respondent No. 3-Delhi Development Authority has filed a separate counter-affidavit wherein similar contentions have been raised.

8. Submissions heard.

9. It is evident from the submissions made by the parties that undisputedly the Notification under Section 4 was issued on 25th November, 1980 and the Declaration under Section 6 was issued on 18th June, 1985 and an Award of Acquisition was made on 17th June, 1987. The compensation was also paid to the erstwhile owners, namely, Hoshiar Singh and Mukhtiar Singh. The present petitioner is a subsequent purchaser who by virtue of Section 4 of Delhi Lands

(Restriction on Transfer) Act, 1972 is barred from entering into a transfer transaction in respect of the property which stands acquired.

10. The New Land Acquisition Act of 2013 repeals and replaces the Land Acquisition Act, 1894, a general law for the acquisition of land of public purposes, which had been in force for almost 120 years, with a view to addressing certain inadequacies and/or shortcomings in the said Act. A three-Judge Bench of Apex Court in the decision reported as 1 (2014) 3 SCC 183 *Pune Municipal Corporation & Anr vs. Harakchand Misrimal Solanki & Ors* interpreted Section 24 of the Act of 2013. Later, in another appeal (arising out of S.L.P. (C) No.2131 of 2016 *Indore Development Authority vs. Shailendra (dead) through Lrs. & Ors.* Reported as 2018 SCC Online SC 100, while referring the matter to a larger Bench on 7th December, 2017; the Apex Court noticed:

“cases which have been concluded are being revived. In spite of not accepting the compensation deliberately statements are made in the Court that they do not want to receive the compensation at any cost, and they are agitating the matter time and again after having lost the matters and when proceedings are kept pending by interim orders by filing successive petitions, the provisions of section 24 cannot be invoked by such landowners”.

11. The Court, therefore, stated that the matter should be considered by a larger Bench and referred the case to Hon’ble the Chief Justice of India for appropriate orders.

12. The reference was answered by the Hon’ble Supreme Court in the decision reported as (2020) 8 SCC 129 *Indore Development Authority vs. Manoharlal* by observing that Section 24 does not confer a new cause of action to challenge the acquisition proceedings but only intends to give higher compensation in case the obligation of taking possession and depositing of compensation has not been fulfilled. Section 24 is applicable to pending proceedings, not to the concluded proceedings and the legality of the concluded proceedings, cannot be questioned. Once an award has been passed and possession taken under Section 16 of the Act of 1894, the land vests in State. There is no divesting and a challenge does not lie within the ambit of the deemed lapse under Section 24(2). It was explained as under:

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3. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 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.”

13. In the present case, the Award was made on 17th August, 1987 and the

possession was taken on 16th July, 1987. The compensation was duly paid through cheques dated 24th September, 1987 to the recorded owners. The acquisition proceedings stood concluded in 1987. The petitioner herein is subsequent purchaser claiming to have entered into Agreement to Sell after about 18 years on 22th August, 2005. Section 24 cannot be used to revive dead and stale claims and concluded cases where rights and claims have been lost and negatived, on the pretext of enactment of Section 24 as has been held in Indore Development Authority (supra). The claim of the petitioner, who is the subsequent purchaser, is only an attempt to infuse life in a concluded matter which was determined and had attained finality way back in 1987 i.e., much before they entered into sale transaction with the predecessors in interest.

14. The claim of the petitioner is bereft of any merit. The writ petition is, therefore, dismissed.