

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 01.03.2016

W.P.(C) 5095/2014 and CM 10164/2014

M/S INSPIRATION ENGINEER PVT. LTD. & ORS Petitioners

versus

UNION OF INDIA & ORS Respondents

Advocates who appeared in this case:

For the Petitioners	: Mr R.K. Anand, Sr Advocate with Mr Chetan Anand, Mr Akash Srivastava and Ms Payal Suneja
For Respondent Nos.1 & 3	: Mr Yeeshu Jain and Ms Jyoti Tyagi
For the Respondent No.2	: Mr Ajay Digpaul
For the Respondent No.4	: Mr J.K. Srivastava

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J

1. In this writ petition two sets of points have been raised concerning the land acquisition proceedings. One set pertains to the provisions of the Land Acquisition Act, 1894 Act (hereinafter referred to as 'the 1894 Act') and the other set relates to the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the 2013 Act').

2. Insofar as the 1894 Act is concerned, it is contended on behalf of the petitioners that since the provisions of Section 11A thereof were not complied with and the Award was not made within the stipulated period of two years, the acquisition has lapsed. The other point raised under the 1894 Act is that because of non-compliance of the provisions under Section 17(3A), the acquisition has lapsed. As regards the 2013 Act, it is submitted that, in any event, since compensation has not been paid to the petitioners in respect of the said acquisition, the proviso in Section 24 of the 2013 Act would be applicable and, therefore, compensation would have to be paid to the petitioners under the 2013 Act.

3. All these points are controverted by the learned counsel appearing on behalf of the respondents. But, before we advert to the rival contentions, it would be appropriate if we set out the chronology of events. On 16.10.2007, the Notification under Section 4 of the 1894 Act pertaining to, *inter alia*, the petitioners' land was issued. The said notification reads as under:-

**“GOVERNMENT OF N.C.T.OF DELHI
LAND & BUILDING DEPARTMENT
VIKAS BHAWAN NEW DELHI**

No. F7(1)/07/L&B/LA/MRTS (W)/10164

Dated: 16.10.2007

NOTIFICATION

Whereas it appears to the Lt. Governor, Delhi that land is likely to be required to be taken by Government at the public expense for a public

purpose namely for construction of Kirti Nagar- Ashok Park Corridor of Delhi MRTS Project Phase II. It is hereby notified that the land in the locality described below is likely to be acquired for the above purpose.

The notification is made, under the provisions of Sub-section 1 of Section 4 of the Land Acquisition Act, 1894, to all whom it may concern.

In exercise of the powers conferred by the aforesaid section, the Lt. Governor, Delhi is pleased to authorize the officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey the land in the locality and do all other acts required or permitted by that section.

The Lt. Governor, Delhi is satisfied also that provisions of sub-section (1) of the section 17 of the said Act are applicable to this land and is further please under sub-section (4) of the said Section to direct that all the provisions of section 5(A) shall not apply.

SPECIFICATION

VILLAGE	TOTAL AREA (Sq. Mtrs.)	PROPERTY NO.	AREA (SQ. M.)
Basai Darapur (Najafgarh Road)	626 Sq. Mtrs.	62, Rama Road, Good Year Tyres	22.0
		62, Rama Road, Auto Vikas Body Shop Chevrolet	94.0
		63, Najafgarh Road, Kisan Metals Pvt. Ltd.	510.0

BY ORDER AND IN THE NAME OF THE LT. GOVERNOR OF NCT
OF DELHI

DIP/1304/07-08

Sd/-
(T.C.NAKH)
ADDL SECRETARY (L&B)”

It is pertinent to mention at this juncture itself that the present petition is concerned with 510 sq. mtrs. of land described as property No. 63, Najafgarh Road.

4. This notification was followed by the declaration under Section 6 of the 1894 Act on 15.02.2008. On that very date, that is, on 15.02.2008, another notification was issued under Section 17(1) of the 1894 Act and the Land Acquisition Collector (West), Delhi was directed to take possession of the land under the subject acquisition on expiry of 15 days from publication of the notice under Section 9(1) of the 1894 Act. The notice under Section 9 and 10 of the 1894 Act was issued on 07.04.2008. On 25.04.2008, *inter alia*, the petitioners submitted their claim for compensation in respect of the said acquisition. The possession of the land/ property under the subject acquisition was taken by the government on 31.03.2009. This was followed by the Award No. 5/DC(W)/2001-12 made on 25.05.2012.

5. It is, therefore, clear that possession of the property in question was taken on 31.03.2009. The acquisition was for the construction of the Kirti Nagar-Ashok Park Corridor of Delhi MRTS Project, Phase-II, by the Delhi Metro Rail Corporation Limited (DMRC). The affidavit filed on behalf of the Delhi Metro Rail Corporation clearly indicates that the possession of the subject property, after having been taken over by the Land Acquisition Collector, had been handed over to the Delhi Metro Rail Corporation and that the same was utilized for their project. With regard to the issue of

compensation, the counter-affidavit filed on behalf of the respondent No.1 by the Land Acquisition Collector (West) clearly indicates as under:-

“7. That it is submitted that the physical possession of the lands under reference was taken over on 31.03.2009 and handed over to the beneficiary department. However, the compensation has yet to be paid to its respective recorded owners. It is pertinent to mention here that it is settled law that section 11 A is not applicable where urgency clause under section 17 has been invoked and possession has been taken.”

From the above extract, it is evident that while the taking over of physical possession of the land in question on 31.03.2009 is confirmed and so too the handing over of the same to the beneficiary department, i.e., the Delhi Metro Rail Corporation, it has also been stated in clear terms that compensation has yet to be paid to the respective recorded owners.

6. In the light of the above facts, the learned counsel for the petitioners submitted that, first of all, Section 11A of the 1894 Act had been violated inasmuch as the Award had to be made within a period of two years from the date of publication of the declaration under Section 6 of the 1894 Act. But, the Award was passed after four years and three months of the declaration under Section 6 and, therefore, the entire acquisition has lapsed. Section 11A of the 1894 Act reads as under:-

“11A. Period within which an award shall be made—

(1) The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), the award shall be made within a period of two years from such commencement.

Explanation. – In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.”

7. A reference was made to the Supreme Court decision in the case of **Laxmi Devi v. State of Bihar and Others: (2015) 10 SCC 241**. In response, the plea taken by the respondents was that Section 11A would not have application in the case of an acquisition for which a declaration and notification under Section 17 of the 1894 Act had been issued. We may point out at this juncture itself that the learned counsel for the respondents had placed reliance on an earlier decision of the Supreme Court in the case of **Satendra Prasad Jain and Others v. State of U. P. and Others : (1993) 4 SCC 369**. It has been contended by the learned counsel for the respondents that Section 11A would not have applicability in cases of acquisition where the emergency provisions under Section 17 of the 1894 Act had been invoked and possession had been taken pursuant thereto. It was also

contended that the decision of the Supreme Court in **Satendra Prasad Jain** (*supra*), which was a judgment delivered by a Bench comprising of three Judges of the Supreme Court would prevail over the decision in **Laxmi Devi** (*supra*), which was a judgment delivered by a Bench comprising of two Judges of the Supreme Court. In response, the learned counsel for the petitioners submitted that the decision in **Laxmi Devi** (*supra*) was not *per incuriam* inasmuch as it specifically took note of the decision in **Satendra Prasad Jain** (*supra*) and distinguished the same. It was also submitted on behalf of the petitioners that the decision in **Satendra Prasad Jain**'s case was noticed in **Delhi Airtech Services Private Limited and Another v. State of U.P.: (2011) 9 SCC 354** and has been referred to a larger Bench in view of the difference of opinion between the two Judges who comprised the Bench. In **Laxmi Devi** (*supra*), which is a subsequent decision, the Supreme Court held as under:-

“26.3 The second issue, one that we feel must be kept in mind in the interpretation in the law laid down by this Court, is the factual matrices involved in both **Satendra Prasad Jain** and Avinash Sharma. In both these precedents, as well as in innumerable others that have relied upon them, the Government's attempt was to misuse its own omissions to achieve its own oblique purposes. It was in this context that this Court declined to accede to the pleas of the Government. This Court poignantly repelled the State's attempt to nullify the acquisition on the predication of its non-compliance with

Sections 16 and 17(3-A). The judicial intent was not to cause any loss to landowners, but to protect them. The pernicious practice that was becoming rampant, that is to make partial compliance with the statute and to follow the acquisition procedure in a piecemeal manner, and then to argue that its own lapses rendered its acquisition illegal, was roundly repulsed. Although this strictly constitutes *obiter*, we think it appropriate to clarify that where the landowners do not assail the acquisition, it may be open to them to seek a mandamus for payment to them, after a reasonable period, of the remaining compensation, which will thereupon metamorphose from a mere estimation to the actual compensation for the expropriation.

27. The Constitution Bench of this Court had to interpret Section 17 in *Anand Brahma Shah v. State of U.P.* but in somewhat different circumstances. The State proposed to take over large tracts of land "for limestone quarry" on urgency basis; by virtue of Section 17(4), Section 5A was held not to be available. The Collector of Mirzapur was directed by the Notification under Section 17(1) of the Act to take possession of the "waste or arable land" even in the absence of an Award being published. The Constitution Bench held that the limestone quarries belonging to the Appellant, which were proposed to be acquired, could not possibly be conceived of or categorised as "waste or arable land, the acquisition, inasmuch as it proceeded Under Section 17, could not pass muster of law. What is very pertinent for the present purposes is that the Constitution Bench had declined issuance of a mandamus commanding the State to restore possession of the land to the Appellant, not because this was inconceivable or impermissible in law or because of any provisions in the L.A. Act, but rather because the lands had validly vested in the State of U.P. under the U.P. Zamindari Abolition and Land Reforms Act, 1950. The conundrum of the restoration of the land had directly arisen before the Constitution Bench and since it declined the prayer for other reasons, it follows that there is no constraint or impediment for the grant of an appropriate Writ in this regard. This will fortify our distillation of the *ratio decidendi* of **Satendra Prasad Jain** which is circumscribed and restricted to the extent that the

State is not empowered to withdraw from an acquisition once it has taken possession of the said lands.

28. We do, however, recognize that **Satendra Prasad Jain** has been interpreted more broadly in the past. In *Allahabad Development Authority v. Naziruzzaman*, *Deptt. of Telecommunication v. Madan Mohan Pradhan* and *Banda Development Authority v. Moti Lal Agarwal*, this Court has dismissed the landowners' challenges to the respective acquisitions on the basis of **Avinash Sharma** and **Satendra Prasad Jain**. It is pertinent to note that all three of these cases were brief in their explanations of **Avinash Sharma** and **Satendra Prasad Jain**, and did not examine their *rationes decidendi*, their innate contradictions, their intentions or their consequences at any length. We thus feel it appropriate to rely on our own detailed exploration of these cases, as opposed to simply placing reliance on the largely contradictory case law that has developed over the years. It was for this reason that we had revisited the curial concept of *ratio decidendi*.

29. The scenario before us depicts the carelessness and the callousness of the State, quite different from the situation in **Satendra Prasad Jain** and **Avinash Sharma**. The Appellants herein are being denied just and fair compensation for their land in proceedings which commenced in 1987, despite the directions of the High Court passed as early as in 1988 to pass an award within four months. The *raison d'etre* behind the introduction of Section 11A was for the landowners to have a remedy in the event of an award not being passed expeditiously. If **Satendra Prasad Jain** is interpreted to mean that Section 11A will not apply to any acquisition under the urgency provisions, landowners such as the Appellants before us will have no protection, even if they are not paid full compensation for their land for decades. This cannot be in keeping with the legislative intent behind this Section. Furthermore, keeping empirical evidence in sight, we make bold to opine that circumstances require this Court to reconsider its view that even if the stated public interest or cause has ceased to exist, any

other cause can substitute it, especially where the urgency provisions have been invoked.

30. We feel it imperative to distinguish between the setting aside of an acquisition and the reversion of possession to the erstwhile landowners. While the L.A. Act and the judgments discussed above do not allow for the latter, we are of the considered opinion that this does not necessarily imply that the former is also not an option. Both the abovementioned cases dealt with a factual situation in which the Government was attempting to set the acquisition of the land at naught so that they would not have to pay compensation to acquire it. Setting aside of the acquisition in those cases was tantamount to reverting the possession to the original owners. In this scenario, however, the two do not have to go hand in hand. In allowing the acquisition of land that the Government finds necessary to be set aside, we would not necessarily be holding that the land revert to the Appellants, as the alternative of permitting the Government to keep possession provided it re-acquires the land with a new Section 4 notification exists. This option, particularly in the present factual matrix, does the least violence to the intent and content of the L.A. Act, in that it upholds Section 11A even in cases of acquisition Under Section 17 while preserving the requirement of Section 17 that the unencumbered possession of the land remain vested in the Government. It also protects the rights of the landowners, thus fulfilling the intent of Section 11A, while allowing the Government to acquire land in cases of emergencies without its title being challenged, which is the avowed intention of Section 17. Any other interpretation of the law would serve to protect only those landowners who had approached the Court to stop the Government from undoing an emergency acquisition, while leaving in the cold equally aggrieved landowners seeking to enforce their right to fair compensation for their land. Even equity demands that the party bearing the consequence of the delay in the Award ought not to be the innocent landowner, but the errant State.

31. While we presently refrain from passing any orders or direction pertaining to or interfering with the possession of the Government over the subject land, the acquisition dated 18.11.1987 is set aside for non-compliance with the provisions of Section 11A of the L.A. Act. As all the subsequent Notifications by the Respondent State having lapsed, the Respondent State is directed to issue a fresh Section 4 notification within six weeks from today. The Respondent State is restrained from contending that the land is no longer required by it or that it should revert to the Appellants. The Appeal is allowed in these terms.”

8. It was also contended, as pointed out above, that possession of the land was taken on 31.03.2009 without making the payment of 80% of the compensation in terms of Section 17(3A). The said provision reads as under:-

“17(1).	xxxx	xxxx	xxxx	xxxx
(2).	xxxx	xxxx	xxxx	xxxx

(3A) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3), —

- (a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and
- (b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2),

and where the Collector is so prevented, the provisions of section 31, sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.

9. Once again, relying on *Laxmi Devi (supra)*, the contention on behalf of the petitioners was that because there was contravention of Section 17(3A) of the 1894 Act, the acquisition was liable to be set aside. This was, of course, controverted by the learned counsel for the respondents, both on facts as also in law relying on the decision of the Supreme Court in *Satendra Prasad Jain (supra)*.

10. The third aspect, which was the subject matter of debate before us, was with regard to the applicability of the proviso in Section 24 of the 2013 Act. Section 24 of the 2013 Act reads as under:-

“24. Land Acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases.— (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act. 1894 (1 of 1894),—

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act (1 of 1894), where an award under the said section 11 has been made five years or more prior to the

commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

11. It was contended by the learned counsel for the petitioners that Section 24(1)(b) of the 2013 Act stipulates that where an Award under Section 11 of the 1894 Act has been made prior to the commencement of the 2013 Act then, in such cases, the acquisition proceedings would continue under the provisions of the 1894 Act as if that Act had not been repealed. But, there is a proviso which has been placed in Section 24 after sub-section (2). Reliance was placed on a decision of a Division Bench of this Court in the case of **Tarun Pal Singh and Others v. Lt. Governor, Govt. Of NCT of Delhi and Others: WP(C) 8596/2014** and other connected matters decided on 21.05.2015. On the strength of the said decision, it was contended that the proviso after Section 24(2) of the 2013 Act was, in fact, a proviso to Section 24(1)(b) of that Act. In that context, it was submitted that since the

Award in the present case had been made within the period of five years prior to the commencement of the 2013 Act (w.e.f. 01.01.2014), the provisions of Section 24(1)(b) would be applicable. In normal circumstances, the acquisition proceedings would continue under the 1894 Act subject to the exception carved out by the proviso referred to above. The proviso clearly stipulated that where an Award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries then, all the beneficiaries specified in the notification for acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. It was submitted that there is a clear admission on the part of the Land Acquisition Collector, as mentioned above, that compensation has not been paid in respect of the subject acquisition and, in any event, to the petitioners which represent the majority of land holdings. Therefore, clearly, the proviso would apply and compensation would be payable to the petitioners under the 2013 Act.

12. The respondents, however, contended that the acquisition was complete under the 1894 Act as the land had vested in the government. According to them, compensation was also payable only in terms of the 1894 Act and not in terms of the 2013 Act.

13. Having heard the rival submissions made on behalf of the parties, we are of the view that the petitioners did not challenge the acquisition in the first instance and this is evident from the fact that the petitioners made a demand for compensation on 25.04.2008. It is another matter that the compensation was not paid to the petitioners despite their demand. The fact remains that at the point of time when the acquisition proceedings had been initiated and when the Award had been made, the petitioners did not challenge the same. Furthermore, the physical possession of the land in question was admittedly taken on 31.03.2009 and has been utilized by the Delhi Metro Rail Corporation for its project. There is, therefore, no question of return of the land. It is in these circumstances that we feel that the petitioners are not in a position to raise grievances with regard to the acquisition *per se* on the basis of alleged non-compliance of Section 11A and Section 17(3A) of the 1894 Act. We are, therefore, not entering into this arena of dispute and, particularly, as to whether and which of the decisions in ***Laxmi Devi (Supra)*** or ***Satendra Prasad Jain (supra)*** would be applicable.

14. The more important issue that has been raised by the petitioners is the one pertaining to the proviso in Section 24 of the 2013 Act. In *Tarun Pal Singh* (*supra*), this Court had observed as under:-

“6. It is evident that under section 24(1), two situations are set out. One where no award has been made under section 11 of the 1894 Act and the other where an award has been made under section 11 of the said Act. Insofar as the latter case is concerned, section 24(2) provides an exception and it begins with a non-obstante clause. In other words, in cases where Awards have been made under section 11 of the 1894 Act, another sub-category of Awards has been carved out by virtue of section 24(2) and those relate to Awards which had been made more than five years prior to the commencement of the 2013 Act, that is, more than five years prior to 01.01.2014. In such cases, that is, where the Awards have been made more than five years prior to the commencement of 2013 Act, if physical possession of the land in question has not been taken or compensation has not been paid, the acquisition proceedings are deemed to have lapsed. [see: (i) *Pune Municipal Corporation and Anr v. Harakchand Misirimal Solanki and Ors*: (2014) 3 SCC 183; (ii) *Union of India and Ors v. Shiv Raj and Ors*: (2014) 6 SCC 564; (iii) *Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors*: Civil Appeal No. 8700/2013 decided on 10.09.2014; and (iv) *Surender Singh v. Union of India and Ors*: W.P.(C) 2294/2014 decided 12.09.2014 by this Court].

7. It is, therefore, clear that in those cases where the Awards have been made more than five years prior to the commencement of the Act, section 24(2) would have applicability, subject to the other conditions being fulfilled. But, in cases where the Awards have been made within five years of the commencement of the 2013 Act, section 24(2) would not apply. It is also clear that once the conditions of section 24(2) are met, the acquisition itself lapses and therefore no occasion would arise for invoking the first proviso which is

set out after section 24(2). This is so because the first proviso entails a situation where the acquisition is saved but the compensation is awarded under the 2013 Act. The proviso cannot blow life into the acquisition which has lapsed under the main provision of sub-section (2) of Section 24 of the 2013 Act. It is for this reason that we think that the first proviso which has been placed after section 24(2) is not really a proviso to section 24(2) but, a proviso to Section 24(1)(b). The said first proviso and Section 24(1)(b) can easily be read together. Section 24(1)(b) in effect relates to all cases where awards have been under the 1894 Act except those which are covered under Section 24(2). Clearly, awards made less than five years prior to the commencement of the 2013 Act would fall under Section 24(1)(b). As such, the general rule in such cases is that the provisions of the 1894 Act would continue to be applicable, as if the 1894 Act had not been repealed. However, the said first proviso carved out an exception to this general rule by providing that in cases where compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. This is a provision for the benefit of landowners inasmuch as even in cases of completed acquisitions, if the conditions stipulated under the said first proviso stand satisfied, the compensation would have to be provided under the more beneficial provisions of the 2013 Act.

8. Thus, while the said first proviso can harmoniously exist when read as a proviso to Section 24(1)(b), it cannot so exist when sought to be read as a proviso to Section 24(2) of the 2013 Act.”

15. We may point out that in the above extract there is a reference to the ‘first’ proviso. That reference is to the proviso after Section 24(2) of the said Act. At the point of time when the decision in *Tarun Pal Singh* (*supra*) was

rendered, there was another proviso (the second proviso), which had been introduced into the said Act by virtue of an Ordinance. That Ordinance having lapsed, the second proviso is no longer there in the 2013 Act. The ‘first’ proviso referred to in ***Tarun Pal Singh*** (*supra*) is the surviving proviso in Section 24 of the said Act and the decision in ***Tarun Pal Singh*** (*supra*) is in respect of this proviso.

16. It is, therefore, clear that the proviso after Section 24(2) of the 2013 Act is actually a proviso to Section 24(1)(b). We have already indicated that the present case does not fall under Section 24(2), but falls within Section 24(1)(b). That being the case, we have to examine as to whether the conditions stipulated in the proviso are satisfied or not. It is clear that the petitioners represent the majority of the land holdings inasmuch as they hold 510 sq. mtrs. out of the total acquisition of 626 sq. mtrs. It is also an admitted position that the petitioners have not received any compensation as admitted by the respondent No.1. Clearly, then, the proviso would be applicable and all beneficiaries specified in the notification for acquisition under Section 4 of the 1894 Act, would be entitled to compensation in accordance with the provisions of the 2013 Act. Therefore, the petitioners

are clearly entitled to compensation in accordance with the provisions of the 2013 Act.

17. The writ petition is, therefore, allowed to the extent that the acquisition will stand but compensation shall be paid to the petitioners under the 2013 Act.

BADAR DURREZ AHMED, J

**MARCH 01, 2016
SR**

SANJEEV SACHDEVA, J

