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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Decided on: 8th April, 2022

+ **W.P.(C) 3270/2015**

HARDWARI LAL RANA AND ORS. Petitioners

Represented by: Mr Shekhar Preet Jha, Mr
Madhu Sudan Bhayana and Mr
Madhav Shah, Advocates for
petitioner nos.1 to 4.

versus

UNION OF INDIA AND ORS. Respondents

Represented by: Mr Nitin Mishra, Advocate for
R-2/DDA.
Mr Siddharth Panda, Mr P.
Venkatesan and Mr Ritank
Kumar, Advocates for R-3.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

MUKTA GUPTA, J. : (Oral)

1. The present petition was filed by the petitioner seeking a writ of certiorari quashing the impugned Award No.8/91-92 dated 6th February, 1992 pursuant to the Notification No.F11(1)86-L&B/(2) dated 7th February, 1990 under Section 4 of the Land Acquisition Act, 1894 (in short 'the Act'). That the declaration under Section 6 of the Act as also the award no.8/91-92 dated 6th February, 1992 has lapsed in respect of Khasra No.51/2 measuring 1 bigha Village Siraspur, Delhi-110042. Directions are also sought not to dispossess the petitioners from the said land measuring 1 bigha Village Siraspur,

Delhi-110042.

2. In the writ petition, the petitioners have impleaded Union of India, Delhi Development Authority and the Government of NCT of Delhi as respondent nos.1, 2 and 3 respectively.

3. The writ petition was disposed of by this Court vide the judgment dated 24th May, 2016 granting the benefit to the petitioners in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short 'the 2013 Act') which came into effect on 1st January, 2014 in terms of the decision in Pune Municipal Corporation and Anr. v. Harakchand Misrimal Solanki and Ors. (2014) 3 SCC 183.

A declaration in respect of the acquisition proceedings initiated under the Act in respect of the subject land was issued to be deemed to be lapsed.

4. Challenging the judgment of this Court dated 24th May, 2016, DDA which was the respondent no.2 in the writ petition filed a Special Leave Petition (Civil) No.36627/2016 before the Hon'ble Supreme Court where leave was granted and the Civil Appeal No.12075/2016 was dismissed vide the judgment dated 14th December, 2016, as under:

"1. Delay condoned.

2. Leave granted.

3. The issue, in principle, is covered against the appellant by judgments in Civil Appeal No. 8477 of 2016 arising out of Special Leave Petition (C) No. 8467 of 2015 and Civil Appeal No. 5811 of 2015 arising out of Special Leave Petition (C) No. 21545 of 2015.

4. This appeal is, accordingly, dismissed.

5. In the peculiar facts and circumstances of this case, the appellant is given a period of one year to exercise its liberty granted under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for initiation of the acquisition proceedings afresh.

6. We make it clear that in case no fresh acquisition proceedings are initiated within the said period of one year from today by issuing a Notification under Section 11 of the Act, the appellant, if in possession, shall return the physical possession of the land to the owner.

7. Pending applications, if any, stand disposed of.

8. No costs.”

5. Aggrieved by the order dated 14th December, 2016, DDA filed a review petition before the Hon’ble Supreme Court, which was also dismissed on the ground of delay, vide order dated 3rd May, 2021. In the meantime, Government of NCT of Delhi also filed the Special Leave Petition (Civil) 4004/2022 wherein leave was granted and was registered as Civil Appeal No.1746/2022 and the following order dated 4th March, 2022 was passed:

“Leave granted.

This appeal takes exception to the judgment and order dated 24.05.2016 passed by the High Court of Delhi at New Delhi in Writ Petition (C) No.3270 of 2015, whereby the High Court declared the acquisition proceedings in respect of subject land as lapsed.

From the judgment under appeal, it is noticed that the High Court adverted to the fact asserted by the appellant that possession of the subject land was taken on 18.09.2004. The High Court then noted that the respondents-land owners disputed that factual assertion and yet proceeded to observe that without going into the controversy of the physical possession, the relief as claimed by the respondent(s) deserve to be granted.

This, in our opinion, is a tenuous approach adopted by the High Court. From it is necessary to first answer the foundational fact of possession and/or compensation in one way or the other and dependent on that deal with the relief as prayed by the petitioners.

In light of the exposition of the Constitution Bench of this court in the Indore Development Authority vs. Manohar Lal & Ors. reported in (2020) 8 SCC 129, the High Court ought to reconsider the entire matter afresh on its own merits in accordance with law.

We advert to the stand taken by the respondent(s) in the counter affidavit that the appellant had challenged the self-same impugned decision before this court, which has been decided against the appellant. This aspect may also be considered by the High Court on its own merits and in accordance with law.

We may not be understood to have expressed any opinion either way on the correctness of the submission stated in the counter affidavit.

All contentions available to both sides are left open.

The parties to appear before the High Court on 08.04.2022, when the High Court may proceed to hear the remanded matter on that day or assign a suitable date for disposing of the same expeditiously.

The appeal is disposed of in the above terms.

Pending applications, if any, stand disposed of.”

6. It is in view of the order of the Hon’ble Supreme Court dated 4th March, 2022 that the present petition is now listed before this Court.

7. In the writ petition, the claim of the petitioners was that the respondents have neither taken physical possession of the land nor paid any compensation to the petitioners or their late father till date. In the counter affidavit filed by the respondent no.2/DDA, a

preliminary objection was taken that the provisions of the 2013 Act would be applicable only if the acquisition proceedings are alive and in the present case, the case of the petitioners claim of possession of the land falling in Khasra No.51/2 (1-0) admeasuring 1 bigha situated in the Revenue Estate of Village, Siraspur, New Delhi is not mentioned in the record of the DDA and the subject land falls within Khasra No.51(4-15) mentioned in the land record admeasuring area 4 bigha 15 biswas situated in the revenue estate of Village Siraspur, New Delhi. It was further stated that though the petitioners claimed that they and their predecessors-in-interest were the recorded owners neither any document of title nor copy from the revenue record to prove their title or ownership in respect of the land had been placed on record. It was further stated that the possession of the land in question having been taken in accordance with law, the acquisition was complete and the land vests in the government free from any encumbrance including the right of the prior owner to continue in possession. It was specifically stated that the physical possession of the acquired land being Khasra No.51(4-15) has been handed over to the DDA by the LAC/Land and Building Department, Government of NCT of Delhi with due process of law on 18th September, 2004 and the land stands transferred to the user department on 22nd September, 2004.

8. Thus in the affidavit of the DDA, it is clearly noted that the petitioners have not placed on record any material to show that they were the recorded owners of the subject land. Further, the khasra number mentioned was incorrect and the possession of the land in

question being Khasra No.51(4-15) has already been handed over to the DDA by the Land and Building Department, Government of NCT of Delhi.

9. In the rejoinder affidavit filed by the petitioners to the counter affidavit of the respondent, it is claimed that forged and fabricated false possession proceedings dated 18th September, 2004 have been filed in respect of the subject property though the fact remains that Khasra No.51 is not in existence since the year 1966 whereas Khasra No.51/2 (1-0) admeasuring 1 bigha situated in the revenue estate of Village Siraspur, New Delhi is owned and possessed by the petitioners and their late father.

10. Petitioners have not placed any document on record to show that the petitioners are in possession of the subject land whereas as per the records of the DDA as noted above, the possession had already been taken.

11. Thus, in view of Constitution Bench Judgement reported as 2020 (8) SCC 129 Indore Development Authority vs. Manoharlal & Ors., in view of the possession having been taken the acquisition proceedings would not lapse and the petitioners cannot claim the benefit as awarded by the judgment of this Court dated 24th May, 2016. Relevant portions of the Indore Development (*supra*) reads as under:

“362. Resultantly, the decision rendered in Pune Municipal Corporation & Anr. (supra) is hereby overruled and all other decisions in which Pune Municipal Corporation (supra) has been followed, are also overruled. The decision in Shree Balaji Nagar Residential Association (supra) cannot be said

to be laying down good law, is overruled and other decisions following the same are also overruled. In Indore Development Authority v. Shailendra (Dead) through L.Rs. and Ors., (supra), the aspect with respect to the proviso to Section 24(2) and whether 'or' has to be read as 'nor' or as 'and' was not placed for consideration. Therefore, that decision too cannot prevail, in the light of the discussion in the present judgment.

363. In view of the aforesaid discussion, we answer the questions as under:

- 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 Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.*
- 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 Act of 2013 under the Act of 1894 as if it has not been repealed.*
- 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 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.*
- 4. The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for*

land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation under Section 31 of the Land Acquisition Act of 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 Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the Act of 1894.

5. In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, 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). Land owners 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 Act of 2013.

6. The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part of Section 24(1)(b).

7. The mode of taking possession under the Act of 1894 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 Act of 1894, the land vests in State there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).

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 Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority 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.

9. Section 24(2) of the Act of 2013 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 Act of 2013, 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.”

12. As regards the contentions of learned counsel for the petitioners concerned that since the DDA, who was a party in the present writ petition and in the SLP filed by the DDA against the judgement dated 24th May, 2016 of this Court, leave was granted and the appeal was dismissed directing DDA to return the physical possession of the land to the owner in case possession had been taken, the document of merger would apply and hence the case of the appellant would not be covered by the Constitution Bench decision in Indore Development (*supra*) but by the judgment dated 14th December, 2016 passed in Civil Appeal No.12075/2016, as noted above.

13. Thus, as noted by the Constitution Bench, the decision in Pune Municipal Corporation (*supra*) stands overruled and all decisions rendered based on the decision in Pune Municipal Corporation (*supra*) also are rendered overruled. The decision of the Supreme Court in Civil Appeal No.12075/2016 would thus be also overruled. Regarding the contention of applicability of the doctrine of merger, learned counsel for the respondent relies upon the decision of the

Hon'ble Supreme Court in Khoday Industry v. Mahadeshwara S. S. K. Ltd. 2019 (4) SCC 376. However, reliance is also placed on the decision by learned counsel for the respondent in Civil Appeal No.215/2022: Land and Building Department through Secretary and Anr. v. Deepak Seth and Ors. which reads as under:

“Leave granted.

The appeal is directed against an order passed by the High Court of Delhi dated 16.12.2014 whereby the writ petition filed by the respondents was allowed holding that acquisition proceedings stand lapsed in terms of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, “the Act”).

Learned counsel for the respondent point out that the special leave petition i.e. SLP (C) No.30148/2015 against the impugned order filed by the Delhi Development Authority was dismissed on 04.05.2017. Therefore, the present appeal merits the same fate.

We do not find any merit in the said arguments raised by Mr. Mohit D. Ram, learned counsel appearing for respondent No.1. The Delhi Development Authority is only a beneficiary whereas the Acquisition Authority is the State. The dismissal of an SLP does not amount to merger. The State is the appellant before this Court.

The order passed by the High Court is not sustainable in view of the Constitution Bench's judgment in 'Indore Development Authority Vs. Manohar Lal & Ors. Etc.', reported in (2020) 8 SCC 129.

Consequently, the appeal is allowed, the order passed by the High Court is set aside and the writ petition is dismissed.

Pending application(s), if any, also stand disposed of.”

14. Considering the fact that the order dated 14th December, 2016 of

the Hon'ble Supreme Court in Civil Appeal No.12075/2016 stands overruled by the Constitution Bench in Indore Development (supra), the doctrine of merger as sought to be applied will not apply, the petition is dismissed.

15. Order be uploaded on the website of this Court.

(MUKTA GUPTA)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 8, 2022
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