* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of decision: 31st October, 2017*

\+ W.P.(C) 7391/2016

PRAVEEN KUMAR & ANR. ..... Petitioners

Through: Ms. Esha Mazumdar, Adv.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Shatrajit Banerji and Ms. Mrinalini Sengupta, Advs. for DDA.
Mr. Yeeshu Jain, Standing Counsel with
Ms. Jyoti Tyagi, Adv. for L&B/LAC.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE V. KAMESWAR RAO

G.S.SISTANI, J (ORAL)

1. This is a petition filed by the petitioners under Article 226 of the Constitution of India seeking a relief of declaration that the acquisition proceedings with respect to land measuring 184 Sq. Yds. out of the land falling in Khasra No. 25 total measuring 6 Bigha and 2 Biswas in the revenue estate of Village Khajuri Khas, Delhi stand lapsed in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013. Counsel for the petitioners submits, in this case on 26th August, 1967, a Notification Under Section 4 of the Land Acquisition Act, 1894 was issued for Village-Khajuri Khas, Delhi. Thereafter a declaration was made under Section 6 of the said Act on 22nd January, 1968 and Award No. 113/86-87 was announced in the year 1986. It

is also the case of the petitioners that on 25th November, 2004, the recorded owner of the said land sold 184 Sq. Yds. to one Dhanno, who in turn sold it to Suleman Khan and Suleman Khan sold the same to Hadisa Begum and Ikramuddin and Hadisa Begum and Ikramuddin thereafter sold the said piece of land to the petitioners herein. It is also the case of the petitioners that between 2004-2015, petitioners were in actual physical possession of the subject land and utilized the said land by getting a mobile tower erected and also by getting a boundary wall constructed with a further fencing atop of the boundary wall and installing an iron gate. Counsel for the petitioners submits that DDA demolished the boundary wall, fencing and iron-gate and placed its board on the subject land in the year 2015 which led to the filing of the present writ petition. The case of the petitioners is that neither the compensation has been paid to the petitioners nor physical possession was taken and thus in view of the law laid down in the case of ***Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors. (2014) 3 SCC 183***, the acquisition proceedings in respect of the land of the petitioners would stand lapsed.

2. Learned counsel appearing for the respondents submits that they do not dispute the issuance of a Notification under Section 4, Notification under Section 6 and passing of the Award. Counsel for the DDA submits that possession was taken over by the DDA as far back as on 23rd September, 1986. Counsel appearing for the DDA also submits that compensation approximately of 2 Crore also stands paid to the Land and Building Department. Learned counsel appearing for the respondent LAC submits that

recorded owners never came forward to receive the compensation. Hence the same is lying unpaid.

3. We have heard the learned counsel for the parties and considered their rival submissions.

4. It is not in dispute that the compensation has not been paid to the petitioners. To say that the owners never came forward to receive any compensation cannot be accepted and it was for the LAC to tender the compensation in terms of the Act. It is also a settled law that in case there is any dispute with regard to the ownership, the compensation has to be deposited in the referral court, which has not been done. It would be useful to reproduce the observations of the Supreme Court of India in Para 17 in the case of ***Pune Municipal Corporation & Anr. (supra)*** as under:

> *"17. While enacting Section 24(2), Parliament definitely had in its view Section 31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word "paid" to "offered" or "tendered". But at the same time, we do not think that by use of the word "paid", Parliament intended receipt of compensation by the landowners/persons interested. In our view, it is not appropriate to give a literal construction to the expression "paid" used in this sub-section (sub-section (2) of Section 24). If a literal construction were to be given, then it would amount to ignoring procedure, mode and manner of deposit provided in Section 31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view, therefore, that for the purposes of Section 24(2), the compensation shall be regarded as "paid" if the compensation has been offered to the person interested and such compensation has been deposited in the court where reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act. In other words, the compensation may be said to have been "paid"*

<u>within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33".</u>

(Emp. Added)

5. A faint argument has also been raised by the learned counsel for the respondents that petitioners would not be entitled to relief so prayed being a subsequent purchasers. Learned Counsel for the petitioners relies on ***Government of NCT of Delhi v. Manav Dharam Trust and Anr. Civil Appeal No. 6112/2017*** passed by the Supreme Court wherein in Para 22 to 30 reads as under:

"22. All the decisions cited by the learned Senior Counsel appearing for the appellants, no doubt, have categorically held that the subsequent purchasers do not have locus standi to challenge the acquisition proceedings. But in the present case, the challenge is not to the acquisition proceeding; it is only for a declaration that the acquisition proceedings have lapsed in view of the operation of Section 24(2) of the 2013 Act, and therefore, the ratio in those cases has no application to these cases.

23. It is one thing to say that there is a challenge to the legality or propriety or validity of the acquisition proceedings and yet another thing to say that by virtue of operation of a subsequent legislation, the acquisition proceedings have lapsed.

24. In all the decisions cited by the learned Senior Counsel for the appellants, which we have referred to above, this Court has protected the rights of the subsequent purchaser to claim compensation, being a person interested in the compensation, despite holding that they have no locus standi to challenge the acquisition proceedings.

25. The 2013 Act has made a sea change in the approach on the acquisition of land and compensation thereof. The only lapse under *the 1894 Act was under Section 11A where what would lapse is the ... "entire proceedings for the acquisition of land" whereas under Section 24(2) of the 2013 Act, what gets lapsed is the land acquisition proceedings initiated under the 1894 Act which has culminated in passing of an award under Section 11 but where either possession was not taken or compensation was not paid within five years prior to 01.01.2014. In other words, the land acquisition proceedings contemplated under Section 24(2) of the 2013 Act would take in both, payment of compensation and taking of possession within the five year period prior to 01.01.2014. If either of them is not satisfied, the entire land acquisition proceedings would lapse under the deeming provision. The impact of deemed lapse underSection 24(2) is that pervasive. To quote R.F. Nariman, J. in Delhi Development Authority v. Sukbhir Singh and others[6]. To quote:*

> *"... As is well settled, a deeming fiction is enacted so that a putative state of affairs must be imagined, the mind not being allowed to boggle at the logical consequence of such putative state of affairs ... In fact, Section 24(2) uses the expression "deemed to have lapsed" because the Legislature was cognisant of the fact that, in cases where compensation has not been paid, and physical possession handed over to the State/vesting has taken place, after which land acquisition proceedings could be said to have been ended. ..." (Paragraph-27).*

Thus, on account of the lapse, the encumbrance created in favour of the State comes to an end, and resultantly, the impediment to encumber the land also comes to an end. Even, according to the appellants, the transfers were illegal and void for the reason that there was an impediment for the transfer. Once the acquisition proceedings lapse, all impediments cease to exist.

26. As we have already noted above, the whole face of land acquisition has changed by the 2013 Act. Section 105 of the 2013 Act has provided that the provisions of the Act shall not apply to the enactments specified in the Fourth Schedule. So far, only 13 Acts have been notified under the Fourth Schedule. Neither The Delhi

Development Act, 1957 nor The Delhi Lands (Restrictions on Transfers) Act, 1972 is included in the Fourth Schedule.

27. The main purpose of the 2013 Act is clearly stated in the preamble which reads as follows :-

> *"An Act to ensure, in consultation with institutions of local self- government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto."*

There is a clear indication that the Act proposes to protect the interest of those persons, among others who are affected by the acquisition. The subsequent purchasers/successors, etc., in the cases before us, are all people affected by the acquisition, and therefore, also they are entitled to seek a declaration on lapse under the 2013 Act.

(Emp. Added)

28. The High Court of Karnataka at Bengaluru in Suryaprakash and others v. State of Karnataka and others[7] has considered a situation of lapse and locus standi of the subsequent purchaser to file a writ petition for a declaration on lapse, though not under Section 24(2) of the 2013 Act. At paragraph-16, it has been held:

> *"16. ... the principle that transferee of land after the publication of preliminary notification cannot maintain a writ petition challenging the acquisition, cannot be made*

applicable to a case where the acquisition itself has been abandoned and has stood lapsed due to efflux of time on account of the omission and inaction on the part of the acquiring authority, particularly because, it is because of the lapse of time and the abandonment of the acquisition, right accrues to the original owner to deal with his property including by way of the sale and the purchaser will acquire right to protect his interest. Hence, the judgment in the case of Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur and others (2013) 5 SCC 427, will have no application to the facts of the present case."

We are of the view that this decision, in principle, applies to the facts of these appeals as well.

29. Thus, the subsequent purchaser, the assignee, the successor in interest, the power of attorney, etc., are all persons who are interested in compensation/land owners/affected persons in terms of the 2013 Act and such persons are entitled to file a case for a declaration that the land acquisition proceedings have lapsed by virtue of operation of Section 24(2) of the 2013 Act. It is a declaration qua the land wherein indisputably they have an interest and they are affected by such acquisition. For such a declaration, it cannot be said that the respondents/writ petitioners do not have any locus standi.

30. Thus, we do not find any merit in these appeals and they are accordingly dismissed. All Interlocutory Applications for Impleadment and Intervention, other than those by Legal Representatives, are also rejected. Applications for Impleadment of Legal Representatives are allowed. There shall be no order as to costs.

6. Reliance is also placed on a decision rendered by the Division Bench of this Court in ***W.P.(C) 7731/2015 N.S. Vashisht v. Union of India,*** Para 7 of which reads as under:

7. There is no doubt that in the context of the 1894 Act the Supreme Court clearly held that a subsequent purchaser would not have a right to challenge the acquisition and would only have a right to seek compensation. But, the position obtaining at present is different. This is a petition which does not seek to challenge the acquisition proceedings but seeks a declaration of a right which has enured to the benefit of the petitioner by virtue of the operation of Section 24(2) of the 2013 Act. Once the acquisition is deemed to have lapsed because of the operation of the deeming provision of Section 24(2) of the 2013 Act, the benefit of the same cannot be denied to the petitioner on the ground that the petitioner is a subsequent purchaser. This is, of course, provided that the conditions precedent for the application of the deeming provision contained in Section 24(2) of the 2013 Act are satisfied.

7. This decision was challenged by the DDA by filing an SLP which also stands dismissed by an order of 31st August, 2016. In our view, the present case is fully covered by the decision rendered by the Supreme Court of India in the case of ***Pune Municipal Corporation & Anr. (supra)*** and ***Manav Dharam Trust and Anr. (supra).*** Accordingly, the petitioners are entitled to declaration that the proceedings initiated under 1894 Act in respect of the subject land are deemed to have lapsed. Ordered accordingly.

8. Petition stands disposed of.

CM. NO. 31315/2016 (for Stay)

Interim order dated 22nd August, 2016 stands confirmed.

CM disposed of.

G.S.SISTANI, J

V. KAMESWAR RAO, J

OCTOBER 31, 2017/*jg*