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

% **Date of decision: 25th October, 2021**

\+ **W.P.(C) 798/2019 and CM No.3537/2019 (Stay)**

MANZOOR-UL-HAQ THROUGH HIS GENERAL POWER OF ATORNEY HOLDER SHRI SATISH KUMAR AGGARWAL

..... Petitioner

Through: Mr. R Jawaharlal, Mr. Siddharth Bawa, Mr. Anuj Garg and Mr. Mohit Sharma, Advs.

versus

GOVERNMENT OF NCT OF DELHI AND ORS. ..... Respondents

Through: Mr.Naushad Ahmed Khan, ASC, GNCTD with Mr.Zahid and Ms.Manisha Chauhan, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

YASHWANT VARMA, J. (ORAL)

1. Heard learned counsels for parties.

2. This petition has been preferred by the petitioner aggrieved by the refusal of the Registering Authority to register a Sale Deed which was presented before it. The order of the Sub-Registrar under challenge is dated 31 December 2018. The land of the petitioner and which forms the subject matter of the Sale Deed is duly specified in the writ petition and more particularly in paragraph 2 thereof.

3. The said parcel of land formed subject matter of acquisition proceedings under the **Land Acquisition Act, 1894** [hereinafter to be referred to as the *"1894 Act"*]. The case of the petitioner is that the respondents neither took possession of the said land, nor was any compensation released in favour of the petitioner. In view thereof, it was contended that the provisions of Section 24(2) of the **Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013** [for the sake of brevity to be referred as the *"2013 Act"*] would clearly apply and that the proceedings would be deemed to have lapsed. The petitioner had earlier approached this Court by way of W.P.(C) 1166/2017 seeking the issuance of direction for a No Objection Certificate being issued by the Land Acquisition Collector. On the aforesaid writ petition, while initially notices were issued, the same came to be dismissed as withdrawn by an order of the Court dated 13 March 2018. The petitioner chose to withdraw that petition resting his case on a judgement rendered by a learned Judge of the Court in W.P.(C) 7242/2017 titled ***Dinesh Kumar Himatsingka & Anr. vs. Govt. of NCT of Delhi & Ors.*** The learned Judge in **Dinesh Kumar Himatsingka** was dealing with an issue of whether the respondents would be justified in refusing to register an instrument even though proceedings of acquisition may have come to have lapsed in light of the provisions made under Section 23(2) of the 2013 Act. The learned Judge also took into consideration the provisions made in Sections 4 & 8 of the **Delhi Land (Restrictions on Transfer) Act, 1972** on the strength of which it was contended by the respondents there that notwithstanding the asserted lapse

of acquisition proceedings in terms of Section 24(2) of the 2013 Act, an NOC would be legally required.

4. Dealing with the impact of the provisions of the 1972 Act, the learned Judge in **Dinesh Kumar Himatsingka** proceeding to consider a situation where the provisions of Section 24(2) would stand attracted and the acquisition lapsing, held that the requirement of obtaining an NOC would not apply since the acquisition itself ceased to exist. The learned Judge ultimately recorded the following conclusions in paragraph 11:-

> "Indisputably, respondent No.4 has to carry out its function within the confines of the statute. There is also no dispute that the condition of obtaining a NOC in case where a declaration of acquisition has not been made, is not applicable. The Delhi Land (Restrictions on Transfer) Act, 1972 neither proscribes nor restricts the registration of conveyance in respect of a property, which is not the subject of any acquisition. Thus, since the acquisition proceedings under the 1894 Act have lapsed, the condition for obtaining the permission of a competent authority - as required under section 8 read with section 4 of the Delhi Land (Restrictions on Transfer) Act, 1972 - for registering the property is no longer applicable. Further, no material has been put before this Court, which would persuade this court to accept that there is any doubt as to the petitioner' right to insist on registration of the gift deed."

5. Post withdrawal of the writ petition and in light of the judgement rendered by this Court in **Dinesh Kumar Himatsingka**, the petitioner preferred a writ petition before this Court bearing W.P.(C) 5260/2015. That petition essentially sought a declaration that in light of the provisions made in Section 24(2) of the 2013 Act, the acquisition proceedings initiated under

the 1894 Act would be deemed to have lapsed. Upon hearing learned counsels for parties, the Division Bench of the Court on the aforesaid writ petition held as under:-

> "2. It is an admitted position that neither physical possession of the subject lands has been taken by the land acquiring agency, nor has any compensation been paid to the petitioner. The Award was made more than five years prior to the commencement of the 2013 Act. All the ingredients of Section 24(2) of the 2013 Act as interpreted by the Supreme Court and this Court in the following decisions stand satisfied:-
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> (i) **Pune Municipal Corporation and Anr v. Harakchand Misirimal Solanki and Ors: (2014) 3 SCC183**;
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> (ii) **Union of India and Ors v. Shiv Rai and Ors: (2014) 6 SCC 564**;
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> (iii) **Sree Balaii Nasar Residential Association v. State of Tamil Nadu and Ors: Civil Appeal No. 8700/2013** decided on 10.09.2014; and
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> (iv) **Surender Singh v. Union of India and Ors.: W.P.(C) 2294/2014 decided 12.09.2014** by this Court.
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> 3. As a result the petitioner is entitled to a declaration that the said acquisition proceedings initiated under the 1894 Act in respect of the subject lands are deemed to have lapsed. It is so declared."

6. The challenge to the aforesaid judgement of the Division Bench at the behest of the Delhi Development Authority came to be negatived with the Supreme Court dismissing the Special Leave Petition on 02.09.2016. The declaration as entered by the Court on the aforementioned writ petition preferred by the present petitioner consequently attained finality.

7. The Court bears in mind the fact that the judgement in **Dinesh Kumar Himatsingka** is a clear authority for the proposition that once the provisions of Section 24(2) of the 2013 Act are found to be applicable and the acquisition proceedings initiated under the erstwhile 1894 Act are deemed to have lapsed, the restrictions as carried in the 1972 Act would not apply and that in any case the Registering Authority would not be justified in refusing to register an instrument which is presented before it. Before the Court, it is not disputed that on the earlier writ petitions preferred by the petitioner here, the Division Bench had categorically come to record an unambiguous finding that neither physical possession of the subject land had been taken by the land acquiring authority nor had any compensation been paid to the petitioner. In fact, the Division Bench had referred to the aforesaid as being the *"admitted position"*.

8. The Court notes that the Constitution Bench in **Indore Development Authority Vs. Manoharlal [(2020) 8 SCC 129]** while explaining the ambit of Section 24 of the 2013 Act held:-

> **191.** Section 24(1)(*a*) operates where no award is made in a pending acquisition proceeding; in such event all provisions of the new Act relating to determination of compensation would apply. Section 24(1)(*b*) logically continues with the second situation i.e. where the award has been passed, and states that in such event, proceedings would continue under the 1894 Act. Section 24(2) — by way of an exception, states that where an award is made but requisite steps have not been taken for five years or more to take possession nor compensation has been paid then there is lapse of acquisition. If one of the steps has been taken, then the proviso can operate. Time is the essence. It is on the basis of time-lag that the lapse is provided and in default of payment for

five years as provided on failure to deposit higher compensation is to be paid. It is based on that time-lag higher compensation has to follow. It is not the mere use of colon under Section 24(2) but the placement of the proviso next to Section 24(2) and not below Section 24(1)(*b*). Thus, it is not permissible to alter a placement of the proviso more so when it is fully in consonance with the provisions of Section 24(2). Section 24(2) completely obliterates the old *regime* to the effect of its field of operation. Under Section 24(1)(*a*), there is a partial lapse of the old *regime* because all proceedings, till the stage of award are preserved. The award, in such proceedings, made after coming into force of the 2013 Act has to take into account its provisions, for determination of compensation. Thus, proceedings up to the stage of the award are deemed final under the old Act. In the case under Section 24(1)(*b*), the old regime prevails. The proviso is an exception to Section 24(2) and in part the new *regime* for payment of higher compensation in case of default for 5 years or more after award."

9. From a reading of the aforesaid extract of the decision in **Indore Development Authority** it is evident that once the provisions of Section 24(2) of the 2013 come into play and are established to apply, it "obliterates" the steps that may have been taken under the 1894 Act. More fundamentally, as this Court reads the provisions of Sections 4 and 5 of the Delhi Land (Restrictions on Transfer) Act, 1972 it is clear that the injunctions embodied therein are to apply provided the land forming subject matter of the instrument is subject to acquisition. The apparent intent of those provisions is to restrain the transfer of property while it forms part of an acquisition and to not affect registration of instruments executed in respect of property that may form part of an acquisition exercise. Here on the other hand and as the recordal of facts would undoubtedly establish, no proceedings for acquisition subsist and any proceedings that may have been

initiated earlier would be deemed to have lapsed and resultantly stand effaced. Once the specter of acquisition stands erased, there appears to be no justification for the Registering Authority to not proceed further in accordance with law. The fact that the acquisition proceedings no longer encumber the property or impede the right of the petitioner is indubitably established in light of the declaration entered by this Court on the judgment rendered *inter partes*.

10. In view of the aforesaid, it is manifest that the decision of the respondents impugned in the present writ petition would not sustain.

11. Accordingly, the writ petition is allowed. The impugned memorandum of 31.12.2018 shall stand quashed. Respondent No.4 is hereby directed to take further steps for registration of the Sale Deed submitted by the petitioner for registration in accordance with law.

YASHWANT VARMA, J.

OCTOBER 25, 2021
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