

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

Date of decision: 08th FEBRUARY, 2023

IN THE MATTER OF:

+ **LPA 19/2023**

RAJAN SOOD & ANR.

..... Appellants

Through: Mr. Rajesh Yadav, Sr. Advocate with
Mr. Nishit Kush, Mr. Siddharth Sikri,
Advocates

versus

DELHI DEVELOPMENT AUTHORITY & ORS. Respondents

Through: Mr. Sanjay Katyal, Standing Counsel
for DDA with Mr. Nihal Singh,
Advocate
Mr. Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi and Ms.
Manisha, Advocates for Respondents
No.1 & 2

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Aggrieved by the dismissal of the Writ Petition *vide* Judgment impugned herein dated 04.01.2023 passed by the learned Single Judge in W.P.(C) 17490/2022, the instant appeal has been preferred by the Appellants.
2. The Writ Petition, i.e. W.P.(C) 17490/2022, was filed by the Appellants herein ("Writ Petitioners") challenging the action of Respondent No.1/DDA for proposed demolition to be done on 22.12.2022 in Khasra No. 804/24-26 (5-14), situated at Village Sadhora Kalan, near Mahavir Model

Senior Secondary School, Opposite Nanak Piau Gurudwara, New Delhi (*hereinafter referred to as 'the property in question'*).

3. According to the Appellants, the property in question i.e., Khasra No. 804/24-26 (5-14) was initially notified under Section 4 of the Land Acquisition Act, 1894 (*hereinafter referred to as 'the 1894 Act'*) vide a Notification dated 24.01.1961. A declaration under Section 6 of the 1894 Act was made on 23.12.1968, for acquiring the property in question for public purposes. Thereafter, an award under Section 11 of the 1894 Act was passed by the Land Acquisition Collector, only in respect of land in Khasra No.804/24-26.

4. Sometime in 2011, the Appellants while invoking Section 48 of the 1894 Act moved an application before the Government to withdraw from the acquisition of the property in question. Pending the application under Section 48 of the 1894 Act, the Appellants, after having received a notice dated 27.11.2011 from Respondent No. 1/DDA for removal of the construction from the property in question also moved a writ petition i.e., W.P. (C) 7714/2011. By Order dated 31.10.2011, the Division Bench of this Court in the aforementioned writ petition observed that the application of the Appellants filed under Section 48 of the 1894 Act has not become infructuous by the actions of the DDA. This Court also observed that the DDA will not act in derogation of the order dated 07.10.2011 passed by Appellate Tribunal, MCD, which had *vide* order dated 07.10.2011 remanded the matter back to the Executive Engineer for consideration of the issue of demolition. This Court, was of the opinion that since the issue of demolition is under challenge, the application filed by the Appellants under Section 48 of the Land Acquisition Act, 1894 has not become infructuous.

5. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (*hereinafter referred to as 'the 2013 Act'*) came into effect on 01.01.2014.

6. The Appellants filed a writ petition bearing W.P.(C) 1034/2015 before this Court stating that as per Section 24 (2) of the 2013 Act, the acquisition proceedings initiated under the 1894 Act, had elapsed. *Vide* Order dated 30.08.2016 passed in W.P.(C) 1034/2015, the Division Bench of this Court allowed the writ petition holding that since neither physical possession of the subject land has been taken over by the land acquiring agency nor has any compensation been paid to the Appellants, and since the Award was passed more than five years prior to the passing of the 2013 Act, all the ingredients of Section 24 (2) of the 2013 Act are fulfilled and, therefore, the acquisition has lapsed. The Division Bench of this Court relied upon the Judgements of the Apex Court in Pune Municipal Corporation and Anr v. Harakchand Misrimal Solanki and Ors, (2014) 3 SCC 183, Union of India and Ors v. Shiv Raj and Ors, (2014) 6 SCC 564, Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors, (2015) 3 SCC 353.

7. The aforesaid Order dated 30.08.2016 passed by the Division Bench of this Court in W.P.(C) 1034/2015 was challenged by the Respondent No.1/DDA before the Apex Court by filing Civil Appeal No.1927/2022.

8. Pending appeal before the Apex Court, the Appellants approached this Court challenging a proposed demolition action by the DDA on the property in question, by filing Writ Petition bearing W.P.(C) 17490/2022, contending that since the acquisition had lapsed vide Judgment dated 30.08.2016 in W.P.(C) 1034/2015, the

Respondent No.1/DDA could not carry out demolition action on the property in question.

9. The Apex Court *vide* its judgment dated 29.03.2022 in Delhi Development Authority v. Rajan Sood and Others, **2022 SCC OnLine SC 371**, after placing reliance upon the Judgment in Indore Development Authority vs. Manoharlal and Ors., **(2020) 8 SCC 129**, allowed the said appeal and set aside the Judgment dated 30.08.2016 passed by the Division Bench of this Court, holding that it could not be said that the land acquisition proceedings under Section 24(2) of the 2013 Act were deemed to have been lapsed. The Apex Court after going through the material on record before it held that the Order dated 30.08.2016 passed by this Court in W.P.(C) 1034/2015 declaring that the land acquisition proceeding that has deemed to have lapsed under Section 24 (2) of the 2013 is unsustainable. The Apex Court accepted the submissions made by the DDA that the compensation amount has been deposited with the Land and Building Department and that possession, even if symbolic, has been taken over by the DDA.

10. Before W.P.(C) 17490/2022 could be heard finally, the Apex Court had already set aside the Judgment dated 30.08.2016 passed by the Division Bench of this Court in W.P.(C) 1034/2015 *vide* Judgment dated 29.03.2022 passed in Civil Appeal No.1927/2022.

11. The learned Single Judge on the basis of the Judgment passed by the Apex Court in Development Authority v. Rajan Sood and Others, **2022 SCC OnLine SC 371**, setting aside the Judgment dated 30.08.2016 passed by the Division Bench of this Court in W.P.(C) 1034/2015 dismissed the writ petition bearing W.P.(C) 17490/2022 *vide* Judgment dated 04.01.2023. It is this Order which has been assailed in this Appeal.

12. Heard the learned Counsel for the parties and perused the material on record.

13. Learned Senior Counsel appearing for the Appellants contends that the Appellants had approached this Court by filing W.P.(C) 7714/2011, challenging the demolition action initiated by the DDA. In the said writ petition it was specifically stated that the denotification application filed by the Appellants under Section 48 of the 1894 Act remained pending and the Division Bench of this Court *vide* Order dated 30.10.2011 had specifically held that the Section 48 application has not become infructuous. He submits that without taking a final decision on the aforesaid application, the DDA could not initiate the proceedings for demolition. He submits that the Order dated 09.11.2011 passed by the Division Bench of this Court in W.P.(C) 7714/2011 has also not been challenged and has, therefore, attained finality. He, therefore, submits that unless and until the application filed by the Appellants under Section 48 of the 1894 Act is decided, the DDA cannot enter the premises and initiate demolition proceedings.

14. Learned Senior Counsel appearing for the Appellants further submits that the Judgment of the Apex Court passed in Civil Appeal No.1927/2022 is very specific and is limited only to Section 24 of the 2013 Act. He submits that the Apex Court has not considered the Order dated 09.11.2011 passed by the Division Bench of this Court. He submits that in the Order dated 09.11.2011, it is categorically held that the application filed under Section 48 of the 1894 Act has not become infructuous and that the same be decided on merits. He submits that till the appeal under Section 48 of the 1894 Act is not decided, the DDA cannot enter into the premises and initiate demolition proceedings.

15. *Per contra*, learned Standing Counsel appearing for the DDA has sought to uphold the Judgment dated 04.01.2023 passed by the learned Single Judge in W.P.(C) 17490/2022.

16. The Appellants (Petitioners therein) had filed a W.P.(C) 1034/2015 seeking a declaration stating that the proceedings under Land Acquisition Act, 1894 had lapsed as per Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Section 24 of the 2013 Act which states that 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 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 then Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (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.

15. The position regarding Section 24 of the 2013 Act has now crystallized in Indore Development Authority (supra) which has overruled the previous Judgment of the Apex Court passed in Pune Municipal Corporation (Supra) and other judgments which have followed Pune Municipal Corporation (Supra) by observing as under:

“365. Resultantly, the decision rendered in Pune Municipal Corpn. [Pune Municipal Corpn. v. HarakchandMisirimal Solanki, (2014) 3 SCC 183 : (2014) 2 SCC (Civ) 274] is hereby overruled and all other decisions in which Pune Municipal Corpn. [Pune Municipal Corpn. v. HarakchandMisirimal Solanki, (2014) 3 SCC 183 : (2014) 2 SCC (Civ) 274] has been followed, are also overruled. The decision in Sree Balaji Nagar Residential Assn. [Sree Balaji Nagar Residential Assn. v. State of T.N., (2015) 3 SCC 353 : (2015) 2 SCC (Civ) 298] 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 [Indore Development Authority v. Shailendra, (2018) 3 SCC 412 : (2018) 2 SCC (Civ) 426] , 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.

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

366.1 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 the 2013 Act, there is no lapse of proceedings. Compensation has to be determined under the provisions of the 2013 Act.

366.2 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 2013 Act under the 1894 Act as if it has not been repealed.

366.3 *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 2013 Act 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.*

366.4 *The expression “paid” in the main part of Section 24(2) of the 2013 Act does not include a deposit of compensation in court. The consequence of non-deposit is provided in the proviso to Section 24(2) in case it has not been deposited with respect to majority of landholdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation under Section 31 of the Land Acquisition Act, 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 2013 Act has to be paid to the “landowners” as on the date of notification for land acquisition under Section 4 of the 1894 Act.*

366.5 *In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, 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). The landowners 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 2013 Act.

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

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

366.8 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 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned 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.

366.9 Section 24(2) of the 2013 Act 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 2013 Act 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.”
(emphasis supplied)

16. The Judgment dated 30.08.2016 passed by the Division Bench of this Court in W.P. (C) 1034/2015 has been set aside by the Apex Court. The result is that the acquisition proceeding has not lapsed and the land has been validly acquired. Once the land has been validly acquired the same vests absolutely in the Government and is free from all encumbrances, as per Section 16 of the 1894 Act, which reads as under:

“16.Power to take possession. - When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the [Government]], free from all encumbrances.”

17. The effect of Section 16 of the 1894 Act is that once a land vests in the Government, then no person can claim any right to take back the land which stands already vested in the Government. Section 48 of the 1894 Act provides that except in case of temporary occupation of land where the appropriate Government has taken over possession and paid compensation for temporary occupation, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken. There is no inherent right for any individual to seek for a right of issuance of mandamus to the Government to withdraw from possession. A Division Bench of this Hon’ble Court in Raheja Hospital & Psychiatric Research Institute v. Lt. Governor of Delhi & Ors., (2005) 85 DRJ 501 (DB), has settled the position of law with respect to representations made under Section 48 of the 1894 Act. It has observed as under:

37. A representation made by a landowner under Section 48 of the Act really cannot say anything more or different from what has already been indicated above. Therefore, even if it is held that a representation under Section 48 of the Act is maintainable, all that a landowner can do is to repeat and reiterate the objections taken by him at the stage of the Section 5-A inquiry and at the stage of challenging the Section 6 declaration. This being the position, we are of the view that the Act does not give repetitive or unlimited opportunities to a landowner to challenge the acquisition process. The right of a landowner, in the event of compulsory acquisition, is not like a double-barreled gun, one salvo to be fired challenging the Notifications under Section 4 and 6 of the Act (either simultaneously or separately), and another to be fired a little later to achieve the same end result, by demanding denotification under Section 48. of the Act.

38. For the reasons given by us above, we are of the view that the guidelines dated 2nd December, 1998 are non-statutory and, therefore, not legally enforceable. These guidelines do not confer any enforceable right on any landowner. Consequently, a landowner has no enforceable right to make a representation under Section 48 of the Act nor are the Respondents obliged to consider such a representation even if a landowner has made it, more particularly when the acquisition is upheld by a court of law, as in the present case. However, if there is any deviation from the these guidelines resulting in any discriminatory treatment against a landowner, then and only then could a landowner seek enforcement of the guidelines, which may even then be declined, if sufficient cause is shown. The right of a landowner in respect of the applicability of the guidelines is limited only to this extent.

39. In so far as the present case is concerned, it must, therefore, be held that the representations made by the

Petitioner under Section 48 of the Act are not maintainable and ought to have been summarily rejected. It may be noted that the Petitioner had agitated and argued the question of alleged discrimination in the second writ petition and that issue cannot now be reopened.” (emphasis supplied)

18. As regards the contention of the Appellants that since they had been in continuous possession of the subject land and the Government could then not take the stance that possession under Section 16 had been taken, we find it relevant to reproduce here the settled position with respect to symbolic possession and the effect thereof, rendered in the judgment of this Hon’ble Court in Nagin Chand Godha v. Union of India, **2003 (7) DRJ 721 (DB)**, as under:

“It is not possible for this Court to agree with the submission of the learned counsel that possession is not taken. Suffice it to say that after symbolic possession is taken, if the petitioner is enjoying the possession, he is enjoying the possession as a trustee on behalf of the public at large and that by itself cannot be considered to be a ground to contend that possession is not taken. It is the duty of the person who is occupying the property to look after the property and to see that the property is not defaced or devalued by himself or by others. He cannot subsequently come to the Court to say that actual possession is not taken and therefore he should be protected and land be denotified.”

19. The Division Bench of this Court while entertaining the W.P. (C) 7714/2011 *vide* Order dated 31.10.2011 has not passed any writ of mandamus directing the Government to withdraw from the acquisition. Since no writ of mandamus has been issued by this Court directing the Government to withdraw from the acquisition, and in the absence of any right to any

individual seeking a direction to the Government to withdraw from acquisition, and the land vests absolutely in the appropriate Government under Section 16 of the 1894 Act, the argument of the learned Senior Counsel appearing for the Appellants that till the application filed by the Appellants under Section 48 of the 1894 Act is not conclusively decided, the DDA cannot take possession of the property in question is unsustainable.

20. The opinion of the learned Single Judge that the representation dated 21.10.2011 filed under Section 48 of the 1894 Act, assuming that it was maintainable on a plea that the possession is still with the Appellants, stood rejected by the affirmative stands of the concerned authorities in writ proceedings and in challenging the Order in the writ proceedings before the Apex Court does not warrant any interference. The learned Single Judge is justified in holding that in absence of a formal Order communicating such a rejection to the Appellants could not have led the Appellants to believe that the representation filed in the year 2011 is still alive and pending in the year 2022. In the absence of any right to seek for withdrawal from acquisition under Section 48 of the 1894 Act, there is no requirement under law for the appropriate authority to pass any Order on a representation made by the Appellants under Section 48 of the Land Acquisition Act, 1894. In any event, the 1894 Act has been repealed by the 2013 Act and after nine years nothing survives.

21. The Appellants are not in lawful occupation of the property in question and they are encroachers of the public land. The proceedings have attained finality in view of Section 16 of the 1894 Act. The symbolic possession of the property in question has already been taken over. The attempt of the Appellants to get a declaration that the acquisition proceedings

have deemed to be lapsed under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has failed. The repeated attempts of the Appellant to cling on to the property cannot be permitted.

22. In view of the above, the appeal is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

FEBRUARY 08, 2023

S. Zakir/ss

