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

+ **W.P.(C) 2609/2024 & CM APPL. 10731/2024**

**GIAN CHAND GUPTA (HUF) THROUGH ITS KARTA SH. GIAN
CHAND GUPTA** Petitioner

Through: Mr. Sanat Kumar, Senior Advocate
with Mr. Sanjay Sharma Darmora and
Mr. Nitin Darmora, Advocates.

versus

**DELHI DEVELOPMENT AUTHORITY THROUGH ITS VICE-
CHAIRMAN** Respondent

Through: Ms. Manika Tripathy, SC, DDA with
Mr. Rony John and Mr. Uday Sodhi,
Advocates for DDA.
(M): 9811831835

**CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA**

**ORDER
21.02.2024**

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1. The present petition has been filed for restraining the respondent/Delhi Development Authority (“DDA”) from taking possession of the land of the petitioner bearing Khasra no. 31/1/1/3 measuring 2 bighas situated in Village Behlolpur Khadar, Opposite Sarai Kale Khan, New Delhi (“subject land”).
2. Learned Senior Counsel for the petitioner submits that the petitioner is the owner and in possession of the aforesaid property by way of registered sale deed dated 17th December, 1984.
3. It is submitted that on 16th February, 2024, the officials of the



respondent DDA visited the land of the petitioner and informed the guard deputed there that the respondent was going to take possession of the property of the petitioner in question. Immediately on coming to know of the said fact, the petitioner's son visited the office of the respondent and met the concerned officials. However, no satisfactory reply was obtained by the petitioner.

4. It is submitted that the respondent have no authority or right to take possession of the petitioner's private land without any reason.

5. Attention of this Court has been drawn to the judgment dated 24th February, 2015 passed in *W.P. (C) No. 8266/2014*, titled as ***Gian Chand Gupta (HUF) Versus. Lieutenant Governor, Govt. of NCT of Delhi and Ors.***, wherein the learned Division Bench has held that the petitioner herein is entitled to a Declaration that the said acquisition proceedings initiated in respect to the subject land are deemed to have lapsed.

6. Learned Senior Counsel has further drawn the attention of this Court to the judgment dated 08th September, 2016 passed in *Civil Appeal No. 9047/2016*. By way of the said judgment, Supreme Court had given directions to the Government of NCT of Delhi ("GNCTD") to initiate fresh acquisition proceedings within a period of one year. It was further directed that the physical possession of the land shall be returned to the original land owner. Thus, it is submitted that the petitioner is the owner of the land in question and is entitled to peaceful possession of the same.

7. Per contra, learned Standing Counsel for the DDA, who appears on advance notice, submits that the judgment dated 24th February, 2015 passed by the learned Division Bench in *W.P. (C) No. 8266/2014* was passed on the basis of judgment of Hon'ble Supreme Court in ***Pune Municipal Corporation and Another Versus Harakchand Misirimal Solanki and***



Ors.¹. She thus, submits that the Hon'ble Supreme Court in the judgment of ***Indore Development Authority Versus Manohar Lal and Others*²**, rendered by the Constitution Bench, has categorically held that all the judgments that have been passed on the basis of the judgment of ***Pune Municipal Corporation (supra)***, shall stand overruled. She relies upon Paras 365 and 366 of the aforesaid judgment, which read as under:-

“xxx xxx xxx

365. Resultantly, the decision rendered in *Pune Municipal Corpn. [Pune Municipal Corpn. v. Harakchand Misirimal 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. Harakchand Misirimal 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

¹ (2014) 3 SCC 183

² 2020 SCC OnLine SC 316



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.

xxx xxx xxx ”

8. She further submits that respondent-DDA has already filed a Review Petition bearing No. 263/2023 before the learned Division Bench, which is pending and the next date of hearing before the learned Division Bench is 04th March, 2024.

9. Responding to the aforesaid, learned Senior Counsel appearing for the petitioner submits that the very fact that the respondent DDA has filed Review Petition shows that the judgment dated 24th February, 2015 of the learned Division Bench, is still in force. He further submits that there is difference of opinion by the Supreme Court in respect of the effect of the aforesaid judgment in the case of ***Indore Development Authority (supra)***. Thus, the matter has been referred to the Full Bench by the Supreme Court in the case of ***Government of NCT of Delhi and Another Versus K.L. Rath Steel Limited and Others***, reported as (2023) 9 SCC 757.

10. I have heard learned counsel for the parties.

11. The essential issue in the present case is with respect to the right of the respondent DDA to take possession of the land currently in occupation of the petitioner. On one hand, it is the case of the petitioner that the acquisition Award already stands lapsed in view of the aforesaid judgment of the learned Division Bench and the Hon'ble Supreme Court. On the other hand, it is the case of the DDA that the award has not lapsed in view of the judgment in the case of ***Indore Development Authority (supra)***.

12. This Court is of the view that since the issue in the present petition is



essentially with respect to the right of the petitioner for continued possession of the land in question on the basis of the lapsing of the acquisition Award and a Review Petition in that regard is already pending before the Division Bench, in order to avoid any multiplicity of proceedings, the petitioner ought to approach the learned Division Bench in the matter where the Review Petition of the DDA is pending.

13. By way of the present petition, the petitioner is essentially praying for restraining the respondent DDA from taking over the possession of the subject land in occupation of the petitioner.

14. Such a prayer, for restraining the respondent DDA from taking possession of the land in occupation of the petitioner, can be made by the petitioner before the learned Division Bench in the aforesaid proceedings.

15. In view of the aforesaid, it is directed that any action of DDA for taking possession of the subject land in occupation of the petitioner, shall be kept in abeyance for a period of one week.

16. Accordingly, the present petition, along with the pending application is disposed of with liberty to the petitioner to approach the learned Division Bench by moving an appropriate application therein.

MINI PUSHKARNA, J

FEBRUARY 21, 2024

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