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

+ **W.P.(C) 7677/2017 & CM APPL. 31734/2017 (Interim Relief)**

RITU ANSAL

.....Petitioner

Through: **Ms. Jyoti Katuria, Adv.**

versus

GNCT OF DELHI AND ORS

.....Respondents

Through: **Mr. Siddharth Panda, Mr. Ritank Kumar & Mr. Anil Pandey, Advs. for R-3/LAC. Ms. Manika Tripathy, SC with Mr. Rony John, Adv. for Resp./ DDA. Ms. Arti Bansal, Mr. Kamal Digpaul, Ms. Suniti Singh & Ms. Akanksha Kumari, Advs. for Resp./ UOI.**

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

27.11.2024

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1. This writ petition has been preferred seeking a declaration referable to Section 24(2) of the **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013¹**.

2. The original acquisition commenced pursuant to a Notification dated 25 November 1980 issued under Section 4 of the Land Acquisition Act, 1894. As per the disclosures made in the writ petition, the original acquisition exercise itself was assailed by the writ petitioner before this Court and which ultimately came to be

¹ 2013 Act



dismissed. In this regard, we bear in consideration the judgment rendered by us on CWP No. 175/1982.

3. Insofar as the claim for a declaration under Section 24(2) of the 2013 Act is concerned and for us holding that the acquisition is liable to be viewed as having lapsed, we find that the issue stands conclusively settled by the Supreme Court in **Delhi Development Authority vs Sunil Khatri**². It becomes relevant to note that the said appeal itself was concerned with this very Notification dated 25 November 1980. After considering the body of precedent on the subject, the Supreme Court rendered the following pertinent observations:

“21. We have heard the learned counsel for the parties and find that the appeal deserves to be allowed. The aforementioned judgments have been thoroughly examined by this Court in *Om Parkash* [*Om Parkash v. Union of India*, (2010) 4 SCC 17 : (2010) 2 SCC (Civ) 1] . The judgments in *Balbir Singh* [*Balbir Singh v. Union of India*, 1989 SCC OnLine Del 211 : (1989) 39 DLT 233] and *Gurdip Singh Uban* [*Gurdip Singh Uban v. Union of India*, 1996 SCC OnLine Del 879] were again recently examined by this Court in *DDA v. Godfrey Phillips (I) Ltd.* [*DDA v. Godfrey Phillips (I) Ltd.*, (2022) 8 SCC 771 : (2022) 4 SCC (Civ) 525] decided on 6-5-2022, wherein it was held as under : [*Godfrey Phillips (I) case* [*DDA v. Godfrey Phillips (I) Ltd.*, (2022) 8 SCC 771 : (2022) 4 SCC (Civ) 525] , SCC p. 794, paras 38-40]

“38. In *Balak Ram (2)* [*B.R. Gupta v. Union of India*, 1988 SCC OnLine Del 367 : (1989) 37 DLT 150] , the acquisition proceedings were quashed since the objections filed by the landowners were not heard or decided in accordance with law. Thus, *Balak Ram (2)* [*B.R. Gupta v. Union of India*, 1988 SCC OnLine Del 367 : (1989) 37 DLT 150] is a judgment in personam and not in rem, as the grievance of the writ petitioners was specific to them. The judgment of the High Court in *Balbir Singh* [*Balbir Singh v. Union of India*, 1989 SCC OnLine Del 211 : (1989) 39 DLT 233] is based upon the fact that in *Balak Ram (2)* [*B.R. Gupta v. Union of India*, 1988 SCC OnLine Del 367 : (1989) 37 DLT 150] , the entire notification under Section 6 of the Act stands quashed.

² (2022) 17 SCC 399



Such aspect has not found favour in *Abhey Ram* [*Abhey Ram v. Union of India*, (1997) 5 SCC 421] and *Gurdip Singh Uban (1)* [*Delhi Admn. v. Gurdip Singh Uban*, (1999) 7 SCC 44] and *Gurdip Singh Uban (2)* [*Delhi Admn. v. Gurdip Singh Uban*, (2000) 7 SCC 296] . Otherwise also, non-hearing of objections filed would be limited to those landowners who have filed objections. The predecessor-in-interest of the purchaser has not filed any objections under Section 5-A of the Act, therefore, the judgment in *Balak Ram (2)* [*B.R. Gupta v. Union of India*, 1988 SCC OnLine Del 367 : (1989) 37 DLT 150] cannot come to the aid of landowners who have never preferred any objections.

39. Therefore, the judgment in *Balbair Singh* [*Balbair Singh v. Union of India*, 1989 SCC OnLine Del 211 : (1989) 39 DLT 233] does not confer any right on the other landowners who have not disputed the acquisition proceedings on the ground of lack of effective hearing of objections under Section 5-A of the Act. Since the original landowner never filed any objections under Section 5-A of the Act, the purchaser cannot seek the relief which was not available even to the original landowner.

40. The purchaser has purchased the property knowing fully well that the vendor has not disputed the acquisition proceedings. But on the basis of an order passed in *Balbair Singh* [*Balbair Singh v. Union of India*, 1989 SCC OnLine Del 211 : (1989) 39 DLT 233] , it was conveyed and accepted by the purchaser, that the acquisition stands quashed and original landowner was in possession of the land. Since *Sudan Singh* [*DDA v. Sudan Singh*, (1997) 5 SCC 430 : (1991) 45 DLT 602] , affirming the order in *Balbair Singh* [*Balbair Singh v. Union of India*, 1989 SCC OnLine Del 211 : (1989) 39 DLT 233] has not been approved by this Court in the three judgments referred to hereinabove [*Abhey Ram* [*Abhey Ram v. Union of India*, (1997) 5 SCC 421] , *Gurdip Singh Uban (1)* [*Delhi Admn. v. Gurdip Singh Uban*, (1999) 7 SCC 44] and *Gurdip Singh Uban (2)* [*Delhi Admn. v. Gurdip Singh Uban*, (2000) 7 SCC 296]], no right would accrue to the original landowner or the purchaser. The High Court in the impugned order has not noticed any of the three judgments of this Court in *Abhey Ram* [*Abhey Ram v. Union of India*, (1997) 5 SCC 421] , *Gurdip Singh Uban (1)* [*Delhi Admn. v. Gurdip Singh Uban*, (1999) 7 SCC 44] and *Gurdip Singh Uban (2)* [*Delhi Admn. v. Gurdip Singh Uban*, (2000) 7 SCC 296] nullifying the effect of *Balbair Singh* [*Balbair Singh v. Union of India*, 1989 SCC OnLine Del 211 : (1989) 39 DLT 233] and instead ordered the purchaser to deposit twice of the amount paid to the original landowner. The



condition of payment of compensation in *Balbir Singh* [*Balbir Singh v. Union of India*, 1989 SCC OnLine Del 211 : (1989) 39 DLT 233] by the landowners does not survive in view of the fact that such judgment has not been approved by this Court.”

22. In the writ petition filed by the landowners, there was an interim order of stay granted on 9-7-1999, even before *Gurdip Singh Uban (1)* [*Delhi Admn. v. Gurdip Singh Uban*, (1999) 7 SCC 44] was decided on 20-8-1999. The notifications under Section 6 of the Act which were quashed became effective only after the order of this Court in *Gurdip Singh Uban (1)* [*Delhi Admn. v. Gurdip Singh Uban*, (1999) 7 SCC 44] and *Gurdip Singh Uban (2)* [*Delhi Admn. v. Gurdip Singh Uban*, (2000) 7 SCC 296] . The landowner strangely made no mention of the judgment delivered on 22-4-1997 in *Abhey Ram* [*Abhey Ram v. Union of India*, (1997) 5 SCC 421] . The order of stay of dispossession in the writ petition filed by the landowner continued when the 2013 Act came into force. The land which was the subject-matter of challenge in *Gurdip Singh Uban* [*Gurdip Singh Uban v. Union of India*, 1996 SCC OnLine Del 879] was also at Village Chattarpur, even before the award was announced. There was an interim order of stay of dispossession on 28-4-1986 in respect of land situated in Village Chattarpur which continued till such time the notification under Section 6 of the Act was quashed relying upon *Balbir Singh* [*Balbir Singh v. Union of India*, 1989 SCC OnLine Del 211 : (1989) 39 DLT 233] decided on 15-5-1989 and *Sudan Singh* [*DDA v. Sudan Singh*, (1997) 5 SCC 430 : (1991) 45 DLT 602] . This order was set aside by this Court on 20-8-1999 in *Gurdip Singh Uban (1)* [*Delhi Admn. v. Gurdip Singh Uban*, (1999) 7 SCC 44] . The landowner had got stay in their writ petition on 9-7-1999. Thus, there was no stay free period of 5 years before coming into force of the 2013 Act.

23. It is to be noted that since the entire notification was quashed by the High Court in *Gurdip Singh* [*Gurdip Singh Uban v. Union of India*, 1996 SCC OnLine Del 879] and *Balbir Singh* [*Balbir Singh v. Union of India*, 1989 SCC OnLine Del 211 : (1989) 39 DLT 233] , therefore, the State could not take possession on the basis of quashed notification. But before the judgments of this Court were pronounced in the year 1999 or 2000, the landowner had obtained stay of dispossession. Therefore, it is not a stay of dispossession pending notification under Section 6 or award under Section 11-A but the acquisition of the entire land which came to be settled by this Court. Thus, the State could not take possession on the basis of a notification under Section 6 leading to the award on 5-6-1987. The argument that there was no stay from the date of the award till the stay was granted in favour of the landowner is hence partly correct as there was no stay but the acquisition itself stood quashed. Therefore, when the 2013 Act came into force on 1-



1-2014, the five years had not lapsed which was stay free or free from setting aside of the acquisition.

24. The learned counsel for the landowners has referred to a counter-affidavit dated 9-7-2018 filed by the State in *Verinder Kaur v. State (NCT of Delhi)* [Verinder Kaur v. State (NCT of Delhi), 2019 SCC OnLine Del 12026] to the effect that the amount of compensation in respect of Village Chattarpur was withdrawn for the purpose of award in Village Kakrola. However, the said writ petition was dismissed by the Division Bench of the High Court inter alia on the ground that the petitioner did not challenge the acquisition proceedings for more than 3 decades. It was held as under : (SCC OnLine Del para 7)

“7. The fact of the matter is that as far as the petitioner is concerned she never came forward to challenge the land acquisition proceedings at any stage. While certain others came to the Court and got interim orders in their favour, the petitioner did not challenge the proceedings at any stage. The inability of the respondents to take possession is explained by the fact that an interim order was passed in one set of petitions which continued for a long time. Interfering with the land acquisition proceedings at this stage when the petitioner has not shown any interest in challenging them for more than three decades would encourage an abuse of the process of law. Entertaining the petition would be contrary to the decision by a three-Judge Bench of the Supreme Court in *Indore Development Authority v. Shailendra* [Indore Development Authority v. Shailendra, (2018) 3 SCC 412 : (2018) 2 SCC (Civ) 426].”

25. In another judgment of this Court reported as *DDA v. Rajan Sood* [DDA v. Rajan Sood, (2022) 12 SCC 177 : (2023) 3 SCC (Civ) 415] , the landowner had the benefit of stay in his favour when the 2013 Act came into force. There was a direction issued in the writ petition filed by the landowner on 9-11-2011 to consider the application under Section 48 of the Act. It was held that Section 48 of the Act would be applicable as the possession of land is not taken over by the acquiring authority and thus the landowners would be deemed to be in possession of the same. It was held as under : (SCC pp. 183-84, paras 9-10 & 12)

“9. It is the case on behalf of the original writ petitioners that a purported letter dated 23-9-1986 allegedly taking symbolic possession was never disclosed by appellants in the proceedings conducted before the High Court on two separate occasions and the same has been filed for the first time in the present proceedings. The aforesaid is not correct. Even in the impugned order itself in para 2, the High Court has noted the submissions on behalf of the appellants to the effect that the



possession was taken over on 23-9-1986. Therefore, it cannot be said such a plea is taken for the first time before this Court.

10. It is the case on behalf of the original writ petitioners, relying upon the earlier order passed by the High Court dated 9-11-2011 in *Rajan Sood v. LAO* [*Rajan Sood v. LAO*, 2011 SCC OnLine Del 5732] that, the original writ petitioners continue to be in possession and the actual possession has never been taken over. However, it is required to be noted that even in the order dated 9-11-2011 [*Rajan Sood v. LAO*, 2011 SCC OnLine Del 5732], there was no specific finding given by the High Court that the original writ petitioners are in possession of the land in question. On the contrary, it is observed that the authority to consider the application under Section 48 of the Act, 1894 on merits on the assumption of the possession being with the original writ petitioners. Therefore, while passing the order dated 9-11-2011 [*Rajan Sood v. LAO*, 2011 SCC OnLine Del 5732] also, the High Court assumed the original writ petitioners are in possession hence as such no specific finding was given to the effect that the original writ petitioners are in possession.

12. Be that as it may. Assuming for the sake of argument that the original writ petitioners are found to be in possession and the compensation was not tendered, in that case also as can be seen from the order passed by the High Court on 9-11-2011 in *Rajan Sood v. LAO* [*Rajan Sood v. LAO*, 2011 SCC OnLine Del 5732], the authority was restrained from taking any coercive action in respect of the land in question. Therefore, in view of the subsequent decision of this Court in *Indore Development Authority [Indore Development Authority (Lapse-5 J.) v. Manoharlal]*, (2020) 8 SCC 129 : (2020) 4 SCC (Civ) 496] (para 366.8), the period, during which the interim order is/was operative, has to be excluded in the computation of five years' period. In the present case even, it is the contention on behalf of the original writ petitioners that the order of no coercive action was directed to be continued till the application under Section 48 of the 1894 Act was decided.”

26. In another judgment in *DDA v. Bhim Sain Goel* [*DDA v. Bhim Sain Goel*, (2022) 17 SCC 580], Notifications dated 21-3-2003 and 18-3-2004 under Sections 4 and 6 of the Act respectively were the subject-matter of consideration. The award was passed by the Land Acquisition Collector on 22-8-2005. In a writ petition filed challenging the Section 6 notification, the High Court directed to maintain status quo with regard to nature, title and possession of



the land in question. The writ petition was dismissed but in appeal before this Court, there was an interim order of stay. During the pendency of the appeal, the 2013 Act came to be enacted. The landowners filed a writ petition to declare the proceedings as lapsed. Such writ petition was allowed on 2-2-2016 [*Bhim Sain Goel v. State (NCT of Delhi)*, 2016 SCC OnLine Del 798] which was then challenged before this Court. This Court held as under : (*Bhim Sain Goel case [DDA v. Bhim Sain Goel*, (2022) 17 SCC 580] , SCC pp. 588 & 592, paras 17, 31 & 33)

“17. On the application of the aforesaid principles to the facts of this case, there cannot be any doubt that the respondents cannot take shelter under Section 24(2) of the 2013 Act. This is for the simple reason that it is by their conduct in approaching the Courts and obtaining interim orders that the appellant was prevented from taking possession of the lands. We are clear in our minds that this is indeed one such case where the respondents have launched litigation, obtained orders and it has clearly prevented the appellant from taking possession and therefore, the impugned judgment [*Bhim Sain Goel v. State (NCT of Delhi)*, 2016 SCC OnLine Del 798] of the High Court would have to be set aside.

31. The principle which has appealed to the Constitution Bench of this Court is squarely applicable to the facts of this case. The public authority which had set the law in motion under the earlier regime cannot be put to a loss when at the end of the day or on the day of reckoning it is found that they must succeed in law. Here we have found that the appellant is fully justified in contending that but for the orders passed by the High Court and this Court, the possession would have been taken, and the land would have vested under the law. We must proceed on the basis that but for the interim orders passed which cannot survive the final disposal of the cases, the land would have stood vested with the Government under the earlier regime....

33. It is clear as daylight that it would be completely antithetical to public interest were the Government be compelled to shell out public funds under the 2013 Act to acquire land which already belongs to it. We cannot be oblivious to the said sublime principle as well.”

27. Pertinent to note, though the High Court in *Balak Ram (2)* [*B.R. Gupta v. Union of India*, 1988 SCC OnLine Del 367 : (1989) 37 DLT 150] had not quashed the notification under Section 6 of the Act, but in some of the subsequent judgments such as in *Balbir*



Singh [*Balbir Singh v. Union of India*, 1989 SCC OnLine Del 211 : (1989) 39 DLT 233] , the High Court held that the notification stands quashed and the land stood reverted back to the landowners. Therefore, an option was given to the landowners to refund the compensation. Such judgment of *Balbir Singh* [*Balbir Singh v. Union of India*, 1989 SCC OnLine Del 211 : (1989) 39 DLT 233] was affirmed by this Court in *DDA v. Sudan Singh* [*DDA v. Sudan Singh*, (1997) 5 SCC 430 : (1991) 45 DLT 602] . The Delhi High Court in *Gurdip Singh Uban* [*Gurdip Singh Uban v. Union of India*, 1996 SCC OnLine Del 879] , etc. relied upon *Sudan Singh* [*DDA v. Sudan Singh*, (1997) 5 SCC 430 : (1991) 45 DLT 602] to hold that the notification under Section 6 of the Act stands quashed. However, *Sudan Singh* [*DDA v. Sudan Singh*, (1997) 5 SCC 430 : (1991) 45 DLT 602] was specifically found to be laying down not good law in *Abhey Ram* [*Abhey Ram v. Union of India*, (1997) 5 SCC 421] , *Gurdip Singh Uban (1)* [*Delhi Admn. v. Gurdip Singh Uban*, (1999) 7 SCC 44] and *Gurdip Singh Uban (2)* [*Delhi Admn. v. Gurdip Singh Uban*, (2000) 7 SCC 296] . There was a stay in the writ petition filed by the landowners themselves which continued to operate till the 2013 Act came into force. Therefore, it was the order of the High Court itself which prevented the appellant to take possession. However, such position got clarified only after the judgment in *Gurdip Singh Uban (1)* [*Delhi Admn. v. Gurdip Singh Uban*, (1999) 7 SCC 44] , later clarified in *Gurdip Singh Uban (2)* [*Delhi Admn. v. Gurdip Singh Uban*, (2000) 7 SCC 296] , but in the meantime, there was an interim order granted in favour of the landowners.

28. This Court in *Indore Development Authority (Lapse-5 J.) v. Manoharlal* [*Indore Development Authority (Lapse-5 J.) v. Manoharlal*, (2020) 8 SCC 129 : (2020) 4 SCC (Civ) 496] held that the twin conditions of failure to take possession or payment of compensation alone can lead to the lapse of notification under Section 24(2) of the 2013 Act. This Court has held as under : (*Manoharlal case* [*Indore Development Authority (Lapse-5 J.) v. Manoharlal*, (2020) 8 SCC 129 : (2020) 4 SCC (Civ) 496] , SCC pp. 354 & 358-59, paras 306-307, 314 & 316)

“306. When the authorities are disabled from performing duties due to impossibility, would be a good excuse for them to save them from rigour of provisions of Section 24(2). A litigant may be right or wrong. He cannot be permitted to take advantage of a situation created by him of interim order. The doctrine “commodum ex injuria sua nemo habere debet” that is convenience cannot accrue to a party from his own wrong. Provisions of Section 24 do not discriminate litigants or non-litigants and treat them differently with respect to the same acquisition, otherwise, anomalous results may occur and provisions may become discriminatory in itself.



307. In *Union of India v. Shiv Raj* [*Union of India v. Shiv Raj*, (2014) 6 SCC 564 : (2014) 3 SCC (Civ) 607] , this Court did not consider the question of exclusion of the time. In *Karnail Kaur v. State of Punjab* [*Karnail Kaur v. State of Punjab*, (2015) 3 SCC 206 : (2015) 2 SCC (Civ) 259] and in *Sree Balaji Nagar Residential Assn. v. State of T.N.* [*Sree Balaji Nagar Residential Assn. v. State of T.N.*, (2015) 3 SCC 353 : (2015) 2 SCC (Civ) 298] , various aspects including the interpretation of provisions of Section 24 were not taken into consideration. Thus, the said rulings cannot be said to be laying down good law.

314. The maxim “lex non cogit ad impossibilia” means that the law does not expect the performance of the impossible. Though payment is possible but the logic of payment is relevant. There are cases in which compensation was tendered, but refused and then deposited in the treasury. There was litigation in court, which was pending (or in some cases, decided); earlier references for enhancement of compensation were sought and compensation was enhanced. There was no challenge to acquisition proceedings or taking possession, etc. In pending matters in this Court or in the High Court even in proceedings relating to compensation, Section 24(2) was invoked to state that proceedings have lapsed due to non-deposit of compensation in the court or to deposit in the treasury or otherwise due to interim order of the court needful could not be done, as such proceedings should lapse.

316. Another Roman Law maxim “nemo tenetur ad impossibilia”, means no one is bound to do an impossibility. Though such acts of taking possession and disbursement of compensation are not impossible, yet they are not capable of law performance, during subsistence of a court's order; the order has to be complied with and cannot be violated. Thus, on equitable principles also, such a period has to be excluded.”

29. Therefore, the period of 5 years had not lapsed on 1-1-2014 which could lead to lapsing of the acquisition proceedings. The appellant was prevented by the interim orders in a number of writ petitions filed to take possession. Therefore, prior to the commencement of the 2013 Act, there was no stay free period of 5 years which could lead to a declaration that the proceedings stand lapsed. Still further, the notifications under Section 6 of the Act quashed on 15-5-1989 and 17-12-1996 were set aside in *Gurdip*



Singh Uban (1) [Delhi Admn. v. Gurdip Singh Uban, (1999) 7 SCC 44] and Gurdip Singh Uban (2) [Delhi Admn. v. Gurdip Singh Uban, (2000) 7 SCC 296] but before that, there was an order of stay of dispossession granted in favour of the landowner on 27-9-1999. Therefore, on account of setting aside of notification under Section 6 of the Act, the State could not take possession in view of the orders passed by the High Court.

30. In view of the above, the appeal is allowed. The order passed by the High Court is set aside and the writ petition filed by the landowners is dismissed.”

4. Accordingly, and in light of the aforesaid, we find no justification to grant the declaration as prayed for. The writ petition fails and shall stand dismissed.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

NOVEMBER 27, 2024/kk