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

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Date of Decision: 13.02.2025

+ **W.P.(C) 1954/2022**

FAZRUDEEN AND ORS

.....Petitioners

Through: Mr Udaibir Singh Kochar and Mr
Utsav Garg, Advocates.

versus

GOVT OF NCT OF DELHI AND ANR.

.....Respondents

Through: Mr Rajneesh Sharma, and Mr Anil
Pandey, Advocates for LAC/L&B/R1
Ms Manika Tripathy, standing counsel
and Mr Ashutosh Kaushik, Advocate,
for DDA/R2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

VIBHU BAKHRU, J. (ORAL)

1. The petitioners have filed the present petition, *inter alia*, praying as under:

“(a) issue a writ, order or direction in the nature of writ of mandamus directing the Respondents to restore the possession of the land bearing Khasra Nos. 453 MIN (3-14), 455 (4-16) and 456 (4-16) admeasuring 13 Bigha and 6 Biswas situated in the village Shahoorpur, Tehsil Saket, New Delhi to the Petitioners;

(b) issue a writ, order or direction in the nature of writ of mandamus directing the Respondent No. 1 and 2 to rectify the revenue records with respect to the land forming part of Khasra Nos. 453 min (3-14), 455 (4-16) and 456 (4-16) admeasuring 13 Bigha and 6 Biswas situated in the Village Shahoorpur, Tehsil Saket, New Delhi;”



2. On 25.11.1980, a Notification under Section 4 of the Land Acquisition Act, 1894 (hereafter the *LA Act*) was issued in respect of lands comprising of 13 villages of Delhi. This was followed by a declaration dated 20.05.1985 issued under Section 6 of the *LA Act*. An award under Section 11 of the *LA Act* in respect of the said lands was published on 14.05.1987.

3. The petitioners, who claim to be land owners of lands comprising in Khasra No.453 min (3-14), 455 (4-16) and 456 (4-16) measuring 13 bighas and 6 biswas in the revenue estate of village Shahpur, Tehsil Saket, New Delhi (hereafter *the subject land*), claim that they have not received the compensation for acquisition of the subject land, which was acquired in terms of the award dated 14.05.1987.

4. In the aforesaid context, the petitioners filed a writ petition before this court [being W.P.(C) 6292/2014], *inter alia*, praying for a declaration that the acquisition of the subject land had lapsed by virtue of the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereafter *the 2013 Act*). The said petition was allowed on 01.12.2014 and this court held that the acquisition proceedings in respect of the subject land had lapsed.

5. Respondent no.2 (DDA) sought to appeal the said decision by filing a Special Leave Petition (being SLP No.32615/2015). The said Special Leave Petition was granted, but the civil appeal arising from the same was dismissed by an order dated 31.08.2016. We consider it apposite to set out the said order in entirety. The same is reproduced below:

“Leave granted.



The issue, in principle, is covered against the appellant by judgment in Civil Appeal No.8477 of 2016 arising out of Special Leave Petition (C) No. 8467 of 2015.

This appeal is, accordingly, dismissed.

In the peculiar facts and circumstances of this case, the appellant is given a period of one year to exercise its liberty granted under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for initiation of the acquisition proceedings afresh.

We make it clear that in case no fresh acquisition proceedings are initiated within the said period of one year from today by issuing a Notification under Section 11 of the Act, the appellant, if in possession, shall return the physical possession of the land to the original land owner.

Pending applications, if any, stand disposed of.”

6. Respondent no.1 filed a separate Special Leave Petition assailing the order dated 01.12.2014, whereby the writ petition preferred by the petitioners was allowed (being SLP no.11421/2016). However, the same was also dismissed by the Supreme Court by an order dated 08.09.2016 but the respondents were granted liberty to initiate acquisition proceedings afresh within a period of one year from the date of dismissal of their appeals.
7. Thereafter, respondent no.2 (DDA) filed a review petition before the Supreme Court (bearing Diary no.5058/2020) seeking review of the order dated 31.08.2016, whereby its appeal (Civil Appeal No.8612/2016) arising from Special Leave Petition no.32615/2015 was dismissed. However, the said review petition was also dismissed by an order dated 04.05.2021.
8. Concededly, no steps were taken by the respondents for acquisition of the subject land in terms of the liberty granted by the Supreme Court by the order dated 31.08.2016.



9. The petitioners had, thereafter, made representations for correction of the records and removal of the name of the Government from the land records. However, the land records have not been rectified as yet.

10. In the aforesaid facts, the petitioners have also filed the present petition, *inter alia*, praying that the possession of the lands be reverted back to the petitioners as the acquisition in respect of the subject lands was declared to have lapsed.

11. The present petition was listed for the first time on 01.02.2022. Notice was issued and the learned counsel for the respondents had accepted notice and sought liberty to file counter affidavit(s). Thereafter, the said petition was adjourned.

12. The respondents have filed their respective counter affidavits. It is material to note that none of the facts as noted above are disputed. The DDA, in its counter affidavit, which was filed on 27.07.2022, stated that it was in the process of filing a Miscellaneous Application/Curative Petition before the Supreme Court. This was the only ground on which the relief sought by the petitioner is sought to be resisted.

13. The present petition was taken up for hearing before this court on 24.04.2024 and this court had passed the following order:

“1. The petitioner has filed the present petition, *inter alia*, praying as under:

‘(a) issue a writ, order or direction in the nature of writ of mandamus directing the Respondents to restore the possession of the land bearing Khasra Nos. 453 MIN (3-14), 455 (4-16) and 456 (4-16) admeasuring 13 Bigha



and 6 Biswas situated in the village Shahoorpur, Tehsil Saket, New Delhi to the Petitioners;

(b) issue a writ, order or direction in the nature of writ of mandamus directing the Respondent No. 1 and 2 to rectify the revenue records with respect to the land forming part of Khasra Nos. 453 min (3-14), 455 (4-16) and 456 (4-16) admeasuring 13 Bigha and 6 Biswas situated in the Village Shahoorpur, Tehsil Saket, New Delhi;'

2. The petitioner had filed a petition seeking a declaration that acquisition has lapsed by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 being W.P.(C) 6292/2014. The said petition was allowed by a judgment dated 01.12.2014.

3. It is stated that the Special Leave Petition (SLP No. 32615/2015 preferred by respondent no. 2) was dismissed by an order dated 31.08.2016. The Government of NCT of Delhi had also preferred a separate Special Leave Petition (SLP No. 11421/2016) against the judgment dated 01.12.2014, which was also dismissed on 08.09.2016.

4. The Review Petition filed by the respondent no. 2 was also dismissed by the Supreme Court on 04.05.2021. Notwithstanding the above, the respondents have not yet restored the possession of the subject land.

5. According to the petitioner, the decision in his favour has attained finality and the respondents are required to comply with the same. Learned counsel appearing for the respondents state that an issue arising regarding different orders passed in the Review Petition, is now pending before the Supreme Court and the judgment has been reserved on 23.11.2023 in SLP (Civil) Diary No. 17623/2021 captioned ***Government of NCT of Delhi v. M/s B.S.K. Realtors.***

6. At their request, list on 05.08.2024.”

14. The present petition was adjourned on a few occasions thereafter as well. The learned counsel for the parties, thereafter, sought time to examine the decision of the Supreme Court in ***Government of NCT of Delhi and Anr.***



v. BSK Realtors LLP and Anr.: (2024) 7 SCC 370.

15. The present petition was last listed before this court on 04.02.2025 and the learned counsel for the DDA had sought time to ascertain whether any application has been filed before the Supreme Court as was averred in the counter affidavit filed on behalf of the DDA.

16. Ms Tripathy, learned counsel who appears on behalf of the DDA submits that an application for curative petition has not been filed as yet. However, the DDA is still in the process of doing so.

17. There is no cavil that the decisions of the Court, which have attained finality, are required to be complied with.

18. The petitioners have also referred to paragraph 44 of the decision in the case of ***Government of NCT of Delhi and Anr. v. BSK Realtors LLP and Anr. (supra)*** as well as paragraph 44 of the decision of the Supreme Court in ***Delhi Development Authority v. Tejpal and Others: (2024) 7 SCC 433***. The same are reproduced below:

“44. The net result of the aforesaid judicial decisions is that the judgment in *Pune Municipal Corpn. [Pune Municipal Corporation v. Harakchand Misirimal Solanki; (2014) 3 SCC 183]* loses its precedential value, having been recalled, although the said decision would be binding inter partes. We are informed that applications to recall the order dated 16-7-2020 have since been filed but are yet to be considered. Be that as it may.”

“44. Finally, the *fourth* reason why subsequent overruling of a judgment cannot be a sufficient cause is because when a case is overruled, it is only its binding nature as a precedent that is taken away and the *lis* between the parties is still deemed to have been settled by the overruled case. [*Neelima Srivastava v. State of U.P., (2021) 17 SCC 693, para 29*] It is a settled principle of law that even an erroneous decision operates as *res judicata* between the parties. [*R. Unnikrishnan v. V.K. Mahanudevan, (2014) 4*



SCC 434, paras 19-23 : (2014) 2 SCC (L&S) 135] Hence, when *Manoharlal [Indore Development Authority (Lapse-5 J.) v. Manoharlal]*, (2020) 8 SCC 129, para 366 : (2020) 4 SCC (Civ) 496] overruled *Pune Municipal Corpn. [Pune Municipal Corpn. v. Harakchand Misirimal Solanki]*, (2014) 3 SCC 183, para 17 : (2014) 2 SCC (Civ) 274] and *Sree Balaji Nagar Residential Assn. [Sree Balaji Nagar Residential Assn. v. State of T.N.]*, (2015) 3 SCC 353, para 11 : (2015) 2 SCC (Civ) 298] , as well as all other cases relying on them, it only overruled their precedential value, and did not reopen the lis between the parties. The mere fact that the impugned orders [Ed. : A few such orders are *Tejpal v. State (NCT of Delhi)*, 2017 SCC OnLine Del 11781; *Bhagwati Devi v. Union of India*, 2017 SCC OnLine Del 8103; *Randhir Singh v. State (NCT of Delhi)*, 2017 SCC OnLine Del 13062; *Ajit Singh v. State (NCT of Delhi)*, 2014 SCC OnLine Del 7427; *Baljeet Singh v. State (NCT of Delhi)*, 2017 SCC OnLine Del 7047; *Jagmel Singh v. State (NCT of Delhi)*, 2017 SCC OnLine Del 7042; *Tejpal v. State (NCT of Delhi)*, 2017 SCC OnLine Del 12343; *Jai Pal v. State (NCT of Delhi)*, 2017 SCC OnLine Del 7048; *Jagbir v. State (NCT of Delhi)*, 2017 SCC OnLine Del 12992 and *Lov Ram v. Union of India*, 2016 SCC OnLine Del 4430] in the present case were overruled by *Manoharlal [Indore Development Authority (Lapse-5 J.) v. Manoharlal]*, (2020) 8 SCC 129, para 366 : (2020) 4 SCC (Civ) 496] would not, therefore, be a sufficient ground to argue that the cases should be reopened.”

19. There is no cavil that the *lis* between the petitioners and the respondent authority was finally settled by the orders of the Supreme Court, as noted above. In view of the above, the relief sought for by the petitioners cannot be denied.

20. The contention advanced on behalf of the DDA that it is in the process of initiating further proceedings, is unpersuasive considering that the present petition is pending before this court for more than three years and admittedly, the respondents have not taken any steps to approach the Supreme Court, as averred by them in their counter affidavit.



21. Before concluding, we consider it apposite to note the contention of the petitioners that they are willing to accept the compensation under the 2013 Act in the event the respondents seek to acquire the subject land.

22. In view of the above, the present petition is allowed. The respondents are directed to restore the possession of the subject land to the petitioners within the period of eight weeks from date. The revenue record be also rectified accordingly.

23. We also consider it apposite to bind down the petitioners to the statement made on their behalf that they are willing to accept the compensation under the 2013 Act. If the respondents decide to accept the aforesaid offer of the petitioners to agree to receive the compensation, as on date would be payable under the 2013 Act, the directions to restore the possession of the subject land are not required to be implemented, subject to the respondents making the payment of compensation under the 2013 Act, as computed on date, without any recourse, within a further period of eight weeks.

24. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

ANOOP KUMAR MENDIRATTA, J

FEBRUARY 13, 2025
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Click here to check corrigendum, if any