

Surender Pal Gupta Vs. Uoi and ors.

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Court : Delhi

Decided On : May-27-2014

Judge : Badar Durrez Ahmed

Appellant : Surender Pal Gupta

Respondent : Uoi and ors.

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on:

27. 05.2014 W.P.(C) Nos.2806/2004 & 2807-2934/2004 JAGJIT SINGH & ORS. versus UOI &ORS. Petitioners Respondents AND W.P.(C) 2937/2004, 2938-3000/2004, 3002-3137/2004 SUDHAR SAMITI RAJIV NAGAR EXT. Petitioner versus UOI &ORS. Respondents AND W.P.(C) 7077/2004 SURENDER PAL GUPTA Petitioner versus UOI & ORS. Respondents AND W.P.(C) 7333/2004, 7334-7337/2004 RAMESH KUMAR YADAV & ORS. Petitioners versus UOI & ORS. WP(C) 830/2013 AND W.P.(C) 8030/2004, 8031-8047/2004 SWAMI SHIRADHANAND RES.WEL.ASS Petitioner versus UOI & ORS. Respondents AND W.P.(C) 8048/2004 OM PRAKASH GOYAL & ANR. Petitioners versus UOI & ORS. Respondents AND W.P.(C) 9270/2004 KAILASH YADAV Petitioner versus UOI & ORS. Respondent AND W.P.(C) 2398/2006, 2399-2404/2006 S.K.JAIN & ORS. Petitioners versus UOI & ORS. WP(C) 830/2013 AND W.P.(C) 1892/2014 RAMESH AGGARWAL Petitioner versus UNION OF INDIA & ORS Respondents Advocates who appeared in

this case: For the Petitioner : Mr Ravinder Sethi, Sr. Advocate with Mr Rajiv Kumar Ghawana, Advocate in W.P.(C) Nos.2806/2004, 2937/2004, 7333/2004 & 9270/2004. Mr Sundeep Srivastava, Advocate in W.P.(C) Nos.7077/2004, 8030/2004, 8048/2004, 2398/2006. Ms Ritu Yadav, Advocate in W.P.(C) No.1892/2009. For the Respondents : Mr Yeeshu Jain, Advocate for L&B in W.P.(C) No 1892/2014. Mr Parvinder Singh Chauhan, Advocate for DUSIB in W.P.(C) No.8048/2004. Mr Sanjay Kumar Pathak, Advocate with Mr Sunil Kumar Jha, Advocate for LAC. Mr Neeraj Chaudhari, CGSC for UOI in W.P.(C) Nos.2806/2004 and 2937/2004. Ms Barkha Babbar, Advocate for UOI in W.P.(C) No.8030/2004. CORAM: HON'BLE MR JUSTICE BADAR DURREZ AHMED HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL) 1. These writ petitions raise a common issue and, therefore, the same are being disposed of by a common judgment. The point urged on behalf of the petitioners in this batch of writ petitions is that the acquisition of their lands lapsed on account of applicability of section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the new Act).

2. It is the case of the petitioners that the three conditions for attracting the deeming provisions of section 24(2) of the new Act have been satisfied and, therefore, all proceedings towards acquisition of land under the Land Acquisition Act, 1894 (hereinafter referred to as the old Act) ought to be deemed to have lapsed. Section 24 of the new Act reads as under:

24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases. (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), (a) 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 (b) 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. (2) 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: Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

3. It is evident upon a plain reading of the above provisions that by virtue of sub-section (1) thereof, that, where no award under section 11 of the old Act has been made, the land acquisition proceedings initiated under the old Act would be governed by the provisions of the new Act relating to the determination of compensation. However, where an award has been made under section 11 of the old Act, then such proceedings would continue under the provisions of the old Act as if the old Act had not been repealed. This is, however, subject to the non-obstante provisions contained in sub-section (2) of section 24 of the new Act which clearly stipulates that where an award under section 11 of the old Act has been made five years or more prior to the commencement of the new 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. It is also stipulated that the appropriate Government, if it so chooses, can initiate the proceedings of land acquisition afresh in accordance with the provisions of the new Act.

4. In the present writ petitions, it is an admitted position in view of the affidavit dated 27.05.2014, which has been handed over across the Bar and is taken on record, that possession has not been taken and compensation has also not been paid. Furthermore, the award in each of these cases has been made more than 5 years prior to the commencement of the new Act (i.e., 01.01.2014). Therefore, it is

contended by the learned counsel for the petitioner that all the conditions stipulated in section 24 (2) of the new Act have been satisfied and, as such, they are entitled to a declaration that the acquisition proceedings have lapsed.

5. The learned counsel for the petitioners placed reliance on three decisions of the Supreme Court in *Pune Municipal Corporation and Anr. v. Harakchand Mistrimal Solanki & Ors.*: (2014) 3 SCC183 *Bharat Kumar v. State of Haryana & Anr.*:

2014. (3) SCALE393 and *Union of India v. Shiv Raj & Ors.*: (Civil Appeal Nos.5478-5483/2014 decided on 07.05.2014).

6. Mr Sethi, the learned senior counsel appearing on behalf of the petitioners also referred to the decision of the Supreme Court in the case of *State of Bombay v. Pandurang Vinayak Chaphalkar and Ors.*: AIR 1953 SC244 for the proposition that a deeming provision creates a legal fiction and ought to be read as it is without worrying about the inevitable corollaries.

7. The learned counsel appearing on behalf of the respondents submit that although it is an admitted position that the award in each of these petitions has been made more than five years prior to the commencement of the new Act and that compensation has not been paid and also that the possession has not been taken, the petitioners are yet not entitled to the benefit of the deeming provisions under section 24 (2) of the new Act since possession in these cases could not be taken due to interim orders passed by this Court and because of the fact that possession could not be taken, compensation has also not been paid.

8. The learned counsel for the respondents also submitted that no party can be put to a disadvantage because of an act of the Court. Since this Court had passed interim orders, it cannot work to the disadvantage of the respondents.

9. We have already set out section 24 of the new Act in its entirety. It is evident that section 24(2) of the new Act is a non-obstante provision. The conditions which are required to be satisfied before the deeming provision is triggered are:(i) WP(C) 830/2013 The award should have been made under section 11 of the old Act, more than five years prior to the commencement of the (ii) Physical possession of

the land in question should not have been taken; or (iii) The compensation should not have been paid. These conditions are unqualified. It does not matter as to what was the reason behind the non-payment of compensation or for not taking possession. If the legislature wanted to qualify the above conditions by excluding the period during which the proceedings of acquisition of land were held up on account of stay or injunction by way of an order of a Court, it could have been expressly spelt out. In fact, whenever the legislature thought that it was necessary to spell out such an intention, it did. An example of this is to be found in the first proviso to section 19 (7) of the new Act which is as under:

19(7)..Provided that in computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.

10. Furthermore, it would be instructive to refer to the decision of the Supreme Court in the case of Pandurang Vinayak (supra) which has been relied upon by Mr Sethi, the learned senior counsel appearing on behalf of the petitioners. In that decision the purpose and meaning of a statutory fiction was being considered. While doing so, the Supreme Court referred to an English decision in the case of East End Dwelling Co. Ltd. v. Finsbury Borough Council: (1952) A.C. 109 and in particular to an observation of Lord Asquith which was to the following effect:

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative, state of affairs had in fact existed, must inevitably have flowed from or accompanied it.The statue says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

11. Following the above observation, it is obvious that the deeming provision of section 24(2) is a legal fiction which is a created and an imagined situation. We ought not to be concerned with the inevitable corollaries that may flow out of it unless there is a clear prohibition in the statute itself. Once the state of affairs is

imagined as real, the consequences and instances would also have to be imagined as real. Therefore, the fact that the possession could not have been taken by the respondents because of interim orders of the Court, would not in any way prevent this Court from imagining the state of affairs stipulated in Section 24(2) of the new Act. The only conditions that are required for the deeming provisions to be triggered are that the award must have been made five years or more prior to the commencement of the new Act and that either physical possession of the land has not been taken or that the compensation has not been paid. In fact in these writ petitions all the conditions stands satisfied. Therefore, the contention of the learned counsel for the respondent cannot be accepted.

12. In Pune Municipal Corporation (supra), the court dealing with the provisions of section 24(2) of the new Act held as under:

21. Under Section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of 2013 Act and possession of the land is not taken or compensation has not been paid. The legal fiction under Section 24(2) comes into operation as soon as conditions stated therein are satisfied..

13. We may point out that in Pune Municipal Corporation (supra) the Court took the above view even in cases before it where interim orders had earlier been passed by the Court preventing dispossession of the petitioner therein from the land sought to be acquired.

14. In Bharat Kumar (supra) also the Supreme court observed that Section 24(2) of the new Act was a non-obstante clause and that it was a beneficial provision.

15. The view taken in Pune Municipal Corporation (supra) has been followed in another three judge Bench decision of the Supreme Court in Shivraj & Ors. (supra).

16. It is, therefore, clear that the petitioners are entitled to succeed in view of the deeming provisions of Section 24(2) of the new Act. The acquisition proceedings in all these writ petitions shall be deemed to have lapsed in respect of the

petitioners lands. We make it clear that we have not examined any other aspect in these writ petitions apart from what we have said above.

17. The writ petition is allowed to the aforesaid extent. There shall be no order as to costs. BADAR DURREZ AHMED, J.

SIDDHARTH MRIDUL, J.

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