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Court : Supreme Court of India

Decided On : Mar-22-2023

Judge : Hon'Ble Mr. Justice Abhay S. Oka Hon'Ble Mr. Justice Rajesh Bindal

Appeal No. : C.A. No.-001918-001918 - 2023

Appellant : Delhi Development Authority

Respondent : Batti

Advocate for Pet/Ap. : ASHWANI KUMAR __

Judgement :

1 REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO._____ OF2023(Arising out of Special Leave Petition (C) No.22803 of 2019) Delhi Development Authority Appellant(s) Versus Batti & Ors. Respondent(s) WITH CIVIL APPEAL NO._____ OF2023(Arising out of Special Leave Petition (C) D.No.30579 of 2021) Government of NCT of Delhi & Anr. Appellant(s) Versus Batti & Anr. Respondent(s)

JUDGMENT

Rajesh Bindal, J.

1. Leave granted.

2. This order will dispose of two appeals arising out of order dated 30.11.2017 passed by the Division Bench of the High Court of Delhi in W.P(C) No.12135/2015. One appeal is preferred by Delhi Development Authority whereas the another has been filed by Government of NCT of Delhi. 2

3. The service on respondent is complete. However, no one appeared when the appeal was taken up for hearing.

4. The facts of the cases are available on record. Vide notification dated 23.06.1989 issued under Section 4 of the Land Acquisition Act, 1894 (For short, the Act) large chunk of the land measuring about 3,500 Hectares was sought to be acquired for planned development of part of Delhi. It was followed by notification issued on June 20, 1990 under Section 6 of the Act. The Award bearing No.13/9293 was announced by the Land Acquisition Collector (DS), Delhi on 19.06.1992.

5. It is evident from the facts noticed by the High Court in the impugned order that husband of the respondent late Mange Ram was son of late Harkesh. He was fatherinlaw of the respondent no.1 writ petitioner. He was claimed to be the recorded owner of 1/12th share [01 bigha and 19 biswas and 03 biswansi]. in land bearing Khasra Nos. 281/4(1011), 282/4 (103) and 80(28) total area measuring 23 bighas and 2 biswas, situated in the revenue estate of Village Ghari Mandu, Shahdara, Delhi. 3

6. There is nothing on record to suggest the acquisition in question was ever challenged by the predecessorininterest of respondent no.1. The writ petition came to be filed in the year 2015 referring to Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short the 2013 Act) claiming that the possession of land having not been taken and the compensation not paid, the acquisition has lapsed.

7. The High Court noticed the fact that the possession of the land had been taken by the State and handed over to the Forest Department for development as green belt, agriculture and water body as the land falls in O Zone. It was further pleaded

that respondent no.1 was not entitled to receive any compensation as the land, in fact, vested in Gaon Sabha.

8. After considering the arguments raised by learned counsel appearing for the parties, the High Court, while relying upon the judgment of this Court in Pune Municipal Corporation & Anr. vs. Harakchand Misirimal Solanki & Ors. (2014) 3 SCC183held that the acquisition in 4 question has lapsed qua the land of the respondent no.1 as the compensation therefor had not been tendered. The issue regarding entitlement of compensation to the respondent as there was dispute regarding the title of the land, was kept open.

9. The arguments raised by learned counsel appearing for the appellant are that in view of the Constitution Bench judgment of this Court in Indore Development Authority vs. Manoharlal and Others (2020) 8 SCC129whereby earlier judgment of this Court in Pune Municipal Corporation & Anr.s case (supra) was overruled the order passed by the High Court is to be set aside. It was opined by the Constitution Bench that compliance to either of the two conditions i.e. taking over of possession of the land or payment of compensation, is good enough to sustain the acquisition. In the case in hand, from the facts admitted on record it is evident that the possession of the land was taken after the acquisition was complete. There was no question of payment of compensation to predecessor in interest of the respondent no.1 as admittedly there was dispute regarding title of the land. The land is 5 recorded in the name of Gaon Sabha. Even the High Court in the impugned order had kept the question of title open.

10. Heard learned counsel for the appellant.

11. There is no dispute on the fact that the judgment of this Court in Pune Municipal Corporation and Anothers case (supra), was relied upon by the High Court to hold that the acquisition in question had lapsed. It was overruled by the Constitution Bench judgment of this Court in the Indore Development Authoritys case (supra). Para 362 thereof is extracted below: 362. Resultantly, the decision rendered in Pune Municipal Corporation & Anr. (supra) is hereby overruled and all other decisions in which Pune Municipal Corporation (supra) has been followed, are also overruled.

12. Various questions required to be considered by the Constitution Bench were answered in para 366 of the judgment. The same read as under: 366. In view of the aforesaid discussion, we answer the questions as under:

6. 366.1. Under the provisions of Section 24(1)(a) in case the award is not made as on 112014, 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 7 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 nondeposit 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. Nondeposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of nondeposit 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 8 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 nonpayment or nondeposit 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 9 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 112014. 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. 112014. It does not revive stale and timebarred 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.

13. A perusal of the impugned order passed by the High Court shows that the Writ Petition was allowed relying upon the judgement of this Court in Pune Municipal Corporation and Anothers case (supra). The case set by 10 the writ petitioner was that late Harkesh was the recorded owner of the land as noticed in para 2 of the judgment. The writ petitioner is his daughterinlaw. Even the husband of the writ petitioner had expired when the writ petition was filed. It was claimed that late Harkesh was having bhoomidari rights, however in terms of the stand taken by the appellant, no surviving membership was placed on record. Definite and undisputed stand taken by the respondent before the High Court was that the possession of the land was taken after the award was announced and the same was handed over to the Forest Department for development as green belt, agriculture and

water body as the land falls in O Zone.

14. Initially, the stand sought to be taken by the writ petitioner before the High Court was that the physical possession of the land had not been taken, however, the same was given up. The only argument pressed was that the compensation be paid as per the provisions of the 2013 Act. The Writ Petition was allowed relying upon the judgment of this Court in Pune Municipal Corporation and Anothers case (supra). The High Court had also 11 noticed the fact that there was dispute about title of the property which as per the stand taken by both the parties was kept open. Meaning thereby, even the compensation could not have been paid to the predecessor interest of the respondent/ writ petitioner. There is nothing on record to suggest as to what action was taken by the person who claimed interest in the property to seek compensation, in case land owned by him was acquired more than two decades back and no compensation paid. The litigation started only with enactment of Act of 2013 15. For the reasons recorded above, the present appeal deserves to be allowed as the ingredients of Section 24(2) of 2013 Act as interpreted by this Court in Indore Development Authority vs. Manoharlal and Otherss case (supra) are not satisfied in the case in hand. There cannot be lapsing of acquisition of land.

16. The appeals are, accordingly, allowed and the impugned order passed by the High Court is set aside. The writ petition filed by the respondents in the High Court stands dismissed. 12 J.

[Abhay S. Oka]. .J.

[Rajesh Bindal]. New Delhi 22.03.2023.

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