NON REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10954 OF 2014
(Arising Out of S.L.P. (C) No. 16578 of 2007)

VELAXAN KUMAR ……APPELLANT

Vs.

UNION OF INDIA & ORS. ……RESPONDENTS

J U D G M E N T

V.GOPALA GOWDA, J.

Leave granted.

2. I.A. No.7 of 2014 has been filed by the appellant Velaxan Kumar seeking applicability of the beneficial provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short 'the Act of 2013') for issuing a

direction and pass an order for disposal of this appeal in terms of the same. The appellant-land owner has come to this Court questioning the correctness of the common judgment and order dated 09.07.2007 passed by the High Court of Delhi in the writ petitions filed by the land owners including the appellant herein, wherein, the High Court has dismissed the same.

3. Brief facts of the case are as under:

The appellant is the owner of the plot measuring 1278 square yards out of Khasra No.62/19/1 located in the area Village-Prehlad Pur Bangar, National Capital Territory of Delhi (hereafter referred to as 'the disputed land') on the basis of a sale deed executed by Kaptan Singh as being the attorney of the land owners in his favour on 02.05.1989 for a total consideration amount of Rs.40,000/-.

4. The Notification No. F-10(29)/96/L&B/LA/11394 under Section 4 and 17 of the Land Acquisition Act, 1894 (for short 'the L.A. Act') was issued on

27.10.1999 by the Land Acquisition Collector in the name of Respondent No.1.

5. The appellant and other land owners objected to the issuance of notification by invoking an emergency clause under Section 17 of the L.A. Act as his land is built up and falls within 50 meters of village-Abadi of Lal Dora, hence his land should be exempted/denotified from acquisition as per policy of the Government dated 02.12.1998. Thereafter, the notification was issued under Section 6 read with Section 17 of the L.A. Act on 03.04.2000 in respect of the land sought to be acquired including the land owned by the appellant.

6. The Land Acquisition Collector, Kanjhawala passed an award on 03.04.2002 in respect of the disputed land of village-Pansali.

7. The appellant challenged the said award by the Land Acquisition Collector by way of filing a writ

petition (W.P. (c) No.5528 of 2001) in the High Court of Delhi which was dismissed by the High Court vide its common judgment and order dated 09.07.2007.

8. Aggrieved by the same, the appellant filed this appeal by way of special leave in this Court. This Court issued notice and also granted interim stay of the order passed by the High Court vide its order dated 17.09.2007.

9. It has been contended by the learned counsel for the appellant that during the pendency of this appeal, the Parliament has repealed the L.A. Act, 1894 and in its place enacted the Act of 2013 which came into force with effect from 01.01.2014 and thus seeking applicability of beneficial provision of Section 24(2) of the Act of 2013.

10. It is contended by the learned counsel for the appellant that in the light of Section 24(2) of the Act of 2013, the entire land acquisition proceedings qua the land of the appellant shall be deemed to have lapsed as admittedly the Award in the present case on

hand was rendered by the Land Acquisition Collector on 03.04.2002, i.e. more than 5 years prior to the commencement of the Act of 2013, but physical possession of the disputed land of the appellant has neither been taken as he is still in physical possession by making construction of one room and boundary wall much prior to issuance of the said notifications over his acquired land in dispute and the same is now built up and also within 50 meters from village-Abadi nor compensation amount has been paid to the appellant till date.

11. It is further contended that this Court in the case of ***Pune Municipal Corporation & Anr*** v. ***Harakchand Misrimal Solanki and Ors.***[1] has interpreted the said Section 24(2) of the Act of 2013. It is contended by the learned counsel for the appellant that in the present case on hand, the physical possession of the land of the appellant has not been taken from him as he is still in actual physical possession of his acquired land in view of interim stay order passed by this Court on 17.09.2007 and

1 (2014) 3 SCC 183

compensation amount has not been paid to the appellant till date and as such acquisition proceedings shall be deemed to have lapsed qua land and relied upon the view taken by this Court in the case of ***Bharat Kumar*** v. ***State of Haryana & Anr.***[2]

12. It is contended that during acquisition proceeding, no proper procedure has been followed by the authorities concerned by way of giving prior notice to the landowners/farmers/appellant herein, whose structures exist over the acquired land or in any case standing crops etc. by way of preparing proper 'Panchnama' in the presence of witnesses and the land-holders, which is contrary to the decisions of this Court in ***Bhanda Development Authority, Bhanda*** v. ***Moti Lal Agarwal***[3], ***Raghubir Singh Sehrawat*** v. ***State of Haryana and Ors.***[4], ***Patasi Devi*** v. ***State of Haryana and Others***[5].

13. It is further contended that it is not possible to take possession of the huge chunk of acquired land measuring 1109.11 Bighas out of the total acquired

2 (2014) 6 SCC 586
3 (2011) 5 SCC 394
4 (2012) 1 SCC 792
5 (2012) 9 SCC 503

land of village-Pansali in one day i.e. on 12.05.2000 by way of following due process of law by giving notice etc. to the land owners including the appellant and as such only paper possession has been taken by the official concerned.

14. On the other hand, the learned counsel for the respondents contended that the possession of the acquired land, including the land owned by the appellant has already been taken by the acquiring authority and handed over to the beneficiary agency which has made large scale developments over the land. In case the appellant is having possession of a part of the land, then he is a trespasser and is liable to be prosecuted.

15. It has been further contended by the learned counsel for the respondents that the Act of 2013 is prospective in operation by virtue of Section 24 read with Section 114 of the Act of 2013. As provided under Section 24, the effect of Section 6 of the General Clauses Act of 1897, the actions taken by the

respondents have been saved. By reading the above provisions of the two Sections, it is clear that Legislature wanted to protect and save the acquisition proceedings initiated under the repealed L.A. Act, particularly where either possession of the acquired land has not been taken or compensation has not been paid to the landowners. It is further submitted that the Act of 2013 never intended to destroy entire acquisition proceedings in acquiring the land for the public purpose under the repealed L.A. Act, 1894. It is well settled position of law that the proceedings initiated and culminated under the repealed Act of 1894 are not to be disturbed by applying the interpretation of the provisions of

Section 24(2) of the Act of 2013 made by this Court in the above referred cases. By operation of the provisions of Section 16 or 17(1) of the L.A. Act as the case may be, once the possession of the acquired land is taken by the respondents, the land will be vested in the State Government which is absolutely free from all encumbrances. Thereafter, it is not open even for the State Government to restore the

land to the land owner in exercise of its power under Section 48 of the repealed L.A. Act as it is not permissible in law. In the cases reported as ***Satendra Prasad Jain Vs. State of Uttar Pradesh***[6]. and ***Sanjeevanagar Medical and Health Emloyees' Co-operative Housing Society Vs. Mohd. Abdul Wahab and Ors***.[7], this Court has held that once possession is taken by the Land Acquisition Collector in exercise of its statutory power under Section 16 or 17 (1) of the repealed L.A. Act, 1894, the land vests with the State Government, free from all encumbrances, even if no compensation has been awarded under Section 11 of the repealed L.A. Act within two years, that is, the statutory period prescribed under the repealed L.A. Act for passing an award. In the aforesaid cases, this Court has also held that Section 11(A) (analogous to Section 24 of the Act of 2013) of the repealed L.A. Act is not applicable and further held that in such circumstances, the only consequence provided under the repealed L.A. Act is payment of interest under Section 34 in respect of the acquired land. Therefore, the

6 (1993) 4 SCC 369
7 (1996) 3 SCC 600

acquisition of land cannot be deemed to have lapsed under Section 24(2) of the Act of 2013, in view of the law laid down in the above cases referred to supra. It is contended that the above said judgments were not brought to the notice of this Court while disposing of the case of ***Pune Municipal Corporation's*** case & other cases of this Court referred to supra which are strongly relied on behalf of the appellant and therefore the legal question in this regard requires to be referred to a larger Bench of this Court.

16. We have carefully examined the application filed by the appellant seeking for the beneficial provision of Section 24(2) of the Act of 2013 and the objections filed by the respondents to the same. After examining the facts and circumstances of the case, we are of the considered view that the award passed under Section 11 was passed on 03.04.2002 in respect of the disputed land of village-pansali, therefore, it is an undisputed fact that it was passed 5 years prior to the commencement of the Act of 2013 and the compensation for the acquisition of the appellant's land has not been paid to the

appellant. Further, with respect to taking over of possession of the land by the respondents, it is clear from the facts and circumstances of the case that actual physical possession of the land in question has not been taken by the respondents. Even if, for the sake of argument it is accepted that possession of the land was taken by the respondents, it is clear that due procedure has not been followed

by the Acquisition Authority by way of preparing proper 'Panchnama' in the presence of independent witnesses and the land-holders, and therefore it is contrary to the principles law laid down by this Court in the case of ***Sita Ram Bhandar Society, New Delhi v. Lt. Governor Govt. Of N.C.T. Delhi & Ors.***[8], wherein, this Court held that when possession of a large tract of land is to be taken then it is permissible in law to take possession by a properly executed 'panchnama' attested by independent witnesses. This was further reiterated by this Court in its decisions in the case of ***Bhanda Development Authority, Raghubir Singh Sehrawat, Patasi Devi***

8 (2009) 10 SCC 501

referred to supra. Further, in the case on hand it is clear from the photographs produced along with the affidavit in support of additional documents produced before us that the appellant is still in physical possession of his acquired land. Undisputedly, actual physical possession of the acquired land has not been taken over by the respondents as pleaded by them by following due process of law. Therefore, the acquisition proceedings of the land of the appellant are lapsed in view of Section 24(2) of the Act of 2013 as both the conditions under the said provision are fulfilled in the present case. This Court has rightly interpreted the said provision in its three Judge Bench decision in the case of ***Pune Municipal Corporation*** referred to supra and the legal principle laid down with respect to the same in the above mentioned case was reiterated by this Court in the cases of ***Bharat Kumar*** (supra), ***Bimla Devi & Others*** v. ***State of Haryana & Others***[9] and ***Union of India & others*** v. ***Shiv Raj & Others***[10]***.*** The relevant paras of the ***Pune Municipal Corporation*** (supra) are extracted hereunder:-

9 (2014) 6 SCC 583
10 (2014) 6 SCC 564

"**20**…….it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act. It is also admitted position that compensation so awarded has neither been paid to the landowners/persons interested nor deposited in the court. The deposit of compensation amount in the Government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested. We have, therefore, no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the 2013 Act.

21. The argument on behalf of the Corporation that the subject land acquisition proceedings have been concluded in all respects under the 1894 Act and that they are not affected at all in view of Section 114(2) of the 2013 Act, has no merit at all, and is noted to be rejected. Section 114(1) of the 2013 Act repeals the 1894 Act. Sub-section (2) of Section 114, however, makes Section 6 of the General Clauses Act, 1897 applicable with regard to the effect of repeal but this is subject to the provisions in the 2013 Act. 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 the 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. The applicability of Section 6 of the General Clauses Act being subject to Section 24(2),

there is no merit in the contention of the Corporation."

17. On considering the facts and circumstances of the present case in the light of the legal principles laid down by this Court in the cases referred to supra, we are of the view that neither compensation has been paid by the respondents to the appellant for the said acquisition even though more than five years have elapsed from the date of Award when the Act of 2013 came into force w.e.f. 01.01.2014 nor physical possession of the land belonging to the appellant has been taken by the respondents. Therefore, the acquisition proceedings in respect of the appellant's land have lapsed in terms of Section 24(2) of the Act of 2013. In view of the law laid down by this Court in ***Pune Municipal Corporation's*** case and other cases referred to supra, we are of the opinion that the same are applicable to the fact situation on hand in respect of the land covered in this appeal for granting the relief as prayed by the appellant in the application.

18. In view of the above findings and reasons

recorded by us with reference to the facts of the case and placing reliance upon the decisions of this Court referred to supra, the acquisition proceedings in respect of the appellant's land have lapsed. The aforesaid application is allowed in the above terms and consequently, the appeal is also allowed by quashing the acquisition proceeding notification in so far as the land of the appellant is concerned.

The applications filed in S.L.P.(C) No.16578 of 2007 for impleadment of Vijendra Singh, Brij Mohan Lal Jain and Shiv Charan as petitioner Nos. 2, 3, and 4 respectively, are disposed of with liberty to challenge the acquisition proceedings before the High Court by filing writ petitions, placing reliance upon the provision of Section 24(2) of the Act of 2013 and catena of decisions rendered both under Section 24(2) of the Act of 2013 and on merits. If such writ petitions are filed by the above applicants, the same shall be heard on merits and disposed of, keeping in view the decisions of this Court on the legal questions.

There shall be no order as to costs.

……J.
[V. GOPALA GOWDA]

……J.
[C. NAGAPPAN]

New Delhi,
December 11, 2014

ITEM NO.1B-For Judgment COURT NO.11 SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

C.A. No.....2014 arising from SLP (C) No(s). 16578/2007

VELAXAN KUMAR **Petitioner(s)**

VERSUS

UNION OF INDIA & ORS. **Respondent(s)**

Date : 11/12/2014 This petition was called on for hearing today.

For Petitioner(s)
Mr. T. N. Singh,Adv.

For Respondent(s) **Mr. Vishnu B. Saharya, Adv.**
For M/s Saharya & Co.

Ms. Rachana Srivastava,Adv.

Hon'ble Mr. Justice V.Gopala Gowda pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice C. Nagappan.

Leave granted.

I.A. No. 7 is allowed. Applications for impleadment are disposed of. The appeal is allowed in terms of signed non-reportable judgment.

(VINOD KUMAR)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed Non-Reportable Judgment is placed on the file)