

BHARGAVA & ASSOCIATES PVT. LTD. & ORS.

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v.

UNION OF INDIA AND ORS.

(Civil Appeal No. 5099 of 2008)

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MARCH 10, 2015

[VIKRAMAJIT SEN AND C. NAGAPPAN, JJ.]

Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 – s. 24(2) – Deemed lapse of acquisition proceedings under – When can be declared – Held: Factum of award u/s. 11 of the 1894 Act must be established and the said award must have been passed five years before the commencement of the Act – Once the aforesaid is established, possession is found to not have been taken, or compensation not paid, then the proceedings shall be deemed to have lapsed – In the instant case, land owners submission that either possession still with them or compensation not tendered by the State – Land owners proposing to initiate proceedings u/s. 24 – Appeal disposed of, without entering into merits, by granting liberty to the land owners to pray for the revival of the appeals in the event the orders u/s. 24 adverse to their interest – Thus, land owners permitted to initiate appropriate proceedings in the proper forum/court, seeking the benefit of s. 24 – Land Acquisition Act, 1894 – s. 11.

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Radiance Fincap (P) Ltd. v. Union of India & Ors. 2015(1) SCALE 677; Arvind Bansal v. State of Haryana 2015 (3) SCALE 200; Karnail Kaur v. State of Punjab (2015) 1 JT 377 – relied on.

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- A *Pune Municipal Corporation vs. Harakchand Misirimal Solanki* 2014 (1) SCR 783:(2014) 3 SCC 183, *Union of India vs. Shiv Raj* (2014) 6 SCC 564; *Bimla Devi vs. State of Haryana* (2014) 6 SCC 583; *Rajiv Chowdhrie HUF v. Union of India* 2015 AIR 614; *Rajiv Chowdhrie HUF v. Union of India* [Civil Appeal No.8786 of 2013, decided on 06.02.2015 – referred to.
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Case Law Reference

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| C | 2014 (1) SCR 783 | Referred to | para 2 |
| | (2014) 6 SCC 564 | Referred to | para 2 |
| | (2014) 6 SCC 583 | Referred to | para 2 |
| D | 2015(1) SCALE 677 | Relied on | para 2 |
| | 2015 (3) SCALE 200 | Relied on | para 2 |
| | (2015) 1 JT 377 | Relied on | para 2 |
| E | 2015 AIR 614 | Referred to. | para 2 |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5099 of 2008

- F From the Judgment and Order dated 25.08.2005 of the High Court of Delhi at New Delhi in Civil Writ Petition No. 5609 of 2002

WITH

- G C.A. No. 5126 of 2008

Salil Sagar, Dushyant Parashar, Surya Kant, Suresh C. Gupta, Abhinav Singh, Samarth Sagar, Birendra Kumar Mishra for the Appellants.

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Rachana Srivastava, Utkarsh Sharma for the Respondents. A

The Judgment of the Court was delivered by

VIKRAMAJIT SEN, J. 1 These Appeals were originally filed seeking relief on the basis of provisions in the Land Acquisition Act, 1894. Subsequently, upon the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the Appeal grounds herein metamorphosed into proceedings under Section 24(2) of the 2013 Act, seeking lapse of the acquisition proceedings thereunder. B C

2. Similar positioned Appeals i.e. Civil Appeal No. 5054 of 2008 and other connected Appeals, i.e. Civil Appeal Nos. 5100, 5283, 5105-5124, 5101-5104, 5053, 5050, 5052 of 2008, 3279, 3280 of 2012 5127-5129, 5125, 5051 of 2008 and 3278 of 2012, have been disposed of with these observations and directions, which seem to us to remain the commendable approach - D

“All of these Appeals were admitted before the commencement of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013. After commencement thereof, the Appellants changed the tack of their challenge – originally framed under the Land Acquisition Act, 1894 - and impugned the acquisition proceedings *in toto*, by evoking the deemed lapse of proceedings under Section 24(2) of the 2013 Act. Any determination under this provision must proceed sequentially. First, the factum of an Award under Section 11 of the Land Acquisition Act, 1894, must be clearly established. The said Award must predate the commencement of the Act, i.e., 01.01.2014., by at least five years (or more), ie., the Award must have been passed on or before 01.01.2009. This having E F G H

- A been established, if possession is found to not have been taken, or compensation not paid, then the proceedings shall be deemed to have lapsed. Thereafter, the appropriate Government, if it so chooses, may reinitiate acquisition proceedings in respect of the same land, but under the 2013
B Act's regime.

- Each and every deeming operation under Section 24(2) requires unambiguously and unvaryingly that a factual conclusion be drawn about the passing of the Award under
C Section 11, of the 1894 Act, on or before 01.01.2009; further, the absence of compensation having been paid or the absence of possession having been taken by the acquirer, either of these, must be a proven point of fact, as a threshold requirement attracting the lapse.
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- From the record, these Appeals do not unambiguously answer these indispensable queries, which inarguably must precede any declaration of lapse of acquisition under Section 24(2). Each of these Appeals must factually satisfy this Court on the ingredients of Section 24(2), before this Court may pass a declaration in recognition of the statutory lapse of acquisition.
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- This Court has in a number of decisions including Pune Municipal Corporation vs. Harakchand Misirimal Solanki (2014) 3 SCC 183, Union of India vs. Shiv Raj (2014) 6 SCC 564 and Bimla Devi vs. State of Haryana (2014) 6 SCC 583, clarified the manner in which the new provision is to be interpreted viz., that the acquisition lapses.
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- It has been contended in other Appeals before this Court that the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Settlement Ordinance, 2014, issued on 31st December, 2014, clarifies that if possession of the acquired land has not been taken owing to interim Orders
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passed in this regard the acquisition may be protected and insulated from the purpose and intendment of Section 24 of the 2013 Act. This Court has now clarified in Radiance Fincap (P) Ltd. v. Union of India & Ors. [Civil Appeal No. 4283 of 2011 decided on 12.01.2015] that the Ordinance shall have prospective operation only. This Court therein held as under:

“The right conferred to the land holders/owners of the acquired land under Section 24(2) of the Act is the statutory right and, therefore, the said right cannot be taken away by an Ordinance by inserting proviso to the abovesaid sub-Section without giving retrospective effect to the same.”

The legal position has been subsequently reiterated by this Court in Arvind Bansal v. State of Haryana (Civil Appeal Nos.417-418 of 2015 decided on 13.01.2015) and Karnail Kaur v. State of Punjab [Civil Appeal No. 7424 of 2013 decided on 22.01.2015]. We are in respectful agreement with all these decisions. In the event that there is no ambiguity that (a) the Award is over five years old and (b) that compensation has not been paid or (c) that possession of the land has not been taken, the acquisition is liable to be quashed. In Rajiv Chowdhrie HUF v. Union of India [Civil Appeal No.8786 of 2013, decided on 06.02.2015], noting that the physical possession of the land had not been taken by the Respondents, nor compensation paid by the Respondents to the Appellant in respect whereof the Award was passed on 6.08.2007, the acquisition proceedings had been declared as having lapsed. The same position was arrived at in Rajiv Chowdhrie HUF v. Union of India in Civil Appeal No.8785 of 2013 decided on 10.12.2014 by a different Bench of this Court.

In all these Appeals, the submission of the land owners is that either possession is still with them, or compensation

A has not been tendered by the State. Consequently, the land owners propose to initiate proceedings founded on Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as ‘the 2013 Act’).

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Having heard all the learned counsel, we are persuaded to dispose of these proceedings, without entering on the merits, by granting liberty to the land owners before us to pray for the revival of the Appeals in the event that Orders under Section 24 of the 2013 Act are adverse to their interest. We, therefore, permit the land owners to initiate appropriate proceedings in the proper forum/court, seeking the benefit of Section 24 of the 2013 Act, within eight weeks from today. We clarify that, in the event that any land owners have already approached the High Court concerned, their plea under Section 24 of the 2013 Act shall be decided on merits.

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It is in these circumstances that all these Appeals are disposed of with liberty to the parties to revive these Appeals in the event that the Orders under Section 24 of the 2013 Act are seen as adverse to their interest. Interim protection, if already granted, shall continue for a period of 90 days from today.

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It is further clarified that the parties desirous of reviving the Appeal must approach this Court within 90 days of the passing of the High Court’s orders.”

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3. These two Appeals are also disposed of in the above terms.

Nidhi Jain

Appeals disposed of.

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