

SUPREME COURT OF INDIA

Karnail Kaur

Vs.

State of Punjab

C.A.No.7424 of 2013

(V.Gopala Gowda and C.Nagappan JJ.)

22.01.2015

JUDGMENT

V.GOPALA GOWDA, J.

1. The abovementioned applications are filed by the appellants for allowing the concerned appeals in terms 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'). The appellant-land owners have come to this Court questioning the correctness of the common judgment and order dated 19.04.2011 passed by the High Court of Punjab & Haryana at Chandigarh in Civil Writ Petition No.5512 of 2001 and batch petitions by which the High Court dismissed the Writ Petitions filed by the appellants herein.

2. As all the appeals are identical involving similar question of law, for the sake of brevity we will discuss the facts of the case in C.A. No. 7424 of 2013 which are stated hereunder:

3. The appellants are original residents and have their houses along with their land in village-Sohana, Tehsil Mohali in District Roop Nagar (Punjab). The State of Punjab has framed a special Act known as 'The Punjab Regional and Town Planning and Development Act, 1995' (hereinafter referred to as 'the Act of 1995') to construct a residential urban estate with the main object to undertake urban development and housing programme. On 21.02.2000, the State of Punjab through Secretary, Punjab Housing and Development, the respondent No.1 herein, issued notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the L.A. Act') for the purpose of setting up a residential urban estate in the area of revenue

estate of village Mauli Baidwan, SAS Nagar (Mohali). The said acquisition notification covered a total extent of 1264.84 acres of land in four villages -Mauli Baidwan, Sohana, Raipur Khurd and Lakhnausr in Roopnagar district of Punjab out of which the land of the appellants in the present batch of appeals constituted 102 acres of land in small pockets of the said 1264.84 acres. Objections were raised against the same by the appellants under Section 5A alleging that in the year 1996 the Punjab State Government had framed a scheme called "Farmers Friendly and Land Pooling Exchange Scheme", and as per the contents of the said Scheme, for every acre of land transferred by the land owners to Punjab Urban Development Authority (PUDA), the land owners will be given back approximately 1000 square yards after development and the land owners were advised not to sell their land. Therefore, the appellants objected to the said notification under Section 4 of the L.A. Act, as the same was violative of the principles of promissory estoppel. The said objections were not decided by the Land Acquisition Officer. Thereafter, on 02.02.2001, the notification under Section 6 of the L.A. Act was published.

4. The appellants filed writ petition No. 5512 of 2001 before the High Court of Punjab and Haryana at Chandigarh alleging inter alia that respondent no. 1 has started acquiring the land without complying with the provisions and in utter violation of the Act of 1995 & therefore the acquisition proceedings are bad in law and liable to be quashed.

5. The High Court vide order dated 19.04.2011 dismissed writ petition No. 5512 of 2001 along with batch matters in CWP No. 4981 of 2001. Hence, the present appeal.

6. It has been contended by the learned senior counsel for the appellants that the L.A. Act has been replaced by the Act of 2013, which has come into force w.e.f. 01.01.2014 and that Section 24(2) of the Act of 2013 provides that where an award under Section 11 of the L.A. Act has been made five years or more prior to the commencement of the Act of 2013 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. In the present case, the proceedings under the L.A. Act have lapsed for both the above said reasons because the case of the appellants satisfy both the conditions as referred to in Section 24(2) of the Act of 2013. The award under Section 11 of the L.A. Act in respect of the land in dispute was passed on 17.05.2001. It is further contended that not only the possession of the said land is still with the appellants but they have also not been paid any compensation. Therefore, the acquisition proceedings in respect of the land under challenge in the

present appeal have lapsed by virtue of provisions of Section 24(2) of the Act of 2013.

7. It has been further contended that the then Additional Chief Administrator- cum- Land Acquisition Collector, GMADA, Mohali in his affidavit dated 06.02.2008 has admitted that the possession of the land in question is with the appellants. Further, in the affidavit dated 19.07.2012 filed on behalf of respondent no.2, it has been categorically stated that the appellants and other land owners are using their land for agricultural purposes. For the said reason, the respondent-GMADA had filed an application dated 09.02.2012 seeking permission to complete the remaining development works in Sectors 76-80 of SAS Nagar, Mohali. The said application was dismissed by this Court on 11.11.2013.

8. Further, it is contended by the appellants that no details/calculation of the awarded money has been given to the appellants. Even if payments have been deposited, the same is no payment in the eyes of law and the respondent State has never offered to pay compensation of the acquired land in terms of the award of the appellants. No notice, whatsoever, has been received by the appellants from any quarter asking them to collect the compensation awarded in respect of their acquired land. A perusal of the Annexure R-10 filed by the State of Punjab along with their further affidavit filed before this Court on 02.07.2013 would clearly go to show that the compensation amount is lying in the Treasury. It has been contended that in view of the above, the case of the appellants is squarely covered under Section 24(2) of the Act of 2013. Therefore, the appellants have filed the applications.

9. On the other hand, it has been contended by the learned Solicitor General Mr. Ranjit Kumar for the respondents that the issue involved in these appeals relates to the prayer for re-allotment of the land on the premise that certain other housing societies/institutions were re-alloted the acquired land. Therefore, it is no ground for the claim of the appellants to dispose of the appeal in terms of Section 24(2) of the Act of 2013 as it is not sustainable in the eyes of law and deserves to be rejected.

10. Further it has been contended that physical possession of the entire extent of the acquired land except 102 acres of the land involved in these appeals were not taken by the respondent no.2-PUDA (now GMADA) on 17.05.2001 because of the interim order passed by both the High Court and this Court. The possession of the land covered by the above batch of appeals could not be taken as stay orders passed by the High Court in writ petitions filed by the land owners were in force.

11. It has been further contended that Section 24(2) of the Act of 2013 stipulates that in relation to the land acquisition proceedings initiated under the L.A. Act where an award has been made five years or more prior to the commencement of the Act of 2013 and either of the two contingencies is satisfied, viz; (i) physical possession of the land has not been taken or (ii) the compensation has not been paid to the owners, the acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition under the L.A. Act, it has to initiate the proceedings afresh under the Act of 2013. The proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the L.A. Act 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 the beneficiaries specified in Section 4 notification become entitled to compensation under the Act of 2013.

12. Further, it is contended that the acquisition proceedings in relation to the land involved in the present appeals are a part of 1264.84 acres of land acquired pursuant to the notification dated 21.02.2000 and the compensation has already been paid/deposited in Court in case of the affected land holders and physical possession of the land has been taken with regard to more than 90% of the acquired land except the land covered by the present appeals where physical possession of the land could not be taken as the stay orders passed by the High Court & this Court have been in force. It is further contended that, however, soon after the passing of the impugned judgment dated 19.04.2011 the possession of the land was taken 28.4.2011. Reliance was placed on the decision of this Court in the case of Sita Ram Bhandar Society, New Delhi v. Lt. Governor, Govt. of N.C.T., Delhi & Ors.[1], in justification of the above legal contentions, the relevant paragraph of which is extracted hereunder:-

"30. It would, thus, be seen from a cumulative reading of the aforesaid judgments, that while taking possession of a large area of land with a large number of owners, it would be impossible for the Collector or the Revenue Official to enter each bigha or biswa and to take possession thereof and that a pragmatic approach has to be adopted by the Court. It is also clear that one of the methods of taking possession and handing it over to the beneficiary Department is the recording of a Panchnama which can in itself constitute evidence of the fact that possession had been taken and the land had vested absolutely in the Government."

13. Further, it is contended that this Court while granting special leave to appeal directed to maintain "status quo" with regard to possession. As is held by this

Court in a catena of judgments including *Municipal Corporation of Delhi v. Lichho Devi and Ors.*[2], and *Bailamma & Ors. v. Poornaprajna House Building Cooperative Society & Ors.*[3], while dealing with cases under Section 11-A of the L.A. Act which also speaks of 'lapse' of acquisition proceedings, if no award is made within a period of two years from the date of publication of the declaration, once an order of stay is obtained and the Government and the Collector are prevented from taking any further action pursuant to the declaration they cannot be faulted for the delay. Similarly, the authorities cannot be faulted for not taking physical possession of the land covered in the present appeals in as much as it is not that the authorities had on their own volition not taken possession of the acquired land of the appellants. In fact the authorities who had taken physical possession of more than 90% of the total extent of acquired land covered by the acquisition proceedings were prevented from taking physical possession of the land in question in view of the stay orders passed in writ petitions moved by the landowners themselves in spite of the filing of application by the authorities seeking permission to complete the development works on the land in issue which was adversely affected in view of the pending lis. Section 24(2) of the Act of 2013 will not be applicable in such a situation. Any interpretation to the contrary would lead to absurdity and anomalous results and unjust and unwarranted enrichment of the landholders who are in physical possession of the acquired land in view of the stay orders passed in the writ petitions filed by them which prevented the authorities from taking physical possession of the acquired land when the L.A. Act was in force. Further, reliance was placed on *New India Assurance Co. Ltd. v. Nusli Neville Wadia & Anr.*[4] and *Ashok Lanka & Anr. v. Rishi Dixit & Ors.*[5] that legislature is known to avoid anomaly or absurdity.

14. It is further contended that the settled principle of law based upon the legal maxim '*Actus Curiae Neminem Gravabit*' that has also been given statutory flavour in terms of Section 144 of the Civil Procedure Code (Restitution) must be read into Section 24(2) of the Act of 2013 in conjunction with Section 6 of the General Clauses Act and Section 11(A) of the L.A. Act.

15. The learned Attorney General has further submitted that the judgment of this Court in *Sree Balaji Nagar Residential Association v. State of Tamil Nadu*[6] is per incuriam in as much as the above crucial legal aspects have not been considered therein. Further, he has placed reliance upon the case of *Nand Kishore Gupta & Ors. v. State of Uttar Pradesh & Ors.*[7] this Court held thus:-

"46.The learned counsel appearing on behalf of the appellants could not deny the fact that the total number of petitioners concerned in these

acquisition proceedings, coming up before the High Court, was extremely insignificant as compared to those who had accepted the compensation. Of course, that by itself may not be the only reason to hold against the appellants (the petitioners), however, that fact will have to be kept in mind while deciding the issues which cover the whole acquisition process, which acquisition is for the purpose of development of 25 million sq m of land. The High Court has also noticed this aspect. We have mentioned this aspect only with a limited objective of showing that the criticism against the whole scheme which would invalidate the acquisition would be difficult to be accepted, particularly in this case, in view of the fact that majority of the landowners have parted with possession, taken the compensation and thus, the whole scheme has progressed to a substantial level, wherefrom it will be extremely difficult now to turn back to square one."

16. With reference to the above decision, he has further contended that in the above circumstances, Section 24(2) of the Act of 2013 cannot be applicable to the fact situation in the present appeals and the above applications deserve to be dismissed in the interest of justice and also public interest.

17. We have carefully gone through the legal submissions made by the learned senior counsel on behalf of the appellants with respect to the application filed under Section 24(2) of the Act of 2013 and the objections raised by the respondents to the same. In our considered view, respondent No.2 GMADA has admitted that the possession of the land in question (i.e. about 102 acres) is with the appellants and the appellants have not received the compensation for the said land being acquired by GMADA. Therefore, the case of Nand Kishore Gupta referred to supra is not applicable to the present case on hand. In fact, the present case is squarely covered by the law laid down in the matter of Pune Municipal Corporation and Anr. v. Harakchand Misirimal Solanki & Ors.[8], Union of India & Ors. v. Shiv Raj & Ors.[9], Bimla Devi & Ors. v. State of Haryana & Ors.[10], Bharat Kumar v. State of Haryana & Anr.[11] and Sree Balaji Nagar Residential Association (supra).

18. The above said provisions of Section 24 (2) of the Act of 2013 quoted above has been interpreted by the three Judge Bench of this Court in the case of Pune Municipal Corporation (supra), the relevant paras 20 and 21 from the case are extracted hereunder:-

"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.

19. Further, this Court vide its order dated 05.09.2011 requested the State Government to consider the submissions of the appellants regarding the re-allotment of the acquired land without admitting any right in the appellants and place the issue before the State Government for its consideration. Therefore, the learned Solicitor General contends that this Court found reasonable ground for its interference in the matter and granted leave for the same to be re-examined and reconsidered. The above contention is not tenable in law particularly having regard to the fact that after the above said date leave was granted by this Court by allowing the Special Leave Petition that means this Court has to consider the case of the appellants on merits. However, this does not deprive the right of the appellants to apply for relief under Section 24(2) of the Act of 2013 as they have acquired a valid statutory right. The learned Solicitor General has also placed reliance upon the case of *A.R. Antulay v. R.S. Nayak & Anr*[12], in support of his legal submission that in the said case the majority view of this Court have succinctly laid down that the elementary rule of justice is that no party should suffer by mistake/action of the Court. What the court does ought not prejudice a

litigant and therefore, respondents herein shall not be made to suffer or be deprived of their right by the reliance being placed by the land owners upon Section 24 (2) of the Act of 2013 due to the interim orders of the High Court and this Court as they have been in possession of the acquired land. The above contentions of the learned Solicitor General cannot be accepted by us as the said principle of law laid down by this Court in the above referred case has no application to the fact situation on hand in view of the clear statement of law laid down by this Court in the above referred cases after interpreting the provisions of the Act of 2013 and therefore, the reliance placed upon the said decision is misplaced.

20. In *Sree Balaji Nagar Residential Association (supra)*, it was opined that after adverting to the decisions of the Privy Council and this Court, that Section 24(2) of the Act of 2013 does not exclude any period during which the land acquisition proceedings might have remained stayed on account of stay or injunction or "status quo" order regarding possession of the land granted by any court. It was conclusively held that the Legislature has consciously omitted to extend the period of five years indicated in Section 24(2) of the Act of 2013, even if the proceedings had been delayed on account of an order of stay or injunction granted by a court of law or for any reason.

21. Further, so far as the judgment cited by the respondents in Civil Appeal No.331 of 2014, we are of the view that the same has no application on the facts of the present case because the appellants in that matter are nowhere connected or concerned with the appellants in the present batch of cases as contended by the appellants. In that matter, the aggrieved persons have not challenged the acquisition proceedings rather they accepted that acquisition but filed references for enhancement of compensation. The appellants therein have accepted the compensation in the year 2001 itself after the passing of the award and their possession have been taken in the year 2001 itself by the authorities concerned. Whereas in the present batch of appeals the appellants are still in possession and they have not accepted any compensation for their acquired land. Secondly, the impugned judgment in the present appeals is two years after passing of the impugned order in C.A. No.331 of 2014. Therefore, the impugned judgment of C.A. No. 331 of 2014 is totally different from the impugned judgment in the present batch of matters and are in no way connected to each other.

22. After referring to the aforesaid decisions with reference to the facts and circumstances of the case on hand, we are of the view that physical possession of the land belonging to the appellants have neither been taken by the respondents nor compensation paid to them even though the award was passed on 06.08.2007, and

more than five years have lapsed prior to date on which the Act of 2013 came into force. Therefore, the conditions mentioned in Section 24(2) of the Act of 2013 are satisfied in this case for allowing the plea of the appellants that the land acquisition proceedings are deemed to have lapsed in terms of Section 24(2) of the Act of 2013. The said legal principle laid down by this Court in the case of Pune Municipal Corporation and other cases referred to supra with regard to the interpretation of Section 24(2) of the Act of 2013, with all fours are applicable to the fact situation in respect of the land covered in these appeals for granting the relief as prayed by the appellants in the applications.

23. We have noticed the Gazette of India published by the Ministry of Law and Justice in respect of the "Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014", in which a second proviso to Section 24(2) has been inserted which reads as follows:-

"Provided further that in computing the period referred to in this subsection, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any stay or injunction issued by any court or the period specified in the award of a Tribunal for taking possession or such period where possession has been taken but the compensation lying deposited in a court or in any account maintained for this purpose shall be excluded."

24. The above said amendment has come into force w.e.f. 01.01.2015. With due regard to the same, we are of the view that the amendment would not be applicable to the case on hand for the reason that these appeals were pending much prior to the ordinance and also the applications under Section 24(2) of the Act of 2013 were filed prior to the amendment to Section 24(2) by Ordinance and the same were heard and reserved for orders on 28.10.2014 and therefore the Ordinance in so far as insertion of proviso to the above Section by way of an amendment is prospective. Further, keeping in mind the principles laid down by this Court in the case of Garikapati Veeraya v. N. Subbiah Choudhry and Ors.[13], wherein it was held thus:

"23...(iv)The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

25. In construing the articles of the Constitution we must bear in mind certain cardinal rules of construction. It has been said in *Hough v. Windus* [1884] 12 Q.B.D. 224, that "statutes should be interpreted, if possible, so as to respect vested right." The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so constructed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed [*Leeds and County Bank Ltd. v. Walker* (1883) 11 Q.B.D. 84; *Moon v. Durden* (1848) 2 Ex. 22; 76 R.R. 479. The following observation of Rankin C.J. in *Sadar Ali v. Dalimuddin* (supra) at page 520 is also apposite and helpful : "Unless the contrary can be shown the provision which takes away the jurisdiction is itself subject to the implied saving of the litigant's right." In *Janardan Reddy v. The State* [1950]1SCR940 Kania C.J. in delivering the judgment of the Court observed that our Constitution is generally speaking prospective in its operation and is not to have retroactive operation in the absence of any express provision to that effect. The same principle was reiterated in *Keshavan Madhava Menon v. The State of Bombay* 1951CriLJ680 and finally in *Dajisaheb Mane and Others v. Shankar Rao Vithal Rao* [1955]2SCR872 to which reference will be made in greater detail hereafter."

(emphasis laid by this Court) Further in the case of *Shyam Sunder v. Ram Kumar & Anr.*[14], the Constitution Bench of this Court held thus:

"26. In *Hitendra Vishnu Tahkur & ors. vs. State of Maharashtra & ors.* 1995CriLJ517 this Court laid down the ambit and scope of an amending act and its retrospective option as follows:

'(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such as construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) a procedural statute should not generally speaking be applied retrospective where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) a statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation unless otherwise provided, either expressly or by necessary implication.'

27. In *K.S. Paripoornan vs. State of Kerala & others* AIR1995SC1012, this Court while considering the effect of amendment in the Land Acquisition Act in pending proceedings held thus:

"... In the instant case we are concerned with the application of the provisions of sub-section 1(1-A) of S. 23 as introduced by the Amending Act of acquisition proceedings which were pending on the date of commencement of the Amending act. In relation pending proceedings, the approach of the courts in England is that the same are unaffected by the changes in the law so far as they relate to the determination of the substantive rights and in the absence of a clear indication of a contrary intention in an amending enactment, the substantive rights of the parties to an action fall to be determined by the law as it existed when the action was commenced and this is so whether the law is change before the hearing of the case at the first instance or while an appeal is pending (See Halsbury's Laws of England, 4th Edn., Vol. 44, para 922).'

28. From the aforesaid decisions the legal position that emerges is that when a repeal of an enactment is followed by a fresh legislation such legislation does not effect the substantive rights of the parties on the date of suit or adjudication of suit unless such a legislation is retrospective and a court of appeal cannot take into consideration a new law brought into existence after the judgment appealed from has been rendered because the rights of the parties in an appeal are determined under the law in force on the date of suit.

However, the position in law would be different in the matters which relate to procedural law but so far as substantive rights of parties are concerned they remain unaffected by the amendment in the enactment. We are, therefore, of the view that where a repeal of provisions of an enactment is followed by fresh legislation by an amending Act such legislation is prospective in operation and does not effect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment. We are further of the view that there is a presumption against the retrospective operation of a statute and further a statute is not to be construed to have a greater retrospective operation than its language renders necessary, but an amending act which affects the procedure is presumed to be retrospective, unless amending act provides otherwise."

(emphasis laid by this Court) In view of the aforesaid findings and reasons recorded by us, the acquisition proceedings in respect of the appellants' land have lapsed.

25. The aforesaid applications are allowed in the above said terms and consequently, the appeals referred to above are also allowed by quashing the land acquisition proceedings notification in so far as the land of the appellants are concerned. No costs.

I.A. No. 6 in C.A. No.7424 of 2013 for impleadment is dismissed with liberty to approach the appropriate forum in accordance with law.

I.A. Nos. 9 and 10 in C.A. No. 7424 of 2013 for intervention and direction are dismissed as not maintainable.

- [1] (2009) 10 SCC 501
- [2] (1997) 7 SCC 430
- [3] (2006) 2 SCC 416
- [4] (2008) 3 SCC 279
- [5] (2005) 5 SCC 598
- [6] 2014(10)SCALE388
- [7] (2010) 10 SCC 282
- [8] (2014) 3 SCC 183
- [9] (2014) 6 SCC 564
- [10] (2014) 6 SCC 583
- [11] (2014) 6 SCC 586
- [12] (1988) 2 SCC 602

- [13] AIR 1957 SC 540
- [14] (2001)8 SCC 24