

**SUPREME COURT OF INDIA**

Govt. of NCT of Delhi

Vs.

Manav Dharam Trust

C.A.No. 6112 of 2017

(Kurian Joseph and R.Banumathi,JJ.,)

04.05.2017

**JUDGMENT**

**Kurian Joseph,J.,**

SLP(C) No.13551 of 2015

1. Leave granted.

2. Whether the subsequent purchasers/assignees/power of attorney holders, etc., have locus standi to file a petition for a declaration of lapse of acquisition proceedings under Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the 2013 Act"), is the only issue arising for consideration in these cases.

3. The High Court has taken the view in favour of such people. Thus, aggrieved the NCT of Delhi and Delhi Development Authority are in appeals before this Court.

4. At the outset, we may note that in these cases, the land acquisition proceedings have otherwise lapsed by the operation of Section 24(2) of the 2013 Act since either compensation was not paid or possession was not taken within five years prior to 01.01.2014, the date of coming into force of the 2013 Act. Thus, the dispute is only on the locus standi.

5. Shri Amarendra Saran, learned Senior Counsel leading the arguments on behalf of the appellants submits that in all these cases, the transfer is in violation of The Delhi Lands (Restrictions on Transfer) Act, 1972 (hereinafter referred to as "the Delhi Act, 1972"). The transfers in favour of the writ petitioners are hence void, and accordingly, the beneficiary of an illegal/void transaction is not entitled to file a case for any relief.

6. Reliance is placed on Sections 3,4,8, and 9 of the 1972 Act, which read as follows:

"3. Prohibition on transfer of lands acquired by Central Government -

No person shall purport to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof situated in the Union territory of Delhi which has been acquired by the Central Government under the Land Acquisition Act, 1984 or under any other law providing for acquisition of land for a public purpose.

4. Regulation on transfer of lands in relation to which acquisition proceedings have been initiated. No person shall, except with the previous permission in writing of the competent authority, transfer or purport to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof situated in the Union territory of Delhi, which is proposed to be acquired in connection with the Scheme and in relation to which a declaration to the effect that such land or part thereof is needed for a public purpose having been made by the Central Government under section 6 of the Land Acquisition Act, 1894, the Central Government has not withdrawn from the acquisition under section 48 of that Act.

8. Restrictions on registration of transfers of land - Notwithstanding any thing contained in any other law for the time being in force, where any document required to be registered under the provisions of clause (a) to clause (e) of sub-section (1) of section 17 of the Registration Act, 1908, purports to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof referred to in section 4, no registering officer appointed under that Act shall register any such document unless the transferor produces before such registering officer a permission in writing of the competent authority for such transfer.

9. Penalty - If any person contravenes the provisions of section 3 or section 4, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both."

7. Learned Senior Counsel and other learned Counsel further submitted that the issue is no more res integra in view of the following decisions of this Court:

“(i) *U.P. Jal Nigam, Lucknow Through Its Chairman and another v. Kalra Properties (P) Ltd., Lucknow and others*<sup>1</sup>

(ii) *Sneh Prabha (Smt.) and others v. State of U.P. and another*<sup>2</sup>,

(iii) *Meera Sahni v. Lieutenant Governor of Delhi and others*<sup>3</sup>,

(iv) *V. Chandrasekaran and another v. Administrative Officer and others*<sup>4</sup>,

(v) *Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur and others*<sup>5</sup> and

8. *U.P. Jal Nigam, Lucknow* (supra), is a case where this Court considered the consequences of a transfer of the land after issuance of notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the 1894 Act") in the State of Uttar

Pradesh. It was held that any encumbrances created by the owner after Section 4(1) Notification is published, does not bind the Government and such a purchaser does not acquire any title to the property. Therefore, such a purchaser cannot challenge the validity of the notification or the regularity of the process of taking possession of the land. To quote paragraph-3:

"3. ... It is settled law that after the notification under Section 4(1) is published in the Gazette any encumbrance created by the owner does not bind the Government and the purchaser does not acquire any title to the property. In this case, notification under Section 4(1) was published on 24-3-1973, possession of the land admittedly was taken on 5-7-1973 and pumping station house was constructed. No doubt, declaration under Section 6 was published later on 8-7-1973. Admittedly power under Section 17(4) was exercised dispensing with the enquiry under Section 5-A and on service of the notice under Section 9 possession was taken, since urgency was acute, viz., pumping station house was to be constructed to drain out flood water. Consequently, the land stood vested in the State under Section 17(2) free from all encumbrances. It is further settled law that once possession is taken, by operation of Section 17(2), the land vests in the State free from all encumbrances unless a notification under Section 48(1) is published in the Gazette withdrawing from the acquisition. Section 11-A, as amended by Act 68 of 1984, therefore, does not apply and the acquisition does not lapse. The notification under Section 4(1) and the declaration under Section 6, therefore, remain valid. There is no other provision under the Act to have the acquired land divested, unless, as stated earlier, notification under Section 48(1) was published and the possession is surrendered pursuant thereto. That apart, since M/s Kalra Properties, respondent had purchased the land after the notification under Section 4(1) was published, its sale is void against the State and it acquired no right, title or interest in the land. Consequently, it is settled law that it cannot challenge the validity of the notification or the regularity in taking possession of the land before publication of the declaration under Section 6 was published."

9. In *Sneh Prabha* (supra), this Court reiterated the position that any alienation of land after the publication of the notification under Section 4(1) of the 1894 Act does not bind the Government or the beneficiary under the acquisition. It has also been held that once the possession of the land is taken under Section 16 of the Act, the land vests with the Government free from all encumbrances and the absolute title is vested in the Government. To quote from paragraph-5:

"5. ... It is settled law that any person who purchases land after publication of the notification under Section 4(1), does so at his/her own peril. The object of publication of the notification under Section 4(1) is notice to everyone that the land is needed or is likely to be needed for public purpose and the acquisition proceedings point out an impediment to anyone to encumber the land acquired thereunder. It authorises the designated officer to enter upon the land to do preliminaries etc. Therefore, any alienation of land after the publication of the notification under Section 4(1) does not bind the Government or the beneficiary under the acquisition. On taking possession of

the land, all rights, titles and interests in land stand vested in the State, under Section 16 of the Act, free from all encumbrances and thereby absolute title in the land is acquired thereunder. If any subsequent purchaser acquires land, his/her only right would be subject to the provisions of the Act and/or to receive compensation for the land. In a recent judgment, this Court in *Union of India v. Shivkumar Bhargava* considered the controversy and held that a person who purchases land subsequent to the notification is not entitled to alternative site. It is seen that the Land Policy expressly conferred that right only on that person whose land was acquired. In other words, the person must be the owner of the land on the date on which notification under Section 4(1) was published. By necessary implication, the subsequent purchaser was elbowed out from the policy and became disentitled to the benefit of the Land Policy."

10. In *Meera Sahni (supra)*, this Court dealt with the provisions under the Delhi Act, 1972. After referring to *U.P. Jal Nigam and Sneh Prabha cases (supra)*, in paragraph-21 of the judgment, it was held that ... "it is by now well settled law that under the Land Acquisition Act, the subsequent purchaser cannot challenge the acquisition proceedings and that he would be only entitled to get the compensation".

11. In *V. Chandrasekaran (supra)*, this Court again addressed the issue as to whether the subsequent purchaser can challenge the acquisition proceedings. After referring to some of the earlier judgments, at paragraph-18, the law has been laid down as follows:

"18. In view of the above, the law on the issue can be summarised to the effect that a person who purchases land subsequent to the issuance of a Section 4 notification with respect to it, is not competent to challenge the validity of the acquisition proceedings on any ground whatsoever, for the reason that the sale deed executed in his favour does not confer upon him, any title and at the most he can claim compensation on the basis of his vendor's title."

12. In *Rajasthan State Industrial Development and Investment Corporation (supra)*, this Court held that such transactions after initiation of acquisition proceedings would be void and would not be binding on the Government. To quote paragraph-13:

"13. There can be no quarrel with respect to the settled legal proposition that a purchaser, subsequent to the issuance of a Section 4 notification in respect of the land, cannot challenge the acquisition proceedings, and can only claim compensation as the sale transaction in such a situation is void qua the Government. Any such encumbrance created by the owner, or any transfer of the land in question, that is made after the issuance of such a notification, would be deemed to be void and would not be binding on the Government. ... "

13. On behalf of the respondents, it has been mainly contended that the subsequent purchasers are persons interested and they have every right to file a case to protect their interests. It was also pointed out that under the Delhi Act, 1972, there is no absolute bar on

transfer since under Section 5, the transfer was possible with the permission of the Competent Authority and that under Section 5, the Competent Authority cannot refuse to grant the permission except on any of the grounds under sub-Section (3) of Section 5. To quote Section 5:

“5. Application for grant of permission for transfer under section 4 -

(3) The competent authority shall not refuse to grant the permission applied for under this section except on one or more of the following grounds, namely:-

(i) That the land is needed or is likely to be needed for the effective implementation of the Scheme;

(ii) That the land is needed or is likely to be needed for securing the objects of the Delhi Development Authority referred to in section 6 of the Development Act;

(iii) That the land is needed or is likely to be needed for any development within the meaning of clause (d) of section 2 of the Development Act or for such things as public building and other public works and utilities, roads, housing, recreation, industry, business, markets, schools and other educational institutions, hospitals and public open spaces and other categories of public uses.”

14. It was also contended that the 2013 Act has not exempted the acquisitions under The Delhi Development Act, 1957, and for that matter the Delhi Act, 1972 under the Fourth Schedule to Section 105.

15. Yet another contention was that in all these cases, the challenge was not to the acquisition proceedings but for a declaration under Section 24(2) of the 2013 Act to the effect that by virtue of operation of the said provision, the acquisition proceedings have lapsed.

16. "Person interested", under the 1894 Act, is defined under Section 3(b) of the Act, which reads as follows:

"3(b) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land;"

17. Under the 2013 Act, "person interested" has been given a much wider meaning under Section 3(x). To quote:

"3(x). "person interested" means—

(i) all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act;

(ii) the Scheduled Tribes and other traditional forest dwellers, who have lost any forest rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006;

(iii) a person interested in an easement affecting the land;

(iv) persons having tenancy rights under the relevant State laws including share-croppers by whatever name they may be called; and

(v) any person whose primary source of livelihood is likely to be adversely affected;"

18. Thus, under the 2013 Act, all persons claiming interest in compensation to be paid on account of the acquisition of land under the 2013 Act, are persons interested. Among others, any person whose primary source of livelihood is likely to be adversely affected is also a person interested.

19. "Land owner" under the 2013 Act is defined under Section 3(r), which reads as follows:

"3(r) "land owner" includes any person,—

(i) whose name is recorded as the owner of the land or building or part thereof, in the records of the authority concerned; or

(ii) any person who is granted forest rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 or under any other law for the time being in force; or

(iii) who is entitled to be granted Patta rights on the land under any law of the State including assigned lands; or

(iv) any person who has been declared as such by an order of the court or Authority; Thus, among others, a person whose name is recorded as owner of the land or building or part thereof in the records of the Authority concerned, is a land owner.

20. "Affected family" has been defined in the 2013 Act under Section 3(c) which reads as follows :-

"3(c) —affected family^ includes—

(i) a family whose land or other immovable property has been acquired;

(ii) a family which does not own any land but a member or members of such family may be agricultural labourers, tenants including any form of tenancy or holding of usufruct right, share-croppers or artisans or who may be working in the affected area for three years prior to the acquisition of the land, whose primary source of livelihood stand affected by the acquisition of land;

(iii) the Scheduled Tribes and other traditional forest dwellers who have lost any of their forest rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) due to acquisition of land;

(iv) family whose primary source of livelihood for three years prior to the acquisition of the land is dependent on forests or water bodies and includes gatherers of forest produce, hunters, fisher folk and boatmen and such livelihood is affected due to acquisition of land;

(v) a member of the family who has been assigned land by the State Government or the Central Government under any of its schemes and such land is under acquisition;

(vi) a family residing on any land in the urban areas for preceding three years or more prior to the acquisition of the land or whose primary source of livelihood for three years prior to the acquisition of the land is affected by the acquisition of such land;" This definition of affected family also indicates that even a family residing in the lands sought to be acquired, be it an owner or not, is an affected family, and if a family or a person is affected, necessarily, he has a right to approach the Court to protect his interests.

21. It is also to be specifically noted that the challenge made by the writ petitioners in the Miscellaneous Application filed by them is not to the acquisition or to the regularity of the process of acquisition including the taking of possession. Their only prayer is for a declaration that the proceedings qua the land referred to in the Application have lapsed by virtue of the operation of Section 24(2) of the 2013 Act.

22. All the decisions cited by the learned Senior Counsel appearing for the appellants, no doubt, have categorically held that the subsequent purchasers do not have locus standi to challenge the acquisition proceedings. But in the present case, the challenge is not to the acquisition proceeding; it is only for a declaration that the acquisition proceedings have lapsed in view of the operation of Section 24(2) of the 2013 Act, and therefore, the ratio in those cases has no application to these cases.

23. It is one thing to say that there is a challenge to the legality or propriety or validity of the acquisition proceedings and yet another thing to say that by virtue of operation of a subsequent legislation, the acquisition proceedings have lapsed.

24. In all the decisions cited by the learned Senior Counsel for the appellants, which we have referred to above, this Court has protected the rights of the subsequent purchaser to claim compensation, being a person interested in the compensation, despite holding that they have no locus standi to challenge the acquisition proceedings.

25. The 2013 Act has made a sea change in the approach on the acquisition of land and compensation thereof. The only lapse under the 1894 Act was under Section 11A where what

would lapse is the ... "entire proceedings for the acquisition of land" whereas under Section 24(2) of the 2013 Act, what gets lapsed is the land acquisition proceedings initiated under the 1894 Act which has culminated in passing of an award under Section 11 but where either possession was not taken or compensation was not paid within five years prior to 01.01.2014. In other words, the land acquisition proceedings contemplated under Section 24(2) of the 2013 Act would take in both, payment of compensation and taking of possession within the five year period prior to 01.01.2014. If either of them is not satisfied, the entire land acquisition proceedings would lapse under the deeming provision. The impact of deemed lapse under Section 24(2) is that pervasive. To quote R.F. Nariman, J. in *Delhi Development Authority v. Sukbhir Singh and others*<sup>6</sup>. To quote:

"... As is well settled, a deeming fiction is enacted so that a putative state of affairs must be imagined, the mind not being allowed to boggle at the logical consequence of such putative state of affairs ... In fact, Section 24(2) uses the expression "deemed to have lapsed" because the Legislature was cognisant of the fact that, in cases where compensation has not been paid, and physical possession handed over to the State/vesting has taken place, after which land acquisition proceedings could be said to have been ended. ..." (Paragraph-27).

Thus, on account of the lapse, the encumbrance created in favour of the State comes to an end, and resultantly, the impediment to encumber the land also comes to an end. Even, according to the appellants, the transfers were illegal and void for the reason that there was an impediment for the transfer. Once the acquisition proceedings lapse, all impediments cease to exist.

26. As we have already noted above, the whole face of land acquisition has changed by the 2013 Act. Section 105 of the 2013 Act has provided that the provisions of the Act shall not apply to the enactments specified in the Fourth Schedule. So far, only 13 Acts have been notified under the Fourth Schedule. Neither The Delhi Development Act, 1957 nor The Delhi Lands (Restrictions on Transfers) Act, 1972 is included in the Fourth Schedule.

27. The main purpose of the 2013 Act is clearly stated in the preamble which reads as follows :-

"An Act to ensure, in consultation with institutions of local self-government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto."

There is a clear indication that the Act proposes to protect the interest of those persons, among others who are affected by the acquisition. The subsequent purchasers/successors, etc., in the cases before us, are all people affected by the acquisition, and therefore, also they are entitled to seek a declaration on lapse under the 2013 Act.

28. The High Court of Karnataka at Bengaluru in *Suryaprakash and others v. State of Karnataka and others*<sup>7</sup> has considered a situation of lapse and locus standi of the subsequent purchaser to file a writ petition for a declaration on lapse, though not under Section 24(2) of the 2013 Act. At paragraph-16, it has been held:

"16. ... the principle that transferee of land after the publication of preliminary notification cannot maintain a writ petition challenging the acquisition, cannot be made applicable to a case where the acquisition itself has been abandoned and has stood lapsed due to efflux of time on account of the omission and inaction on the part of the acquiring authority, particularly because, it is because of the lapse of time and the abandonment of the acquisition, right accrues to the original owner to deal with his property including by way of the sale and the purchaser will acquire right to protect his interest. Hence, the judgment in the case of Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur and others (2013) 5 SCC 427, will have no application to the facts of the present case."

We are of the view that this decision, in principle, applies to the facts of these appeals as well.

29. Thus, the subsequent purchaser, the assignee, the successor in interest, the power of attorney, etc., are all persons who are interested in compensation/land owners/affected persons in terms of the 2013 Act and such persons are entitled to file a case for a declaration that the land acquisition proceedings have lapsed by virtue of operation of Section 24(2) of the 2013 Act. It is a declaration qua the land wherein indisputably they have an interest and they are affected by such acquisition. For such a declaration, it cannot be said that the respondents/writ petitioners do not have any locus standi.

30. Thus, we do not find any merit in these appeals and they are accordingly dismissed. All Interlocutory Applications for Impleadment and Intervention, other than those by Legal Representatives, are also rejected. Applications for Impleadment of Legal Representatives are allowed. There shall be no order as to costs.

31. In the peculiar facts and circumstances of these cases, the appellants are given a period of six months to exercise its liberty granted under Section 24(2) of the 2013 Act for initiation of the acquisition proceedings afresh.

32. We make it clear that we have not gone into the inter se disputes between the parties in some cases or other claims regarding the ownership.

**Judgment Referred.**

<sup>1</sup>(1996) 3 SCC 0124

<sup>2</sup>(1996) 7 SCC 0426

<sup>3</sup>(2008) 9 SCC 0177

<sup>4</sup>(2012) 12 SCC 0133

<sup>5</sup>(2013) 5 SCC 0427

<sup>6</sup>(2016) 8 SCALE 0655

<sup>7</sup> MANU/KA/3319/2016 (*Writ Petition No. 10286-291 of 2014, decided on 05.12.2016.*)