2022 INSC 601

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3862 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 21353 OF 2015)

DELHI DEVELOPMENT AUTHORITY .....APPELLANT(S)

VERSUS

SUNIL KHATRI & ORS. .....RESPONDENT(S)

J U D G M E N T

HEMANT GUPTA, J.

1. The challenge in the present appeal is to an order dated 22.12.2014 passed by the High Court of Delhi whereby an application filed in the pending writ petition was allowed, holding that the acquisition proceedings stand lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013[1].

2. The land of the respondents[2] measuring 14 Bigha 8 Biswa comprising in Khasra No. 1883 (4-16), 1884 (4-16) and 1885 (4-16) at village Chattarpur was notified under Section 4 of the Land Acquisition Act, 1894[3], as required for the planned development of Delhi vide notification dated 25.11.1980. The notification was in

1 For short, the '2013 Act'
2 For short, the 'land owners'
3 For short, the 'Act'

respect of lands situated at Village Chattarpur, Satbari Maidangarhi, Sayoorpur and Rajpur Khurd. The declarations under Section 6 of the Act were published on 27.5.1985, 6.6.1985, 7.6.1985 and 26.2.1986, and the award was announced on 05.06.1987.

3. The process of acquisition initiated vide notifications dated 5.11.1980 and 25.11.1980 was challenged in a number of writ petitions before the High Court and an interim order of stay of dispossession was granted. In the first bunch of writ petitions, the challenge was to the notification under Section 4 of the Act *inter alia* on the ground that the notification was not for a public purpose. Such challenge was remained unsuccessful on 15.11.1983 by a judgment reported as ***Munni Lal*** v. ***Lt. Governor of Delhi***[4]***.***

4. Various writ petitions were thereafter filed to challenge the notification under Section 6 of the Act on the ground that such notification has been published after the time limit provided by Central Act No. 68 of 1984. The Full Bench of the High Court in a judgment dated 27.5.1987 reported as ***Balak Ram Gupta*** v. ***Union of India***[5] held that the stay of dispossession in one or the other writ petition is required to be taken into consideration for determining the period of three years in publication of the notification. The High Court held as under:

> "39. We have, for the reasons stated above, come to the conclusion that the period during which stay orders were in

4 1983 SCC OnLine Del 321

5 For short, the 'Balak Ram-I', 1987 SCC OnLine Del 227 : AIR 1987 Del 239

> force should be excluded in computing the validity of the declaration under S. 6. So far as the notification dated 25-11-80 is concerned, we find that the latest of the S. 6 declarations was on 26-2-86. The stay order (in C.M.P. 668/81) was in operation from 18-3-81 to 15-11-83 i.e. for a period of 2 years, 7 months and 27 days. They are therefore in time having been issued within three years plus 2 years 3 months, i.e., 5 years 3 months of the S. 4 notification. So far as the notification dated 5-11-1980 is concerned, we find that the latest of the S. 6 declaration was issued on 7-6-1985, i.e., 4 years 7 months after the S. 4 notification. They stay order (in CMP 4226/81) was operative from 30-9-1981 to 15-11-1983, i.e., for 2 years and 11/2 months. If this period is excluded the declaration is within time. We answer the principal issue debated before us accordingly."

5. After deciding the question of law, the matter was ordered to be placed before the appropriate Division Bench. The writ petitions were decided by the Division Bench on 14.10.1988, when the operative order was passed stating 'reasons to follow'. The High Court upon recording the reasons in a judgment reported as ***Shri B.R. Gupta*** v. ***Union of India & Ors.***[6] on 18.11.1988, set aside the notification issued under Section 6 of the Act as the writ petitioner was neither given an opportunity of personal hearing, nor was he actually heard in the objections filed by the land owners under Section 5A of the Act and since there was no record maintained for consideration of large number of objections filed by the writ petitioners/land owners, it was held that the writ petitioner whose land is being taken by the Government without his consent has a right to know the reasons as to why his claim for exemption was being declined. It was held as under:

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6 For short, the 'Balak Ram-II', 1988 SCC OnLine Del 367 : (1989) 37 DLT 150 (DB)

> "16. We may note that there are number of other contentions raised by the petitioner in the writ petition apart from the ones that are mentioned and considered above. We need not go into all of them and given any finding, since we have already come to the conclusion that reports under Section 5A and orders under Section 6 cannot be sustained in law on the basis of the contentions already noted by us."

6. In C.W.P. No. 2657/85 (***Abhey Ram*** v. ***Union of India***), an order of status quo was passed by the High Court on 29.10.1985. The writ petition was dismissed later on 2.9.1987 in view of the judgment in ***Balak Ram-I***. The land owners filed an appeal before this Court whereby the order of status quo as to dispossession was passed on 25.3.1988. In the final order, reported as ***Abhey Ram & Ors.*** v. ***Union of India & Ors.***[7], the judgment in ***Balak Ram-I*** was maintained. This Court referred to ***Balak Ram-II*** wherein it was found that the writ petitions were allowed on 14.10.1998 by an operative order that 'reasons to follow'. This Court noticed that unfortunately, in ***Delhi Development Authority*** v. ***Sudan Singh & Ors.***[8], the operative part of the judgment was not been brought to the notice of this Court. Therefore, the ratio therein has no application to the facts in this case. A three judge Bench of this Court held as under:

> "12. It is true that a Bench of this Court has considered the effect of such a quashing in *Delhi Development Authority* v. *Sudan Singh* [(1997) 5 SCC 430 : (1991) 45 DLT 602] . But, unfortunately, in that case the operative part of the judgment referred to earlier has not been brought to the notice of this Court. Therefore, the ratio therein has no application to the facts in this case. ....."

7 (1997) 5 SCC 421
8 (1997) 5 SCC 430

7. The judgment in ***Sudan Singh*** was directed against an order of the Delhi High Court in a judgment reported as ***Balbir Singh*** v. ***Union of India & Ors.***[9]***.*** The High Court restrained the respondents on 6.1.1989 in Civil Writ Petition No. 51 of 1989 from dispossessing the petitioner from the land in dispute or demolition of the building. The writ petition was allowed on 21.4.1989 and the notification under Section 6 was quashed as a whole. There was also a direction to handover physical possession of the land to the land owners on their depositing the compensation amount disbursed to them along with interest.

8. In ***Brig. Gurdip Singh Uban*** v. ***Union of India***[10], the Delhi High Court was examining the acquisition of land in Village Chattarpur vide notification dated 25.11.1980 under Section 4 of the Act. The High Court quashed the notification under Section 6 of the Act. It was held as under:

> "27. The petitioners have urged before us that the judgement in Balak Ram Gupta's case has received the seal of approval of the Supreme Court in 45 (1991) DLT (11) 602 (SC) (Delhi Development Authority v. Sudan Singh) in para 4, wherein the Supreme Court has also said that the notifications with respect not to 11 villages, but 12 villages have been quashed.
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> 28. In the light of the specific seal of approval by the Supreme Court in the aforesaid judgment, it is difficult to see how the Full Bench judgement of the High Court in *Balak Ram Gupta's case* and Division Bench judgement in *Balak Ram Gupta's case* is not applicable to the instant case, particularly in view of the fact that "notification", are specifically treated as "law", as contemplated by Article 13(3)(a) of the Constitution of India. It has been so held in (1985) 1 SCC 641. (*Indian Express Newspapers (Bombay) Private Ltd.* v. *Union of India*). The notifications being law,

9 1989 SCC OnLine Del 211 : (1989) 39 DLT 233 (DB)
10 1996 SCC OnLine Del 879

> law having been quashed, and made nugatory it enures for the benefit of all persons who are likely to be affected by such law/notification."

9. Furthermore, this Court in ***Delhi Administration*** v. ***Gurdip Singh Uban & Ors.***[11] allowed the appeal and set aside the judgment of the High Court and it was held as under:

> "7. We may state that it is true that in Sudan Singh's case a two Judge Bench of this Court confirmed another judgment of the Delhi High Court wherein the High Court had allowed the writ petition on the basis that the judgment of the Division Bench dated 18.11.1988 had quashed the Section 6 declaration wholly. It is also true that in Sudan Singh's case too no objections were filed by the owners under section 5A. But, we are governed by the judgment of the three Judge Bench in Abhey Ram's case where the said Bench not only referred to the effect of the Division Bench judgment of the High Court dated 18.11.1988 but also referred to the judgment of the two Judge Bench of this Court in Sudan Singh's case. The three Judge Bench in Abhey Ram is binding on us in preference to the judgment of two Judges in Sudan Singh".

10. The land owners filed review petition against the order passed in ***Gurdip Singh Uban-I*** inter-alia on the ground that on account of conflict between ***Abhey Ram*** and ***Sudan Singh***, matter should be placed before larger Bench. Such review was dismissed on 24-11-1999 in the judgment reported as ***Delhi Administration*** v. ***Gurdip Singh Uban & Ors.***[16]. This Court held as under:

> "45. It will be noticed that when *Abhey Ram* [(1997) 5 SCC 421] was decided in the High Court, the Full Bench decision alone was there and not the subsequent Division Bench judgment in *Balak Ram Gupta case*. But by the time *Abhey Ram case* [(1997) 5 SCC 421] came up before the three learned Judges in this Court on 20-8-1999, the latter order of the Division Bench dated 18-11-1988 in *Balak Ram Gupta* [*B.R. Gupta* v. *Union of India*, (1989) 38 DLT 243 (DB)

11 For short, the 'Gurdip Singh Uban-I' (1999) 7 SCC 44

16[16] For short, the 'Gurdip Singh Uban-II', (2000) 7 SCC 296

> (order dated 18-11-1988)] was also available and naturally the appellant raised a plea based on the latter order of the Division Bench judgment dated 18-11-1988 which said that the entire Section 5-A inquiry and the entire land acquisition proceedings stood quashed. The appellant in *Abhey Ram* [(1997) 5 SCC 421] , in our view, was certainly entitled to do so. His contention was however repelled in *Abhey Ram* [(1997) 5 SCC 421] holding that notwithstanding the broad language used in the latter reasoned order dated 18-11-1988, its area of operation was to be confined to what was stated by the same Division Bench earlier on 14-10-1988 when a brief operative order was passed in the 73 cases allowing the writ petitions. We have already held that the writ absolute dated 14-10-1988 in each case was based on non-consideration of objections and not on the basis of there being no public purpose and that the decision in each case must, therefore, be confined to the land covered therein. The three-Judge Bench in *Abhey Ram* [(1997) 5 SCC 421] held that the reasoned order dated 18-11-1988 of the Division Bench could not travel beyond the earlier operative order dated 14-10-1988 and could not have covered land other than the land involved in the said batch of writ petitions. In our view, the question of the correctness or interpretation of the orders dated 14-10-1988 and 18-11-1988 in *Balak Ram Gupta* was put in issue directly in *Abhey Ram* [(1997) 5 SCC 421] in this Court and the said decision in *Abhey Ram* [(1997) 5 SCC 421] can neither be characterised as uncalled for nor as being obiter nor as a decision per incuriam. *Sudan Singh* [(1997) 5 SCC 430] had not gone into this question at all and would not help the applicant."

11. In another bunch of writ petitions in ***Chatro Devi*** v. ***Union of India***[12], the Hon'ble Judges of the Division Bench differed on the question as to whether the objections filed under Section 5-A of the Act are required to be decided only by the person who has provided the opportunity of hearing. The matter was referred to a 3rd Judge who held that where objections have been filed and heard by one Collector and the report had been submitted by another Collector, the proceedings stand vitiated for being in violation of

12 2005 SCC Online Delhi 279

the principles of natural justice. Some of the land owners in this matter were owners of land in Village Chattarpur wherein there was interim order of stay of dispossession. Though the Hon'ble Judges differed on the ground of hearing of objections filed by the land owners, but in respect of all other issues, the Court held as under:

> "33. The Division Bench judgment in the case of *Balak Ram Gupta* (supra) no longer can be stated to be a good law in view of the judgment of the Supreme Court in *Abhey Ram's case*, *Gurdip Singh's case* as well as a recent Division Bench judgment of this Court in the case of *Sunil Nagpal* v. *Union of India*, CW 838/86 decided on 17.12.2004 wherein similar writ petitions were dismissed. The judgment of *Sudan Singh* (supra) was not approved by a Larger Bench of Supreme Court in *Abhey Ram's case* (supra). Thus, none of these two judgments can tilt either the equity or the law in favour of the petitioners.
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> 39. It is evident from the above discussion that larger number of, writ petitions have been dismissed by the Courts and particularly after pronouncement of the judgment of the Supreme Court in the cases of Gurdip Singh and *Abhey Ram* (supra) even recently in the *Sunil Nagpal's case* (supra) number of writ petitions were dismissed by another Division Bench of this Court. Wherever the petitioners have been granted relief by different Division Bench of this Court, it has been primarily by following the judgment of the Division Bench in *Balak Ram Gupta's case* (supra) and prior to the pronouncement of the judgment of the Supreme Court in the above referred cases. Even if one was to accept the contentions raised on behalf of the petitioners, in my opinion, the petitioners are not entitled to any relief in the facts and circumstances of the present case."

12. This Court in a judgment reported as ***Union of India*** v. ***Shiv Raj***[13] dismissed the appeals arising out of ***Chatro Devi*** *inter-alia* on the

13 (2014) 6 SCC 564

ground that the majority view of the High Court that objections are required to be decided by the same Collector who heard the objections is correct. The said judgment however, relating to interpretation of Section 24(2) of the 2013 Act, was held to be not laying down good law in the Constitution Bench judgment of this Court reported as ***Indore Development Authority*** v. ***Manoharlal and Others.***[14]

13. In another set of appeals, this Court in a judgment reported as ***Om Prakash*** v. ***Union of India and Others***[15] dismissed the appeals of the land owners who had not filed objections under Section 5-A of the Act. This Court relied upon ***Abhey Ram*** and ***Gurdip Singh Uban-I*** held as under:

> "54. It is emphasised by him that in the light of judgment of this Court in *Delhi Admn.* v. *Gurdip Singh Uban* [(2000) 7 SCC 296] known as *Gurdip Singh Uban-II* [(2000) 7 SCC 296], all points having already been considered, no fresh look is required by this Court. More so, when each and every point argued, hammered and contended by the appellants has already been decided against them. It was also submitted by him that in the name of unfair treatment, matters which stood closed either by several judgments of this Court or of the Delhi High Court and also keeping in mind that the land acquisition proceedings were initiated in the year 1980, nothing more is required to be done and the appeals deserve to be dismissed.
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> 91. In the light of the foregoing discussion, more so, keeping in mind the ratio of which stood concluded by a judgment of Bench of three learned Judges of this Court in Abhey Ram [(1997) 5 SCC 421], we are of the opinion that it is not a fit case where we are called upon to come to a different conclusion that subsequent declaration issued under Section

14 (2020) 8 SCC 129
15 (2010) 4 SCC 17

6 was beyond the period of limitation. Fact situation does not warrant us to do so."

14. In ***Manohar Lal Atree*** v. ***Union of India & Ors.***[16], the challenge was to the acquisition of land situated in Village Satbari. On 27.7.1990, the Division Bench passed an interim order that any development activity undertaken on the land in question will be at the risk and cost of the respondents. However, the writ petition was allowed on 6.12.1990 relying upon ***Balbir Singh*** that the notification under Section 6 of the Act stands quashed. There was also a direction for restoration of possession and on payment by the land owners of the compensation disbursed.

15. The respondents-land owners in ***Smt. Sheila Khatri & Ors.*** v. ***Union of India & Ors.***[17], in the writ petition filed in the year 1999, alleged that the notification under Section 6 of the Act stands quashed and therefore, the award in respect of land of the land owners was illegal. The land owners challenged the Section 6 notification and that no further proceedings could be taken under Section 11-A of the Act on the basis of the existing Section 4 notification. The land owners made reference to Writ Petition No. 2478 of 1985 (*Moohul Transport Company Pvt. Ltd.* v. *Union of India*) wherein it was held that the entire land covered by that notification stands de-acquired. The land owners also made reference to ***Balbir Singh*** wherein a direction was issued to handover the vacant possession of land to all those persons who have received compensation and the land owners were directed to

16 Civil Writ Petition No. 2364 of 1990 decided on 6.12.1990
17 Civil Writ Petition No. 1786 of 1998

return/refund the compensation received by them along with interest. The land owners have averred to the following effect:

> "16. That it is submitted that all the above mentioned judgements passed by this Court in CWP No. 1639 of 1985 dated 18.11.1989 *(Balak Ram II*) dated 16.5.1989 in CWP No. 51 of 1989 *(Balbir Singh)* and judgement dated 6th December, 1990 in Civil Writ Petition No. 2364 of 1990 *(Manohar Lal Atree*) applies squarely to the case of the petitioners in the present writ petition. In view of the above mentioned legal position, the land in question owned and possessed by the petitioners are free from acquisition proceedings and the petitioners are the lawful owners in actual physical possession of the said land."
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> *(Names Mentioned for easy identification of the cases)*

16. The land owners contended that the objections dated 2.12.1980 were found in the old records left by late Shri K.C. Khatri, therefore, they have reason to believe that objections were filed by the deceased K.C. Khatri. We may state that there is no categorical assertion of filing of such objections, therefore, the reason to believe that objections were filed is not conclusive. Still further, even if such objections were filed, neither Shri K.C. Khatri nor his legal heirs have disputed the acquisition proceedings on the ground of non-consideration of such objections before announcing of the award bearing No. 15/87-88 on 5.6.1987. The land owners have also referred to an order passed by the Division Bench of the High Court on 17.12.1996 in the case of ***Brig. Gurdeep Singh Uban*** holding that once the acquisition proceedings were quashed in a writ petition, the entire proceedings fall through.

17. According to the appellant, there was a stay of dispossession operating in one or the other writ petition, even after decision of

Balak Ram-II on 14.10.1988/ 18.11.1988. Thereafter, the Delhi High Court in ***Balbir Singh***, ***Gurdeep Singh Uban*** and in various other judgments had taken a view that the entire acquisition proceedings shall stand quashed. However, the issue was clarified by this Court in ***Abhey Ram*** on 22.4.1997 and ***Gurdip Singh Uban-I*** and ***II*** on 20.8.1999 and 18.8.2000 respectively. Therefore, there was an era of uncertainty about the status of acquisition proceedings in view of either stay operating against the appellant or on account of setting aside of the notification under Section 6 of the Act. It was only the issue of the validity of notification under Section 6 of the Act which attained finality when ***Gurdip Singh Uban-II*** was decided. Thus, the period of five years had not expired before the commencement of the 2013 Act with effect from 1.1.2014.

18. Mr. Bansal, learned counsel for the land owners vehemently argued that there is specific provision for exclusion of time if stay is operating in another writ petition in terms of Explanation 2 in Section 6 of the Act and the Explanation in Section 11-A of the Act, but there is no corresponding exclusion clause in Section 24(2) of the 2013 Act. Therefore, it was contended that the period of stay can very well be excluded for publication of a notification under Section 6 or for announcing the award but not after the award, on the strength of the interim orders passed in the writ petition of other land owners. Therefore, after the expiry of five years before the status-quo order was passed in favour of the land owners, the

proceedings had lapsed in terms of Section 24(2) of 2013 Act. It was contended that stay granted in the writ petitions filed by other land owners cannot be used by the State for excluding such period in the case of the land owners herein.

19. Learned counsel for the land owners further argued that the award was announced on 5.6.1987 and the interim order in favour of the land owners was passed on 9.7.1999. Thus, for a period of 12 years from the date of making of the award, there was no stay by the Court or by giving effect to any statutory provision of the Act granting such stay under Section 24(2) of the 2013 Act. It was contended that the State has been taking possession on different dates, therefore, it cannot be inferred that the stay in one or the other case was deterrent for the appellant to take possession of the land which was subject matter of acquisition. The land owners have made elaborate reference on the undisputed principle that the judgment is an authority for what it actually decides and not what follows from it, i.e., what is meant by *obiter dictum* and *ratio decidendi*. It was also argued that the *Casus Omissus* cannot be supplied by including further words in the statute.

20. We have heard learned the Counsel for the parties and find that the appeal deserves to be allowed. The aforementioned judgments have been thoroughly examined by this Court in ***Om Prakash.*** The judgments in ***Balbir Singh*** and ***Gurdeep Singh Uban*** were again recently examined by this Court in ***Delhi Development***

Authority v. ***Godfrey Phillips (I) Ltd. & Ors.***[18] decided on 6.5.2022, wherein it was held as under:

> "36. In ***Balak Ram-II***, the acquisition proceedings were quashed since the objections filed by the land owners were not heard or decided in accordance with law. Thus, ***Balak Ram-II*** is a judgment in *personam* and not in *rem*, as the grievance of the writ petitioners was specific to them. The judgment of the High Court in ***Balbir Singh*** is based upon the fact that in ***Balak Ram-II,*** the entire notification under Section 6 of the Act stands quashed. Such aspect has not found favor in ***Abhey Ram*** and ***Gurdip Singh Uban-I and II***. Otherwise also, non-hearing of objections filed would be limited to those land owners who have filed objections. The predecessor-in-interest of the purchaser has not filed any objections under Section 5A of the Act, therefore, the judgment in ***Balak Ram-II*** cannot come to the aid of land owners who have never preferred any objections.
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> 37. Therefore, the judgment in ***Balbir Singh*** does not confer any right on the other land owners who have not disputed the acquisition proceedings on the ground of lack of effective hearing of objections under Section 5-A of the Act. Since the original land owner never filed any objections under Section 5-A of the Act, the purchaser cannot seek the relief which was not available even to the original land owner.
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> 38. The purchaser has purchased the property knowing fully well that the vendor has not disputed the acquisition proceedings. But on the basis of an order passed in ***Balbir Singh***, it was conveyed and accepted by the purchaser, that the acquisition stands quashed and original land owner was in possession of the land. Since ***Sudan Singh***, affirming the order in ***Balbir Singh*** has not been approved by this Court in the three judgments referred hereinabove (***Abhey Ram***, ***Gurdip Singh Uban-I*** and ***Gurdip Singh Uban-II***), no right would accrue to the original land owner or the purchaser. The High Court in the impugned order has not noticed any of the three judgments of this Court in ***Abhey Ram***, ***Gurdip Singh Uban-I*** and ***Gurdip Singh Uban-II*** nullifying the effect of ***Balbir Singh*** and instead ordered the purchaser to deposit twice of the amount paid to the original land owner. The condition of payment of compensation in ***Balbir Singh*** by the land owners does not survive in view of the fact that such judgment has not been approved by this Court."

18 Civil Appeal No. 3073 of 2022

21. In the writ petition filed by the land owners, there was an interim order of stay granted on 9.7.1999, even before ***Gurdip Singh Uban-I*** was decided on 20.8.1999. The notifications under Section 6 of the Act which were quashed became effective only after the order of this Court in ***Gurdip Singh Uban-I and II.*** The land owner strangely made no mention of the judgment delivered on 22.4.1997 in ***Abhey Ram.*** The order of stay of dispossession in the writ petition filed by the land owner continued when the 2013 Act came into force. The land which was the subject matter of challenge in ***Gurdip Singh Uban***[19] was also at Village Chattarpur, even before the Award was announced. There was an interim order of stay of dispossession on 28.4.1986 in respect of land situated in the village Chattarpur which continued till such time the notification under Section 6 of the Act was quashed relying upon ***Balbir Singh*** decided on 15.05.1989 and ***Sudan Singh***. This order was set aside by this Court on 20.8.1999 in ***Gurdip Singh Uban I***. The land owner had got stay in their writ petition on 9.7.1999. Thus, there was no stay free period of 5 years before coming into force of the 2013 Act.

22. It is to be noted that since the entire notification was quashed by the High Court in ***Gurdip Singh*** and ***Balbir Singh***, therefore, the State could not take possession on the basis of quashed notification. But before the judgments of this Court were pronounced in the year 1999 or 2000, the land owner had obtained

19 WP (C) No. 920 of 1986 decided on 17.12.1996

stay of dispossession. Therefore, it is not a stay of dispossession pending notification under Section 6 or award under Section 11-A but the acquisition of the entire land which came to be settled by this Court. Thus, the State could not take possession on the basis of a notification under Section 6 leading to the award on 05.06.1987. The argument that there was no stay from the date of the award till the stay was granted in favour of the land owner is hence partly correct as there was no stay but the acquisition itself stood quashed. Therefore, when the 2013 Act came into force on 01.01.2014, the five years had not lapsed which was stay free or free from setting aside of the acquisition.

23. Learned counsel for the land owners has referred to a counter affidavit dated 9.7.2018 filed by the State in ***Mrs. Verinder Kaur*** v. ***Government of NCT of Delhi***[20] to the effect that the amount of compensation in respect of village Chattarpur was withdrawn for the purpose of award in village Kakrola. However, the said writ petition was dismissed by the Division Bench of the High Court *inter alia* on the ground that the petitioner did not challenge the acquisition proceedings for more than 3 decades. It was held as under:

> "The fact of the matter is that as far as the Petitioner is concerned she never came forward to challenge the land acquisition proceedings at any stage. While certain others came to the Court and got interim orders in their favour, the Petitioner did not challenge the proceedings at any stage. The inability of the Respondents to take possession is explained by the fact that an interim order was passed in one set of petitions which continued for a long time.

20 WP (C) No. 589 of 2018 decided on 13.8.2019

> Interfering with the land acquisition proceedings at this stage when the Petitioner has not shown any interest in challenging them for more than three decades would encourage an abuse of the process of law. Entertaining the petition would be contrary to the decision by a three Judge Bench of the Supreme Court in ***Indore Development Authority*** v. ***Shailendra (2018) 3 SCC 412***."

24. In another judgment of this Court reported as ***Delhi Development Authority*** v. ***Rajan Sood***[21], the land owner had the benefit of stay in his favour when the 2013 Act came into force. There was a direction issued in the writ petition filed by the land owner on 9.11.2011 to consider the application under Section 48 of the Act. It was held that Section 48 of the Act would be applicable as the possession of land is not taken over by the acquiring authority and thus the land owners would be deemed to be in possession of the same. It was held as under:

> "7.1 ... It is the case on behalf of the original writ petitioners that a purported letter dated 23.09.1986 allegedly taking symbolic possession was never disclosed by appellants in the proceedings conducted before the High Court on two separate occasions and the same has been filed for the first time in the present proceedings. The aforesaid is not correct. Even in the impugned order itself in paragraph 2, the High Court has noted the submissions on behalf of the appellants to the effect that the possession was taken over on 23.09.1986. Therefore, it cannot be said such a plea is taken for the first time before this Court. It is the case on behalf of the original writ petitioners, relying upon the earlier order passed by the High Court dated 09.11.2011 in writ petition No. 7714/2011 that, the original writ petitioners continue to be in possession and the actual possession has never been taken over. However, it is required to be noted that even in the order dated 09.11.2011, there was no specific finding given by the High Court that the original writ petitioners are in possession of the land in question. On the contrary, it is observed that the

21 Civil Appeal No. 1927 of 2022 Decided on 29.3.2022

> authority to consider the application under section 48 of the Act, 1894 on merits on the assumption of the possession being with the original writ petitioners. Therefore, while passing the order dated 09.11.2011 also, the High Court assumed the original writ petitioners are in possession hence as such no specific finding was given to the effect that the original writ petitioners are in possession.
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> 7.3 Be that as it may. Assuming for the sake of argument that the original writ petitioners are found to be in possession and the compensation was not tendered, in that case also as can be seen from the order passed by the High Court on 09.11.2011 in writ petition No. 7714/2011, the authority was restrained from taking any coercive action in respect of the land in question. Therefore, in view of the subsequent decision of this Court in the case of *Indore Development Authority* (supra - paragraph 366.8), the period, during which the interim order is/was operative, has to be excluded in the computation of five years' period. In the present case even, it is the contention on behalf of the original writ petitioners that the order of no coercive action was directed to be continued till the application under section 48 of the Act, 1894 was decided."

25. In another judgment in ***Delhi Development Authority*** v. ***Bhim Sain Goel & Ors.***[22], notifications dated 21.3.2003 and 18.3.2004 under Sections 4 and 6 of the Act respectively were the subject matter of consideration. The award was passed by the Land Acquisition Collector on 22.8.2005. In a writ petition filed challenging the Section 6 notification, the High Court directed to maintain status quo with regard to nature, title and possession of the land in question. The writ petition was dismissed but in appeal before this Court, there was an interim order of stay. During the pendency of the appeal, the 2013 Act came to be enacted. The land owners filed a writ petition to declare the proceedings as

22 Civil Appeal No. 3151 of 2022 passed by this Court on 25.4.2022

lapsed. Such writ petition was allowed on 2.2.2016 which was then challenged before this Court. This Court held as under:

> "12. On the application of the aforesaid principles to the facts of this case, there cannot be any doubt that the respondents cannot take shelter under Section 24(2) of the 2013 Act. This is for the simple reason that it is by their conduct in approaching the Courts and obtaining interim orders that the appellant was prevented from taking possession of the lands. We are clear in our minds that this is indeed one such case where the respondents have launched litigation, obtained orders and it has clearly prevented the appellant from taking possession and therefore, the impugned judgment of the High Court would have to be set aside.
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> 22. The principle which has appealed to the Constitution Bench of this Court is squarely applicable to the facts of this case. The public authority which had set the law in motion under the earlier regime cannot be put to a loss when at the end of the day or on the day of reckoning it is found that they must succeed in law. Here we have found that the appellant is fully justified in contending that but for the orders passed by the High Court and this Court, the possession would have been taken, and the land would have vested under the law. We must proceed on the basis that but for the interim orders passed which cannot survive the final disposal of the cases, the land would have stood vested with the Government under the earlier regime...
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> 24. It is clear as daylight that it would be completely antithetical to public interest were the Government be compelled to shell out public funds under the 2013 Act to acquire land which already belongs to it. We cannot be oblivious to the said sublime principle as well."

26. Pertinent to note, though the High Court in ***Balak Ram-II*** had not quashed the notification under Section 6 of the Act, but in some of the subsequent judgments such as in ***Balbir Singh***, the High Court

held that the notification stands quashed and the land stood reverted back to the land owners. Therefore, an option was given to the land owners to refund the compensation. Such judgment of ***Balbir Singh*** was affirmed by this Court in ***Delhi Development Authority*** v. ***Sudan Singh***[23]. Delhi High Court in ***Gurdip Singh Uban*** etc. relied upon ***Sudan Singh*** to hold that the notification under Section 6 of the Act stands quashed. However, ***Sudan Singh*** was specifically found to be laying down not good law in ***Abhey Ram***, ***Gurdip Singh Uban-I*** and ***Gurdip Singh Uban-II***. There was a stay in the writ petition filed by the land owners themselves which continued to operate till the 2013 Act came into force. Therefore, it was the order of the High Court itself which prevented the appellant to take possession. However, such position got clarified only after the judgment in ***Gurdip Singh Uban-I***, later clarified in ***Gurdip Singh Uban-II***, but in the meantime, there was an interim order granted in favour of the land owners.

27. This Court in ***Indore Development Authority*** v. ***Manoharlal and Others***[24] held that the twin conditions of failure to take possession or payment of compensation alone can lead to the lapse of notification under Section 24(2) of the 2013 Act. This Court has held as under:

> "306. When the authorities are disabled from performing duties due to impossibility, would be a good excuse for them to save them from rigour of provisions of Section 24(2). A litigant may be right or wrong. He cannot be permitted to take advantage of a situation created by him of interim order. The doctrine "commodum ex injuria sua nemo habere

23 (1997) 5 SCC 430
24 (2020) 8 SCC 129

debet" that is convenience cannot accrue to a party from his own wrong. Provisions of Section 24 do not discriminate litigants or non-litigants and treat them differently with respect to the same acquisition, otherwise, anomalous results may occur and provisions may become discriminatory in itself.

307. In Union of India v. Shiv Raj [Union of India v. Shiv Raj, (2014) 6 SCC 564 : (2014) 3 SCC (Civ) 607] , this Court did not consider the question of exclusion of the time. In Karnail Kaur v. State of Punjab [Karnail Kaur v. State of Punjab, (2015) 3 SCC 206 : (2015) 2 SCC (Civ) 259] and in Sree Balaji Nagar Residential Assn. [Sree Balaji Nagar Residential Assn. v. State of T.N., (2015) 3 SCC 353 : (2015) 2 SCC (Civ) 298], various aspects including the interpretation of provisions of Section 24 were not taken into consideration. Thus, the said rulings cannot be said to be laying down good law.

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314. The maxim "lex non cogit ad impossibilia" means that the law does not expect the performance of the impossible. Though payment is possible but the logic of payment is relevant. There are cases in which compensation was tendered, but refused and then deposited in the treasury. There was litigation in court, which was pending (or in some cases, decided); earlier references for enhancement of compensation were sought and compensation was enhanced. There was no challenge to acquisition proceedings or taking possession, etc. In pending matters in this Court or in the High Court even in proceedings relating to compensation, Section 24(2) was invoked to state that proceedings have lapsed due to non-deposit of compensation in the court or to deposit in the treasury or otherwise due to interim order of the court needful could not be done, as such proceedings should lapse.

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316. Another Roman Law maxim "nemo tenetur ad impossibilia", means no one is bound to do an impossibility. Though such acts of taking possession and disbursement of compensation are not impossible, yet they are not capable of law performance, during subsistence of a court's order; the order has to be complied with and cannot be violated. Thus, on equitable principles also, such a period has to be excluded. ……."

28. Therefore, the period of 5 years had not lapsed on 1.1.2014 which could lead to lapsing of the acquisition proceedings. The appellant was prevented by the interim orders in a number of writ petitions filed to take possession. Therefore, prior to the commencement of 2013 Act, there was no stay free period of 5 years which could lead to a declaration that the proceedings stand lapsed. Still further, the notifications under Section 6 of the Act quashed on 15.5.1989 and 17.12.1996 were set aside in ***Gurdip Singh Uban-I*** and ***II*** but before that, there was an order of stay of dispossession granted in favour of the land owner on 27.9.1999. Therefore, on account of setting aside of notification under Section 6 of the Act, the State could not take possession in view of the orders passed by the High Court.

29. In view of the above, the appeal is allowed. The order passed by the High Court is set aside and the writ petition filed by the land owners is dismissed.

.....J.
(HEMANT GUPTA)

.....J.
(V. RAMASUBRAMANIAN)

NEW DELHI;
MAY 19, 2022.