

Brief Note on the Judgement of the Hon'ble Supreme Court of India in the Indore Development Authority Matter regarding lapsing of acquisition cases

For my friends working in the Land Acquisition wing.

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Title: Indore Development Authority v. Manoharlal and Ors

Citation: S.L.P. (C) NOS.9036-9038 OF 2016)

Court: Supreme Court of India

Bench: 5 –Judges Bench comprising of Hon'ble Justice Arun Mishra, Hon'ble Justice Indira Banerjee, Hon'ble Justice Vineet Saran, Hon'ble Justice M.R. Shah, and Hon'ble Justice S. Ravindra Bhat

Date of Judgment: 06-03-2020

Petitioners: Indore Development Authority

Respondents: Manoharlal and Ors

Brief Description: The question in the case was whether deposit of compensation by the Government in Government treasury can be regarded as “paid” within the meaning of Section 24(2) of Land Acquisition, Rehabilitation and Resettlement Act 2013 or Act XXX of 2013 . Consequently, case involved the interpretation of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013.

Case Background: The underlying issue, in broad terms, was whether deposit of compensation by government in treasury can be deemed as payment to landowner as per Section 24(2) of the 2013 Land Acquisition Act so as to save the proceedings taken under the 1894 Land Acquisition Act from being lapsed

In 2014, a three judge bench in Pune Municipal Corporation case held that in case land owners are not willing to accept the compensation, the same has to be deposited in Court. Mere deposit of compensation in treasury cannot be regarded as payment as per Section 24(2). In other words, land acquisition proceedings under the 1894 Act will lapse.

This view held field for nearly over three years, until a two judges bench comprising Justice Arun Mishra and Amitava Roy doubted its correctness in the Indore Development Authority case in December 2017 and referred it to larger bench.

The larger bench (a three judge bench) which considered the reference was also headed by Justice Arun Mishra. This three judge bench (by 2:1 majority) held the decision in Pune Municipal Corporation to be per incuriam. While Justices Arun Mishra and A K Goel were in the majority, Justice Mohan M Shantanagoudar dissented by stating that a three judge bench cannot overrule a precedent laid down by a co-ordinate bench.

Shortly, another three-judge bench (Justices Madan B Lokur, Kurian Joseph and Deepak Gupta) took objection to this course adopted by Justice Arun Mishra-led bench in the Indore Development Authority case, and stayed the operation of Indore Development Authority case.

It was only after this that a two-judge bench headed by Justice Arun Mishra thought it fit to refer the issue to the CJI for determination by a larger bench.

Issues Involved:

(i) Whether the word “or” in Section 24(2) of the Act of 2013 used in between possession has not been taken or compensation has not been paid to be read as “and”?

(ii) Whether proviso to Section 24(2) of the Act of 2013 has to be construed as part thereof or proviso to Section 24(1)(b) ?

(iii) What meaning is to be given to the word “paid” used in Section 24(2) and “deposited” used in the proviso to Section 24(2) ?

(iv) What are the consequences of payment not made ?

(v) What are the consequences of the amount not deposited ?

(vi) What is the effect of a person refusing to accept the compensation ?

Judgment:

1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.
2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.
3. The word ‘or’ used in Section 24(2) between possession and compensation has to be read as ‘nor’ or as ‘and’. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.
4. The expression ‘paid’ in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation under Section

31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the “landowners” as on the date of notification for land acquisition under Section 4 of the Act of 1894.

5. In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013.
6. The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part of Section 24(1)(b).
7. The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).
8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority as on 1.1.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.
9. Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.