

NON REPORTABLE
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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6256 OF 2009

M/S SHARMA AGRO INDUSTRIES ...APPELLANT

Vs.

STATE OF HARYANA & ORS. ...RESPONDENTS

WITH

CIVIL APPEAL NO.6350 OF 2009

M/S. INDIAN DISCS CORPORATION ....APPELLANT

Vs.

STATE OF HARYANA & ORS. ...RESPONDENTS

J U D G M E N T

V. GOPALA GOWDA, J.

These civil appeals are directed against the common judgment and order dated 15.05.2007 passed in Civil Writ Petition No. 1956 of 2004 and Civil Writ Petition No. 6299 of 2004 by the High Court of Punjab

and Haryana at Chandigarh, upholding acquisition of lands of the appellants.

2. Since both the appeals are identical involving similar question of law, for the sake of brevity and convenience, we would deal with the facts of Civil Appeal No.6256 of 2009 which are stated hereunder:

The State Government of Haryana issued a Notification under Section 4 of the Land Acquisition Act, 1894 (for short "the Act") on 27.11.2002 for acquisition of the appellant's industrial land for public purpose, namely, for the construction and development of Industrial Estate and laying of sewerage and storm water drainage in Sector 3, District Karnal, Haryana. The appellant filed objections under Section 5A of the Act. The Land Acquisition Collector submitted his report to the Commissioner and Secretary to the Government of Haryana, Industries Department, recommending that the area of 37 Bhigas 13 Biswas be not acquired which included the area of land belonging to the appellant. The Haryana State Industrial Development Corporation in its report also admitted the

fact that the industries are situated on the land sought to be acquired for industrial purpose and did not recommend that the land be acquired. The above two reports were not considered and the State Government issued declaration notification under Section 6 of the Act on 14.11.2003. An Award under Section 11 of the Act was passed on 30.05.2005. The appellant filed a writ petition before the High Court of Punjab and Haryana questioning the correctness of the acquisition proceedings. The High Court dismissed the writ petition and held that the acquisition proceedings cannot be struck down merely on the ground that the plan does not reflect clearly as to where the sewerage and storm water drainage area have been earmarked and that the acquisition of land of the appellant was for an important public purpose. Hence, these appeals.

3. In the appeals, the applications have also been filed to dispose of the appeals in terms of para Nos. 20 and 21 of the judgment of this Court in the case of **Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & Ors.**<sup>1</sup> wherein this Court interpreted

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1 (2014) 3 SCC 183

Section 24(2) of the Resettlement Act, 2013 and held that not taking possession of the acquired lands of the appellants, the acquisition proceedings in respect of the same are lapsed. Para No. 11 in the case of **Vinod Kumar v. State of Haryana & Ors.**<sup>2</sup> in support of the legal submission that not accepting the recommendation of the Land Acquisition Collector to delete the lands of the appellants from acquisition, the State Government issuing declaration under Section 6 of the Act without assigning reasons has vitiated the acquisition proceedings.

4. We have heard Mr. Pravin Parekh, learned senior counsel for the appellant. He has relied upon the cases of this Court in **Bimla Devi & Ors. v. State of Haryana & Ors.**<sup>3</sup>, **Sree Balaji Nagar Residential Association v. State of Tamil Nadu & Ors.**<sup>4</sup> and **Union of India & Ors. v. Shiv Raj & Ors.**<sup>5</sup> in support of his legal submissions.

5. During the pendency of these appeals, the Parliament enacted 'The Right to Fair Compensation and

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2 (2014) 3 SCC 203

3 (2014) 6 SCC 583

4 2014 (10) SCALE 388

5 (2014) 6 SCC 564

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013' (for short "Resettlement Act, 2013"). The relevant Section 24(2) of the Act reads as under:-

"24(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said Section 11 has been made five years or more prior to the commencement of this Act 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 and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act..."

It is contended by the learned senior counsel for the appellant that the land acquisition proceedings have lapsed by virtue of Section 24(2) of the Resettlement Act, 2013. The above said provision of the Act has been interpreted by the three Judge Bench of this Court in the case of **Pune Municipal Corporation** (supra) wherein the law was laid down holding that the land acquisition proceedings initiated are deemed to have lapsed where an award has been made five years or more prior to the

commencement of Resettlement Act, 2013 and possession of the land is not taken or compensation has not been paid to the land owners.

6. The award was made 5 years prior to the date of commencement of the Resettlement Act, 2013. Therefore, the acquisition proceedings of the land of the appellants have lapsed in view of Section 24(2) of the Resettlement Act, 2013, which has been interpreted by this Court in the aforesaid case of **Pune Municipal Corporation** (supra), which reads thus:-

"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."

Further, reliance was placed in the cases of **Bimla Devi & Ors.** (supra) and **Sree Balaji Nagar Residential Association** (supra) wherein the law laid down in the case of **Pune Municipal Corporation** (supra) was reiterated.

In **Sree Balaji Nagar Residential Association** (supra), it was held thus:-

"9. From a plain reading of Section 24 of the 2013 Act it is clear that Section 24(2) of the 2013 Act does not exclude any period during which the land acquisition proceeding might have remained stayed on account of stay or injunction granted by any court. In the same Act, proviso to Section 19(7) in the context of limitation for publication of declaration under Section 19(1) and the Explanation to Section 69(2) for working out the market value of the land in the context

of delay between preliminary notification under Section 11 and the date of the award, specifically provide that the period or periods during which the acquisition proceedings were held up on account of any stay or injunction by the order of any court be excluded in computing the relevant period. In that view of the matter it can be safely concluded that the Legislature has consciously omitted to extend the period of five years indicated in Section 24(2) 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. Such *casus omissus* cannot be supplied by the court in view of law on the subject elaborately discussed by this Court in the case of Padma Sundara Rao (Dead) & Ors. v. State of T.N. & Ors. (2002) 3 SCC 533."

Further in the case of ***Shiv Raj & Ors.*** (supra), this Court has held thus:-

"19. In order to clarify the statutory provisions of the Act 2013 with respect to such lapsing, the Government of India, Ministry of Urban Development, Delhi Division, came up with a circular dated 14.3.2014 wherein on the basis of the legal opinion of the Solicitor General of India, it has been clarified as under:

**"3. Interpretation of five years' period** "With regard to this issue viz. interpretation of five years' period, two situations have been envisaged in cases where the acquisition has been initiated under the Land Acquisition Act, 1894 viz. (1) parties whose lands have been acquired have refused to accept the compensation and (2) parties whose lands have been acquired having just parted with physical possession of the land. However, in

both the above situations, as on 1-1-2014, the period of 5 years would not have ended and in such cases, the advisory seeks to clarify that the new law shall apply only if the situation of pendency continues unchanged for a period that equals to or exceeds five years. In my view, it should be further clarified that in none of the cases the period of five years would have elapsed pursuant to an award made under Section 11 from the date of commencement of the Act and that the benefit of Section 24(2) will be available to those cases which are pending and where during pendency, the situation has remained unchanged with physical possession not being handed over or compensation not having been accepted and the period equals to or exceeds five years.

#### **4. *Limitation***

As regards this item relating to the period spent during litigation would also be accounted for the purpose of determining whether the period of five years has to be counted or not, it should be clarified that it will apply only to cases where awards were passed under Section 11 of the Land Acquisition Act, 1894, 5 years or more prior to 1-1-2014 as specified in Section 24(2) of the Act, to avoid any ambiguity. Since this legislation has been passed with the objective of benefiting the land-losers, this interpretation is consistent with that objective and also added as a matter of abundant caution that the period spent in litigation challenging an award cannot be excluded for the purpose of determining whether the period of five years has elapsed or not. If the possession has not been taken or compensation has not been paid due to the challenge to the land acquisition proceedings, the pendente lite period will be included to determine the five year period

and including such period if the award was made five years or more prior to the commencement of the Act, then the said acquisition proceedings will be deemed to have elapsed and fresh proceedings, if so desired, will have to be initiated in accordance with the new Act."

The Objects and Reasons of the 2013 Act and particularly Clause 18 thereof fortify the view taken by this Court in the judgments referred to hereinabove. Clause 18 thereof reads as under:

"18. The benefits under the new law would be available in all the cases of land acquisition under the Land Acquisition Act, 1894 where *award has not been made or possession of land has not been taken.*"

20. However, the aforesaid appeals have to be decided in the light of above settled legal propositions. The admitted facts of the case remains that the Respondents-Tenure Holders had filed objections under Section 5A of the Act 1894 as admitted in the affidavit filed by Smt. Usha Chaturvedi, Deputy Secretary (Land Acquisition), Land and Building Department, Vikas Bhawan, New Delhi, filed in January 2014 before this court. The award no. 15/87-88 had been made on 5.6.1987 and possession has not been taken till date though compensation has been deposited with the Revenue Department, which cannot be termed as `deemed payment` as has been held in case of Pune Municipal Corporation & Anr."

7. The Legislature brought about amendment to Section 6 of the Land Acquisition Act, 1894 through an Amendment Act 68 of 1984, to add Explanation 1, for the purpose of excluding the period, when the proceeding suffered stay

by an order of the Court, in the context of limitation provided for publishing the declaration under Section 6(1) of the Act. The Explanation to Section 11A which was added by Amendment Act 68 of 1984 was to a similar effect, wherein, Legislature in its wisdom made the period of five years under Section 24(2) of the Resettlement Act, 2013 absolute and unaffected by any delay in the proceedings on account of any order of stay by a court. The plain wordings used by the Legislature under the provisions of Section 24(2) are clear and do not create any ambiguity or conflict. In such a situation, the court is not required to depart from the literal rule of interpretation, as held by this Court in the case of **C.I.T., Mysore v. The Indo Mercantile Bank Ltd.**<sup>6</sup> as under:-

"10. Lord Macmillan in Madras & Southern Maharatta Railway Co. v. Bezwada Municipality laid down the sphere of a proviso as follows:

"The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where, as in the present case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the

interpretation of the main enactment, so as to exclude from it by implication what clearly falls within its express terms.

The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that that is its necessary effect."

After referring to the aforesaid decisions with reference to the facts and circumstances of the present cases, we are of the view that there is no dispute that physical possession of the lands belonging to the appellants has not been taken by the State or any other authority on its behalf. More than five years have elapsed since the making of the awards when the Resettlement Act, 2013 came into force. Therefore, the conditions mentioned in Section 24(2) of the Resettlement Act, 2013 are satisfied for allowing the plea of the appellants that the land acquisition proceedings must be deemed to have lapsed in terms of Section 24(2) of the Resettlement Act, 2013. The said legal principle laid

down in the aforesaid judgment after following the three Judge Bench decision of this Court referred to supra with regard to interpretation made under Section 24(2) of the Resettlement Act, 2013 with all fours would be applicable to the fact situation in respect of the land covered in these appeals and for granting relief as prayed.

8. The learned senior counsel further contended that the recommendations made in the reports of the Land Acquisition Collector were neither accepted by the respondents nor assigned reasons for not accepting the same. Therefore, the issuance of notification under Section 6 of the Act declaring the land involved in these appeals is bad in law. It is contended that the case of the appellant is squarely covered by the above said judgments.

Further, reliance is placed in the case of **Vinod Kumar** (supra) wherein this Court has held as under:-

"9. We are inclined to observe that the High Court has erred in dismissing the writ petition of the appellant as the same is contrary to the principle laid down by this Court in the following cases :-

In *Kamal Trading (P) Ltd. v. State of W.B.* it

has been held as under: (SCC pp. 29-30, paras 14-16)

14.....16. Sub-section (3) of Section 6 of the LA Act makes a declaration under Section 6 conclusive evidence that the land is needed for a public purpose. Formation of opinion by the appropriate Government as regards the public purpose must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. It is, therefore, that the hearing contemplated under Section 5-A and the report made by the Land Acquisition Officer and his recommendations assume importance. It is implicit in this provision that before making declaration under Section 6 of the LA Act, the State Government must have the benefit of a report containing recommendations of the Collector submitted under Section 5-A(2) of the LA Act. The recommendations must indicate objective application of mind."

*(emphasis laid by this Court)*

16. Hence, the declaration made by the Government for acquisition of land of the appellant under Section 6 of the Act does not provide any reason for arriving at a decision contrary to that of the report produced by the Land Acquisition Collector. Therefore, the basic protection to which the landowners are entitled to under the Act through Section 5-A is violated. Consequently, the process of acquisition of the land of the appellant is tainted with mala fides and therefore, the same is liable to be set aside....."

9. The Land Acquisition Collector in the present case

has recommended to the State Government that the land covered in these civil appeals need not be acquired. On our direction, Mr. Manjit Singh, the learned Additional Advocate General representing the State of Haryana has made available the record pertaining to acquisition of the lands involved in these appeals. The following is the relevant translated extract of the recommendations made by the Land Acquisition Collector:

"On 16.01.2003 I visited the concerned spot for the purpose of inspection; with the kanoongo and patwari belonging to the revenue department. A seller has been established since 1981 in Khasra nos. 3959, 3960, 3961/1, 3961/2, 3963, 3964, 3965, 3966/1, 3967, 3968 with a total area of 29 bigha, 11 biswas. The Government of Haryana, Deptt. of Industry, had also issued a license to the seller for this industry, and the same is operative till date. An old factory is established in Khasra No.3966/2, 3971/2, with a total area of 1 bigha, 11 biswa. Small-scale industry licenses established in Khasra Nos. 4000, 4001/2, 4001/1/1, 4001/1/2, 4001/1/3, 4002/1, 4002/2 where old factories along with lantered houses have been constructed. When the land was acquired in 1986 in Sector 3, the abovementioned khasra nos. were excluded from the acquisition process. Hence the above mentioned land may be released, measuring total of 37 bighas and 13 biswas. The above nos. are leftover for acquirement.

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Land Acquisition Collector,  
Karnal"

The State Government has neither accepted the

recommendations of the Land Acquisition Collector nor assigned any reasons before issuing declaration notification under Section 6 of the Act. The same is sought to be justified by the learned Addl. Advocate General contending that it is the prerogative of the Government to either accept or reject the recommendations of the Land Acquisition Collector with respect to the proposed land to be acquired by issuing declaration notification under Section 6 of the Act. This contention of the learned Additional Advocate General is wholly untenable in law in view of the decisions referred to above. However, after adverting to the decisions of this Court in the above case and in the cases referred to supra, the said report of the Land Acquisition Collector was neither accepted by the Government nor did the government assign any reasons before issuing the Declaration Notification by holding that the land is required for public purpose, we are of the view that the acquisition proceedings are vitiated in law.

10. The learned senior counsel for the appellants has rightly placed reliance upon the decision of this Court in the case of Vinod Kumar (supra), wherein this Court

referred to the legal principle laid down in the case of **Women's Education Trust & Anr. v. State of Haryana & Ors.**<sup>7</sup>, and has held as under:-

"35. What is most surprising is that the High Court did not even deal with the issue relating to application of mind by the Government to the report submitted by the Land Acquisition Collector under Section 5-A(2) along with his recommendations. The documents produced before the High Court and this Court do not show that the State Government had objectively applied mind to the recommendations made by the Land Acquisition Collector and felt satisfied that the land in question deserves to be acquired for the purpose specified in the notification issued under Section 4(1). The record also does not contain any indication as to why the State Government did not consider it proper to accept the recommendations of the Land Acquisition Collector. Therefore, there is no escape from the conclusion that the impugned acquisition is ultra vires the provisions contained in Section 6 of the Act."

11. Further, in the case of **Shyam Nandan Prasad & Ors. v. State of Bihar & Ors.**<sup>8</sup> this Court has observed that compliance of Section 5A(2) of the Act is a *sine qua non* for acquisition of land. In the said case, it was held as under:-

"10...The decision of the Collector is supposedly final unless the appropriate

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7 (2013) 8 SCC 99

8 (1993) 4 SCC 255

Government chooses to interfere therein and cause affectation, suo motu or on the application of any person interested in the land. These requirements obviously lead to the positive conclusion that the proceeding before the Collector is a blend of public and individual enquiry. The person interested, or known to be interested, in the land is to be served personally of the notification, giving him the opportunity of objecting to the acquisition and awakening him to such right. That the objection is to be in writing, is indicative of the fact that the enquiry into the objection is to focus his individual cause as well as public cause..."

In view of the law laid down in the aforesaid decisions of this Court with regard to Section 5A of the Act, the report submitted by the Land Acquisition Collector in respect of the proposed acquisition of the land of the appellants, the State Government has to consider the report of the Land Acquisition Collector while issuing declaration of the acquisition of the land under Section 6 of the Act. If the Government comes to the conclusion contrary to the report of the Land Acquisition Collector then the Government shall assign valid and cogent reasons for not accepting the same. Therefore, the declaration notification by the State Government issued without accepting the recommendation of the Land Acquisition Collector and without assigning reasons for not accepting

the same is bad in law. Therefore, the acquisition proceedings in relation to the land covered in these appeals are liable to be quashed on this ground also.

In view of the foregoing reasons, the impugned judgment and order dated 15.05.2007 in so far as the present appeals are concerned, is set aside and the impugned acquisition notification including the award is quashed holding that the acquisition proceedings are deemed to have lapsed by not taking the physical possession of the acquired land of the appellants by the State Government or any other authorized authority and also for not following the mandatory procedure as required under Section 5A of the Act.

Accordingly, the appeals are allowed. There shall be no order as to costs.

.....J.  
[V. GOPALA GOWDA]

.....J.  
[ADARSH KUMAR GOEL]

**New Delhi,  
November 12, 2014**

ITEM NO.1A  
(For Judgment)

COURT NO.11

SECTION IV

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No(s). 6256/2009

M/S SHARMA AGRO INDUSTRIES

Appellant(s)

VERSUS

STATE OF HARYANA & ANR.

Respondent(s)

WITH

C.A. No. 6350/2009

Date : 12/11/2014 These appeals were called on for judgment today.

For Appellant(s) M/s. Parekh & Co.,Adv.

Mr. S. K. Sabharwal,Adv.

For Respondent(s) Mr. Manjit Singh, A.A.G.  
Mr. Nupur Choudhary, Adv.  
Ms. Vivekta Singh, Adv.  
Mr. Kamal Mohan Gupta,Adv.

Mr. Ravindra Bana,Adv.

Hon'ble Mr. Justice V. Gopala Gowda pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Adarsh Kumar Goel.

The appeals are allowed in terms of the signed non-reportable judgment.

(S.K. RAKHEJA)  
COURT MASTER

(MALA KUMARI SHARMA)  
COURT MASTER

(Signed non-reportable judgment is placed on the file)