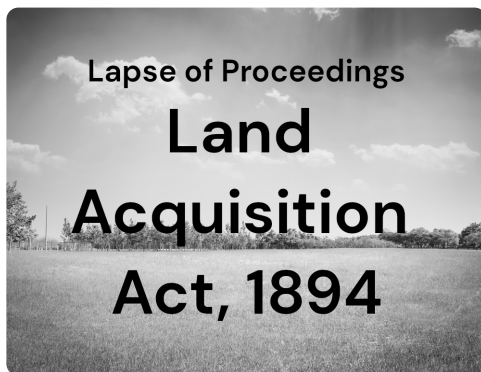


Lapse of Proceedings under Land Acquisition Act, 1894



A five judge Supreme Court bench has recently delivered a judgment^[1] (“**Judgment in reference**”) conclusively deciding an important dispute regarding the continuation/lapsing of proceedings under the Land Acquisition Act of 1894 (“**Old Act**”), after Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (“**New Act**”) is legislated.

Saving clause under the New Act

When the New Act came into force, there were thousands of proceedings pending under the Old Act, which were at various stages. The New Act does not abate these proceedings under the Old Act, but lays down how these proceedings are to be decided by incorporating saving clauses in Section 24. The saving clause divides the proceedings under Old Act into two categories, (i) one where award is not yet passed under the Old Act and (ii) one where Award is already passed for acquiring the property. In respect of proceedings under first category, the New Act is to apply for computing the consideration payable to owners, whereas in respect of proceedings under second category, the Old Act shall continue to be the applicable law and New Act shall not have any operation. However, in certain circumstances the Second category of cases, may fall under New Act if it comes under Section 24(2), which provides that *if award is passed in a proceeding more than 5 years of coming into operation of New Act, but where no physical possession of the land has not been taken, or the compensation has not been paid,* the proceedings under the Old Act shall be deemed to have been lapsed and the New Act shall apply.

Interpretation of Section 24

Till now, the judgment of Supreme Court ("SC") in *Harakchand's case*^[2] was considered the *locus classicus* on Section 24, wherein the SC, while considering a proceeding under the Old Act, kept the application of the Old Act alive. Ultimately, in another case,^[3] the Supreme Court felt that the issue needs determination by a larger bench, as they did not agree with a judgment of a coordinate bench, which followed *Harakchand's case*. Subsequently, in *Indore Development Authority v. Shailendra through LR and Others*^[4], the interpretation of Section 24 was once again referred to a larger bench for consideration. The SC, now in Judgment in Reference,^[5] by a complete majority, overruled the judgment of *Harakchand's case* and all the other judgments which followed *Harakchand's case*.

When does a proceeding initiated under the Old Act lapse?

The SC has now held that a proceeding already initiated under the Old Act will only be considered as lapsed, when all the conditions under Section 24(2) are fulfilled, i.e. (a) an award under Old Act was passed more than 5 years before the coming into force of the New Act (b) no possession has been taken by the

acquiring authority (c) no compensation has been paid by the acquiring authority. The SC held that the word 'or' used in Section 24 [*Please see the underlined portion above*] cannot be treated as disjunctive and that all the conditions have to be fulfilled, i.e. the acquiring authority must not have taken possession and must not have paid compensation pursuant to the award having been passed more than 5 years before the New Act, for the proceeding to be lapsed under the Old Act. The SC has taken into account various factors to come to this conclusion. Firstly, the SC observed, once a possession is taken under the Old Act, the land vests in Government. The payment of compensation is not related to the vesting of title. Therefore, it would lead to an absurd situation when a possession is taken (meaning vesting of title in favour of the government) and despite the same, the Old Act is declared as lapsed merely because compensation is not paid. Secondly, where consideration has been paid but no possession is taken, if the Old Act is considered as lapsed, the government would be entitled to claim back the consideration already paid. The same would also be an absurd

The SC has now held that a proceeding already initiated under the Old Act will only be considered as lapsed, when all the conditions under Section 24(2) are fulfilled

scenario, as the Old Act or the New Act do not provide for seeking any refund by the government from the landowners. Therefore, the SC held that Old Act can only be treated as lapsed when the award under Old Act was passed more than 5 years before the coming into force of the New Act and neither possession is taken nor consideration paid.

In case of landowners, whose proceedings are pending under the old act, such landowners can seek legal opinion based on the facts of their cases in order to understand the impact of the SC judgment.

The SC further considered the period of 5 years mentioned in Section 24 (2) of the New Act and held that for calculating the said 5 years, interim orders obtained by landowners in any proceedings would be excluded. Otherwise, the same would nullify the intention of the legislators and would actually give premium to forum hunting litigators.

To understand the effect of judgment of the SC, let's take the illustration of following four circumstances and effect of Judgment in Reference in case of each of the circumstances.

Illustration: In respect of a land, the collector had already passed an award under Old Act in the year 2005 for acquiring the land. Pursuant thereto,

1. **Circumstances 1:** Possession of the land has been taken but no compensation has been paid to landowners.

Effect of Judgment in Reference: In this case, the Old Act shall not lapse and the compensation shall be determined under the Old Act. New Act shall not apply.

2. **Circumstances 2:** Possession of the land has not been taken but compensation has already been paid to the landowners.

Effect of Judgment in reference: In this case also, the Old Act shall not lapse. The landowner cannot claim to refund the money and seek right over the land.

3. **Circumstances 3:** Neither possession of the land has been taken nor compensation been paid by the acquiring authority

Effect of Judgment in reference: The proceedings under the Old Act shall lapse. A fresh proceeding under the New Act would have to be initiated.

4. **Circumstances 4:** The landowner filed a writ petition and obtained a stay on further proceedings in the year 2004. The said stay order continued till 2012.

Effect of Judgment in Reference: The Old Act shall not lapse. Even though award is passed more than 5 years before the New Act, since the Landowner obtained a stay order, which continued for 8 years, the same would be excluded for the purpose of determining the period of 5 years

Conclusion

The Judgment in Reference gives clarity and sets out the parameters to determine as to what proceedings under the Old Act have lapsed and if such landowner will be able to take the benefit of Section 24. In case of landowners, whose proceedings are pending under the old act, such landowners can seek legal opinion based on the facts of their cases in order to understand the impact of the SC judgment.

*Soura Ghosh (Partner), Anirban Sen (Senior Associate) and
Jash Shah (Associate)*

[1] Indore Development Authority Vs. Manoharlal and Others. (SLP (C) Nos. 9036-9038 of 2016 – Judgment passed on 6 March 2020

[2] Pune Municipal Corporation & Another v. Harakchand Misrimal Solanki and others [2] (“Harakchand”) (2014) 3 SCC 183

[3] Yogesh Neema and Ors. Vs. State of Madhya Pradesh (2016) 6 SCC 387

[4] 2018 SCC Online SC 100

[5] Supra

DISCLAIMER

This newsletter is for informational purposes only, and not intended to be an advertisement or solicitation. This newsletter is not a substitute for professional advice. Hariani & Co. disclaim all responsibility and accept no liability for consequences of any person acting or refraining from acting on the basis of any information contained herein.

Copyright © : Hariani & Co. All rights reserved. Reproduction of this newsletter in whole or in part is allowed with proper reference to Hariani & Co.