

(2015) 06 KAR CK 0026

In the Karnataka High Court

Case No : Writ Petition Nos. 53890 and 53891 of 2014 (LA-RES)

Arun Kumar Nevatia and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 24-06-2015

Acts Referred:

General Clauses Act, 1897 — Section 6
Land Acquisition Act, 1894 — Section 11, 12(2), 16, 18, 31
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 114, 114(1), 114(2), 24, 24(2)

Citation : (2015) ILR Kar 3594 : (2015) 5 KarLJ 550

Hon'ble Judges : Ram Mohan Reddy, J.

Bench : Single Bench

Advocate : D.N. Nanjunda Reddy, Senior Counsel and Nishanth A.V., Advocate, for the Appellant; Y.D. Harsha, Additional Government Advocate and G. Balakrishna Shastry, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—Land measuring 2 acres in Sy. No. 7 and 1 acre in Sy. No. 9 of Gubbalala Village, Uttarahalli Hobli, Bangalore South Taluk, amongst other lands though proposed to be acquired pursuant to a preliminary notification on 4-3-1994, Annexure-"D" under Section 4(1) of the Land Acquisition Act, 1894 (for short "Act") and a final notification dated 14-6-1995 Annexure-E under sub-section (1) of Section 6 of the Act, led to the framing of an award dated 9-10-1997, following which possession of the land was taken by issue of a notification on 4-7-1998 Annexure-J, under sub-section (2) of Section 16 of the Act nevertheless on the allegation that compensation "was not paid", the land losers represented by their power of attorney holder have presented these petitions for the following reliefs:

(a) Declare the notifications issued by the respondent 1 under Section 4(1) of the Land Acquisition Act, 1894 vide Annexure-D, dated 4-3-1994 bearing No. LAQ(2)SR.2/92-93 and final notification vide Annexure-E issued under Section

6(1) of the Land Acquisition Act, 1894, dated 14-6-1995 bearing No. KamEe 110 BhuSwaBe 90 as lapsed in terms of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

(b) Issue a writ in the nature of certiorari quashing the notifications issued by the respondent 1 under Section 4(1) of the Land Acquisition Act, 1894 vide Annexure-D, dated 4-3-1994 bearing No. LAQ (2) SR 2/92-93 and final notification vide Annexure-E issued under Section 6(1) of the Land Acquisition Act, 1894, dated 14-6-1995 bearing No. KamEe 110 BhuSwaBe 90.

(c) Grant such other order/s, relief/s as this Hon"ble Court deems fit to grant, in the facts and circumstances of the case, in the interest of justice and equity.

Petitions are opposed by filing statement of objections of the 3rd respondent beneficiary of the acquisition, though not denying the aforesaid statements of facts, nevertheless, contends: (i) that in the award enquiry petitioners stated that they were not interested in receiving the compensation; (ii) that the power of attorney is not entitled to maintain the writ petition; (iii) that for over 20 years petitioners did not challenge the acquisition; (iv) possession of lands when taken by the State Government was handed over to the beneficiary society; (v) that petitioners did not demand payment of compensation and that since the respondent beneficiary extended its consent to drop from acquisition the remaining portion of the land in Sy. Nos. 7 and 9, petitioners stood to gain by way of enhancement in value of the said lands, and therefore "waived their right to receive compensation by consent", sequentially petitioners did not show interest to collect compensation though by award compensation was determined and tendered to the petitioners and despite notice under Section 12(2) of the "Act". The beneficiary has deposited Rs. 1,89,81,083/- with State Government towards compensation payable for acquisition of lands in question amongst other lands. Therefore, it is contended that petitioners are estopped from contending that the acquisition proceeding has lapsed by invoking Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, "New Land Acquisition Act").

2. The learned Government Advocate for the State Government when asked to verify and make submission over whether the amount of compensation as determined in the award was "paid" to the land losers/petitioners, files a memo of the Special Land Acquisition Officer stating that "the award passed on 9-10-1997 has been deposited in the State Treasury", and submits that compensation amount determined under the award is deposited in the State Treasury.

3. The first submission of the learned Counsel for beneficiary that the power of attorney holder of the petitioners has no locus standi to maintain this petition since the power of attorney is not in respect of petition schedule premises is opposed by the learned Senior Counsel Sri D.N. Nanjunda Reddy who points to. Annexure-F, copy of registered power of attorney in which the name of the

petitioners are shown as executants and the name of the attorney holder none other than the representative of the petitioners, while the schedule therein is identical to the petition schedule properties. The first submission is but a specious plea.

4. Having regard to the pleadings of the parties and the submissions of the learned Senior Counsel for the petitioners and the learned Government Advocate as well as Counsel for the beneficiary of the acquisition, the core question for decision making is:

"Whether under Section 24(2) of the "New Land Acquisition Act" the award Annexure-G, dated 9-10-1997 drawn under Section 11 of the Act, more than five years prior to the commencement of the New Land Acquisition Act", compensation has not been paid to the petitioners, admittedly land losers, the Land Acquisition proceeding under the Act shall be deemed to have lapsed?"

5. In order to appreciate the submissions of the learned Counsel, reference may be made to Section 24 which runs thus:

"24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.--(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894.--

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(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:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

6. So also Section 31(1) and 31(2) of the Act which reads thus:

"31. Payment of compensation or deposit of same in Court.--(1) On making an

award under Section 11 , the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by someone or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under Section 18 would be submitted:

....."

7. The aforesaid provisions came up for consideration before a three-Judges Bench of the Apex Court in *Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others*, whence it was observed thus:

"17. While enacting Section 24(2) , Parliament definitely had in its view Section 31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word "paid" to "offered" or "tendered". But at the same time, we do not think that by use of the word "paid", Parliament intended receipt of compensation by the landowners/persons interested. In our view, it is not appropriate to give a literal construction to the expression "paid" used in this sub-section (sub-section (2) of Section 24). If a literal construction were to be given, then it would amount to ignoring the procedure, mode and manner of deposit provided in Section 31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view, therefore, that for the purposes of Section 24(2) , the compensation shall be regarded as "paid" if the compensation has been offered to the person interested and such compensation has been deposited in the Court where reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act. In other words, the compensation may be said to have been "paid" within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in Court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33 .

18. The 1894 Act being an expropriatory legislation has to be strictly followed. The procedure, mode and manner for payment of compensation are prescribed in Part V (Sections 31 to 34) of the 1894 Act. The Collector, with regard to the payment of compensation, can only act in the manner so provided. It is settled proposition of law (classic statement of Lord Roche in *Nazir Ahmad vs. Emperor* AIR 1936 253 (Privy Council)) that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

19. Now, this is admitted position that award was made on 31-1-2008. Notices

were issued to the landowners to receive the compensation and since they did not receive the compensation, the amount (Rs. 27 Crores) was deposited in the Government Treasury. Can it be said that deposit of the amount of compensation in the Government Treasury is equivalent to the amount of compensation paid to the landowners/persons interested? We do not think so. In a comparatively recent decision, this Court in *Nazir Ahmad vs. Emperor* AIR 1936 253 (Privy Council) , relying upon the earlier decision in *Nazir Ahmad vs. Emperor* AIR 1936 253 (Privy Council) , has held that the deposit of the amount of the compensation in the State's revenue account is of no avail and the liability of the State to pay interest subsists till the amount has not been deposited in Court.

20. From the above, 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."

8. The aforesaid observations were followed and reiterated by a co-ordinate three-Judges Bench of the Apex Court in *Nazir Ahmad vs. Emperor* AIR 1936 253 (Privy Council) .

9. Yet again in *Nazir Ahmad vs. Emperor* AIR 1936 253 (Privy Council) , the observations in *Pune Municipal Corporations* case was followed.

10. In *Nazir Ahmad vs. Emperor* AIR 1936 253 (Privy Council) , His lordship Justice H.L. Dattu as he then was, speaking to the Bench observed thus:

"7. Keeping the aforesaid provisions in view, we have specifically looked into the assertions made by the appellant and the way it is countered by the

respondents. In our opinion though the award has been passed by the Land Acquisition Collector, they have not taken the physical possession of the land and have not paid the compensation to the appellant or had deposited the said compensation before an appropriate forum."

11. In *Nazir Ahmad vs. Emperor* AIR 1936 253 (Privy Council) , His Lordship Justice V. Gopala Gowda speaking to the Bench, after scanning various legal precedents observed thus:

"23. After referring to the aforesaid decisions with reference to the facts and circumstances of the case on hand, we are of the view that physical possession of the land belonging to the appellants has neither been taken by the respondents nor compensation paid to them even though the award was passed on 6-8-2007, and more than five years have lapsed prior to date on which the Act of 2013 came into force. Therefore, the conditions mentioned in Section 24(2) of the 2013 Act are satisfied in this case for allowing the plea of the appellants that the land acquisition proceedings are deemed to have lapsed in terms of Section 24(2) of the 2013 Act. The said legal principle laid down by this Court in *Pune Municipal Corporation* and other cases referred to supra with regard to the interpretation of Section 24(2) of the 2013 Act, with all fours are applicable to the fact situation in respect of the land covered in these appeals for granting the relief as prayed by the appellants in the applications."

12. Applying the aforesaid observations to the facts of this case, there being no dispute over relevant dates, supra, coupled with the fact that in the award Annexure-G the Special Land Acquisition Officer, though records the determination of the compensation for the lands acquired belonging to the petitioners, nevertheless does not record payment of compensation; so also the memo dated 23-6-2015 filed by the Special Land Acquisition Officer stating that compensation was deposited in the State Treasury, it is needless to state that the factum of non-payment of compensation to the petitioners is well-established. This is forfeited by a further observation that the Special Land Acquisition Officer, did not deposit the compensation amount, before the reference Court (Civil Court) in terms of the mandate of Section 31(2) of the Act, as would have been done in the case of a reference under Section 18 of the Act. Thus the inevitable conclusion is that the requirement of Section 24(2) of the "New Land Acquisition Act" is fully satisfied entitling the petitioners to a declaration that the proceeding of land acquisition of their lands i.e., petition schedule properties, under the Act is deemed to have lapsed.

13. The other submissions of waiver and estoppel to disentitle petitioners to the aforesaid declaration are but specious pleas which pale into insignificance. Regard being had to the contents of the award Annexure "G", there is not a titter of evidence to substantiate the aforesaid pleadings, more so on facts, since waiver and estoppel cannot be inferred from pleadings.

14. The submission of the learned Counsel for the respondent that the

beneficiary of the acquisition extended consent to drop from acquisition certain extents of land in Sy. Nos. 7 and 9 belonging to the petitioners and therefore, the value of which stood enhanced and therefore petitioners waived their right to receive the compensation, cannot but be noticed only to be rejected as a specious plea. There being nothing on record in support of the said plea except for a bald assertion, does not inspire confidence in the Court to draw and inferential finding. Even otherwise, Section 24(2) of the "New Land Acquisition Act" provides for a legal fiction of deemed lapse of the acquisition proceeding under the Act, if the requirements stated therein are satisfied.

15. In the circumstances petitioners have made out a case entitling them to the reliefs sought for. In the result, these petitions are allowed. A declaration and a writ of certiorari shall ensue, however insofar as it relates to the petition schedule properties.