

(2015) 02 CHH CK 0019

In the Chhattisgarh High Court

Case No : Writ Petition (C) Nos. 3908 and 4608 of 2008, 3693 and 4089 of 2007

Budru Kashyap and Others

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 09-02-2015

Acts Referred:

General Clauses Act, 1897 — Section 6
Land Acquisition Act, 1894 — Section 11, 31, 32, 33
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) 2 CGLJ 380

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Single Bench

Advocate : B.P. Sharma, Manoj Paranjpe and Harshal Chauhan, for the Appellant; Arun Sao, Deputy Advocate General, Advocates for the Respondent

Final Decision : Allowed

Judgement

Prashant Kumar Mishra, J.—WP(C) Nos. 3908/2008, 4089/2007 and 4608/2008 are arising out of Land Acquisition Case No. 10/A-82/04-05/04/2005 (Village Aghanpur) whereas WP(C) No. 3693/2007 is arising out of Land Acquisition Case No. 11/A-82/2004-05/2005 (Village Hatkachora). In the first batch of three writ petitions, challenge has been thrown to the legality and validity of the Land Acquisition Proceeding including the award passed in Land Acquisition Case No. 10/A-82/04-05/04/2005 on 27.1.2007 which was approved by the State Government on 10.5.2007 whereas in the latter writ petition, challenge has been thrown to the legality and validity of the Land Acquisition Proceeding including the award passed in Land Acquisition Case No. 11/A-82/2004-05/2005 on 21.11.2006 which was approved by the State Government on 14.6.2007.

2. Initially challenge is on the ground that notification under Sections 4 and 6 are vague; principles of natural justice have not been followed; objection to the acquisition has illegally been rejected by treating the same as time barred; the subject land is not suitable for the purpose for which it is acquired; nearby

available Government land has not been acquired and the private persons land is acquired which is malafide.

3. The proceedings have been drawn under the Land Acquisition Act, 1894 (hereinafter referred to as "the old Act"). In all the writ petitions, interim orders have been passed directing the parties to maintain status quo with respect to land of the petitioners.

4. During the pendency of the writ petitions, the Central Government has enacted the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) (hereinafter referred to as "the new Act") which has been made applicable with effect from 1.1.2014.

5. Before proceeding to argue other points urged in the writ petitions, learned counsel for the petitioners would raise a purely legal submission to the effect that in view of the provisions contained in Section c of the new Act and neither possession has been obtained from the petitioners nor compensation has been paid, the land acquisition proceeding would lapse and the award cannot be acted upon. They would refer to the law laid down by the Supreme Court in Ram Kishan and Others Vs. State of Haryana and Others .

6. Per contra, Shri Sao, learned Deputy Advocate General and Shri Pali, learned counsel for the respondent/Housing Board, would submit that although it is true that the Housing Board has not obtained possession of the lands, but the same happened because of the interim orders passed by this Court, therefore, Section 24(2) of the new Act has no application. They would also submit that the Housing Board having deposited the amount of compensation in the treasury, the amount should be deemed to have been paid to the petitioners and the award would not lapse.

7. Shri Sao would also submit that the writ petitions have been preferred after passing of the award, therefore, the writ petitions suffer from delay and laches and irrespective of the fact whether the award would lapse or not, the writ petitions deserve to be dismissed on this count alone.

8. In order to dwell on the issue raised before this Court regarding application of Section 24 of the new Act, it would be apt to refer to the said provision, which is reproduced hereinbelow:--

"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 (1 of 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 (1 of 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."

9. Sub-section (2) of Section 24 of the new Act, quoted above, makes it explicit that where an award under the old Act has been made five years or more, prior to the commencement of the new 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 contained in the new Act.

10. In the case at hand, Shri Pali, on instructions, would submit that because of the interim orders passed by this Court directing maintenance of status quo pertaining to the subject land, the Housing Board has not obtained possession of the land. There is also no dispute as to the position that after passing of the award, the Housing Board has deposited the amount in the treasury but the petitioners have not obtained payment of compensation. Thus, they have not yet been paid compensation.

11. The first judgment of the Supreme Court interpreting the rigor of Section 24(2) of the new Act has been reported in *Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others*, AIR 2014 SC 982 : (2014) AIRSCW 787 : (2014) 3 JT 283 : (2014) 1 RCR(Civil) 880 : (2014) 1 SCALE 618 : (2014) 3 SCC 183 . In the said matter of Pune Municipal Corporation (Supra) also, the award amount was deposited in the treasury but the land owners had not received compensation. Referring to the provisions contained in Section 31 of the old Act which provided for payment of compensation or deposit of same in the Court and considering the same alongside Section 24(2) of the new Act, the Supreme Court concluded in paragraphs-18, 19 and 20 thus:--

"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 31-34) 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) 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 Ivo Agnelo Santimano Fernandes and Others Vs. Government of Goa and Another, (2011) 5 SCALE 252 : (2011) 11 SCC 506 : (2011) 2 SCR 1142 , relying upon the earlier decision in Prem Nath Kapur and Another Vs. National Fertilizers Corpn. of India Ltd. and Others, (1996) 1 AD 195 : (1995) 9 JT 23 : (1995) 7 SCALE 109 : (1996) 2 SCC 71 : (1995) 5 SCR 790 Supp : (1996) 1 UJ 180 , 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."

(Emphasis supplied)

12. In Pune Municipal Corporation (Supra), the beneficiaries of the land acquisition proceedings also tried to take shelter under the provisions contained in Section 114 (2) of the new Act to argue that the proceedings under the old Act wherein an award has been passed are saved. Repelling the said contention, the Supreme Court held in paragraph-21 thus:--

"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."

13. The judgment in the matter of Pune Municipal Corporation (Supra) has been relied by the Supreme Court in its subsequent decision in the matter of Union of India (UOI) and Others Vs. Shiv Raj and Others, AIR 2014 SC 2242 : (2014) AIRSCW 3388 : (2014) 6 SCC 564 .

14. In 2 subsequent decisions in the matters of Bimla Devi Vs. State of Haryana, (2014) 7 SCALE 215 : (2014) 6 SCC 583 and Bharat Kumar Vs. State of Haryana and Another, (2014) 3 SCALE 393 : (2014) 6 SCC 586 , the Supreme Court quashed the award passed under the old Act on the ground that neither compensation was paid nor physical possession of the land was taken by the Government.

15. In a more recent judgment in the matter of Ram Kishan and Others Vs. State of Haryana and Others the Supreme Court has taken note of its earlier decisions to conclude in paragraphs-12 and 13 thus:--

"12. By considering the aforesaid decisions of this Court and the facts and circumstances of the present case on hand, we are of the view that physical possession of the land belonging to the appellants has not been taken by the respondents and more than five years have elapsed since the making of the award on 14.01.2006 when the Resettlement Act, 2013 came into force on 01.01.2014. Therefore, the conditions stated in Section 24(2) of the Act of 2013 are fulfilled for allowing the plea of the appellants that the land acquisition proceedings be deemed to have elapsed. The said legal principle laid down by this Court in the case of Pune Municipal Corporation and other cases referred to supra with regard to interpretation of Section 24(2) of the Act of 2013 are applicable with all fours to the fact situation on hand with respect to the land covered in this appeal and for granting relief as prayed by the appellants in this application.

13. In view of the aforesaid decisions of this Court referred to supra, and the findings and reasons recorded by us the application filed under Section 24(2) of the Act of 2013 is allowed. Consequently, having regard to the facts of this case, this appeal is allowed by quashing the acquisition proceedings in so far as the land of the applicants/appellant Nos. 24-28 are concerned. There shall be no order as to costs."

(Emphasis supplied)

16. Shri Sao, learned Deputy Advocate General would also argue that the writ petitions suffer from delay and laches because the writ petitions have been presented after passing of the award.

17. In the matter of Prahlad Singh and Others Vs. Union of India (UOI) and Others, (2011) 2 RCR(Civil) 863 : (2011) 5 SCALE 296 : (2011) 5 SCC 386 : (2011) 5 SCR 1002 , it has been observed that in cases where the writ petition has been preferred after passing of the award and obtaining possession by the Government, it would suffer from delay and laches.

18. However, in the present case, admittedly, possession has not been taken from the petitioners. Thus, the writ petitions do not suffer from delay and laches. For the aforesaid reasons, all the writ petitions are allowed. In view of the provisions contained in Section 24(2) of the new Act and since neither possession has been obtained from the petitioners nor compensation has been paid to them, the land acquisition proceedings have lapsed. The respondents may proceed to re-acquire the land as provided under Section 24(2) of the new Act, in accordance with law.

HEADLINES

WP(C) No. 3908 of 2008 and other connected matters

Land Acq. award more than 5 years back under old Act, but neither possession taken nor compensation paid. Proceeding lapsed u/s. 24(2) of new Act.