

(2017) 12 DEL CK 0453

In the Delhi High Court

Case No : Civil Writ Petition No. 2261 Of 2015

Gian Singh And Anr.

APPELLANT

Vs

Union Of India And Anr.

RESPONDENT

Date of Decision : 20-12-2017

Acts Referred:

Constitution Of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 4, 6, 11, 18, 31, 31(1), 31(2), 32, 33, 34

Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 24(2)

Citation : (2017) 12 DEL CK 0453

Hon'ble Judges : G.S.Sistani, J;V. Kameswar Rao, J

Bench : Division Bench

Advocate : Anuroop P.S., Yeeshu Jain, Jyoti Singh, Sanjeev Sabharwal

Final Decision : Disposed Of

Judgement

G.S.Sistani, J

1. This is a petition under Article 226 of the Constitution of India. The petitioners seek a declaration that the acquisition proceedings in respect of the

land comprised in Khasra No.2528/1229 (12 bighas 11 biswas) and Khasra no.1223 (8 bighas and 16 biswas) wherein the petitioners are having 1/6th

share, situated in the revenue estate of village Mehrauli, New Delhi (hereinafter referred to as "the subject land") are deemed to have lapsed in

view of Section 24 (2) of the Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter

referred to as "the New Act") as compensation has not been paid and the physical possession has not been taken.

2. The necessary facts to be noticed for disposal of this writ petition are that a Section 4 notification of the Land Acquisition Act, 1894 (hereinafter

referred to as 'the Act') was issued on 23.01.1965. Section 6 declaration was made on 07.12.1966. Thereafter an Award bearing No.80-E/70-71

(supp) was rendered in the year 1981.

3. Learned counsel for the petitioners has drawn the attention of the Court to para 4A of the counter affidavit filed by the LAC in support of his

submission that the compensation was not tendered to the petitioners but is lying deposited in RD. A counter affidavit has also been filed by the DDA

according to which, part of the land has been transferred to Horticulture Department and part of the land is to be used for S.F.S. Flats. Counsel for

the petitioner submits that the land is lying vacant and the same has not been put to use despite Section 4 notification issued as far back as in the year

1965, although it is claimed that possession was taken in the year 1981. Learned counsel for the petitioners submits that the case of the petitioners

would be fully covered by the decision rendered by the Apex Court in Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.,

reported at (2014) 3 SCC 183.

4. We have heard learned counsel for the parties. Para 4A of the counter affidavit filed by the LAC reads as under:

4A. That it is submitted that the lands of village Mehrauli were notified under Section 4 of the Land Acquisition Act, 1894 dated 23.01.1965 which

was followed by the Notification under Section 6 of the Act dated 7.12.66. The Award was also passed vide Award No.80-E/70-71 dated 9.1.1981

and the physical possession of the land was taken on 23.9.1981 and handed over to requisition agency on the spot. It is submitted that since there was

a dispute over the payment of compensation, the same could not be paid and lying deposited in RD. It is further submitted that the factum of taking

physical possession is also apparent from the prayer of the petitioners whereby they have sought restoration of possession from the DDA.

5. Reading of the counter affidavit leaves no room for doubt that compensation has not been paid to the petitioners. Counter affidavit filed by the

DDA would also show that the land has not been put to use and thus there is no force in the submission made by the counsel for the petitioners that

the land is lying vacant. Learned counsel for the petitioners relies on the decisions rendered in Khazani & Ors. vs. The Honorable Lt.Governor Raj

Bhawan, Delhi and Ors., W.P.(C) 6587/2014 decided on 23.12.2014 and also in

Girish Chhabra vs. Lt.Governor of Delhi and Ors., W.P.(C)

2759/2011 decided on 12.09.2014. Counsel submits that in the aforesaid matters physical possession of the land has been taken but compensation has not been paid. However, the declaration was granted by the predecessor Bench of this Court.

6. Having regard to the fact that admittedly compensation has not been paid to the petitioners, we are of the view that the case of the petitioners

would be covered by the decision rendered by the Supreme Court of India in the case of Pune Municipal Corporation & Anr. (supra). Paras 14 to 20

read as under:

14. Section 31(1) of the 1894 Act enjoins upon the Collector, on making an award under Section 11, to tender payment of compensation to

persons interested entitled thereto according to award. It further mandates the Collector to make payment of compensation to them unless prevented

by one of the contingencies contemplated in sub-section (2). The contingencies contemplated in Section 31(2) are: (i) the persons interested entitled to

compensation do not consent to receive it (ii) there is no person competent to alienate the land and (iii) there is dispute as to the title to receive

compensation or as to the apportionment of it. If due to any of the contingencies contemplated in Section 31(2), the Collector is prevented from

making payment of compensation to the persons interested who are entitled to compensation, then the Collector is required to deposit the

compensation in the court to which reference under Section 18 may be made.

15. Simply put, Section 31 of the 1894 Act makes provision for payment of compensation or deposit of the same in the court. This provision requires

that the Collector should tender payment of compensation as awarded by him to the persons interested who are entitled to compensation. If due to

happening of any contingency as contemplated in Section 31(2), the compensation has not been paid, the Collector should deposit the amount of

compensation in the court to which reference can be made under Section 18.

16. The mandatory nature of the provision in Section 31(2) with regard to deposit of the compensation in the court is further fortified by the provisions

contained in Sections 32, 33 and 34. As a matter of fact, Section 33 gives power to the court, on an application by a person interested or claiming an

interest in such money, to pass an order to invest the amount so deposited in

such government or other approved securities and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider proper so that the parties interested therein may have the benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

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 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. 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[1]) 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 31.01.2008. 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 Agnelo Santimano Fernandes[2], relying upon the earlier decision in Prem Nath Kapur[3], 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.??

7. We are of the considered view that the necessary ingredients for the application of Section 24(2) of the New Act as has been interpreted by the

Supreme Court of India and this Court in the following cases stand satisfied:

(1) Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors., reported at (2014) 3 SCC 183;

(2) Union of India and Ors v. Shiv Raj and Ors., reported at (2014) 6 SCC 564;

(3) Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors, Civil Appeal no.8700/2013 decided on 10.09.2014;

(4) Surender Singh v. Union of India & Others, W.P.(C).2294/2014 decided on 12.09.2014 by this Court; and

(5) Girish Chhabra v. Lt. Governor of Delhi and Ors; W.P.(C).2759/2014 decided on 12.09.2014 by this Court.

8. Having regard to the submissions made and stand taken by the LAC that

compensation has not been paid to the petitioners, it is declared that the acquisition proceedings qua the subject land of the petitioners stand lapsed. However, as the possession has been taken over, petitioners would only be entitled to compensation as per the New Act.

9. The writ petition stands disposed of.