(2014) 09 DEL CK 0265

In the Delhi High Court

Case No : W.P. (C) 2759/2014 and CM Nos. 10673 and 14840/2014

Girish Chhabra APPELLANT

Vs

Lt. Governor of Delhi RESPONDENT

Date of Decision : 12-09-2014

Acts Referred:

General Clauses Act, 1897 — Section 6, 6(1)
Land Acquisition Act, 1894 — Section 11, 11A, 16, 18, 24
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 11, 114, 114(1), 114(2), 19(1)

Citation : (2014) 09 DEL CK 0265

Hon'ble Judges : Siddharth Mridul, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Esha Mazumdar, Advocate for the Appellant; Sanjay Poddar, Senior Advocate, Siddharth Panda, Govind Kumar, Anshuman Nayak, Jyoti Tyagi and Arun Birbal, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Badar Durrez Ahmed, J.—In this writ petition, the following prayers have been made:-

"(a) Writ of Certiorari or any other appropriate writ, order or direction in the nature thereof, quashing, Declaration u/s. 6 bearing No. F.11(2) /88/LandB/LA of the said Act dated 08.09.1989, the Award bearing No. 5/91-92 and in consequence thereof quashing Notification No. F.11(7) /88-LandH/LA dated 23.06.1989 u/s. 4 of the Land Acquisition Act, 1894;

(b) Writ of Mandamus or any other appropriate writ, order or direction in the nature thereof, thereby directing the Respondents to denotify the lands of the petitioner bearing Khasra Nos. 60/22/1 (17 biswas) and 60/22/2 (4 biswas) in Village Shahbad Daulatpur, Delhi;

(c) Award appropriate costs in the facts and circumstances of the case;

(d) Any other or further order or direction which this Hon''ble Court may deem fit and proper in the facts and circumstances of the case be passed / issued in favour of the petitioner."

2. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as ''the 2013 Act'') came into effect on 01.01.2014. Section 24 of the 2013 Act reads as under:-

"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 u/s 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 u/s 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

3. It is claimed by the petitioner and accepted by the respondents that though physical possession has been taken of the subject land, compensation has not been paid. The award in respect of the subject land was made on 06.09.1991, that is, more than five years prior to the commencement of the 2013 Act. A declaration is sought that the acquisition in respect of the subject land has lapsed by virtue of the provisions of Section 24(2) of the 2013 Act. The petitioner places reliance on the following Supreme Court decisions: (1) Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others, ; (2) Union of India (UOI) and Others Vs. Shiv Raj and Others, ; and a very recent decision of the Supreme Court in (3) Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors: Civil Appeal No. 8700/2013 decided on 10.09.2014.

4. In Pune Municipal Corporation (supra) , the Supreme Court with reference to Section 24(2) of the 2013 Act held as under:-

"11. Section 24(2) also begins with non obstante clause. This provision has overriding effect over Section 24(1). Section 24(2) enacts that in relation to the land acquisition proceedings initiated under the 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied viz. (i) physical possession of the land has not been taken, or (ii) the compensation has not been paid; such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the appropriate Government still chooses to acquire the land which was the subject-matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the 2013 Act. The proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act an award has been made and compensation in respect of a majority of landholdings has not been deposited in the account of the beneficiaries then all the beneficiaries specified in the Section 4 notification become entitled to compensation under the 2013 Act."

(underlining added)

In connection with the manner in which compensation is to be paid, the Supreme Court further observed as under:-

"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 u/s 18 can be made on happening of any of the contingencies contemplated u/s 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."

(underlining added)

Later in the said judgment, the Supreme Court reiterated its position on Section

24(2) of the 2013 Act as under:-

"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. u/s 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 u/s 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."

(underlining added)

5. In Shiv Raj (supra) the Supreme Court reiterated the view taken by the earlier three Judge Bench in Pune Municipal Corporation (supra).

6. In the recent decision in Sree Balaji Nagar Residential Association (supra) , the Supreme Court once again examined the provisions of Section 24(2) of the 2013 Act and, after following the decisions in Pune Municipal Corporation and Shiv Raj (supra) , observed as under:-

"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 u/s 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 u/s 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 Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, .

10. Even in the Land Acquisition Act of 1894, the Legislature had brought about amendment in Section 6 through an Amendment Act 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 u/s 6(1) of the Act. To a similar effect was Explanation to Section 11A which was added by Amendment Act 68 of 1984. Clearly the Legislature has, in its wisdom, made the period of five years u/s 24(2) of the 2013 Act 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 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.

11. It was faintly suggested by Mr. Subramonium Prasad, learned AAG for the State of Tamil Nadu that the proviso may come to the rescue of the State and save the proceedings from suffering lapse if it is held that since there was an award leading to payment of compensation in respect of some of the land holdings only, therefore all the beneficiaries may now be entitled to compensation in accordance with the provisions of the 2013 Act. This contention could have been considered with some more seriousness if physical possession of the land had been taken but since that has not been done, the proviso dealing only with compensation cannot be of any help to the State. Therefore, we are not required to go deeper into the effect and implications of the proviso which prima facie appears to be for the benefit of all the land holders in a case where the award is subsisting because the proceedings have not lapsed and compensation in respect of majority of land holdings has not been deposited in the account of the beneficiaries. There is nothing in the language of the proviso to restrict the meaning of the words used in Section 24(2) mandating that the proceedings shall be deemed to have lapsed if the award is five years or more than five years'' old but the physical possession of the land has not been taken over or the compensation has not been paid. The law is trite that when the main enactment is clear and unambiguous, a proviso can have no effect so as to exclude from the main enactment by implication what clearly falls within its express terms, as held by Privy Council in the case of AIR 1944 71 (Privy Council) and by this Court in the case of The Commissioner of Income Tax, Mysore, Travancore-cochin and Coorg, Bangalore Vs. The Indo Mercantile Bank Limited, .

12. The judgment of three Judges'' Bench in the case of Harakchand Misirimal (supra) has been followed by another Bench of three Judges in the case of Union of India (UOI) and Others Vs. Shiv Raj and Others, . In paragraphs 25 and 26 of that judgment, this Court took notice of a clarification issued by the Government of India, Ministry of Urban Development, Delhi Division dated 14.03.2014. Part of the circular extracted in that case clearly shows that the period of five years or more in Section 24(2) of the 2013 Act has been prescribed with a view to benefit the land-losers and the period spent in litigation due to challenge to the award or the land acquisition proceedings cannot be excluded."

(underlining added)

7. From the above decisions of the Supreme Court, it is clear that Section 24(2) stipulates that where a award has been made five years or more prior to the commencement of the 2013 Act and where either of the two contingencies is

satisfied, that is, (i) physical possession of the land has not been taken, or (ii) compensation has not been paid, the acquisition proceedings shall be deemed to have lapsed. It is also clear that while computing the period from the making of the award till the commencement of the 2013 Act, 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 a stay order or an injunction granted by any court. Moreover, it is evident from the Supreme Court decision in Pune Municipal Corporation (supra) that for the purposes of Section 24(2) , the compensation shall be regarded as "paid" only if the compensation has been offered to the person interested and such compensation has been deposited in the court where a reference u/s 18 can be made on the happening of any of the contingencies contemplated u/s 31(2) of the Land Acquisition Act, 1894. The Supreme Court has clarified that the compensation can be said to be paid within the meaning of Section 24(2) when the Collector or the Land Acquisition Officer, as the case may be, has discharged his obligation and deposited the amount of compensation in court and made the amount available to the interested person to be dealt with as provided in Sections 32 and 33 of the Land Acquisition Act, 1894. It is, therefore, clear that mere depositing of the compensation in the court is not sufficient unless and until it has been first offered to the person interested and he has refused to accept the same. Furthermore, the proviso after Section 24(2) of the 2013 Act does not, in any manner, restrict the meanings of the words used in Section 24(2) which clearly mandate that the proceedings shall be deemed to have lapsed if the award has been made five years or more prior to the commencement of the 2013 Act but the physical possession of the land has not been taken over or the compensation has not been paid. The Supreme Court in Sree Balaji Nagar (supra) specifically dealt with the proviso and came to the above conclusion and in doing so also noted that when the main enactment is clear and unambiguous, a proviso can have no effect so as to exclude from the main enactment by implication what clearly falls within its express terms.

8. Mr. Sanjay Poddar, senior advocate, appearing for the Land Acquisition Collector, sought to distinguish the Supreme Court decision in Pune Municipal Corporation (supra) by contending that the question before the Supreme Court in that case was limited to the expression ''compensation has not been paid'' as appearing in section 24(2) of the 2013 Act. We are afraid we cannot read any such limitation into the clear and unequivocal observations of the Supreme Court which have been set out above. Moreover, the same have been reiterated and reinforced by the Supreme Court in its subsequent decisions in Shiv Raj (supra) and Sree Balaji Nagar (supra).

9. It was then contented by Mr. Poddar that where two negatives are interspersed with ''or'', the ''or'' will have to be read as ''and''. Reliance was placed on Punjab Produce and Trading Co. Ltd. Vs. Commissioner of Income Tax, West Bengal II, Calcutta, . On the basis of this contention, it was urged that before an acquisition could be deemed to have lapsed both the conditions - (i) physical possession not having been taken and (ii) compensation not having

been paid - would have to be satisfied. This argument is also not available to the respondents in view of the interpretation put on the provisions of section 24(2) of the 2013 Act by the Supreme Court, consistently and specifically, in all the three decisions in Pune Municipal Corporation (supra) , Shiv Raj (supra) and Sree Balaji Nagar (supra).

10. It was also sought to be contended by Mr. Poddar that in cases where possession has been taken by the land acquiring agency the lands have vested in the government by virtue of section 16 of the Land Acquisition Act, 1894 and there is no question of any lapsing of acquisitions. He submitted that in such cases even the government cannot withdraw from the acquisition u/s 48 of the 1894 Act. He further submitted that there is no provision even in the 2013 Act for return of possession. These arguments are not tenable, first of all, in view of the clear decision of the Supreme Court in Pune Municipal Corporation (supra) , Shiv Raj (supra) and Sree Balaji Nagar (supra). Secondly, the arguments of Mr. Poddar are premised on a mindset fashioned by the provisions of and decisions under the 1894 Act. That would not do as the 1894 Act has been replaced by the 2013 Act. In the words of the Supreme Court in Pune Municipal Corporation (supra), the Shiv Raj (supra) and Sree Balaji Nagar (supra). Secondly, the arguments of Mr. Poddar are premised on a mindset fashioned by the provisions of and decisions under the 1894 Act. in place an entirely new regime for compulsory acquisition of land."

11. Mr. Poddar also sought to contend that the proviso after section 24(2) of the 2013 Act ought to be construed as a saving clause. If so construed, the proviso saves the position existing on the commencement of the 2013 Act, implying thereby that if the majority of the landholders have received the compensation then the 1894 Act would apply. If not, then all would be entitled to compensation under the 2013 Act. Such an argument has to be stated to be rejected as it runs contrary to the clear provisions of deemed lapsing contained in section 24(2) of the 2013 Act. As held in Sree Balaji Nagar (supra) "there is nothing in the language of the proviso to restrict the meaning of the words used in section 24(2) mandating that the proceedings shall be deemed to have lapsed if the award is five years or more than five years'' old but the physical possession of the land has not been taken over or the compensation has not been paid."

12. The learned counsel appearing on behalf of the respondents also sought to argue that the proviso would have to be considered even in cases which clearly fall within Section 24(2) of the 2013 Act because there is a colon which separates the main part of Section 24(2) and the proviso. It was contended that the proviso, therefore, has to be read as part of Section 24(2) and not as a proviso. We are afraid that this argument is also not available to the respondents in view of the clear conclusion of law set out by the Supreme Court in the case of Sree Balaji Nagar (supra). Even otherwise, the argument is merely to be stated to be rejected.

13. In the present case although the physical possession of the land in question

has been taken, compensation has not been paid. In view of the provisions of section 24(2) of the 2013 Act as interpreted in the Supreme Court decisions cited above, the acquisition proceedings in respect of the subject land would be deemed to have lapsed. It is, accordingly, declared that the subject acquisition has lapsed in terms of the deeming provision of Section 24(2) of the 2013 Act and the respondents are not entitled in law to retain possession of the subject land.

14. The writ petition is allowed to the aforesaid extent. There shall be no order as to costs.

