

(2017) 01 DEL CK 0014
In the Delhi High Court
Case No : W.P.(C) 8273 of 2014

Guru Nanak Vidya Bhandar Trust

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 04-01-2017

Acts Referred:

Citation : (2017) 161 DRJ 168 : (2017) 161 DRJ 400

Hon'ble Judges : Badar Durrez Ahmed and Ashutosh Kumar, JJ.

Bench : Division Bench

Advocate : Mr. Yeeshu Jain with Ms. Jyoti Tyagi, Advocates, for the L&C/L&B; Mr. Dev P. Bhardwaj, CGSC with Ms. Anubha Bhardwaj, Advocates, for the Union of India; Mr. Ravinder Sethi, Senior Advocate with Mr. Ajoy Halia, Mr. Rajiv Kr. Ghawana & Mr. Puneet Sharma, Advocates, for the Petitioner; Mr. Anil Grover, St. Counsel with Ms. Noopur Singhal and Ms. Kanika Singh, Advocate, for the NDMC

Final Decision : Disposed Off

Judgement

Ashutosh Kumar, J. - This writ petition has been filed invoking the proviso in section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the 2013 Act") which came into effect on 01.01.2014.

2. The acquisition proceedings had commenced under the Land Acquisition Act, 1894 (hereinafter referred to as "the 1894 Act") and culminated in an award no. 01/2009-10 dated 06.08.2009, in respect to a portion of the Petitioners property, measuring 3394.10 sq. m., in 9 Jantar Mantar Road (measuring a total of 2.18 Acres).

3. The possession of the land has been taken and the same has already been put into public use.

4. Respondent no.1 is the lessor of the property. The property was originally leased out in favour of one Sardar Ram Singh Kabli, and thereafter the title in the property was transferred in favour of the petitioner. It is also not in dispute

that the land of the petitioner was encroached upon by the NDMC, possession of which was taken in an illegal manner. Pursuant thereto the Petitioner had filed a suit for possession in the year 1979 (CS (OS) 390/1979), which was decreed by a learned single Judge of this Court vide judgment and decree dated 08.03.2006. Appeal to the Division Bench and thereafter to the Supreme Court preferred by the NDMC also failed. It is thereafter that the NDMC requested the Land Acquisition Authority to acquire the land and the present acquisition proceedings were initiated.

5. The notifications under section 4 and 17(1) dated 22.11.2007 and declaration under section 6 dated 11.12.2007, inter alia, were challenged before this Court by way of a writ petition bearing W.P.(C) No. 729/2008. The same was disposed of vide a consent order dated 08.05.2009 with the following directions:

1. The estimated compensation for the land would be re-determined in terms of the decision taken by the Government of NCT of Delhi as contained in para 7 of the affidavit filed by the LAC affirmed on 5.5.2009 especially taking into consideration the circle rate which has proximity to the date of notification.

2. Such fresh estimated compensation subject to the final determination would be paid to the petitioners within one (1) month from today.

3. The proceedings relating to the determination of the final compensation would be concluded within a maximum period of four (4) months from today.

4. The parties will file the necessary documents within a maximum period of one (1) month from today before the LAC.

6. Vide the award dated 06.08.2009 a compensation of Rs. 10,48,79,702/- was granted. The compensation was directed to be paid to the rightful occupant / lessee, on the basis of the latest records, in the rate of 80% to the claimant/ lessee, and 20% to the lessor (Respondent No.1). Even though the LAC observed that as per the documents provided, the claimant (petitioner herein), is indicated as the owner, it went on to observe that the documents available on record (copy of the perpetual lease, and also those as provided petitioner) did not establish the transfer of lease of the claimant, conclusively. A letter dated 28.05.2009 issued by respondent no.1 to the LAC, indicating that the land was mutated in favour of the petitioner, was also on record. However, the LAC observed that copy of mutation or lease record had not been furnished along with it. The LAC therefore, referred the case to the court of ADJ in terms of sections 30&31 of the 1894 Act.

7. The aforementioned amount was deposited by the LAC in the court of the Ld. ADJ/Reference Court on 27.04.2011.

8. It is submitted on behalf of the respondent no.4 that since there was a dispute regarding the apportionment of the compensation, the same was referred under section 30 & 31 of the 1894 Act and the same is still pending adjudication. It was further submitted that the amount awarded towards compensation was duly

deposited with the Ld. ADJ on 27.04.2011 and 75% of the said amount has already been released to the petitioner in terms of order dated 26.08.2015 passed by the Ld. ADJ. It was also pointed out by the respondent no.2 that the petitioner had also filed a reference petition under section 18 of the 1894 Act, which is still pending before the Reference Court.

9. The petitioner on the other hand has argued that the said amount was released in favour of the petitioner under the orders of this court in the present petition (20.01.2015 and 21.04.2015) wherein it was observed that the same shall be received by the petitioner without prejudice to its rights and contentions in so far as the applicability of the Act of 2013 is concerned.

10. The aforementioned orders are reproduced hereunder:

Order

20.01.2015

The learned counsel for the respondents request for another opportunity to file the counter affidavits. The same be filed within four weeks. The rejoinder affidavits, if necessary, be filed before the next date of hearing.

The learned counsel for the petitioner states that at least the compensation which has been awarded under the Land Acquisition Act, 1894 be paid to the petitioner without prejudice. A reference was made to the order dated 08.05.2009 passed in W.P.(C) 729/2008 where, inter alia, it was directed that the fresh estimated compensation subject to the final determination be paid to the petitioners within one month from that date. That has not happened. The learned counsel for the respondents shall ensure that the order dated 08.05.2009 is complied with before the next date of hearing without prejudice to the rights and contentions of the parties insofar as the applicability of the new Act is concerned.

Renotify on 21.04.2015.

Order

21.04.2015

We are now informed that the estimated amount of compensation has been deposited in the court of Mr Suresh K. Gupta, ADJ-02 & Wakf Tribunal. In this backdrop the petitioner is permitted to move an application before the said court for release of the amount as directed by this court in WPC 729/2008 on 08.05.2009. The Land Acquisition Collector shall fully cooperate with the petitioner in ensuring that the order dated 08.05.2009 is complied with. This would be without prejudice to the rights and contentions of the parties insofar as the applicability of the new Act is concerned.

Renotify on 18.08.2015.

In the meanwhile, the respondents shall file their counter affidavits positively within four weeks. The rejoinder affidavits, if necessary, be tiled before the next

date of hearing.

11. It appears therefore that the LAC (Respondent no.4) has deposited the said amount in the court of the Ld. ADJ without following the procedure as mandated under section 31(2) of the 1894 Act. Therefore the compensation will not be deemed to have been offered to the petitioners in view of the decision of the Supreme Court in *Pune Municipal Corporation and Anr v. Harakchand Misirimal Solanki and Ors*: (2014) 3 SCC 183, and thus cannot be regarded as compensation having been paid to the petitioners.

12. The issue to be decided therefore is whether reprieve of the proviso in section 24 of the 2013 Act can be taken or not, in the facts of the present case.

13. 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 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."

14. The issue with regard to the said proviso after section 24(2) came up for consideration before this court in *Tarun Pal Singh & Anr. v. Lt. Governor, Govt. of NCT of Delhi & Ors.*: WP(C) 8596/2014, and other connected matters, which was decided on 21.05.2015. In that case, this court held as under:-

"6. It is evident that under section 24(1), two situations are set out. One where no award has been made under section 11 of the 1894 Act and the other where

an award has been made under section 11 of the said Act. Insofar as the latter case is concerned, section 24(2) provides an exception and it begins with a non-obstante clause. In other words, in cases where Awards have been made under section 11 of the 1894 Act, another sub- category of Awards has been carved out by virtue of section 24(2) and those relate to Awards which had been made more than five years prior to the commencement of the 2013 Act, that is, more than five years prior to 01.01.2014. In such cases, that is, where the Awards have been made more than five years prior to the commencement of 2013 Act, if physical possession of the land in question has not been taken or compensation has not been paid, the acquisition proceedings are deemed to have lapsed. [see: (i) Pune Municipal Corporation and Anr v. Harakchand Misirimal Solanki and Ors: (2014) 3 SCC 183; (ii) Union of India and Ors. v. Shiv Raj and Ors: (2014) 6 SCC 564; (iii) Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors: Civil Appeal No. 8700/2013 decided on 10.09.2014; and (iv) Surender Singh v. Union of India and Ors.: W.P.(C) 2294/2014 decided 12.09.2014 by this Court.

7. It is, therefore, clear that in those cases where the Awards have been made more than five years prior to the commencement of the Act, section 24(2) would have applicability, subject to the other conditions being fulfilled. But, in cases where the Awards have been made within five years of the commencement of the 2013 Act, section 24(2) would not apply. It is also clear that once the conditions of section 24(2) are met, the acquisition itself lapses and therefore no occasion would arise for invoking the first proviso which is set out after section 24(2). This is so because the first proviso entails a situation where the acquisition is saved but the compensation is awarded under the 2013 Act. The proviso cannot blow life into the acquisition which has lapsed under the main provision of sub-section (2) of Section 24 of the 2013 Act. It is for this reason that we think that the first proviso which has been placed after section 24(2) is not really a proviso to section 24(2) but, a proviso to Section 24(1)(b). The said first proviso and Section 24(1)(b) can easily be read together. Section 24(1)(b) in effect relates to all cases where awards have been under the 1894 Act except those which are covered under Section 24(2). Clearly, awards made less than five years prior to the commencement of the 2013 Act would fall under Section 24(1)(b). As such, the general rule in such cases is that the provisions of the 1894 Act would continue to be applicable, as if the 1894 Act had not been repealed. However, the said first proviso carved out an exception to this general rule by providing that in cases where 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 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. This is a provision for the benefit of landowners inasmuch as even in cases of completed acquisitions, if the conditions stipulated under the said first proviso stand satisfied, the compensation would have to be provided under the more beneficial provisions of the 2013 Act.

8. Thus, while the said first proviso can harmoniously exist when read as a proviso to Section 24(1)(b), it cannot so exist when sought to be read as a proviso to Section 24(2) of the 2013 Act."

15. It is pertinent to point out that the reference to the "first" proviso is a reference to the proviso in question as the "second" proviso which had been introduced through an Ordinance, is no longer in the statute book as the Ordinance has lapsed. The aforesaid view has been followed in *Usha Devi and Ors. v. Union of India* and Ors: Writ Petition nos. 6339/2015, 6356/2015, 6357/2015, 6363/2015, 6378/2015 and 6490/2015 decided on 23.02.2016 by this court, and in *Inspiration Engineer Pvt. Ltd. & Ors. v. Union of India & Ors.*: 2016 (156) DRJ 129 (DB).

It is, therefore, clear from the said decisions that the said proviso is actually a proviso to section 24(1)(b) of the 2013 Act and is not a proviso to section 24(2).

16. In the present petition, the award was made on 06.08.2009 which is clearly within the period of five years prior to the commencement of the 2013 Act. Therefore, section 24(2) would have no application and Section 24(1)(b) would clearly apply.

17. Thus, now what has to be seen is whether or not compensation, in respect of a majority of land holdings, had been deposited in the account of the beneficiaries as mentioned in the said proviso and as already interpreted above.

18. On a perusal of the facts it is evident that the compensation was deposited in the court unilaterally and without it being offered to the persons interested as interpreted in *Pune Municipal Corporation (Supra)*, and even otherwise no facts have been brought on record to suggest that the same was offered to the petitioner. It follows that compensation in respect of "a majority" of land holdings has not been deposited in the account of the "beneficiaries". As a result of this, the petitioner would be entitled to compensation in accordance with the 2013 Act.

19. The writ petition is allowed to the extent that the acquisition will stand but the compensation shall be paid to the petitioner under the new Land Acquisition Act of 2013. The amount already released to the petitioner as indicated above shall be adjusted against the total amount computed in terms of the 2013 Act.

CM 19209/2014

1. In view of the petition having been disposed of, the application has become infructuous.

2. The application is disposed of accordingly.