

(2014) 09 DEL CK 0375

In the Delhi High Court

Case No : Writ Petition (Civil) 1393/2014 and CM No. 2905/2014

Gyanender Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 11, 18, 24, 24(2), 32

Citation : (2014) 146 DRJ 538

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

Bench : Division Bench

Advocate : N.S Vasisht, Vishal Singh, Madhur Prabhat Bhargava and Jyoti Karatia, Advocate for the Appellant; Ripu Daman Bhardwaj, T.P Singh, Ajay Verma, Sanjay Poddar, Senior Advocate, Siddharth Panda, Govind Kumar, Anshuman Nayak and Jyoti Tyagi, Advocate for the Respondent

Judgement

Badar Durrez Ahmed, J.—By way of this writ petition, the petitioners seek the benefit of Section 24(2) 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. The petitioners urged that possession of the subject lands have not been taken nor has the compensation been paid to them. They also state that the awards made in respect of the subject lands were made more than five years prior to the commencement of the 2013 Act. Consequently, it is contended that all the ingredients necessary for invoking the provisions of Section 24(2) of the 2013 Act has been satisfied.

2. The learned counsel for the respondents contend that possession of the subject lands were taken on 05.07.2013 and 17.07.2013 and this fact was informed to this court in W.P.(C) No. 7057/2005 (Court On Its Own Motion). Insofar as compensation is concerned, it was contended on behalf of the respondents that the amount of compensation was deposited in this court in CM Main Nos. 1403/2013 and 1411/2013 on 30.12.2013. It was contended that as

the District Courts were closed for the vacation, the same could not be deposited there and, therefore, the cheques representing the amount of compensation were deposited in this court in the above CM Main Nos. 1403/2013 and 1411/2013. Therefore, according to the respondents, the compensation had been paid to the petitioners prior to the commencement of the 2013 Act. Consequently, it was submitted that the acquisition had been completed under the Land Acquisition Act, 1894 as possession had been taken and compensation had also been paid.

3. It has been made clear by the Supreme Court decisions in *Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others*, ; *Union of India (UOI) and Others Vs. Shiv Raj and Others*, ; and *Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors*: Civil Appeal No. 8700/2013 decided on 10.09.2014 that in the context of Section 24(2) of the 2013 Act, where an 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. In the present case, as the question of physical possession is disputed, we are not entering into that arena of controversy. Insofar as the question of compensation is concerned, we are of the view that the manner in which the respondents state that compensation has been paid is not in accord with the law as settled by the Supreme Court in *Pune Municipal Corporation (supra)*. But before we examine the position as stated in *Pune Municipal Corporation (supra)* it would be relevant to refer to the order passed by a Vacation Judge of this court on 30.12.2013 in, inter alia, CM Main Nos. 1403/2013 and 1411/2013. The same reads as under:-

"1. As pleaded in the petitions the necessity to file the same is the promulgation of "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No. 30 of 2013)" stated to be effective from January 01, 2014.

2. As vaguely pleaded in para 10 and as orally explained, the urgency to file these petitions is that if compensation assessed is not paid or deposited the proceedings under the Land Acquisition Act, 1894 lapse.

3. It is pleaded in paragraph 4 that the concerned Court is presently closed during winter vacations and shall reopen on January 02, 2014.

4. Enclosed with the petitions as Annexure-2 are cheques drawn in the name of "ADJ, Delhi".

5. A meaningful reading of the petition would reveal that the intentment is to tender the amounts on or before December 31, 2013.

6. The petitions stand disposed of recording that without prejudice to the rights and contentions of the land holders the cheques tendered in each petition (being

Annexure P-2) would be treated as a tender to the Court of the learned Additional District Judge Delhi as of today i.e. December 30, 2013.

7. The Registry is directed to remove the cheques annexed as Annexure 2 and keep them in safe custody till reopening of the Court. On the reopening the cheques shall be sent to the Court of the concerned Additional District Judge Delhi and for which the following tabular chart shall guide the Registry:-

DISTRICT: SOUTH

COURT OF LD. ADDITIONAL DISTRICT JUDGE (SOUTH), SAKET COURTS, NEW DELHI

DISTRICT: SHAHDARA

COURT OF LD. ADDITIONAL DISTRICT JUDGE (SHAHDARA), KARKARDOOMA COURTS, DELHI

DISTRICT: NORTH WEST

COURT OF LD. ADDITIONAL DISTRICT JUDGE (NORTH WEST), ROHINI COURTS, DELHI

DISTRICT: CENTRAL

COURT OF ADDITIONAL DISTRICT JUDGE (CENTRAL), TIS HAZARI COURTS, DELHI

4. We are informed that after the passing of the said order dated 30.12.2013, the cheques have been sent to the concerned Additional District Judges as directed by the learned Vacation Judge on 30.12.2013. It is pertinent to note that in paragraph 6 of the said order dated 30.12.2013 itself, the learned Vacation Judge took care in noting that while the petitions were disposed of, they were without prejudice of the rights and contentions of the land owners. The learned Judge also noted that the cheques tendered in the above mentioned CM Main Nos. 1403/2013 and 1411/2013 and other similar petitions would be treated as a tender to the court of the learned Additional District Judge, Delhi as on 30.12.2013.

5. In Pune Municipal Corporation (supra), the Supreme Court clearly set out the circumstances under which compensation could be regarded as having been paid. The relevant paragraphs of the said decision are 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.

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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."

It is absolutely clear from the above extracts that unless and until the compensation is tendered to the persons interested, mere depositing of the compensation in the court would not be sufficient. To be clear, compensation cannot be regarded as having been paid merely on the deposit of the same in court unless and until it has first been offered to the person interested and he has refused to accept the same. In the present case, it is an admitted position that the compensation amount was tendered in this court without first being offered to the persons interested (petitioners). Therefore, in view of the clear dictum of the Supreme Court in *Pune Municipal Corporation (supra)*, such deposit of compensation in court cannot be regarded as a payment of compensation as

contemplated under the provisions of Section 24(2) of the 2013 Act. The Supreme Court has categorically held 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 a reference under Section 18 can be made on the happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act. The contention of Mr. Poddar, the learned senior counsel, appearing in this matter, that compensation has first to be offered to the interest person is not a mandatory requirement is without any substance and is in clear contradiction to the ruling of the Supreme Court which has construed the expression of compensation having been paid in the context of Section 24(2) of the 2013 Act.

6. In view of the foregoing as compensation has not been paid to the petitioners and the award has been made more than five years prior to the commencement of the 2013 Act, the subject acquisition as per award No. 15/87-88 dated 05.06.1987 and award No. 24/87-88 dated 09.07.1987 in respect of the Khasra Nos. 347, 350, 918/1, 918/2, 922, 923, 929, 930, 932/1 and 941 of Village Chatterpur totaling 28 bighas and 14 biswas shall be deemed to have lapsed. It is declared as such.

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