

(2018) 01 DEL CK 0223

In the Delhi High Court

Case No : Civil Writ Petition No. 8784 Of 2015, Civil Miscellaneous Application
No. 19497 Of 2015

Harinder Kaushik

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 05-01-2018

Acts Referred:

Constitution Of India, 1950 — Article 226
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and
Resettlement Act, 2013 — Section 24(2)
Land Acquisition Act, 1894 — Section 4, 6, 11, 18, 31, 31(1), 31(2), 32, 33, 34

Citation : (2018) 01 DEL CK 0223

Hon'ble Judges : G.S.Sistani, J; Sangita Dhingra Sehgal, J

Bench : Division Bench

Advocate : Arun K. Sharma, Siddharth Panda, Pawan Mathur

Judgement

G. S. Sistani, J

1. This writ petition was admitted on 28.02.2017.
2. This is a petition under Article 226 of the Constitution of India seeking a declaration that the acquisition proceedings initiated under the Act of 1894 with respect to the land of the petitioner forming part Khasra Nos. 1075(3-9), 1077/4 (1-0), 1078 (1-8) and 1079 (1-16), total admeasuring 7 Bighas and 02 Biswas, situated in the revenue estate of Village Satbari, Tehsil Mehrauli, District South West, New Delhi, has lapsed, as neither the actual physical possession of the subject land has been taken nor the compensation has been paid.
3. In this case, a notification under Section 4 of the Land Acquisition Act, 1894 was issued on 25.11.1980 followed by a declaration under Section 6 of the said Act on 27.05.1985 and an award in respect of the land of Village Satbari, District South West, Tehsil Mehrauli, New Delhi was made vide Award No. 14/87-88 on 26.05.1987

4. Counter affidavit has been filed on behalf of the LAC. Para 8 of the counter affidavit reads as under :

"8. That in the present case, the possession of the land in question was taken over and handed over to the beneficiary department 14.07.1987 except Khasra No. 1077/4 and compensation was sent in RD."

5. Counter affidavit has also been filed by DDA as per which possession of the subject land was handed over to the DDA.

6. Learned counsel for the petitioner submits that actual physical possession of the subject land is with the petitioner and infact the writ petition filed pertaining to the same village was for separate Khasra No. which has already been allowed and it has been declared that the acquisition proceeding stands lapsed. Learned counsel further submits that since the compensation has not been paid and deposited in treasury, such deposit does not amount to the payment of compensation. Learned counsel has placed reliance on the decision rendered by the Apex Court in *Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors.* reported in (2014) 3 SCC 183.

7. We have heard counsel for parties. In *Pune Municipal Corporation & Anr. (Supra)*, it has been held that :

"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.

8. Taking into consideration the submissions made and the stand taken by the LAC in the counter affidavit, we are of the considered view that the necessary ingredients for the application of Section 24(2) of the 2013 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.

9. Applying the law laid down to the facts of the present case, since the award having been announced more than five years prior to the commencement of the 2013 Act and, having regard to the fact that the compensation has not been tendered, the petitioner is entitled to a declaration that the acquisition proceedings initiated under the Land Acquisition Act, 1894 with regard to the subject land are deemed to have lapsed. It is ordered accordingly.

CM No.19497/2015

The application stands disposed of in view of order passed in writ petition.