

(2017) 12 DEL CK 0420
In the Delhi High Court
Case No : Civil Writ Petition No. 5462 Of 2016

Harish Chander

APPELLANT

Vs

Union Of India Through: Lac (Shahdara) & Anr.

RESPONDENT

Date of Decision : 19-12-2017

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)
Delhi Development Act, 1957 — Section 22(i)

Citation : (2017) 12 DEL CK 0420

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

Bench : Division Bench

Advocate : Deepak Khosla, Akhil Mittal, Akhil Mittal Maheshwari, Sanjeev Sabharwal, Hem Kumar, Simmee Kumari

Final Decision : Disposed Of

Judgement

G.S. Sistani, J

1. With the consent of the parties, present petition is set down for final hearing and disposal.

2. This is a petition under Article 226 of the Constitution of India filed by the petitioner seeking a declaration that the acquisition proceedings with

respect to the land of the petitioner comprised in Khasra nos. 613/2 (2-15) and 614 (2-8) situated in the revenue estate of Village-Gokalpur, Ilaga

Shahdara, Delhi (hereinafter referred to as 'subject land'), are deemed to have lapsed in view of Section 24 (2) of the Right to Fair

Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (New Act) as neither possession of the land has

been taken nor compensation has been paid to the petitioner.

3. The necessary facts to be noticed for disposal of this writ petition are that Section 4 notification of the Land Acquisition Act, 1894 was issued on

6th March, 1965, Section 6 declaration was made on 19th October, 1966 and thereafter Award bearing No. 14/1972-73 was passed by the Land

Acquisition Collector on 16th June, 1972. Reliance is placed on Khasra Girdawari, copy whereof has been placed on record to show that a petrol

pump exists in both the khasra numbers. Reliance is also placed on the counter-affidavit filed by the respondent / LAC to show that compensation was

not tendered, but deposited in the revenue deposit on 4th September, 1972 vide Voucher No. 465 dated 1st September, 1972. Counsel for the petitioner

submits that although as per the counter-affidavit filed by the respondent / DDA part possession has been taken, but the physical possession of the

land is still with the petitioner, which is evident from the copy of the Khasra Girdawari which shows that petrol pump is in existence. Counsel for the

petitioner submits as the compensation has not been paid, the case of the petitioners is fully covered by the decision rendered by the Supreme Court of

India in the case of Pune Municipal Corporation & Anr. V. Harak Chand Misirimal Solanki & Ors(2014) 3 SCC 18 3and other decisions as detailed

below to submit that the acquisition proceedings would lapse:

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

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

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

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

4. We have heard the learned counsel for the parties.

5. Counter-affidavit has been filed by the respondent / LAC. Para 6 of the counter-affidavit reads as under:

â??It is submitted that the possession of subject land of the Village-Gokalpur, Ilaqa Shahdara comprised in Khasra No. 613/2 (2-15) and

614 (2-8) was taken on 29.07.1972 and handed over to the requisition agency on the spot and the compensation was sent to the revenue

deposit on 04.09.1972 vide voucher no. 465 dated 01.09.1972.

6. Para VII of the counter-affidavit filed by the respondent / DDA reads as under:

It is further submitted that the physical possession of the acquired land partially i.e., Khasra No. 613/2 (2-15) of village Gokulpur,

Illaq Sahahdara, Delhi has been handed over to the respondent-Delhi Development Authority by the LAC/Land and Building Department,

Govt. of NCT of Delhi on 29.07.1972 and the same acquired land transferred to Horticulture Department for green on 14.07.1975 vide

notification no. F9(18)/92-L&B/LA dated 25.01.1995 under section 22 (i) of DD Act. It is further submitted that the acquired land, i.e.,

Khasra No. 614 (2-08) of village Gokulpur, Illaq Sahahdara, Delhi has not been handed over to the respondent Delhi Development

Authority by the LAC/Land and Building Department, Govt. of NCT of Delhi copy of possession proceedings dated 29.07.1972 is annexed

herewith marked as Annexure A-1. It is further submits that the petitioner has not placed on the records of the present case any document to

show its possession over the acquired land. The photographs filed before the Honable Court can be of any area.

7. Taking into consideration the submissions made by both the parties, counter-affidavits filed and copy of the Khasra Girdawari, we are of the view

that the case of the petitioner will be fully covered by the decision rendered by the Apex Court in Pune Municipal Corporation & Anr. (supra),

wherein in Paras 14 to 20, it is held 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.

8. 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
- (2) Union of India and Ors v. Sshiv 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) Giri Chhabra v. Lt. Governor of Delhi and Ors; W.P.(C).2759/2014 decided on 12.09.2014 by this Court.

9. In view of the above, petitioner is entitled to a declaration that the acquisition proceeding with respect to the subject land stand lapsed. It is so declared.

Accordingly, the writ petition is disposed of.