

(2018) 02 DEL CK 0154

In the Delhi High Court

Case No : Civil Writ Petition No. 8780 Of 2015

Kamal Kant Bansal & Anr

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 05-02-2018

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, 30, 31, 31(1), 31(2), 32, 33, 34

Citation : (2018) 02 DEL CK 0154

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

Bench : Division Bench

Advocate : S.K. Rout, Aman Mehrotra, Yeeshu Jain, Jyoti Tyagi

Final Decision : Disposed Of

Judgement

G.S. Sistani, J

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

to land bearing Khasra No. 31/20 min, admeasuring (0-12 Biswa) situated in the revenue estate of village Nangloi Jat, New Delhi, (hereinafter

referred as the 'subject land') stand lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition,

Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as '2013 Act') as no compensation has been paid to the petitioners.

2. In this case, a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'Act') was issued on 28.07.2006 and a

declaration under Section 6 was made on 22.11.2006. Thereafter, an Award bearing no.1/2007-08 was passed on 06.08.2007. It is the case of the

petitioners that the compensation with respect to subject land has not been tendered even though the possession of the land has been taken.

3. The counsel for the petitioners submits that since the compensation has not been tendered, the petitioners would be entitled to a declaration under

Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter

referred to as 'the New Act'). Counsel for the petitioners has drawn the attention of the Court to the Counter Affidavit filed by LAC wherein it has

been categorically stated that the compensation has not been paid.

4. Learned counsel for the petitioners further submits that since the compensation has not been tendered to the petitioners, the case of the petitioners

would be fully covered by the decision rendered by the Apex Court in *Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.*,

reported at (2014) 3 SCC 183.

5. Mr. Yeeshu Jain, learned Counsel for LAC submits that actual vacant physical possession of the subject land was taken on 28.09.2007, however

the compensation was not paid. Para.4 of the Counter affidavit filed by the LAC, reads as under :-

4. That the present writ petition is liable to be dismissed as the actual vacant physical possession of the subject land falling in khasra

number 31/20 min (0-12) which became the subject matter of the present writ petition was duly taken was back on 28.09.2007 on the spot

by preparing possession proceedings on the spot and the same was handed over to the DDA on the spot. The compensation however could

not be paid.

6. We have heard learned counsel for the parties.

7. Taking into consideration the submissions made and the categorical assertion made in the counter affidavit filed by LAC that the compensation has

not been paid, we are of the view that, the case of the petitioners is fully covered by the decision rendered by the Apex Court in the case of *Pune*

Municipal Corporation & Anr.(supra). Paras. 14 to 20 of aforesaid decision read 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 subsection (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 W.P. (C) No.866/2017 Page 5 of 6 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.â??

8. Having regard to 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 answered:

(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. Since the award having been announced more than five years prior to the commencement of the 2013 Act and, having regard to the stand taken by

the LAC that the compensation has not been tendered, the petitioners are 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.

9. The writ petition is disposed of.