
(2014) 11 P&H CK 0081

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 3654 of 2006 (O&M)

Kamla Devi and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:

Delhi Lands (Restrictions on Transfer) Act, 1972 — Section 8
Land Acquisition Act, 1894 — Section 11, 11A, 17 (4), 17(2)(c), 19(1)
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24, 24(2)

Citation : (2015) 1 RCR(Civil) 480

Hon'ble Judges : Ashutosh Mohunta, Acting C.J.; Anupinder Singh Grewal, J

Bench : Division Bench

Advocate : Sanjiv Sharma, Senior Advocate and Mukul Aggarwal, Advocates for the Appellant; Palika Monga, Deputy Advocate General, Advocates for the Respondent

Judgement

Ashutosh Mohunta, Actg. C.J.

1. The present petition has been filed challenging notification dated 17 September 2004 issued under Section 4 read with Section 17(2)(c) and 17 (4) of the Land Acquisition Act, 1894 as well as declaration dated 27 October 2004 issued under Section 6 of the Land Acquisition Act, 1894 (for brevity "1894 Act") acquiring the land of the petitioners. The State of Haryana issued a notification under Section 4 of the Act on 17 September 2004 describing its urgent need to acquire land, at public expense, for a public purpose, namely, for setting up of Chaudhary Devi Lal Industrial Model Township Phase-V Manesar to be planned and developed as an integrated complex for Industrial, Institutional, Commercial, Recreational and other public utilities, by Haryana State Industrial Development Corporation Ltd. In the notification, it was stated that the Governor of Haryana was satisfied that the purpose for which the land is required, is urgent and therefore, the provisions of Section 5-A of the said Act shall not apply to the acquisition. This notification was followed by declaration dated 27 October 2004

declaring that the land notified under Section 4, is urgently needed for the purpose stated therein. Thereafter, notice under Section 9 was issued.

2. When this matter came up for hearing on 7 March 2006, while issuing notice of motion, by an interim order, dispossession of the petitioners from the land in dispute was stayed by this Court. Thereafter, award was made on 9 March 2006.

3. Challenge to the acquisition proceedings has been made primarily on the ground that invocation of the urgency provisions was without any basis and that the public purpose disclosed in the notification could not by any stretch of imagination justifies the suspension of the provisions of Section 5-A of the 1894 Act, which is an indefeasible statutory right bestowed upon every landowner. Consequently, it was contended that the respondents had failed to place any material on record even to prima facie establish the existence of any urgency and particularly the kind of urgency which would require suspension of rights under Section 5-A of the 1894 Act and therefore the entire process stood vitiated.

4. In the meanwhile, similar connected writ petition bearing CWP 17108 of 2004 came to be decided on 16 April 2009 and one of the grounds therein for setting aside the land acquisition proceedings was the uncalled for invocation of urgency provisions by the Government and consequent denial of opportunity to landowners to file objections under Section 5-A of the 1894 Act. A bunch of writ petitions were decided together, some allowed, others dismissed however, the present petition remained pending and during interregnum, "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013" (for brevity "2013 Act") came into force w.e.f. 1 January 2014.

5. In view of coming into force the 2013 Act, the petitioners filed CM. No. 9607 of 2014 stating therein that the petitioners continue to remain in physical possession of the land in question and that more than five years has elapsed since passing of the Award, hence the entire acquisition stands lapsed; even if, physical possession of the land could not be taken on account of interim order passed in the present case by this Court. It was further stated in the application that the respondents have also not paid compensation nor the same has been deposited in the competent Court. Based on the aforesaid assertions, the petitioners would urge that the acquisition proceedings initiated under the 1894 Act has lapsed because of legal fiction created by dint of Section 24(2) of the 2013 Act coming into force w.e.f. 01.01.2014.

6. Notice of the application was issued on 12 August 2014 with a direction to the respondents to verify as to whether they have taken physical possession of the land acquired or not and also to ascertain as to whether they have paid the compensation to the petitioners if not whether the same has been deposited with the competent court.

7. An affidavit dated 28 August 2014 by the Director, Industries and Commerce Department Haryana has been filed pursuant to our directions dated 12 August

2014. In the affidavit, it has been stated that possession of the land in dispute was taken over by the Land Acquisition Collector, on 9 March 2006 at the time of making of the Award and the land was handed over to the respondents on the same day. Further it has been stated in the affidavit that although compensation for the land has not been paid to the petitioners but the same was deposited in the Court on 1 July 2014.

8. Considering the subsequent events and the legislative intent of the 2013 Act, Section 24 of 2013 Act is as follows:

"Section 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, 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."

9. It was contended by Shri Sanjeev Sharma Learned senior counsel appearing for the petitioners that in view of the non-obstante clause in Sub-section (2) of Section 24, notwithstanding an Award having been passed under Section 11 of the 1894 Act in respect of the acquisition proceedings which are under challenge, such proceedings cannot continue under the provisions of that Act. He would urge that because the petitioners remain in physical possession of the land in pursuance to the interim order dated 7 March 2006 passed by this Court wherein their dispossession was stayed, any suggestion that possession was taken by the Land Acquisition Collector and handed over to HSIIDC on 9 March 2006 in itself

is meaningless and a mere paper entry. According to counsel for the petitioners, actual physical possession continues to remain with the petitioners till date.

10. There is no answer forthcoming from the respondents to the specific assertion made by the learned counsel for the petitioners, as to how physical possession of the land could have been taken on 09.03.2006 in view of the interim order passed by this Court dated 07.03.2006. Furthermore, the Khasra Girdawari also reflects physical possession of the petitioners over the land. It was argued that since Award was made on 9 March 2006, which is more than five years earlier and undisputedly neither physical possession of the land of the petitioners has been taken nor has the compensation been deposited in the Court as per the requirement of Section 31 of the 1894 Act, the entire acquisition proceedings is deemed to have lapsed. Reliance was placed upon the decision in Sree Balaji Nagar Residential Association Vs. State of Tamil Nadu, to contend that the period of five years or more in Section 24(2) of the 2013 Act has been prescribed with a view to benefit the landowners and the period spent in litigation on account of challenge to the land acquisition proceedings, cannot be excluded. Further, while placing reliance on the judgment of the Hon'ble Supreme Court in Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others, , it was contended by learned counsel for the petitioners that since more than five years have passed prior to the commencement of the 2013 Act and compensation has not been paid to the landowners-petitioners, the acquisition proceedings have lapsed.

11. Learned Senior Counsel for the petitioners would further urge that the 2013 Act puts in place an entirely new regime for compulsory acquisition of land. As far as Sub-section (2) of Section 24 is concerned, it begins with a non-obstante clause and thus as such the Parliament gave an overriding effect to this provision over all other provisions of the 2013 Act. These provisions make it evident that where land acquisition proceedings had been initiated under the 1894 Act and an Award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied i.e. (i) physical possession of the land has not been taken, or (ii) the compensation has not been paid; such acquisition proceedings shall be deemed to have lapsed.

12. He would contend that as far as possession is concerned, the same is with the petitioners till date. Compensation which ought to have been paid in terms of Section 31 of the 1894 Act was never paid to the petitioners neither was the same deposited in the Court for these long years. Though the same has been deposited on 01.07.2014 i.e. after coming into force of 2013 Act.

13. While not disputing the factual position as noticed above, learned counsel?s appearing for the respondents would content that the petitioners had no locus to challenge the acquisition as they are subsequent buyers of property, purchased after issuance of the notification under Section 4 of the 1894 Act. In support of this contention he placed reliance on the judgment of this Court dated 8 August 2014 in the case of CWP 2304 of 2014 titled M/s. Packing Industries v. State of

Haryana and others. He also placed reliance on the judgments of the Hon''ble Supreme Court in *Meera Sahni Vs. Lt. Governor of Delhi and Others*, and *V. Chandrasekaran and Another Vs. The Administrative Officer and Others*, to support the aforesaid contention. Additionally, the respondents would urge that the Land Acquisition Collector, on the passing of the Award, took physical possession of the land from the petitioners.

14. We have heard learned counsel for the parties and examined the case file.

15. We first deem it appropriate to deal with the objection taken by the respondents with regard to the locus - standi of the petitioners to challenge the acquisition. In *M/s. National Packing Industries (supra)* relied upon by the respondents, it was noticed that the land acquisition proceedings initiated through notification dated 1 October 1973 were unsuccessfully challenged in CWP No. 9406 of 1987 against which LPA No. 242 of 2007 stood dismissed on 21 July 2009. SLP No. 7933 of 2010 preferred against the same was also dismissed as withdrawn on 29 March 2010. Thereafter, another CWP No. 24093 of 2013 impugning the same acquisition proceedings was filed and the same too was dismissed on 31 October 2013. It was noticed therein that the petitioner was a post acquisition vendee. In the first round of litigation, it was observed that the owners had already received compensation, they had not filed objections under Section 5-A nor had they challenged the acquisition proceedings and the petitioners who laid challenge to the acquisition now, were mere lessees. A brief reference to the aforesaid facts shows that those cases were distinct and unique with not even remotest of resemblance to the present case wherein acquisition of the land by the respondents through invocation of urgency provisions was challenged both by the erstwhile owners as well as the subsequent purchasers in a situation where, no opportunity to file objections under Section 5-A was given to the petitioners nor physical possession of the land was taken by the respondents nor compensation was paid to them or deposited in competent court till 01.07.2014.

16. In the case cited by the respondents as *Meera Sahni (supra)*, there was a specific bar under Section 8 of the Delhi Lands (Restriction on Transfer) Act, 1972 and without permission being granted thereunder, as contemplated for the transfer of the land, the petitioners had purchased the land after its acquisition, hence they were disqualified from laying challenge to the acquisition. There was no question involved with regard to acquisition having lapsed in that case; as is being urged in the present petition in context of 2013 Act. Even in the case reported as *V. Chandrasekaran and another (supra)*, the facts are completely distinct in as much as after compensation had been taken, the land was transferred to another vendee who then laid challenge to the acquisition.

17. To the contrary, in the case of *Union of India (UOI) and Others Vs. Shiv Raj and Others*, the Hon''ble Supreme Court of India dealt with the case of *Smt. Geeta Devi* who was a subsequent purchaser of the land. Considering the fact that the appellant therein was in actual and physical possession of the land, the

acquisition proceedings in that case were held to have lapsed on account of the fact that more than five years had passed since the making of the Award but physical possession had not been taken. In these circumstances, we find ourselves unable to agree with the respondent State that the petitioners cannot challenge the acquisition proceedings.

18. Now considering the question as to whether the petitioners remained in physical possession of the land despite the Award having been made on 9 March 2006, we may notice that there is no dispute that the present petition was filed even before the making of the Award and dispossession of the petitioners was stayed by this Court vide order dated 7 March 2006. Learned counsel appearing for the State failed to draw our attention to any material on the record from which we can discern that physical possession of the land was either taken over at the time of the Award or that the petitioners are not in actual physical possession of the same. It is not in dispute, that in terms of the interim order passed in this case on 07.03.2006, physical possession of the petitioners over the land continues to remain protected till date and thus we have no hesitation to conclude that the petitioners remained in physical possession of the land and were never dispossessed therefrom by the respondents.

19. In the context of interim order viz. dispossession of the petitioners from the land in question; operating during the period of 5 years stipulated under Section 24(2) of the 2013 Act, we may notice that the Hon'ble Supreme Court of India in the case of Sree Balaji Nagar Residential Association (supra) has dealt with the said proposition thus:

"8. There is no dispute that writ petitions were filed even before the making of award and interim orders have operated against the State of Tamil Nadu and, therefore, the State was not at fault in not taking physical possession of the concerned lands under acquisition. But the intention of the Legislature in enacting Section 24(2) of the 2013 Act will have to be culled out from its wordings and on the basis of other relevant provisions of this Act and the relevant case law for deciding whether the period of stay/injunction is required to be excluded in computing the five years" period or not.

9. From a plain reading of Section 24 of the 2013 Act it is clear that Section 24(2) of the 2013 Act does not exclude any period during which the land acquisition proceeding might have remained stayed on account of stay or injunction granted by any court. In the same Act, proviso to Section 19(7) in the context of limitation for publication of declaration under Section 19(1) and the Explanation to Section 69(2) for working out the market value of the land in the context of delay between preliminary notification under Section 11 and the date of the award, specifically provide that the period or periods during which the acquisition proceedings were held up on account of any stay or injunction by the order of any court be excluded in computing the relevant period. In that view of the matter it can be safely concluded that the Legislature has consciously omitted to extend the period of five years indicated in Section 24(2) even if the

proceedings had been delayed on account of an order of stay or injunction granted by a court of law or for any reason. Such *casus omissus* cannot be supplied by the court in view of law on the subject elaborately discussed by this Court in the case of *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*, .

10. Even in the Land Acquisition Act of 1894, the Legislature had brought about amendment in Section 6 through an Amendment Act of 1984 to add Explanation 1 for the purpose of excluding the period when the proceeding suffered stay by an order of the court, in the context of limitation provided for publishing the declaration under Section 6(1) of the Act. To a similar effect was Explanation to Section 11A which was added by Amendment Act 68 of 1984. Clearly the Legislature has, in its wisdom, made the period of five years under Section 24(2) of the 2013 Act absolute and unaffected by any delay in the proceedings on account of any order of stay by a court. The plain wordings used by the Legislature are clear and do not create any ambiguity or conflict. In such a situation, the court is not required to depart from the literal rule of interpretation.

11. It was faintly suggested by Mr. Subramonium Prasad, learned AAG for the State of Tamil Nadu that the proviso may come to the rescue of the State and save the proceedings from suffering lapse if it is held that since there was an award leading to payment of compensation in respect of some of the land holdings only, therefore all the beneficiaries may now be entitled to compensation in accordance with the provisions of the 2013 Act. This contention could have been considered with some more seriousness if physical possession of the land had been taken but since that has not been done, the proviso dealing only with compensation cannot be of any help to the State. Therefore, we are not required to go deeper into the effect and implications of the proviso which *prima facie* appears to be for the benefit of all the land holders in a case where the award is subsisting because the proceedings have not lapsed and compensation in respect of majority of land holdings has not been deposited in the account of the beneficiaries. There is nothing in the language of the proviso to restrict the meaning of the words used in Section 24(2) mandating that the proceedings shall be deemed to have lapsed if the award is five years or more than five years" old but the physical possession of the land has not been taken over or the compensation has not been paid. The law is trite that when the main enactment is clear and unambiguous, a proviso can have no effect so as to exclude from the main enactment by implication what clearly falls within its express terms, as held by Privy Council in the case of *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*, and by this Court in the case of *The Commissioner of Income Tax, Mysore, Travancore-cochin and Coorg, Bangalore Vs. The Indo Mercantile Bank Limited*, .

12. The judgment of three Judges" Bench in the case of *Harakchand Misirimal (supra)* has been followed by another Bench of three Judges in the case of *Union of India (UOI) and Others Vs. Shiv Raj and Others*, of that judgment, this Court

took notice of a clarification issued by the Government of India, Ministry of Urban Development, Delhi Division dated 14.03.2014. Part of the circular extracted in that case clearly shows that the period of five years or more in Section 24(2) of the 2013 Act has been prescribed with a view to benefit the land-losers and the period spent in litigation due to challenge to the award or the land acquisition proceedings cannot be excluded."

20. In view of the above, the present case is squarely covered by the judgment in Sree Balaji case (supra). In as much as admittedly, physical possession of the land is still with the petitioners in view of the interim order passed in their favour dated 07.03.2006 by this Court coupled with the fact that period of five years has since elapsed from the time of making of the award till date and thus the entire acquisition proceedings stands lapsed by the dint of Section 24(2) of the 2013 Act.

21. Further, it has been held in the case of Pune Municipal Corporation and another (supra) that where an Award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied, that is, (i) physical possession of the land has not been taken, or (ii) the compensation has not been paid, such acquisition proceedings shall be deemed to have lapsed on legal fiction being created by Section 24(2) of the 2013 Act.

22. Since we are deciding the present case on the basis of legal fiction created by Section 24(2) of the 2013 Act viz. acquisition proceedings arising out of Land Acquisition Act, 1894, therefore we refrain from entering upon any of the other questions raised in the petition as well as CM. No. 9607 of 2014 and thus leave them open to be adjudicated at an appropriate stage, if required. From the discussions elaborated above, it is clear that though the Award in the present case was made on 9 March 2006, the petitioners continued to remain in physical possession of the land till date in view of the interim order passed in their favour dated 07.03.2006 by this Court and more than 5 years have elapsed since the date of passing of the award. It is admitted position on record that compensation was not paid to the petitioners but was deposited in the Court only on 1 July 2014 i.e. after the commencement of the 2013 Act and therefore, the conditions mentioned in Section 24(2) of the 2013 Act being satisfied, we allow the writ petition and hold that the land acquisition proceedings have lapsed qua the land in dispute in terms of Section 24(2) of the 2013 Act. However, the Government of Haryana shall be at liberty, if it so chooses, to initiate proceedings for such land acquisition afresh in accordance with the provisions of the 2013 Act. In the facts and circumstances of the case, there shall be no order as to costs.