

(2015) 09 KAR CK 0293

In the Karnataka High Court

Case No : Writ Petition Nos. 37140-37142 of 2014 (LA-RES)

K.G. Pramila and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 03-09-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 11 [A], 16[2], 18, 18[1], 31, 31
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and
Resettlement Act, 2013 — Section 24[2]

Citation : (2015) 6 KarLJ 488

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : M. Krishnappa, for the Appellant; Y.D. Harsha, AGA, Advocates for
the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J—Land measuring 1 acre 5 guntas in Sy. No. 33 of Kengeri Village, Kengeri Hobli, Bengaluru South Taluk, amongst other lands proposed to be acquired pursuant to the Preliminary Notification on 16.12.1999, Annexure-F, under section 4[1] of the Land Acquisition Act, 1894, [hereinafter referred to as "1894 Act" for short] and a Final Notification dated 13.2.2001, Annexure-G, under section 6[1] of the "1894 Act" led to framing an Award dated 15.3.2003, Annexure-J, following which possession of the land was taken by issue of a Notification on 6.5.2004, Annexure-R7 to the Statement of Objections of Respondent No. 4, under section 16[2] of the "1894 Act", nevertheless, on the allegation that compensation is not paid, the land losers have presented these petitions for the following reliefs:

"[a] Declare by issuing appropriate writ or order, declaring that the entire acquisition proceedings initiated vide preliminary Notification issued U/s. 4[1] dt. 16.12.1999 bearing No. LAQ[2] SR: 16: 1999-2000 issued by 2nd respondent as at Annexure-F and final notification issued u/s. 6 of Land Acquisition Act, 1894

dated 13.2.2001 bearing No. KAM E:145:BHUSWABA:2000 by respondent-1 as at Annexure-G in respect of the petitioners land bearing Sy. No. 33 totally measuring 1.05 acres, situate at Kengeri village, Kengeri Hobli, Bangalore South Taluk, as lapsed in view of Section 24[2] of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and that there is no vesting of the Petitioners said land and it is free from acquisition.

[b] Grant such other relief or reliefs as may deem fit to grant in the facts and circumstances of the case including an order as to costs."

2. Petitions are opposed by filing Statement of Objections of Respondent Nos. 1 to 3, the State, Special Deputy Commissioner and Special Land Acquisition Officer, respectively, inter alia, not denying the factum of issue of Notifications for acquisition of land belonging to the petitioners, while at paragraph-4, as regard the payment of compensation, it is stated that the beneficiary has deposited the Award amount and the same in turn is "deposited in the Government Treasury" and further reiterated the fact that the amount is kept in Government Treasury. It is further stated that the petitioners filed WP Nos. 27792-94/2010 challenging the acquisition proceedings which were dismissed on 16.04.2012 and Writ Appeal Nos. 2630-32/2012 was dismissed on 20.3.2014. According to the said respondents, petitioners made a representation dated 30.6.2014 Annexure-K, requesting for a reference under section 18[1] of the "1894 Act" while the award of compensation is at Rs. 4 lakhs per acre of the acquired land, while such of those land losers who extended their consent, after negotiation, compensation was fixed at Rs. 9 lakhs per acre, since those persons did not pose a threat to the acquisition proceedings. It is further stated that petitioners' request to refer the dispute for enhancement of compensation was rejected on the premise that the application was not made within three years and ninety days from the date of passing the Award. At paragraph-9, it is stated that compensation amount is deposited in the Government Treasury since none of the persons including the petitioners made any claim for that Award amount so far. At paragraph-11, it is further asserted that petitioners have not made any demand for payment of compensation and therefore the amount is kept in "Government deposit in Government Treasury".

3. Petitions are opposed by filing Statement of Objections of Respondent No. 4, the beneficiary of the acquisition, namely, Bangalore Water Supply & Sewerage Board, denying the claim of the petitioners on the premise that learned Single Judge by order dated 16.4.2012 in WP Nos. 27792-94/2010 filed by the petitioners were dismissed on the basis of an earlier order dated 26.2.2002 in WP Nos. 34589-34640/2001 and connected petitions confirming the acquisition notifications. Writ Appeal Nos. 2630-32/2012, it is submitted were also dismissed, confirming the order of the learned Single Judge. That order having become final since petitioners did not challenge the same, cannot be permitted to re-agitate the same challenge to the acquisition proceedings. According to this respondent, tender process for erection and installation of sewerage treatment

plant is in progress and that compensation amount for acquisition of the land is deposited with the acquiring Authority after having availed "huge astronomical loans". At paragraph-10, the beneficiary of the acquisition submits that the case brought before Court centers around interpretation under section 24[2] of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [hereinafter referred to as "New Acquisition Act" for short] and that the said section has no application, particularly, in the facts that petitioners unsuccessfully challenged the acquisition proceedings leading to confirmation of the legality of the acquisition notifications both by the learned Single Judge and by the Division Bench. In addition, it is stated that possession is taken and handed over to the beneficiary who has in turn invited tenders for implementation of the project and therefore section 24[2] of the "New Acquisition Act" does not apply. As regards averments set out in Paragraph-9 of the Memorandum of Writ Petitions, it is stated that this respondent has no comments to offer as it is a beneficiary who satisfied the Award by depositing the compensation with respondents 1 to 3 and therefore it is for those respondents to answer.

4. Having regard to the pleadings of the parties and the submissions of their learned Counsel as well as learned Additional Government Advocate, the core question for decision making is,

""Whether under section 24[2] of the "New Acquisition Act", though the Award Annexure-J dated 15.3.2003 drawn under section 11 [A] of the "1894 Act" nevertheless compensation when not paid to the petitioners, land losers, the land acquisition proceedings under the "1894 Act" is deemed to have lapsed?"

5. Suffice it to notice that the Apex Court in *Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others*, AIR 2014 SC 982 : (2014) AIRSCW 787 : (2014) 3 JT 283 : (2014) 1 RCR(Civil) 880 : (2014) 1 SCALE 618 : (2014) 3 SCC 183 , observed that the Parliament while enacting section 24[2] of the "New Acquisition Act", had in its view section 31 of the "1894 Act" and therefore it is clear that it did not equate the word "paid" to "offered" or "tendered", while a literal construction of the expression "paid" if given would amount to ignoring the procedure, mode and manner of deposit under section 31[2] of the "1894 Act". Their Lordships observed that for the purpose of section 24[2], compensation shall be regarded as "paid" if compensation is offered to the person interested and such compensation is 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, it is stated the compensation may be said to have been "paid" within the meaning of Section 24[2] when the Collector or the Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in court and made that amount available to interested persons to be dealt with as provided in Sections 32 and 33. At paragraph-18 of the Judgment, the Apex Court observed that "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. In other words, where 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.

6. The aforesaid observations were followed and reiterated by a three Judge Bench of the Apex Court in Union of India (UOI) and Others Vs. Shiv Raj and Others, AIR 2014 SC 2242 : (2014) AIRSCW 3388 : (2014) 6 SCC 564 ; in Bimla Devi Vs. State of Haryana, (2014) 7 SCALE 215 : (2014) 6 SCC 583 ; in Bharat Kumar Vs. State of Haryana and Another, (2014) 3 SCALE 393 : (2014) 6 SCC 586 and; in Karnail Kaur Vs. State of Punjab(2015) 2 AD 429 : (2015) 1 RCR(Civil) 786 : (2015) 1 SCALE 598 : (2015) 3 SCC 206 : (2015) 2 SCJ 271 .

7. Applying the aforesaid observations to the facts of this case, there being no dispute over relevant dates, coupled with the fact that in the Award Annexure-J, the Special Land Acquisition Officer though determined compensation for the land acquired belonging to the petitioners, nevertheless, did not record payment of compensation. So also in the Statement of Objections of Respondent Nos. 1 to 3, State and its Authorities including the Special Land Acquisition Officer very clearly state that the compensation is in deposit in the Government Treasury and that since petitioners did not make a demand, were not paid the compensation. It is needless to state that the factum of non payment of the compensation to the petitioners is well established.

8. The fact that the Special Land Acquisition Officer or the Deputy Commissioner did not deposit the compensation amount before the Reference Court in terms of the mandate of section 31[2] of the "1894 Act", as would have been done in the case of reference under section 18 of the "1894 Act", the only inevitable conclusion is that requirement of section 24[2] of "New Acquisition Act" is fully satisfied, entitling the petitioners to a declaration that the proceeding of the acquisition of their land i.e., petition schedule properties is deemed to have lapsed. In this circumstances the earlier proceedings initiated by the petitioners challenging the acquisition proceedings, though unsuccessful, would have no bearing on the core question supra which is answered in the affirmative.

9. In the circumstances, petitioners have made out a case entitling them to the relief sought for.

10. In the result, these petitions are allowed.

11. The land acquisition proceedings for acquisition of the petition schedule lands is declared as lapsed.