

(2018) 01 DEL CK 0264

In the Delhi High Court

Case No : Civil Writ Petition No. 2908 Of 2015

Krishna Khandelwal

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 09-01-2018

Acts Referred:

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) 01 DEL CK 0264

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

Bench : Division Bench

Advocate : N.S.Vasisht, M.P.Bhargava, Jyoti Kataria Bajaj, Bhagvan Swarup Shukla, Kamaldeep, Sanjay Kumar Pathak, K.Kaomudi Kiran Pathak, Sunil Kumar Jha, Kushal Raj Tater, Arjun Pant

Final Decision : Dismissed

Judgement

G.S.Sistani, J

1. This petition was admitted on 28.02.2017. Counter affidavit has been filed on 28.07.2015 but no rejoinder has been filed to the same.

2. This is a petition under Article 226 of the Constitution of India filed by the petitioner seeking a declaration that the acquisition proceedings qua the land of the petitioner with respect to 1/6th share in 30 bighas 18 biswas of land (5 bighas 3 biswas) comprised in Khasra Nos.1372/2 (1-4), 1376/3 (1-5), 1377 (5-12), 1378 (0-10), 1379 (4-1), 1380 (4-16), 1381/1 (2-16), 1522 (4-16), 1523/1 (3-14) and 1732/1 (2-4) situated in revenue estate of village Malikpur Kohi @ Rangpuri, Tehsil Mehrauli, National Capital Territory of Delhi (hereinafter referred to as the "subject land") have 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 neither physical possession of the subject land has been taken nor the compensation has

been tendered.

3. The necessary facts to be noticed for disposal of this writ petition are that a notification, vide No.F4(98)/64- L&H under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the old Act") was issued on 23.01.1965, subsequently a Section 6 declaration was made on 26.12.1968. Thereafter, an Award bearing no.146/80-81 under Section 11 of the old Act was rendered on 30.03.1981. It may be noted that the recorded owner, Mr.Ram Swaroop, father of the petitioner expired on 03.06.1973. A copy of the death certificate has been annexed as Annexure P-5 with the petition. The petitioner being the Class-I legal heir claims to have inherited the aforesaid land upon the demise of his father.

4. Mr.Pathak, counsel for respondents No. 3 and 4 (LAC), relies upon para 6 of his counter affidavit in support of his submissions that on account of a dispute between the parties, a reference was made under Section 30-31 of the old Act to the court of Mr. P.S.Sharma, Additional District Judge (ADJ) on 06.10.1983 and the amount of compensation was deposited vide Voucher No.672 dated 05.10.1983.

5. Mr. Vasisht, learned counsel appearing for the petitioner submits that there was no dispute at all and in the absence of any dispute any reference being made to the court of ADJ would be bad in law and would have no bearing on the rights of the petitioner. It is the case of the petitioner that the petitioner is the rightful owner, who was entitled to the compensation and the LAC has referred the matter to the ADJ without any just cause. The counsel further submits that in the absence of any dispute, it cannot be said that the amount of compensation was tendered to the petitioner or her predecessor-in-interest.

6. Mr. Vasisht, counsel for the petitioner has labored hard to submit that the Act provides, that first and foremost the compensation must be tendered to the petitioner and in case the petitioner refuses to accept the compensation, only then a reference could have been made.

7. Mr.Vasisht, counsel for the petitioner has relied upon the observation made in the decision rendered by the Supreme Court of India in the case of Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors., reported at (2014) 3 SCC 183, specifically paragraphs 12 to 14. Mr. Vashisht submits that as per Section 31 (1) of the Old Act, a collector on making an award under Section 11 is bound to tender the compensation to a person entitled to it unless, prevented by one of the contingencies mentioned in sub -section (2). He further contended that there was no material before the LAC to make a reference under Section 30-31 of the old Act.

8. To buttress his argument that on account of a dispute a reference was made under Section 30-31 of the old Act, the original record has been produced by Mr.Sanjay Pathak, counsel appearing for the LAC which has also been shown to Mr.Vasisht, counsel for the petitioner. As per the record, an application was filed on 06.09.1982 by five persons, namely, Bhagwat Swarup Gupta, Shanti Swaroop

Gupta, Krishna Kumari, Raj Kumari and Bimla Gupta for withdrawal of compensation. Mr.Pathak further relies on the noting in the file which has been read out in court, as per which, a note dated 09.08.1983 has been made, which reads as under:

"Present: Applicant with his counsel.

Send the amount to the court of ADJ under Section 30-31 of L.A.Act as the dispute cannot be settled here."

Mr.Pathak submits that pursuant to this statement, the voucher was prepared and thereafter the amount was deposited in the court of ADJ and in the reference petition vide letter dated 06.10.1983. He further submits that the petitioner is not entitled to any relief as claimed under the 2013 Act as the possession of the land has been taken but on account of a dispute, a reference under Section 30-31 of the old Act was made.

9. In response to the submissions of Mr.Pathak, Mr.Vashisht has submitted that the petitioner has not made any application seeking release of the money as there was no dispute. He submits that there was no occasion to make any reference in the absence of any dispute and the LAC had no authority to refer the matter to the ADJ.

10. We have heard learned counsels for the parties and considered the rival submissions.

11. Section 24 (2) of the 2013 Act reads as under:

"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,-

(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 (1 of 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."

12. As per Section 24 (2) of the 2013 Act, in two eventualities the acquisition proceedings are deemed to have lapsed. Firstly; in case where the physical possession has not been taken and secondly; where the compensation has not been tendered.

13. In the case of Pune Municipal Corporation (*supra*), the Supreme Court of India has considered in detail as to what is the interpretation of payment of compensation. Paragraphs 12 to 20 of the judgment read as under:

"12. To find out the meaning of the expression, "compensation has not been paid", it is necessary to have a look at Section 31 of the 1894 Act. The said section, to the extent it is relevant, reads as follows:

"31. Payment of compensation or deposit of same in Court. - (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the court to which a reference under section 18 would be submitted:"

13. There is amendment in Maharashtra-Nagpur (City) in Section 31 whereby in sub-section (1), after the words "compensation" and in sub-section (2), after the words, "the amount of compensation", the words "and costs if any" have been inserted.

"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. The 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."

14. The Supreme Court has explained that upon making of an award, the compensation is to be tendered to the persons interested. While elaborating the mandate of Section 11, the Apex Court has explained that it is mandatory for the LAC to make the payment of compensation unless prevented by one of the three contingencies being (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. In the absence of any dispute, no doubt, it is incumbent upon the collector to tender the compensation to the rightful owner. To say that there was no dispute amongst the parties, in our view, cannot be accepted in view of the original record which has been produced before us.

15. The original record reflects that the original owners had made an application before the LAC as far back as in the year 1982. Thereafter, the applicants (the petitioner being one of the applicants) had also signed the application. It is not in dispute that pursuant to the application, the amount was not released in favour of the original owners. Instead, as reflected in the noting in the file, in view of the stand taken on account of a dispute, the money was deposited through a voucher vide No.672 dated 05.10.1983 in the court of ADJ.

16. In case, there was no dispute, which has been strenuously contended by the

learned counsel for the petitioner, it was open for the petitioner to contest the matter before the Court of ADJ from 1983 till the date of filing of the writ petition in the year 2015. There is no explanation as to why the matter was not contested before the reference court. There is also no explanation as to why no steps were taken by the petitioner till the filing of the writ petition to seek compensation in the case, where there was no dispute or in case the matter was wrongly referred to the court of ADJ under a reference made under Section 30-31 of the Old Act.

17. Mr.Vasisht, learned counsel for the petitioner has also submitted before us that no notice was received by the petitioner from the court of learned ADJ or the Collector. This submission of the learned counsel for the petitioner is again without any force as the petitioner was one of the signatories to the application, which was filed before the LAC in the year 1982. The order referring the matter to the court of ADJ was passed in the presence of the applicants and even otherwise, an ordinary prudent person would be keen to know the outcome of an application seeking release of the amount. The application for release of amount being made as far back as in the year 1982. In our view, the case of the petitioner falls under one of the contingencies as explained by the Supreme Court in para 14 of the judgment extracted in the foregoing paras. The amount has been sent to the court of ADJ, which in-fact is supported by the documents produced on record and since this order was passed, an application filed by five applicants, out of which, petitioner was one of the applicants, the petitioner cannot say that he was not aware of the same.

18. In view thereof, we find no merit in the writ petition. Accordingly, the writ petition is dismissed.