

(2015) 01 DEL CK 0075

In the Delhi High Court

Case No : Writ Petition (C) 6696/2014 and CM No. 15889/2014

Mahadev Prasad Khanna

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-01-2015

Acts Referred:

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

Citation : (2015) 01 DEL CK 0075

Hon'ble Judges : Sanjeev Sachdeva, J.;Badar Durrez Ahmed, J.

Bench : Division Bench

Advocate : Malavika Lal and Avishkar Singhvi, for the Appellant; Anil Soni, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Badar Durrez Ahmed, J.—The learned counsel for the Land Acquisition Collector (respondent No. 4) has handed over the counter affidavit which is taken on record. The learned counsel for the petitioner does not wish to file any rejoinder to this affidavit and shall be relying on the averments made in the writ petition.

2. By way of this writ petition, the petitioner is seeking the benefit of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the 2013 Act") which came into effect on 01.01.2014. The petitioner, consequently seeks a declaration that the acquisition proceeding initiated under the Land Acquisition Act, 1894 (hereinafter referred to as "the 1894 Act") and in respect of which the Award No. 15/87-88 dated 05.06.1987 was made, inter alia, in respect of the petitioner's land comprised in khasra numbers 1703 (4-16), 1704 (0-18), 1705 (3-08), 1706 (4-16), 1707/1 (1-08), 1707/2/2 (2-19), 1712/2 (4-07) measuring 22 bighas and 12 biswas in village Chattarpur, shall be deemed to have lapsed.

3. It is an admitted position that the physical possession of the subject land has not been taken by the land acquiring agency. However, insofar as the

compensation is concerned, it is the case of the petitioner that the same has not been paid to them whereas it is the case of the respondents that the said compensation was deposited in court pursuant to an order passed by a Vacation Judge of this court in C.M.(Main) 1411/2013 passed on 30.12.2013. By virtue of that order, the said C.M.(Main), amongst others, was disposed of by recording that without prejudice to the rights and contentions of the land holders the cheque tendered in each petition would be treated as tendered to the court of the learned Additional District Judge, Delhi as of that date i.e. 30.12.2013. According to the respondents this amounts to payment of compensation. However, this issue has already been settled by a decision of this court in Gyanender Singh and Ors v. Union of India and Ors. WPC 1393/2014 decided on 23.09.2014 wherein this court held that unless and until the compensation was tendered to the persons interested, mere deposit of the compensation in court would not be sufficient. The compensation cannot be regarded as having been paid merely on the deposit of the same in court unless and until it has first been offered to the person interested and he has refused to accept the same. In the present case, it is an admitted position that the compensation amount was tendered in this court in the said C.M (Main) 1411/2013 without first being offered to the petitioner herein. Therefore the same, following the decision in Gyanender Singh (supra), cannot be regarded as compensation having been paid to the petitioner.

4. The learned counsel for the respondent also placed reliance on the newly inserted proviso to Section 24(2) of the 2013 Act which was introduced by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014. The newly added proviso reads as under:-

"Provided further that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a Tribunal for taking possession or such period where possession has been taken but the compensation lying deposited in a court or in any account maintained for this purpose shall be excluded."

(underlining added)

5. On a plain reading of the proviso, it is evident that the purpose of the proviso is for computing the period of five years referred to in Section 24(2) of the 2013 Act. Certain periods are to be excluded in computing the said period referred to in Section 24(2) of the 2013 Act. The periods to be excluded are:

- (1) the period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court; or
- (2) the period specified in the Award of a Tribunal for taking possession; or
- (3) such period where possession has been taken but the compensation is lying

deposited in a court or in any account maintained for this purpose.

6. The learned counsel for the respondents are relying on the third alternative inasmuch as it has been contended that the amount for compensation has been deposited in court.

7. The learned counsel for the petitioner contends that the newly added proviso does not have any application to the facts prevailing in the present case. The question of compensation lying deposited in a court or in any account maintained for such purposes would only arise in a case where possession has been taken. In the present case, admittedly, the possession has not been taken. This being the situation, the newly inserted proviso has no application. We agree with the submission made by the learned counsel for the petitioner that unless and until possession is taken, the third alternative mentioned in the second proviso does not get triggered even though compensation may be lying deposited in a court or in any account maintained for such purposes.

8. In these circumstances, it is clear that neither physical possession of the subject land has been taken by the land acquiring agency nor has any compensation been paid to the petitioner. The award was made more than five years prior to the commencement of the 2013 Act. All the ingredients necessary for the applicability of section 24(2) of the 2013 Act, as interpreted by the Supreme Court and this court in the following decisions, stand satisfied:-

(i) Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others, ;

(ii) Union of India (UOI) and Others Vs. Shiv Raj and Others, ;

(iii) Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors: Civil Appeal No. 8700/2013

(iv) Surender Singh v. Union of India and Others: WP(C) 2294/2014 decided on 12.09.2014 by this Court; and

(v) Gyanender Singh and Ors v. Union of India and Ors: W.P.(C) 1393/2014.

9. As a result, the petitioner is entitled to a declaration that the said acquisition proceedings initiated under the 1894 Act in respect of the subject lands are deemed to have lapsed. It is so declared.

10. The writ petition is allowed to the aforesaid extent. There shall be no order as to costs.