

(2017) 11 DEL CK 0054

In the Delhi High Court

Case No : Civil Writ Petition No. 2521 Of 2016

Maya Devi And Ors.

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 30-11-2017

Acts Referred:

Constitution Of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 4, 6, 9, 10, 11, 17, 18, 31, 31(1), 31(2), 32, 33, 34

Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 24(2)

Citation : (2017) 11 DEL CK 0054

Hon'ble Judges : G.S.Sistani, J;V.Kameswar Rao, J

Bench : Division Bench

Advocate : Nishtha Garg, Sachin Nawani, Ajay Arora, Kapil Dutta, Kush Sharma, Ekant

Final Decision : Disposed Of

Judgement

G.S.Sistani, J

1. This is a petition under Article 226 of the Constitution of India filed by the petitioners seeking a declaration that the acquisition proceedings with respect to the land of the petitioners measuring 3 biswas comprised in Khasra No. 416/2 min situated in Village-Mundka, Delhi (hereinafter referred to as the subject land) stand lapsed.

2. At the oral request of counsel for the petitioners, which is not opposed, North Delhi Municipal Corporation is impleaded as a party to the writ petition being the beneficiary of the land. Let the amended memo of parties be filed during the course of the day.

3. Counsel for the petitioner submits that Notification under Section 4 of the

Land Acquisition Act, 1894 was issued on 23rd March, 2010 followed by declaration under Section 6 & 17 on 7th April, 2010 and thereafter Award bearing no. 04/DC(W)/2011-12 was made on 26th March, 2012. Counsel

for the petitioners submits that although the possession of the subject land has been taken, however no compensation has been tendered to the

petitioners. Thus the case of the petitioner would be covered by the decision rendered by the Supreme Court of India in the case of Pune Municipal

Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors. (2014) 3 SCC 183. She also relies on Paragraphs 6 and 7 of the counter-affidavit filed

by respondent LAC in support of her submissions that the compensation has not been disbursed to the interested persons. Counsel further submits that

since the possession of the land has been taken, she only presses for compensation in terms of Section 24 (2) of the Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

4. Mr. Kapil Dutta, counsel appearing for respondent North Delhi Municipal Corporation on instructions from the North DMC informs the Court that

the possession of the subject land has been taken and put to use and Road Under Bridge (RUB) has been constructed.

5. We have heard the counsel for the parties. Paragraphs 6 and 7 of the counter-affidavit filed by respondent LAC reads as under:

â??6. That as per the records, the land of the petitioner bearing Khasra No. 416/2 min admeasuring 3 biswa situated at the revenue estate

of village Mundka, Delhi were notified under Section 4 of the Land Acquisition Act on 23.3.2010 followed by declaration under Section 6

& 17 of the Land Acquisition Act on 7.4.2010 for public purpose namely for Construction of RUB on existing Railway Crossing, Mundka

No. 16 on Delhi-Bhatinda Section. In pursuance of said notification, notices under Section 9 & 10 of the Act, were issued to the interested

persons, inviting the claims from all the interested persons and claims were also filed by the interested persons. The then Land Acquisition

Collector passed Award No. 4/DC(W)/2011-2012 dated 26.3.2012 after considering the claims of the claimants.

7. That the possession of the land was taken over and handed over to the beneficiary department on 6.1.2012. It is respectfully submitted

that the compensation of the land could not be disbursed to the interested

persons.â??

6. In the case of Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors reported in (2014) 3 SCC 183, in Paras 14

to 20, it was held as under:-

â??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. 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.

7. Having regard to the stand taken by the respondent / LAC that compensation has not been paid to the petitioners and keeping in view the

observations made by the Supreme Court in the case of Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors. (supra), we

are of the view that the present petition is liable to be allowed.

8. For the reasons aforesaid, we are of the considered view that the necessary ingredients for the application of Section 24(2) of the New Act as

has been interpreted by the Supreme Court of India and this Court in the following cases stand satisfied:

(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. In view of the discussion above, the petitioner is entitled to a declaration that the acquisition proceedings with respect to subject land is deemed to

have lapsed. It is so declared.

10. Since the land has been put to use, as prayed by the counsel for the petitioners, they would only be entitled to compensation.

11. In view of above, the petition stands disposed of.