

(2015) 10 MP CK 0001
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 305 of 2007

Purushottam Lal and Others	Vs	APPELLANT
State of M.P. and Others		RESPONDENT

Date of Decision : 01-10-2015

Acts Referred:

General Clauses Act, 1897 — Section 6
Land Acquisition Act, 1894 — Section 11, 18, 31, 4, 5A
Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 114, 114(1), 114(2), 18, 24

Citation : (2015) 3 JLI 351

Hon'ble Judges : Rajendra Menon and C.V. Sirpurkar, JJ.

Bench : Division Bench

Advocate : Vivek Tankha, Varun K. Chopra and Akshay Sapre, for the Appellant; Swapnil Ganguly, Government Advocate, for the Respondent

Judgement

Rajendra Menon, J.—In this appeal filed under section 2(1) of M.P. Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005, exception is sought to an order dated 6.3.2003 passed by the Writ Court in Writ Petition No. 1719/1999 whereby, challenge made to the acquisition proceedings under the Land Acquisition Act, 1894, has been rejected. Even though various grounds are raised, an interlocutory application has been filed and it is said that now 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 Act of 2013), the acquisition be lapsed and appeal be allowed and disposed of in terms thereof. The M.P. Housing Board with a view to establish and implement a land development scheme approached the State Government and in the year 1987-88, the Collector, Bhopal and the Land Acquisition Officer, Bhopal, initiated proceedings under the Land Acquisition Act of 1894 for acquiring 25.57 acres of land bearing Khasras No. 57, 58, 59, 60, 69 and 70 situated in Village Khajuri kala, Tahsil Huzur, District Bhopal. Challenging this acquisition proceeding,

Purushottam Lal and others filed a writ petition before the Writ Court being Writ Petition No. 17.19/1999 raising various grounds to say that the acquisition under the Land Acquisition Act of 1894 is illegal. By an order passed on 6.3.2003, the learned writ Court having rejected the prayer made by Purushottam Lal and others, this appeal has been filed.

2. Even though various grounds are raised to say that the acquisition proceedings are illegal and cannot be sustained, during the pendency of the matter, I.A. No. 15129/2014 was filed seeking amendment in the writ appeal and pointing out that after coming into force of Act of 2013 w.e.f. 1.1.2014 and in view of section 24 of the said Act and particularly, the provisions of section 24(2) , now after the award was passed in the year 1991 and as till date no compensation has been paid to the land owners or beneficiaries nor is the same deposited in the accounts of the beneficiaries, the acquisition proceedings have lapsed and the land should be restored back to the appellants. Accordingly, it is contended that in accordance to the Act of 2013 the appeal should be allowed and land restored back to the appellants.

3. Shri Vivek Tankha, learned senior counsel appearing for the appellants, took us through the provisions of section 24 of the Act of 2013, particularly, sub-section (2), meaning and import of the words "payment of compensation" or deposit of the same in the Court as contemplated under section 31 of the Act of 1984, the law laid down by the Supreme Court in the case of Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others, ; Union of India (UOI) and Others Vs. Shiv Raj and Others, ; Bimla Devi Vs. State of Haryana, ; Bharat Kumar Vs. State of Haryana and Another, , and another judgment of the Supreme Court in the case of Sharma Agro Industries Vs. State of Haryana, , argued that now as the award under section 11 of the Land Acquisition Act, 1894 has been passed more than five years back prior to commencement of the Act of 2013 and as compensation has not been paid to the beneficiaries, the law laid down in the case of Pune Municipal Corporation (supra), will squarely apply and land is liable to be restored back to the petitioners, they also referred to reply filed by the respondents, particularly, M.P. Housing Board to the applications in question and pointed out that Housing Board has only deposited the compensation with the State Government namely, Collector, Bhopal but as the amount is not paid to the beneficiaries, the ingredients necessary for invoking section 24 of the Act of 2013 are made out.

4. Shri Swapnil Ganguly, learned Government Advocate refuted the aforesaid contention and argued that as the Housing Board has paid the compensation, no relief can be granted. The Housing Board has filed a detailed reply to I.A. No. 15129/2014 and from the said reply filed and the documents annexed thereto as Annexures R-1 to R-6, respondents only say that after the award was passed on 30th March, 1999 the Housing Board deposited the amount with the Collector, Bhopal vide various cheques as is indicated in para 2 of the reply and as the compensation has been deposited with the Collector, the petitioners and the

appellants should have collected the amount from the Collector. It is indicated in para 4 of this reply that after passing of the award, no efforts were made by the petitioners or the appellants to receive the compensation and the amount remained with the competent authority and it is said that as no reference was also made under section 18 of the Old Act by the appellants, they cannot make any complaint. It is tried to be indicate by Ku. Anjali Banerjee, learned counsel for the Housing Board, that the provisions of section 24(2) will not apply in the present case as M.P. Housing Board has already complied with the award passed on 21.3.1999 and deposited the compensation with the Collector.

5. After the matter was heard and closed, time was granted to the State Government and the Housing Board to file additional affidavit in support of their contention, if any. Even though the State Government has not filed any affidavit, on behalf of the Housing Board, an additional reply has been filed on 5th October 2015. In the additional reply filed, nothing new has been pointed out, except to say that after the acquisition proceedings were conducted the possession of the land has been taken over and documents showing taking over of the possession has been filed. That apart, various agreements and documents have been filed to show that tender has been granted and some agreement has been entered into for development of the land and therefore, now the appellants cannot claim back the land from the Board. It is indicated that once the Board has deposited the compensation award with the Collector and the possession of the land is taken over, the application cannot be allowed.

6. We have heard learned counsel for the parties at length and we have considered the rival contentions. Section 24 of the Act of 2013 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 (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 is 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."

Similarly, section 31 of the Land Acquisition Act, 1894 reads as under:

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

(ii) 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 compensation or 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."

7. A perusal of sub-section (2) of section 24 indicates that - Notwithstanding anything contained in sub-section (1) of section 24 , in case where land acquisition proceedings are initiated under the Land Acquisition Act of 1894 and when an award under section 11 has been made five years prior to commencement of the Act of 2013 but physical possession of the land has not been taken or compensation has not been paid, the said proceeding shall be deemed to have been lapsed. Further section 31 of the Land Acquisition Act, 1984 pertains to payment of compensation or deposit of the same in Court. This provision contemplates that on making of an award under section 11 , the Collector shall tender the payment of compensation awarded by him to the person interested, entitled thereto according to the award and shall pay to them unless prevented by someone or some competency. Sub-section (2) contemplates that if for any reason, amount is not paid or there is no competent person to receive the compensation, Collector shall deposit the amount of compensation to the Court to which reference under section 18 would be submitted. A conjoint reading of both these sections clearly indicates that if award under land acquisition proceeding held under the Land Acquisition Act of 1894 is passed five years prior to coming into force of Act of 2013 and if either physical possession of the land has not been taken over or compensation is not paid to the beneficiaries, then the land acquisition proceedings lapse. The manner of payment of compensation is contemplated under section 31 of the 1894 Act and the eventualities or non-receipt of compensation warrants the Collector to deposit the amount with the Court where the reference can be submitted. Both these provisions, particularly, the provisions of Section 24 has been interpreted by the Supreme Court in the case of Pune Municipal Corporation (supra), and after considering various aspects of the matter in paras 11, 19 and 21 the following principles have been laid down:

"11. Section 24(2) also begins with non obstante clause. This provision has overriding effect over section 24(1) . Section 24(2) enacts that in relation to the land acquisition proceedings initiated under 1894 Act, 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, viz; (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 the lapse of such acquisition proceedings, if the appropriate Government still chooses to acquire the land which was the subject matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the 2013 Act. The proviso appended to section 24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act 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 the beneficiaries specified in section 4 notification become entitled to compensation under 2013 Act.

19. Now, this is admitted position that award was made on 31.1.2008. 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 land owners/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 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.

21. The argument on behalf of the Corporation that the subject land acquisition proceedings have been concluded in all respects under the 1894 Act and that they are not affected at all in view of section 114(2) of the 2013 Act, has no merit at all, and is noted to be rejected, section 114(1) of the 2013 Act repeals 1894 Act. Sub-section (2) of section 114 , however, makes section 6 of the General Clauses Act, 1897 applicable with regard to the effect of repeal but this is subject to the provisions in the 2013 Act. Under section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of 2013 Act and possession of the land is not taken or compensation has not been paid. The legal fiction under section 24(2) comes into operation as soon as conditions stated therein are satisfied. The applicability of section 6 of the General Clauses Act being subject to section 24(2) , there is no merit in the contention of the Corporation."

It has been clearly laid down by the Supreme Court in the aforesaid case, that if compensation is not paid or if possession of the land is not taken over and if five years period or more is over, prior to commencement of the Act of 2013, the land

acquisition proceedings lapse. Section 31(1) of the Act is also taken note of and it has been clearly held that if compensation is neither paid to the beneficiaries nor deposited in the Court where reference would be met under section 18, land acquisition proceedings would lapse. It is also held that deposit of the amount as per the award with the treasury of the Government of State Revenue Department is not sufficient compliance. This judgment of the Supreme Court in the case of Pune municipal Corporation (supra), has been subsequently considered in the case of Shiv Raj and others (supra), and after taking note of the said judgment certain other judgments in the case of Bharat Kumar (supra), and Bimla Devi and others (supra), have been taken note of and in paras 26 and 27 the matter has been crystallized in the following manner:

"26. The Objects and Reasons of the 2013 Act and particularly clause 18 thereof fortify the view taken by this Court in the judgments referred to hereinabove. Clause 18 thereof reads as under:

"18. The benefits under the new law would be available in all the cases of the land acquisition under the Land Acquisition Act 1894 where award has not been made or possession of land has not been taken."

(Emphasis added)

27. However, the aforesaid appeals have to be decided in the light of the above settled legal propositions. The admitted facts of the case remain that the respondent tenure holders had filed objections under section 5A of the 1894 Act as admitted in the affidavit filed by Smt. Usha Chaturvedi, Deputy Secretary (Land Acquisition), Land and Building Department, Vikas Bhawan, New Delhi, filed in January 2014 before this Court. Award No. 15/87-88 had been made on 5.6.1987 and possession has not been taken till date though compensation has been deposited with the Revenue Department, which cannot be termed as "deemed payment" as has been held in Harakchand case."

8. Similar is the view taken by the Supreme Court in the case of Sharma Agro Industries (supra), wherein also the principles laid down in the case of Pune Municipal Corporation (supra), etc., has been considered and principle reiterated. It is therefore, clear from these judgments and interpretation of section 24 of the Act of 2013 and implication of section 31 of the Act of 1894 that if after passing of the award and five years prior to coming into force of Act of 2013, amount is not paid in accordance to the requirement of law, the entire proceedings lapsed. If aforesaid principle is applied in the present case, we find that award in question was passed on 15.4.1999 and from the averments made by the M.P. State Housing Board in their counter affidavit filed, it is only indicated that the amount of compensation has been deposited with the competent authority namely the Collector, Bhopal. Thereafter, in the additional affidavit filed on 5.10.2015, they only indicate about taking over of possession. However, nothing is said with regard to payment of the compensation to the beneficiaries in accordance to the requirement of section 24(2). The Supreme Court has clearly

laid down the principle that if either of the eventualities contemplated under sub-section (2) of section 24 are in existence, the land acquisition proceedings lapsed. The two eventualities are that possession is not taken over or compensation in accordance to law is not given to the beneficiaries. In this case even though the affidavit filed by the Housing Board indicates that possession is taken over by them and they have entered into some agreement with the contractor for development of the area and have also paid some amount in furtherance thereto but the amount of compensation has not been paid to the beneficiaries in accordance to the requirement of section 31 of the Land Acquisition Act of 1894. On the contrary, the note sheet of the Collector dated 17.1.2003 available in the record of Writ Petition No. 2633/2002 filed along with an interlocutory application I.A. No. 9867/2015 which was heard by us along with this appeal, goes to show that after the amount of compensation was deposited by the Housing Board with the Revenue Department, namely the Collector on 17.1.2003. It was indicated that the amount has not been paid to the beneficiaries and therefore, in accordance to the provisions of section 31 of the Act of 1894, the amount should be deposited in the Court where the proceeding under section 18 are normally held. However, there is no material to show as to when, how and in what manner the amount has been deposited in the Court where the proceeding under section 18 is maintainable. In spite of granting repeated opportunities respondents have failed to demonstrate before this Court that the amount of compensation as required under law was paid. As held by the Supreme Court mere deposit of the amount in the Government Treasury or with the Revenue Department is not sufficient, it has to be paid to the beneficiaries or deposit in the Court where a reference under section 18 is normally filed. That being so, we are satisfied that documents overwhelming available on record do demonstrates that in spite of award having been passed more than five years prior to coming into force of the Act of 2013 i.e. w.e.f. 1.1.2014, the award of compensation has not been paid to the beneficiaries as required under law and therefore, in the light of legal principles laid down by the Supreme Court as referred to herein above, entire proceedings lapsed.

9. Accordingly, interlocutory applications are allowed. Petition and appeal are also allowed. Order passed in Writ Petition No. 1719/1999 is quashed. It is held that the acquisition proceedings are lapsed and now the land be restored back to the land owners and if required, the respondents may proceed in accordance with law. With the aforesaid, appeal and writ petition stands allowed and disposed of. No order on costs.