

(2018) 01 DEL CK 0441

In the Delhi High Court

Case No : Civil Writ Petition No. 743 Of 2016

Rajinder Singh And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 19-01-2018

Acts Referred:

Constitution Of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 4, 6, 11, 18, 30, 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 : (2018) 01 DEL CK 0441

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

Bench : Division Bench

Advocate : S. B. S. Vashishta, Yeeshu Jain, Jyoti Tyagi, Kamal Sharma

Final Decision : Disposed Of

Judgement

G.S.Sistani, J

1. Counter affidavit has been filed by LAC in the Registry today. Matter was passed over once to enable the counsel for LAC to place the counter affidavit on record.

2. 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 land of the petitioners comprised in Khasra Nos. 39/14/2 (2-00), 17 (4-16) and 24 (4-14) to the extent of 1/6th share, situated in the revenue estate of village Rani Khera, Delhi (hereinafter referred to as 'the subject land') stand 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 the compensation has not been paid to the petitioners.

3. Learned counsel for the petitioners submits that although possession has been taken, compensation was not tendered to the petitioners, thus, the case of the

petitioners is fully covered by a decision rendered by the Apex Court in the case of Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors., reported at (2014) 3 SCC 183.

4. Mr. Jain, learned Standing Counsel for LAC submits that possession of the subject land was taken. He further submits that compensation towards 5/6th share was also paid to the recorded owners on 05.05.2006 and remaining 1/6th share of the petitioners could not be paid as one Smt. Rohni had filed an objection against the payment of compensation to the petitioners. The petitioner had filed a W.P. (C) No. 3255/2013 where a relief was sought that the 1/6th share of the compensation be referred to the Reference Court under Section 30-31 of Land Acquisition Act, 1894 which was given by an order dated 09.10.2014. He further submits that the compensation amount was sent before the Reference Court in compliance of aforesaid order and the petitioner cannot take advantage of Section 24(2) of the New Act having regard to the fact that upon that prayer made by the petitioners a reference was made.

5. We have heard learned counsel for the parties.

6. In this case, a notification under Section 4 was issued on 21.03.2003, a declaration under Section 6 of the Act was issued on 18.03.2004 and an Award bearing No.8/2005-06 was passed on 12.07.2005. The petition reveals that after taking over the possession of subject land on 15.12.2005 by the LAC, the petitioners made repeated requests for release of compensation including in writing by a letter dated 18.01.2006. The petitioners were forced to file a writ petition in the year 2013 being W.P. (C) 3255/2013 seeking a direction to the Land Acquisition Collector to deposit the compensation with interest.

7. Counter affidavit has been filed by Land Acquisition Collector. Para 5 of the counter affidavit reads as under:

"5. xxxxx As admitted by the petitioners, the 5/6th share was also paid to the recorded owners on 5.5.2006 and remaining 1/6th share of the petitioners could not be paid as Smt. Roshni filed objections dated 18.1.2006 against the payment of compensation to the petitioners. The petitioners have admitted that they filed a writ petition number 3255/20136 seeking a relief that the 1/6th share of compensation be referred to the Reference Court u/s 30-31 of Land Acquisition Act, 1894 which was directed vide order dated 09.10.2014. it is submitted that the said writ petition was decided by the Hon'ble Court vide judgment dated 20.11.2014 and on 19.11.2014, the compensation amount for 1/6th share was sent before Reference Court in compliance of order dated 09.10.2014 vide cheque number 454555 amounting to Rs.9,89,936/-. It is submitted that the petitioners cannot take the advantage by staying that the compensation was referred u/s. 30-31 in the year 2014 as the same was prayed by the petitioners itself and the same was done in compliance of the order passed by the Hon'ble Court. It is further submitted that by not amending its writ petition and restricting its claim to the sending of reference u/s. 30-31 of Act, 1894, the

petitioners cannot challenge the action of the respondent so taken in compliance of the order of the Hon'ble Court."

8. In our considered view, by the time the compensation was deposited, the acquisition proceedings with respect to the land of the petitioners already stood lapsed by the coming into force of the 2013 Act. The compensation amount deposited by the LAC in Reference Court in the year 2014 can not stand in the way of the petitioners. The Court cannot loose track of the fact that an award was made in the year 2005, but the compensation was neither tendered to the petitioners nor the LAC took recourse to Section 30, 31 of the Act of 1894 and made a reference. The petitioners approached this Court in the year 2013 and sought a direction to the LAC to make a reference. By the time the relief sought was granted on 09.10.2014, the acquisition proceedings had lapsed.

9. The case of the petitioners is fully covered by a decision rendered by the Apex Court in the case of Pune Municipal Corporation (Supra), as compensation has been paid to the petitioners. Para 14 to 20 read as under:

"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."

10. For the reasons aforesaid and since the award having been announced more than five years prior to the commencement of the 2013 Act and compensation not having been tendered to the petitioners nor a reference having been made prior to the commencement of the 2013 Act, the petitioners are entitled to a declaration that the acquisition proceedings initiated under the Land Acquisition Act, 1894 with regard to the subject land are deemed to have lapsed. It is ordered accordingly.

11. Learned counsel for the petitioners, at this stage, submits that the petitioners would be satisfied if the compensation is paid to them as per 2013 Act as the possession of the subject land has already been taken over by the respondents. As prayed, it is directed the petitioners be paid the compensation as per the New Act to be paid within one year from today.

12. The writ petition, is accordingly disposed.