
(2014) 11 SC CK 0027

In the Supreme Court Of India

Case No : I.A. No(s). 3-4 of 2014 in Civil Appeal No. 3872 of 2010

Ram Kishan

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

General Clauses Act, 1897 — Section 6
Land Acquisition Act, 1894 — Section 11, 11(1), 4, 6
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 114(1), 114(2), 24(2)

Citation : AIR 2015 SC 440 : (2015) 1 AJR 563 : (2015) 2 ALD 29 : (2015) 1 AWC 816 : (2015) 1 RCR(Civil) 259 : (2015) 4 SCC 347

Hon'ble Judges : V. Gopala Gowda, J;C. Nagappan, J

Bench : Division Bench

Advocate : Ranbir Singh Yadav, Anzu K. Varkey and Vimal Chandra S. Dave, Advocates for the Appellant; Narender Hooda, Sr. Adv., Vineet M. and Kamal Mohan Gupta, Advocates for the Respondent

Final Decision : Allowed

Judgement

V. Gopala Gowda, J.—I.A. No. 4 for exemption from filing official translation is ordered.

2. I.A. No. 3 in Civil Appeal No. 3872 of 2010 is filed by the applicants/Appellant Nos. 24-28 (for short "the applicants") seeking direction and appropriate orders for disposal of this appeal in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short "the Act of 2013"). The Appellant-land owners have come to this Court questioning the correctness of the judgment and order dated 13.03.2008 passed by the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 3823 of 2008, wherein the writ petition was dismissed on the ground that the same was not maintainable after passing of the Award.

3. The brief facts are mentioned hereunder.

The Appellant Nos. 24-28 are the owners and in possession of the land in question bearing khewat No. 260 Khasra No. 46 killa Nos. 1(3-18), 2(7-14), 3/1(0-16), 8/2(0-16), 9(8-0), 10(6-1) and 26(0-5) totally measuring 27 kanals 13 marlas of land situated in the revenue estate of Village Kumashpur Tehsil and District Sonipat(Haryana). The Appellants have been in continuous possession of the aforesaid land in question till date and harvesting crops.

4. On 20.01.2003 the Respondents published a notification Under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the L.A. Act") bearing No. LAC (F)-NTLA/2003/137. Thereafter on 16.01.2004, the Respondents issued notification Under Section 6 of the L.A. Act bearing No. LAC (F)-NTLA/2004/190. The Land Acquisition Collector passed an award bearing No. 7 of the year 2006-2007 dated 14.01.2006.

5. The Appellants challenged the said notification in the High Court of Punjab and Haryana vide Civil Writ Petition No. 3823 of 2008. The High Court vide its judgment and order dated 13.03.2008 dismissed the writ petition by assigning untenable reasons. Aggrieved by the same, the Appellants have filed this appeal.

6. The learned Counsel for the Appellants placed strong reliance on the application filed Under Section 24(2) of the Act of 2013 which has come into force w.e.f. 01.01.2014, the said provision is extracted hereunder:

24(2) Notwithstanding anything contained in Sub-section (1), in case of land acquisition proceedings initiated under the LA Act, 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 whether 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 specified in the notifications for acquisition Under Section 4 of the said land acquisition and shall be entitled to compensation in accordance with the provisions of this Act.

7. It is contended that in the instant case, the Appellants are fulfilling the requirements of Section 24(2) of the Act of 2013 as the physical possession of the land involved in these proceedings has not been taken till date and no compensation is paid to the Appellants though the award has been made on 14.01.2006. Therefore, the said provision Under Section 24(2) of the Act of 2013 squarely applies to the case of the Appellants and the land acquisition proceedings in so far as the Appellants land is concerned be deemed to have elapsed.

8. Further, the learned Counsel for the Appellants placed reliance on the decisions of this Court in the cases of Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others, , Bharat Kumar Vs. State of Haryana and Another, , Bimla Devi Vs. State of Haryana, and Union of India (UOI) and Others Vs. Shiv Raj and Others, and submitted that the ratio in the aforesaid judgments squarely apply to the present case on hand. Thus, the acquisition proceedings qua the land of the Appellants have to be declared as lapsed by applying the provisions of Section 24(2) of the Act of 2013.

9. We have heard the learned Counsel for both the parties. After examining the facts and circumstances of the case on hand, we are of the considered view that neither the possession of the land in question has been taken by the Respondents nor was the compensation paid to the Appellants though more than five years have passed since the date of the award passed on 14.01.2006. Therefore, the acquisition proceedings of the land of the Appellants have lapsed in view of Section 24(2) of the Act of 2013. The said provision has been succinctly interpreted by the three Judge Bench decision of this Court in the case of Pune Municipal Corporation (supra). The relevant paras 20 and 21 of the aforesaid case is extracted hereunder:

20..... 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.

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 the 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 the 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.

10. Further, reliance was placed on the decision of this Court in the case of Bimla Devi and Ors. (supra) and Sree Balaji Nagar Residential Association Vs. State of

Tamil Nadu, , wherein the law laid down in the case of Pune Municipal Corporation (supra) was reiterated. In Sree Balaji Nagar Residential Association (supra), it was held that the provision Under Section 24(2) of the 2013 Act does not exclude any period during which the land acquisition proceedings might have remained stayed on account of stay or injunction granted by any court. It was further held that the Legislature has consciously omitted to extend the period of five years indicated in Section 24(2) even if the proceedings had been delayed on account of an order of stay or injunction granted by a court of law or for any reason.

11. Further in the case of Shiv Raj and Ors. (supra), this Court discussed the circular issued by the Government of India, Ministry of Urban Development, Delhi Division wherein the legal opinion of the Solicitor General of India clarified the statutory provisions of the Act of 2013 with respect to lapsing of land acquisition proceedings Under Section 24(2) of the Act of 2013. The relevant para 25 is extracted hereunder:

25..... 3. Interpretation of five years" period "With regard to this issue viz. interpretation of five years" period, two situations have been envisaged in cases where the acquisition has been initiated under the Land Acquisition Act, 1894 viz. (1) parties whose lands have been acquired have refused to accept the compensation and (2) parties whose lands have been acquired having just parted with physical possession of the land. However, in both the above situations, as on 1-1-2014, the period of 5 years would not have ended and in such cases, the advisory seeks to clarify that the new law shall apply only if the situation of pendency continues unchanged for a period that equals to or exceeds five years. In my view, it should be further clarified that in none of the cases the period of five years would have elapsed pursuant to an award made Under Section 11 from the date of commencement of the Act and that the benefit of Section 24(2) will be available to those cases which are pending and where during pendency, the situation has remained unchanged with physical possession not being handed over or compensation not having been accepted and the period equals to or exceeds five years.

4. Limitation

As regards this item relating to the period spent during litigation would also be accounted for the purpose of determining whether the period of five years has to be counted or not, it should be clarified that it will apply only to cases where awards were passed Under Section 11 of the Land Acquisition Act, 1894, 5 years or more prior to 1-1-2014 as specified in Section 24(2) of the Act, to avoid any ambiguity. Since this legislation has been passed with the objective of benefiting the land-losers, this interpretation is consistent with that objective and also added as a matter of abundant caution that the period spent in litigation challenging an award cannot be excluded for the purpose of determining whether the period of five years has elapsed or not. If the possession has not been taken or compensation has not been paid due to the challenge to the land acquisition

proceedings, the pendente lite period will be included to determine the five year period and including such period if the award was made five years or more prior to the commencement of the Act, then the said acquisition proceedings will be deemed to have elapsed and fresh proceedings, if so desired, will have to be initiated in accordance with the new Act.

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 land acquisition under the Land Acquisition Act, 1894 where award has not been made or possession of land has not been taken.

12. By considering the aforesaid decisions of this Court and the facts and circumstances of the present case on hand, we are of the view that physical possession of the land belonging to the Appellants has not been taken by the Respondents and more than five years have elapsed since the making of the award on 14.01.2006 when the Resettlement Act, 2013 came into force on 01.01.2014. Therefore, the conditions stated in Section 24(2) of the Act of 2013 are fulfilled for allowing the plea of the Appellants that the land acquisition proceedings be deemed to have elapsed. The said legal principle laid down by this Court in the case of Pune Municipal Corporation and other cases referred to supra with regard to interpretation of Section 24(2) of the Act of 2013 are applicable with all fours to the fact situation on hand with respect to the land covered in this appeal and for granting relief as prayed by the Appellants in this application.

13. In view of the aforesaid decisions of this Court referred to supra, and the findings and reasons recorded by us the application filed Under Section 24(2) of the Act of 2013 is allowed. Consequently, having regard to the facts of this case, this appeal is allowed by quashing the acquisition proceedings in so far as the land of the applicants/Appellant Nos. 24-28 are concerned. There shall be no order as to costs.