
(2016) 05 AHC CK 0279
In the Allahabad High Court
Case No : C.M.W.P. No. 10487 of 1982

Shiv Gaur

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 18-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4, 6
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24(2)

Citation : (2016) 5 AllWC 5260 : (2016) 119 ALR 412 : (2016) 3 UPLBEC 2152

Hon'ble Judges : Sudhir Agarwal and Shamsheer Bahadur Singh, JJ.

Bench : Division Bench

Advocate : K.N. Tripathi, B.P. Verma, Krishna Ji Khare, N.K. Gupta, Neeraj Tripathi, Ravi Kant and S.C. Misra, Advocates, for the Petitioner; S.V. Goswami, S.C. Vashistha Tiwari, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Sudhir Agarwal and Shamsheer Bahadur Singh, JJ.—;For the purpose of a private body namely M/s Arya Pratinidhi Sabha, Mathura, acquisition proceedings were initiated by Collector, Mathura by publishing notification dated 6.6.1979 (published in U.P. Gazette dated 28th July, 1979), inviting objections from interested persons under Section 5-A (1) of Land Acquisition Act, 1894 (hereinafter referred to "Act, 1894"). It proposed to acquire 1667 Sq. Yard of land comprising plots no. 1128, 1128/1, 1128/2, 1128/3, 1128/4, 1128/5, 1128/6, 1128/7, 1128/8, 1128/9 and 1128/10, situated in Mohalla Antapara, City and District Mathura. After considering objections, Collector submitted report and other records to State Government who made a declaration under Section 6 of Act, 1894 vide notification dated 27th July, 1982, authorising Collector to acquire notified land.

2. Petitioners are owners of premises at plot no.1128 and also have their shops at plots no. 1128/1 to 1128/10.

3. Arya Pratinidhi Sabha, Mathura Branch is running a Kanya Intermediate College, Mathura which was at a distance of about 100 yards from disputed land. It requested Collector to acquire disputed land for expansion of college building.

4. Petitioners claim that Arya Pratinidhi Sabha is neither a society registered under Societies Registration Act, 1860 (hereinafter referred to as "Act, 1860") nor a Cooperative Society within the meaning of Cooperative Societies Act, 1912 (hereinafter referred to as "Act, 1912"), as such it does not fall within the definition of "company" under Act, 1894. Proceedings, however, were initiated by Collector without examining these aspects of matter and impugned notification was issued for acquisition of disputed land. It is also said that area of acquired land was mentioned as "Mohalla Antapara" and not "Tilak Dwar", though the disputed land is situated at Tilak Dwar. Respondents also did not give public notice as contemplated under Act, 1894. Contending that acquisition proceedings are bad in law, the same are challenged on the ground that exercise of acquisition for a private body is a colourable exercise of power.

5. In the counter affidavit filed on behalf of respondents no. 1 to 3, it is said that "Arya Pratinidhi Sabha" is a registered Society under the provisions of Act, 1860, as such a company within the definition of Act, 1894 and Mathura Branch is part and parcel of the said body. It is also said that Arya Samaj Tilak Dwar, Mathura and Laxman Prasad Chaturvedi Arya Kanya Inter College are wings of U.P. Arya Pratinidhi Sabha, Lucknow. Notification under Section 4 of Act, 1894 was published after making due inquiry as contemplated under Act, 1894 and Rules. Disputed land is contiguous to Mohalla Antapara and 100 yards away from Tilak Dwar. It is commonly known as "Mohalla Antapara". Opportunity of filing objection was given to petitioners and they actually filed objections which were duly considered. Thereafter Collector made inquiry and submitted report to State Government. Notification under Section 6 of Act, 1894 was published within three years of notification published under Section 4 of Act, 1894. There is no illegality at all. Agreement was also executed between State Government and acquiring body for which land was proposed to be acquired, on 26.7.1982 i.e before publication of notification under Section 4 in official gazette. Therefore, Section 41 of Act, 1894 was also complied with in words and substance.

6. Another counter affidavit has been filed on behalf of respondents no.4 and 5, wherein also substantially they have adopted what has been stated on behalf of respondents no. 1 to 3. In their counter affidavit, however, it is said that award for compensation has not been given by Land Acquisition Officer and the matter is pending.

7. An interim order was passed by this Court on 22nd December, 1983 in the following terms:

"Issue notice.

Notices have already been accepted on behalf of the respondents no. 1, 2 and 3 by the learned Standing Counsel. Sri S.V. Goswami has accepted notice on behalf

of the respondents no.4 and 5. The copies have been delivered to him today. He prays for and is granted three weeks to file a counter affidavit. The petitioner may file a rejoinder affidavit within three weeks. List the application for orders immediately after expiry of the aforesaid period before the Bench concerned. Meanwhile the petitioner, shall not be dispossessed from the land in dispute. This case need not be treated as tied up to me."

(emphasis added)

8. Pursuant thereto, respondents could not take possession of disputed land from petitioners. Special Land Acquisition Officer, Mathura (hereinafter referred to as "SLAO") made award on 20th September, 1986 which has also been brought on record and it is said that respondents no.4 and 5 have deposited amount of compensation in Court Treasury in June, 1986.

9. On behalf of petitioners an affidavit along with Misc. Application No. 227955 of 2014 has been filed, stating that after declaration of award on 20.9.1986, by SLAO, neither any notice was served upon petitioners nor they were offered compensation nor have been paid compensation in respect of disputed land sought to be acquired. It is also said that though writ petition was dismissed for want of prosecution on 27th November, 1995 and restored on 6.2.2002, but during this 7 years" period also neither possession was taken nor compensation was paid. It is further said that a notice was issued by SLAO on 4.1.2000, requiring petitioners to collect compensation, where against petitioners moved an application for making reference under Section 18 to District Judge, Mathura and thereupon Land Acquisition Reference No. 2 of 2000 (Uma Devi v. Laxman Prasad Chaturvedi Arya Pratinidhi Sabha and others) was made which has been dismissed by Reference Court in default on 19.3.2014. However, entire amount of compensation is still lying in Government Treasury. Possession of proposed acquired land is still with petitioners and they have also not been paid compensation. In view of provisions of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "Act, 2013"), it is said that proceedings for acquisition stand lapsed and now respondents cannot proceed to take over land in dispute and Court may pass appropriate order accordingly in the light of provisions of sub-section (2) of Section 24 of Act, 2013.

10. Learned counsel for petitioners at the time of argument raised only one point that in view of Section 24(2) of Act, 2013, acquisition proceedings have lapsed by operation of law and, therefore, impugned notifications and all subsequent proceedings in respect of disputed land are liable to be set aside.

11. Per contra, learned Standing Counsel appearing for respondents no. 1 to 3 submitted that possession could not be taken due to interim order passed by this Court and there was no fault on the part of respondents, hence Section 24(2) of Act, 2013 would have no application in the present case.

12. We have heard learned counsel for the parties and perused record as also

relevant statutory provisions and judicial authorities on the subject.

13. It is admitted by the parties that possession of disputed land has not been taken by respondents and it is still with petitioners. It is also admitted that award was pronounced by SLAO on 20.9.1986 but compensation has not been paid to petitioners till date. Compensation has also not been deposited in Court but it was deposited by respondent no.4 and 5 in Government Treasury and is still lying thereat.

14. In the light of these admitted facts, we have to examine "whether Section 24(2) of Act, 2013 is attracted, rendering entire acquisition proceedings as deemed lapsed or there is any scope of making aforesaid provisions inapplicable to proceedings in question as argued on behalf of respondents."

15. Section 24 (2) of Act,2013 reads as under:

"24. (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act,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 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 holding 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."

(emphasis added)

16. Section 24 (1)(a) states, if acquisition proceeding is initiated under Act,1894 but no award under Section 11 has been made, then provisions of Act, 2013, relating to determination of compensation, shall apply. Section 24 (1)(b) shall be attracted when acquisition proceedings were initiated under Act, 1894 and award under Section 11 has been made. However, sub-section (2), as an exception to Sub-section (1) having a non-obstante clause, provides that notwithstanding

anything contained in sub-section (1), where acquisition was initiated under Act, 1894, award was also made under Section 11, but 5 years or more period had passed prior to commencement of Act, 2013 and physical possession of land has not been taken or compensation has not been paid, then acquisition proceedings shall be deemed to have lapsed, with liberty to Government, if it so decides, to initiate fresh proceedings of acquisition under Act, 2013. Proviso to Section 24(2) is applicable wherein award has been made but compensation in respect of majority of land holding has not been deposited in the account of beneficiaries and it shows that in such circumstances all beneficiaries, specified under notification of acquisition under Section 4 of Act, 1894, shall be entitled to compensation in accordance with Act, 2013.

17. In the present case, award has been made on 20.9.1986 i.e. almost 29 years before the enactment and commencement of Act, 2013. Further neither possession of disputed land of petitioners has been taken nor compensation has been paid to petitioners or deposited in Court. It is in these circumstances, we are of the view that Section 24 (2) would come into play in this case.

18. Section 24(2) of Act, 2013 came to be considered by a Three Judge Bench in *Pune Municipal Corporation and another v. Harakchand Misirimal Solanki*, (2014) 3 SCC 183. Court held that Section 24(2) deals with non-ostante clause which has overriding effect over Section 24(1). If either of two contingencies is satisfied, wherein award has been made 5 years or more prior to commencement of Act, 2013, i.e. (i) physical possession of land has not been taken or (ii) compensation has not been paid, Court held that such acquisition proceeding would be deemed to have lapsed. Court further considered that deposit of amount of compensation in Government Treasury cannot be treated equivalent to payment of compensation to land owner or any such person interested therein. For this purpose, it relied upon its earlier decisions in *Prem Nath Kapur v. National Fertilizers Corporation of India Ltd.* (1996) 2 SCC 71 and *Ivo Agnelo Santimano Fernandes and others v. State of Goa and another* (2011) 11 SCC 506 wherein Court categorically held that deposit of amount of compensation in State's Revenue Department is of no avail and liability of interest subsists till amount is not deposited in Court.

19. An argument was also raised in *Pune Municipal Corporation and another v. Harakchand Misirimal Solanki* (supra) that land acquisition proceedings have been concluded in all respects under Act, 1894 and they are not affected at all in view of Section 114 (2) of Act, 2013. This was rejected by observing that Section 114 (2) makes Section 6 of General Clauses Act, 1897 (hereinafter referred to as "Act, 1897") applicable with regard to the effect of repeal but this is subject to provisions under Act, 2013. Since Section 24(2), by legal fiction provides that acquisition would be deemed to have lapsed, as soon as conditions mentioned therein are satisfied, hence applicability of Section 6 of Act, 1897 is subject to satisfaction of Section 24 (2) of Act, 2013.

20. A two Judges' Bench in *Bharat Kumar v. State of Haryana*, 2014 (6) SCC 586

(decided on 4.2.2014) again had occasion to consider Section 24 (2) of Act, 2013. Therein also admitted case was that award was made but neither possession was transferred nor compensation was paid to the land owners. In this view of the matter, Court held that Section 24(2) would apply and acquisition proceedings so far as appellant, Bharat Kumar is concerned, are deemed to have lapsed. Court permitted State to initiate appropriate proceeding for acquisition of land afresh in accordance with provisions of Act, 2013. Relevant extract of judgement reads as under:

"Sub-section (2) of Section 24 commences with a non obstante cause. It is a beneficial provision. In view of this provision, if the physical possession of the land has not been taken by the acquiring authority though the award is passed and if the compensation has not been paid to the landowners or has not been deposited before the appropriate forum, the proceedings initiated under the 1894 Act is deemed to have been lapsed.

7. Keeping the aforesaid provisions in view, we have specifically looked into the assertions made by the appellant and the way it is countered by the respondents. In our opinion though the award has been passed by the Land Acquisition Collector, they have not taken the physical possession of the land and have not paid the compensation to the appellant or had deposited the said compensation before an appropriate forum.

8. In that view of the matter, in our considered opinion, sub-section(2) of Section 24 of the 2013 Act squarely applies to the appellant's case and the appellant is entitled to relief sought for in their petition."

(emphasis added)

21. Same Bench had occasion to consider same question in another matter i.e. Bimla Devi and others v. State of Haryana and others, and in other connected matters, reported in 2014 (6) SCC 583, wherein also it held that acquisition proceedings stood lapsed since award was made on 18.11.1995 and neither compensation was paid to land owners nor deposited in court nor physical possession of land was taken from land owner.

22. Then Section 24(2) of Act, 2013 came up for consideration before a three Judges' Bench in Union of India and others v. Shivraj and others, 2014 (6) SCC 564. Therein also, Court found that though award was made on 5.6.1987 but neither possession was taken from land owners nor compensation was paid to them. Though compensation was deposited with Revenue authorities but the same cannot be termed as deemed payment. Therein Court also upheld judgement of High Court wherein acquisition proceedings were set aside for non-compliance of Section 5A of Act, 1894.

23. The next question is, "if possession could not be taken by authorities owing to interim order passed by this Court, would it make any difference and render effect of Section 24(2) of Act, 2013 inapplicable or would make any difference,

whatsoever."

24. This question has been considered directly in *Sree Balaji Nagar Residential Association v. State of Tamil Nadu* 2015 (3) SCC 353 and it is held that since period during which stay order passed by Court is operating has not been excluded by Legislature, it would not be appropriate for Court to read such an exclusion under Section 24(2). Court, in para 11 of the judgement said as under:

"11. From a plain reading of Section 24 of the 2013 Act it is clear that Section 24(2) of the 2013 Act does not exclude any period during which the land acquisition proceeding might have remained stayed on account of stay or injunction granted by any court. In the same Act, proviso to Section 19(7) in the context of limitation for publication of declaration under Section 19(1) and the Explanation to Section 69(2) for working out the market value of the land in the context of delay between preliminary notification under Section 11 and the date of the award, specifically provide that the period or periods during which the acquisition proceedings were held up on account of any stay or injunction by the order of any court be excluded in computing the relevant period. In that view of the matter it can be safely concluded 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. Such casus omissus cannot be supplied by the court in view of law on the subject elaborately discussed by this Court in the case of *Padma Sundara Rao (Dead) and Ors. v. State of T.N.*"

(emphasis added)

25. Following above dictum, same view has been taken in *Sharma Agro Industries v. State of Haryana and others* (2015) 3 SCC 341.

26. Another argument advanced is that Act, 2013, being prospective, action taken by State Government have been protected/saved vide Section 114(2) of Act, 2013 read with Section 6 of Act, 1897, therefore, Section 24(2) of Act, 2013 would not destroy entire acquisition proceeding already completed under Repealed Act, 1894. It was also argued that two conditions mentioned in Section 24(1) of Act, 2013 with regard to possession and compensation must be read conjunctively and same would apply only when both conditions are satisfied. We find that this argument has been considered and negated in *Pune Municipal Corporation and another v. Harakchand Misirimal Solanki* (supra).

27. In *Magnum Promoters Pvt. Ltd. v. Union of India*, 2015 (3) SCC 327, above view has been reiterated and acquisition proceedings have been declared lapsed where possession of land was not taken and more than 5 years have passed since the date of award and compensation was also not paid.

28. Learned Standing Counsel then placed a G.O. dated 30th January, 2015 issued by Suresh Chandra, Principal Secretary, addressed to all Secretaries, Director (Land Acquisition), Commissioners and District Magistrates in State of

U.P. referring to proviso inserted by Ordinance No.9 of 2014. Even the effect of this Ordinance has been considered in *Radianse Fincap Pvt. Ltd. v. Union of India* (2015) 1 SCC 677 and it has been held that right conferred under Section 24(2) is a statutory right and cannot be taken away by Ordinance by inserting proviso to the said subsection, without giving retrospective effect to the same. Court relied upon its earlier decision in (*supra*) and said that proviso to Ordinance would make no difference. It is prospective in nature and cannot be applied to a case where Section 24(2) of Act, 2013, as enacted, has already come into operation and by operation of law acquisition has deemed lapsed before insertion of aforesaid proviso. To the same effect is the decision in *Arvind Bansal and others v. State of Haryana and others* (2015) 3 Scale 200.

29. Similar view has been reiterated in *Rajiv Choudhrie HUF v. Union of India and others* 2015 (3)SCC 541; *Rajiv Chaudhrie HUF v. Union of India and others* reported in 2015 (3)Scale 203 and *Karnail Kaur v. State of Punjab* 2015 (3) SCC 206.

30. In view of above discussion, we have no hesitation in holding that impugned acquisition notifications issued under Sections 4 and 6 of Act, 1894 in respect of petitioners' land in dispute and entire acquisition proceedings in respect thereto are deemed lapsed. The respondents cannot deprive petitioners of said land in view of aforesaid lapsed proceedings. It would, however, be open to respondents, if they so decide, to proceed for fresh acquisition in accordance with provisions of Act, 2013.

31. Writ Petition is allowed. Impugned acquisition notifications dated 6.6.1979 and 27th July, 1982 issued under Sections 4 and 6 of Act, 1894, in respect of petitioners' land, disputed in writ petition, are hereby quashed.

32. There shall be no order as to costs.