

(2018) 01 DEL CK 0339

In the Delhi High Court

Case No : Civil Writ Petition No. 12143 Of 2015

Subhash Chander Khatri

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 15-01-2018

Acts Referred:

Constitution Of India, 1950 — Article 226

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

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

Citation : (2018) 01 DEL CK 0339

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

Bench : Division Bench

Advocate : Abhimanjyu Singh Khatri, Ankit Panwar, Rajesh Kumar, Nikhil Kumar, Raghwendra Pandey, Rakesh Mittal, Swati Arya, Sanjeev Pauchori, Ruchika Rathi

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 petitioner seeking a declaration that the acquisition proceedings in respect of the land of the petitioner falling in Khasra No.21/10 min(1-14) and 22/6 min(1-06) to the extent of ½ share, situated in the revenue estate of village Mamurpur Narela, 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 compensation has not been paid to the petitioner. It is the case of the petitioner that the compensation has not been tendered although possession of the land falling in Khasra no.21/10 (0-03) and 22/6 (1-06) has been taken, while physical possession of the land falling in Khasra no.21/10 (1-11) is with the petitioner.

2. Counsel for the petitioner submits, on instructions, that the petitioner is only

seeking compensation for the reason that initially the land was acquired for the purpose of Bankner Link Drain. Counsel for the petitioner has drawn attention of the Court to counter affidavit filed by the Irrigation and Flood Control Department, as per which after the land was acquired, physical possession was handed over to the Department for Construction of Bankner Link Drain which was duly built and is running smoothly.

3. In this case, a Notification under Section 4, 6 & 17(1) was issued on 24.04.1979 and an Award bearing No.120/1980-81 was passed on 05.03.1981. Counsel for the petitioner has ruled upon 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. We have heard the counsel for the parties.

5. Counter affidavit has been filed by the Land Acquisition Collector, as per which the compensation amount has been deposited in RD. Para 9 of the counter affidavit filed by LAC reads as under:

"9. That the petitioners in the writ petition para 9 has mentioned that:

'That the Land Acquisition Collector has neither paid nor tendered the compensation to the petitioners, in respect of his acquired land falling in Khasra no.21/10(1-14) and 22/6(1-6) acquired under Award No.120/80-81 till date'.

It is pertinent to mention herein that the Answering Respondent Nos.2 and 5 had deposited the compensation amount vide cheque no.410648 dated 12.06.1981 in RD as per record. It is submitted that none of the recorded owners or the petitioners had claimed or approached the answering respondent regarding the compensation amount, the compensation amount which is still lying in RD. It is further submitted that the petitioners have made baseless and frivolous contention in the writ petition, which are misleading this Hon'ble Court".

6. Counter affidavit has also been filed by the Irrigation and Flood Control Department. Para 2 of the counter affidavit filed by the Irrigation and Flood Control Department reads as under:

"2. That the relief sought in the writ petition is not available to the petitioner, in that the land was acquired as per law and its physical possession was handed over to Irrigation and Flood Control Department for construction of Bankner Link Drain, which was duly built and is running smoothly, therefore, the question of quashing the Award does not arise".

7. It is also the case of the LAC and the Irrigation and Flood Control Department that the possession of the subject land has been taken but the compensation has not been paid.

8. In our view, the case of the petitioner is fully covered by the decision rendered by the Apex Court in the case of Pune Municipal Corporation & Anr.(supra). Paras 14 to 20 of aforesaid decision 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."

9. Having regard to the submissions made, settled position of law and the fact that compensation was not tendered to the petitioner, we are of the considered view that the necessary ingredients for the application of Section 24(2) of the 2013 Act as has been interpreted by the Supreme Court of India stand satisfied.

10. Since, the award having been announced more than five years prior to the commencement of the 2013 Act, the petitioner is entitled to declaration that the acquisition proceedings in respect of the subject land are deemed to have lapsed.

It is ordered accordingly. However, the petitioner would only be entitled to compensation under the New Act, as prayed, in view of the fact that the land has been put to use.

11. The writ petition stands disposed of.

CM No.32248/2015 (stay)

The application stands disposed of, in view of order passed in the writ petition.