

(2017) 11 DEL CK 0495

In the Delhi High Court

Case No : Civil Writ Petition No. 9559 Of 2015

Sudesh Bansal

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 13-11-2017

Acts Referred:

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), 114(1), 114(2)
General Clauses Act, 1897 — Section 6

Citation : (2017) 11 DEL CK 0495

Hon'ble Judges : G.S.Sistani, J;V. Kameswar Rao, J

Bench : Division Bench

**Advocate : Meenu Handa, Jyoti Tyagi, Yeeshu Jain, Dhanesh Relan, Akshita
Manocha, Kajri Gupta**

Final Decision : Disposed Of

Judgement

V. Kameswar Rao, J

1. The present petition has been filed by the petitioner seeking a declaration that the acquisition proceedings with respect to the land measuring 125

Sq. Yds. in Khasra No. 704/119 min in Revenue Village Pipal Thala, New Delhi (hereinafter referred to as subject land) has lapsed. It is the case of

the petitioner that Sh. Mehar Chand and Ram Mehar were the recorded owners of Khasra No. 704/119 measuring 13 biswa in Village Pipal Thala,

New Delhi. The said recorded owners sold the land measuring 1050 Sq. Yds. to one Sh. Sardar Kartar Singh by duly registered Sale Deed dated 9th

October, 1959. Sh. Sardar Kartar Singh was survived his wife Ms. Mukhtiar Kaur. The other legal heirs of Sh. Sardar Kartar executed a duly

registered Relinquishment Deed dated 1st August, 1986 in favour of their

mother, who became sole owner of estate of her late husband. Ms.

Mukhtiar Kaur sold 125 Sq. Yds. out of 1050 Sq. Yds. to one Sh. Harvinder Singh by executing a GPA dated 16th December, 1986, who thereafter

sold the same to one Hari Singh by way of registered GPA and WILL dated 9th June, 1999 and thereafter petitioner purchased the plot measuring 125

Sq. Yds. falling in Khasra No. 704/119 in the revenue estate of Village Pipal Thala, New Delhi by way of registered GPA and Registered WILL

dated 12th January, 2005. It is the contention of the learned counsel for the petitioner that Section 4 Notification of the Land Acquisition Act, 1894

was issued on 26th September, 1966, which was followed by the Notification under Section 6 of the Act of 1894 on 30th December, 1966 and Award

bearing no. 102A/72-73 was pronounced on 23rd March, 1977. It is the submission of the learned counsel for the petitioner that neither the possession

of the land was taken nor the compensation has been paid. She seeks the benefit of Section 24 (2) of the Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

2. On the other hand, learned counsel appearing for the respondent / LAC would challenge the locus of the petitioner to file the present petition

inasmuch as the documents on which the petitioner is relying upon to show his interest in the subject land is after issuance of Notification under

Section 4 of the Act of 1894 and the documents are inadmissible for the purpose of conferring any right, title or interest to the petitioner. She would

state even though the possession of the land was taken, but compensation could not be paid as the land was shown in the name of Gaon Sabha.

Relevant Para 5 counter-affidavit reads as under:

â??It is submitted that the lands of Pipal Thala were notified vide Notification under Section 4 of the Land Acquisition Act, 1894 dated

26.09.1966 which was followed by the Notification under Section 6 of the Act dated 30.12.1966. The Award was also passed vide Award

No. 102-A/72-73 dated 23.03.1977. It is further submitted that the possession of the land was taken on 28.08.2003 however, the

compensation could be paid as the land has been shown in the name of Gaon Sabha.â??

3. It is noted that Gaon Sabha which has been made a party in the petition has not cared to appear in the present proceedings. The DDA which has

also filed the counter-affidavit would submit that the physical legal possession of the land has been handed over to the DDA by LAC / L&B on 28th

August, 2003. It is also stated that in so far as the disbursement of the compensation is concerned, the DDA has released the entire compensation to

L&B Department, Govt. of NCT of Delhi including land in question of Village Sarai Peepal Thala by revolving fund.

4. Having heard the learned counsel for the parties, suffice to state from the averments made in Para 5 of the counter-affidavit filed by LAC, it is

clear that no compensation has been paid by the LAC as the land was shown in the name of Gaon Sabha. In the absence of any compensation having

been paid to the petitioner, Section 24(2) of the new Act has been satisfied. The award is beyond five years from the date of effect of the new Act.

The acquisition proceedings deemed to have been lapsed. This position has been held by the Supreme Court in Para 14 to 21 in the case of Pune

Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors. (2014) 3 SCC 183, which are reproduced 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.

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.â??

5. The aforesaid position has been reiterated by Supreme Court of India and this Court in the following cases as well :-

(1) Union of India and Ors v. Shiv Raj and Ors., reported at (2014) 6 SCC 564;

(2) Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors, Civil Appeal no.8700/2013 decided on 10.09.2014;

(3) Surender Singh v. Union of India & Others, W.P.(C).2294/2014 decided on 12.09.2014 by this Court; and

(4) Girish Chhabra v. Lt. Governor of Delhi and Ors; W.P.(C).2759/2014 decided on 12.09.2014 by this Court.

6. In so far as the plea of the learned counsel for the LAC that the land has shown in the name of Gaon Sabha is concerned, suffice to state this Court

by way of this order is not determining any right or title of a person on the subject land. The same shall be determined by appropriate authorities as has

been held by this Court in the case of Sanjeev Solanki v. Delhi Development Authority and Ors. W.P.(C) 1999/2015, Para 5 of which reads as under:

â??5. While we have declared that the subject acquisition has lapsed, it is made clear that this would not amount to giving title to the

petitioner or perfecting the petitionerâ??s title inasmuch as Mr Jain has taken the plea in the counter-affidavit filed on behalf of the

respondent No.2 that the Gaon Sabha has been shown as the recorded owner. This fact is disputed by the learned counsel for the petitioner.

But, we are not entering into the controversy of title which may be sorted out elsewhere. Insofar as the acquisition is concerned, the same

has lapsed because neither physical possession was taken over nor compensation was paid.â??

In view of above discussion, it is held that acquisition proceedings in respect of the land measuring 125 Sq. Yds. in Khasra No. 704/119 min in

Revenue Village Pipal Thala, New Delhi has lapsed. The petition stands disposed of. No order as to costs.

CM. NO. 22549/2015

Interim order dated 7th October, 2015 stands confirmed.

CM disposed of.