

(2018) 01 DEL CK 0602

In the Delhi High Court

Case No : Civil Writ Petition No. 8058 Of 2017

Suman Chhabra

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 30-01-2018

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, 18, 30, 31, 31(1), 31(2), 32, 33, 34

Citation : (2018) 01 DEL CK 0602

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

Bench : Division Bench

Advocate : Richa Oberoi, Ankit Banati, Chiranjiv Kumar, Arun Birbal, Sanjay Singh, Ajay Birbal, Yeeshu Jain, Jyoti Tyagi

Final Decision : Disposed Of

Judgement

G. S. Sistani, J

CM APPLN. No. 33171/2017

Exemption allowed, subject to just all exceptions.

Application stands disposed of.

W. P. (C) 8058/2017

1. Present writ petition has been filed under Article 226 of the Constitution of India seeking a declaration that the acquisition proceedings with respect

to the land of the petitioner i.e. 6050 Square Yards out of Part of Khasra No. 668 (1210 Sq. Yards) and Khasra No. 669 (4840 Sq. Yards), situated in

the revenue estate of Village Neb Sarai, New Delhi (hereinafter referred to as the Subject Land), has 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 neither the compensation has been paid nor the physical possession has been taken.

2. In this case, a notification under Section 4 of the Land Acquisition Act, 1894 was issued on 05.11.1980. A declaration under Section 6 of the said

Act was made on 21.05.1985 and thereafter an award bearing No. 12/1987-88 was made on 20.05.1987. The petitioner claims to have purchased the

subject land, based on a General Power of Attorney dated 02.01.2004 executed by M/s. Laxmichand Bhagaji Ltd. Depositors Management

Committee and Agreement to Sell, copies of which have been placed on record.

3. Learned counsel for the petitioner submits that the case of the petitioner is fully covered by the decision rendered by the Apex Court in Pune

Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors., reported in (2014) 3 SCC 183, as neither compensation has been paid nor

possession has been taken.

4. Learned counsel appearing for the LAC does not dispute that the possession has not been taken over and the compensation has been paid to the

recorded owner though the same was deposited in R.D. which was later withdrawn vide R. V. No. 436 dated 07.05.1993 for the Award No. 1/93-84

Village Kakrola, Delhi . learned counsel for LAC has opposed this petition on the ground that the petitioner is claiming relief based on a General

Power of Attorney and an Agreement to Sell which cannot confer title of the petitioner.

5. Counsel for the petitioner submits that question with regard to the title may be kept open as per the view expressed by this Court in the Parshotam

Joshi vs. Govt. of NCT of Delhi & Ors. reported as 2017 Law Suit (Del) 5784 decided on 8th November, 2017, wherein a decision of the Coordinate

Bench of this Court in the case of Sanjeev Solanki v. Delhi Development Authority and Ors. W.P.(C) 1999/2015 decided on 24th January, 2017 so

also a subsequent decision of this court in the case of Dhannu v. Lt. Governor, Govt. of NCT of Delhi and Ors. W.P.(C) 3158/2015 decided on 16th

November, 2017 were followed.

6. We have heard learned counsels for the parties.

7. Having regard to the observation made by the Apex Court in Manav Dharma

Trust (Supra), in our view the objection raised by Mr. Jain, learned

Standing Counsel for LAC/L&B is misplaced. However, we make it clear that this order would not confirm any title of the petitioner. In the case of

Manav Dharma Trust (supra), the Apex Court has held as under :

“28. Thus, the subsequent purchaser, the assignee, the successor in interest, the power-of-attorney holder, etc., are all persons who are interested

in compensation/landowners/ affected persons in terms of the 2013 Act and such persons are entitled to file a case for a declaration that the land

acquisition proceedings have lapsed by virtue of operation of Section 24(2) of the 2013 Act. It is a declaration qua the land wherein indisputably they

have an interest and they are affected by such acquisition. For such a declaration, it cannot be said that the respondent-writ petitioners do not have

any locus standi.”

8. Counter affidavit has been filed by the LAC. Para 4A of the counter affidavit reads as under:

“4A. That it is submitted that the lands of village Neb Sarai were notified vide Notification under Section 4 of the Land Acquisition Act 1894 dated

05.11.1980, declaration under Section 6 was issued on 21.05.1985. The Award was also passed vide Award No. 12/87-88 dated 20.05.1987. That the

actual vacant physical possession of the subject land falling in Khasra numbers 668 (1210 Sq. Yards) and 669 (4840 Sq. Yards) could not be taken.

Statement A of the Award 12/87/88 is not traceable. An NCR has also been lodged with P. S. Neb Sarai bearing LR No. : 0063/2017 dated

07.02.2017. However, as per the Revenue Deposit Register the total amount of Rs.8,10,28,938/- of Award No. 12/87-88 was deposited in R. D. but

the same was later withdrawn vide R. V. No. 436 dated 07.05.1993 for the Award No. 1/93-94 Village Kakrola, Delhi as per Dy. Secy. (L&B)

Letter No. F.19/145/88-89/L&B F.A.-20392 dated 07.07.1992.”

9. Reading of the counter affidavit filed by the LAC makes it abundantly clear that neither the possession has been taken over nor the compensation

was tendered to the recorded owner or to the interested persons. In view thereof, 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) wherein it has been held in paras 14 to 20 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.â??

10. Taking into consideration the submissions made and the stand taken by LAC that compensation has not been tendered, we are of the considered

view that the necessary ingredients of Section 24 (2) of 2013 Act stand satisfied. Since the award having been announced more than five years prior

to the commencement of the 2013 Act and, having regard to the fact that the compensation has not been tendered, the petitioner is 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. We make it clear that we have not expressed any opinion with respect to the title over the subject land.

11. The writ petition stands disposed of.

CM APPL. No. 33170/2017

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