

(2017) 11 DEL CK 0414

In the Delhi High Court

Case No : Civil Writ Petition No. 10464 Of 2015

Tripat Kaur

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 15-11-2017

Acts Referred:

Constitution Of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 4, 6, 11, 18, 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)

Citation : (2017) 11 DEL CK 0414

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

Bench : Division Bench

Advocate : Raghuvinder Verma, Jyoti Tyagi, Rajesh Kumar, Nikhil Kumar, Renuka Arora, Sumit Rana

Final Decision : Disposed Of

Judgement

G.S.Sistani, J

1. Counter affidavit has not been filed by LAC. Ms. Tyagi submits that she adopts the counter affidavit filed by LAC in another connected matter

bearing W.P. (C)10455/2015.

2. With consent of the parties, the matter is set down for final hearing and disposal.

3. This is a petition filed by the petitioner under Article 226 of the Constitution of India seeking a declaration that the acquisition proceedings with

respect to land bearing plot no.6 measuring 300 sq. yds. out of Khasra no.40/22 (4-12), situated in the revenue estate of village Karala, Delhi

(hereinafter referred to as the "subject land"), to have lapsed in view of Section 24(2) of Right to Fair Compensation and Transparency in Land

Acquisition, Rehabilitation and Re-settlement Act, 2013 as neither compensation has been paid nor possession has been taken over.

4. Counsel appearing for LAC relies on para 4 of its counter affidavit filed in the connected matter submits that possession of the subject land has

been taken and handed over to DSIIDC. However, compensation could not be paid as the original owner did not turn up to collect the same.

5. Mr.Verma has placed reliance on Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors., reported at (2014) 3 SCC 183

to submit that it was the duty and responsibility of LAC to tender the compensation, which has not been done in the present case. As such the

acquisition proceedings would stand lapsed.

6. Counsel appearing for DSIIDC also disputes the fact that the possession is with the petitioner.

7. We have heard learned counsel for the parties. Para 4 of counter affidavit filed by LAC in W.P. (C)10455/2015, reads as under :-

“4. That the present writ petition is liable to be dismissed as the actual vacant physical possession of the total subject lands measuring

04-04 falling in khasra number 40//19 in village Karala was duly taken on 29.7.2008 on the spot and handed over to the requisition agency

i.e. DSIIDC. It is submitted that the ownership of the subject land lies with Sardar Singh S/o Kanhaiya who never turned up receive the

compensation and /or the SRP as the objections were filed by one Pyara Singh, Param Jeet Kaur W/o Pyara Singh and some others persons.

The present writ petition is liable to be dismissed as the petitioner has been claiming the rights over the subject land through different GPA

executed during different period and which gives no description of specific measurement out of the subject khasra number as at times, the

khasra numbers are more than the subject khasra number but the measurement is combined without any bifurcation between the different

khasra numbers.”

8. Reading of the counter affidavit makes it clear that the compensation has not been tendered. We are of the considered view that the case of the

petitioner would be fully covered by the judgment passed by the Supreme Court of India in the case of Pune Municipal Corporation & Anr.(supra),

more particularly, paragraphs 14 to 20 of the judgment, which 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. An identical issue had arisen before another Division Bench of this Court in the case of Sanjeev Solanki Vs. Delhi Development Authority and Ors,

W.P.(C) 1999/2015, decided on 24.01.2017. Paragraph 5 reads as under:-

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 petitioner'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.

10. Having regard to the submissions made and taking into consideration the stand of LAC, we hold that the acquisition proceedings with respect to

the subject land stand lapsed. As far as the plea of possession is concerned, we leave the question open to be decided in appropriate proceedings.

11. The writ petition stands disposed of in above terms.

C.M.APPL 26260/2015(stay)

12. Interim order dated 06.11.2015 is confirmed.

13. Application stands disposed of.