

(2017) 12 DEL CK 0398

In the Delhi High Court

Case No : Civil Writ Petition No. 24 Of 2016

Ved Prakash Tyagi And Anr

APPELLANT

Vs

Land Acquisition Collector And Anr

RESPONDENT

Date of Decision : 18-12-2017

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) 12 DEL CK 0398

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

Bench : Division Bench

Advocate : Brajesh Kumar Singh, Amit Pratap Shaunak, Anjani Dubey, Sachin Nandwani, Tarun Johri, Ankit Saini

Final Decision : Disposed Of

Judgement

G.S.Sistani, J

1. Notice was issued in this matter on 05.01.2016. Time was granted to the parties to file the counter affidavits. Counter affidavit has not been filed by

the LAC despite final opportunity having been granted on 10.04.2017. Counsel for the petitioners submits that no useful purpose would be achieved in

adjourning the matter in view of the categorical stand taken by the Delhi Metro Rail Corporation Ltd.(for short "DMRC"), respondent no.3 in its

counter affidavit that the land in question is no longer required by them and, in fact, they have written to the Divisional Commissioner, SDM/LAC and

all the concerned authorities for de-notification of the land vide its letter dated 11.08.1999.

2. We find force in the submission made by the learned counsel for the

petitioners. With the consent of the parties, the writ petition is set down for final hearing and disposal.

3. This is a petition under Article 226 of the Constitution of India filed by the petitioners. The petitioners seek a declaration that the acquisition

proceedings with respect to the land of the petitioners comprised in Khasra nos.60/1(0-10), 2/1(0-12), 9/1(0-12), having 1/8th share, situated in

Holambi Kalan, Delhi (hereinafter referred to as the "subject land") is deemed to have lapsed in view of Section 24(2) of the Right to Fair

Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013(New Act), as neither the compensation has been

paid to the petitioners nor the possession has been taken.

4. The necessary facts to be noticed for disposal of this writ petition are that a Section 4 notification of the Land Acquisition Act, 1894(hereinafter

referred to as the "Act") was issued on 12.06.1997, a Section 6 declaration was issued on 28.07.1997 and thereafter, an Award was passed on

20.07.1999. It is the case of the petitioners that neither the compensation has been paid nor the possession has been taken over and the petitioners

continue to cultivate the land, sowing and reaping the crops.

5. We may note that a notice was issued in this matter on 05.01.2016. Time was granted to file counter affidavit. Thereafter, six weeks time was

granted on 23.05.2016 to file the counter affidavit; three weeks time was granted on 09.08.2016; final opportunity was granted on 10.04.2017 to file

the counter affidavit, and thereafter, the matter was adjourned to 28.08.2017, but no counter affidavit has been filed by the LAC. The ordersheets

show a very sorry state of affairs. We find there is complete non-application of mind in the office of the LAC and no steps are being taken to

complete the pleadings based on the directions issued by the Courts from time to time, not only in this matter but in a large number of cases. We are

also pained to note that after the counter affidavit was filed by the DMRC on 31.05.2016 where a categorical averment has been made that the land is

no more required and it should be denotified and such a communication was addressed to the LAC on 11.08.1999. Para (f) of the counter affidavit

filed by DMRC, reads as under:

"f. That the contents of Para 2 (f) of the Petition as stated are a matter of record. It is submitted that, since the Project alignment was modified,

the possession of the subject land has not been taken over by the answering Respondent. It is submitted that the Group of Ministers in a meeting held on 04.08.2000 approved the substitution of Subzi Mandi " Holambi Kalan corridor by Tri Nagar " Barwana corridor and therefore, the land in question which was part of the village Holambi Kalan was no more required by the answering Respondent. It is submitted that the answering Respondent had already requested the Divisional Commissioner, SDM/LAC and all the concerned authorities for de-notification of the land vide its letter dated 11.08.1999."

6. In view of the categorical averment made by the DMRC that the possession of the subject land has not been taken over and the land is no more required by the DMRC, we are of the view that the case of the petitioners would be fully covered by the 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. Paragraphs 14 to 21, 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.â??

7. Having regard to the facts noted hereinabove and the stand taken by the DMRC in its counter affidavit, we are of the considered view that the necessary ingredients for the application of Section 24(2) of the New Act as has been interpreted by the Supreme Court of India and this Court in the following cases stand satisfied:

(1) *Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.*, reported at (2014) 3 SCC 183;

- (2) Union of India and Ors v. Shiv Raj and Ors., reported at (2014) 6 SCC 564;
- (3) Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors, Civil Appeal no.8700/2013 decided on 10.09.2014;
- (4) Surender Singh v. Union of India & Others, W.P.(C).2294/2014 decided on 12.09.2014 by this Court; and
- (5) Girish Chhabra v. Lt. Governor of Delhi and Ors; W.P.(C).2759/2014 decided on 12.09.2014 by this Court.

8. In view of the discussion above, the petitioner is entitled to a declaration that the acquisition proceedings initiated under the Land Acquisition Act,

1894 with regard to the subject land having 1/8th share are deemed to have lapsed. It is so declared.

9. The petition stands disposed of.

10. A copy of this order be sent to the Secretary(Revenue), Department of Revenue, Government of NCT of Delhi for information.

CM.APPL 74/2016(stay)

11. The interim order dated 05.01.2016 is confirmed.

12. The application stands disposed of.