

(2018) 01 DEL CK 0157

In the Delhi High Court

Case No : 12112 of 2016

VEENA JAIN

APPELLANT

Vs

UNION OF INDIA & ORS

RESPONDENT

Date of Decision : 09-01-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 4, 6, 30, 31, 32, 33, 34

Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24(2)

Citation : (2018) 01 DEL CK 0157

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

Bench : Division Bench

Advocate : S.K. Rout, Sanjay Kumar Pathak, K. Kaomudi Kiran Pathak, Sunil Kumar Jha, Kushal Raj Tater, Sumit Rajput

Final Decision : Disposed

Judgement

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 an industrial built up property admeasuring approximately 36.33 sq. yds. out of Khasra no.1185/20/2/1, property bearing nos.1/350-A (old), 350-A (new), Gali no.1, Friends Colony Industrial Area, G.T. Road, Shahdara, Delhi (hereinafter referred to as the "subject land") have 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 tendered to the petitioner although the possession has been taken.

2. In this case, a notification under section 4 of Land Acquisition Act, 1894 was issued on 14.10.2005, section 6 declaration was made on 05.10.2006 and an award bearing no.1/2008-09 was passed by Land Acquisition Collector (LAC) on 26.07.2008.

3. Counter affidavit has been filed by LAC, as per which, possession of the

subject land has been taken and compensation has been deposited in the Court of Additional District Judge (ADJ) under sections 30-31 on 22.03.2016 post to coming into force of 2013 Act. Para 8 of counter affidavit filed by LAC reads as under :- "8. That as regards possession it is humbly submitted that as per possession proceeding report possession of the land in question has been taken 20.02.2010. The fact that physical possession of the land has been taken has been admitted by the petitioner herself in para 8 of the writ petition. So far as compensation amount is concerned, it is humbly submitted that compensation amount has been sent to the court of Additional District Judge under section 30-31 on 22.03.2016 vide cheque No.001732 dated 22.03.2016 of Rs.2,54,44,733/-."

4. Counsel for the petitioner submits that only on the date of coming into force of 2013 Act, the acquisition proceedings would deem to have lapsed as on that date, the compensation was not tendered to the petitioner. Counsel has placed reliance on Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors., reported at (2014) 3 SCC 183, in support of his plea that since the compensation has not been tendered, the case of the petitioner would be covered by the aforesaid decision, 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."

5. We have heard learned counsel for the parties. Having regard to the submissions and the stand taken by the LAC in its counter affidavit that the compensation was not tendered to the petitioner till the coming into force of 2013 Act, the acquisition proceedings qua the land of the petitioner would stand lapsed. It is declared accordingly. The petitioner shall be entitled to compensation as per the 2013 Act, which shall be paid within one year from today, as prayed.

6. The petition stands disposed.