

(2017) 10 DEL CK 0117

In the Delhi High Court

Case No : Civil Writ Petition No. 7140 Of 2015

Virender Singh And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 30-10-2017

Acts Referred:

Constitution Of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 4, 6, 11, 18, 31, 31(1), 31(2)

Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 24(2)

Citation : (2017) 10 DEL CK 0117

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

Bench : Division Bench

Advocate : Pradeep Sehrawat, Rajesh Kumar, Santwana, Sanjay Kumar Pathak, Koumudi Kiran Pathak, Kushal Raj Tater, Arun Birbal, Rohan Mehra, Sanjay Singh

Final Decision : Allowed

Judgement

G.S.Sistani, J

1. While relying on the decision rendered by the Apex Court in the case of Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & Ors. reported in (2014) 3 SCC 183, petitioners have approached this Court under Article 226 of the Constitution of India praying for a writ of mandamus declaring the entire acquisition proceedings with respect to 4 Bighas 16 Biswas of Land comprised in Khasra No. 997, 4 Bigha 16 Biswas of the Land comprised in Khasra No. 1002 and 2 Bigha 8 Biswas of the Land comprised in Khasra no. 1004/2, situated in the Revenue Estate of Village Mahipalpur, New Delhi as having lapsed. Petitioners also seek a direction to quash the impugned Notification No.F.4 (98)/64-L&H dated 23.1.1965 issued under Section 4, Notification No. F.4 (98)/64-L&B dated 7.12.1966 issued under Section 6 of the Land Acquisition Act, 1894, the Award No. 34/86-87 dated 19.09.1986 and Award No. 242/86-87 dated 22.09.1986 with respect to 4 Bigha 16 Biswas of the Land comprised in Khasra No. 997, 4 Bigha 16 Biswas of the Land comprised in Khasra No. 1002 and 2 Bigha 8 Biswas

of the Land comprised in Khasra No. 1004/2 respectively, situated in the Revenue Estate of Village Mahipalpur, New Delhi.

2. Counsel for the petitioners while relying on Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 submits that the acquisition proceedings stand elapsed in view of the fact that the compensation has not been tendered to the petitioners herein.

3. Learned counsel for the petitioners has also placed reliance on Para 8 of the counter-affidavit filed by the LAC in support of his submission that the compensation has admittedly not paid. Para 8 reads as under:

"That as regards status of possession and compensation, it is humbly submitted that, as per possession proceeding report, the possession of the land comprised in Khasra Nos. 997 (4-16), was taken on 23.09.1986 and handed over to D.D.A, possession of Khasra No. 1004/2 (2-08) was taken on 04.05.2001 and handed over to D.D.A and possession of Khasra No. 1002 (4-16) was taken on 23.03.2001 and handed over to D.D.A. So far as compensation is concerned, it is humbly submitted that compensation amount of the subject land was sent to revenue deposit."

4. Learned counsel for the respondents submits that in this case after Notifications under Section 4 and 6 were made, the possession of the land was taken over as per the proceedings report. However, it is not disputed before us that compensation was deposited in treasury, but not to the petitioner and in the referral court.

5. In the case of Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors(2014) 3 SCC 183, the Supreme Court in paras 14 and 20 held 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.

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."

6. 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
- (2) Union of India and Ors v. Sshiv 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) Giri Chhabra v. Lt. Governor of Delhi and Ors; W.P.(C).2759/2014 decided on 12.09.2014 by this Court.

7. In view of the settled position of law and having referred to Para 8 of the counter-affidavit so filed, the present petition is allowed. The petitioners are 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 so declared.

CM. No. 13103/2015

Interim order dated 31st July, 2015 stands confirmed.

CM disposed of.