

(2017) 12 DEL CK 0419

In the Delhi High Court

Case No : Civil Writ Petition No. 4405 Of 2016

Zile Singh

APPELLANT

Vs

Gnct Of Delhi And Ors

RESPONDENT

Date of Decision : 19-12-2017

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 0419

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

Bench : Division Bench

Advocate : Vishal Maan, Jyoti Tyagi, Yeeshu Jain Jayendra, Jayendra, Atul Singh Singh, Rahul Bakshi

Final Decision : Disposed Of

Judgement

G.S.Sistani, J

1. Counter-affidavit of the respondent / LAC has been handed over in Court. Copy of the same has been supplied to Mr. Vishal Maan, counsel for the

petitioner.

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

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

respect to property bearing plot no. 44 measuring 100 Sq. Yds., part of Khasra Nos. 631/2 and 628/2, situated in the revenue estate of Village-

Roshanpura, Colony known as Shyam Vihar, Najafgarh, New Delhi (hereinafter referred to as "subject land") are 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 possession has been taken nor compensation has been paid.

4. Necessary facts to be noticed for disposal of this writ petition are that Section 4 notification of the Land Acquisition Act, 1894 was issued on 7th

April, 2006, Section 6 declaration was issued on 4th April, 2007 and an award bearing no. 8/2008-09 was made on 14th November, 2008. Counsel for

the petitioner submits as the possession of the subject land has not been taken and compensation has not been paid, the case of the petitioner is fully

covered by the decision rendered by the Supreme Court of India in the case of Pune Municipal Corporation & Anr. V. Harak Chand Misirimal Solanki

& Ors(2014) 3 SCC 183 and other decisions as detailed below to submit that the acquisition proceedings would lapse:

(1) Union of India and Ors v. Sshiv Raj and Ors., reported at (2014) 6 SCC 564;

(2) Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors, Civil Appeal no.8700/2013 decided on 10.09.2014;

(3) Surender Singh v. Union of India & Others, W.P.(C).2294/2014 decided on 12.09.2014 by this Court; and

(4) Giri Chhabra v. Lt. Governor of Delhi and Ors; W.P.(C).2759/2014 decided on 12.09.2014 by this Court.

5. We have heard the learned counsel for the parties.

6. Counter-affidavit has been filed by respondent / LAC. As per the counter-affidavit, neither physical possession of the land has been taken nor

compensation paid. It is also averred in the counter-affidavit that the land belongs to the Gaon Sabha. Counsel for the LAC also submits that subject to

the issue of the ownership of the land to be kept open, the writ petition may be disposed of. Paras 6 and 7 of the counter-affidavit read as under:

â??6. That the Land Acquisition Collector passed an Award bearing no. 08/2008-09 dated 14.11.2008 and it is submitted that the physical

possession of the land bearing Khasra Nos.628/2 (3-5) and 631/2 (4-12) situated in the Revenue Estate of Village Roshanpura, South West

District could not be taken.

7. It is submitted that the possession of the subject land falling in Khasra number 628/2 (3-5) and 631/2 (4-12), however there is no

question of paying the compensation to the petitioner since the rightful owner is

the vested Gaon Sabha and petitioner has suppressed this

material aspect from the Honâ??ble Court for the reasons best known to him.â??

7. 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.

8. Having regard to the fact that neither the possession has been taken nor the compensation has been paid, we are of the view that this case is fully

covered by the decision rendered by the Supreme Court of India in the case of Pune Municipal Corporation & Anr. (supra). Paras 14 to 20 are

reproduced as under:

â??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. 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 2014 3 SCC 183
- (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.

10. Since the parties agree that the question of title may be kept open in terms of the decision in the case of Sanjeev Solanki (supra), we allow the writ petition declaring the acquisition proceedings with respect to the land of the petitioner stand lapsed.

11. We have not expressed any opinion on the title of the parties. The question of title of the subject land is left open to be decided in the appropriate court of jurisdiction.

12. The writ petition stands disposed of.