
(2018) 02 DEL CK 0219

Delhi High Court

Case No: Civil Writ Petition No. 4082 Of 2017

Singh Raj & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision: Feb. 6, 2018

Acts Referred:

Constitution Of India, 1950 " Article 226#Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 " Section 24(2)#Land Acquisition Act, 1894 " Section 4, 6, 11, 18, 30, 31, 31(1), 31(2), 32, 33, 34

Citation: (2018) 02 DEL CK 0219

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

Bench: Division Bench

Advocate: Prashant Sharma, R.K. Saini, Yeeshu Jain, Jyoti Tyagi, Nikhil Goel

Final Decision: Disposed Of

Judgement

G.S.Sistani, J

1. Counter affidavit has not been filed. Mr. Jain, counsel for LAC has handed over the counter affidavit in Court, which is taken on record. Copy of

same has been supplied to counsel for the petitioners.

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

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

to land measuring 1 bigha 7 biswas out of Khasra no.319, situated in the revenue estate of village Dallupura, Delhi (hereinafter referred to as the

“subject land”) stand lapsed in view of section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

Resettlement Act, 2013 (hereinafter referred to as “2013 Act”) as neither compensation has been tendered to the petitioners nor possession has been taken.

4. In this case, a notification under section 4 of Land Acquisition Act, 1894 (“the Act”, in short) was issued on 17.11.1980 and a declaration under

sections 6 of the Act was made on 29.09.1981. Thereafter, an award bearing no.79/82-83 was passed on 09.03.1983.

5. Counsel for the petitioners has placed reliance upon a decision rendered by Apex Court in 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

petitioners would be covered by the aforesaid decision.

6. Counsel for the petitioners submits that counter affidavit which has been handed over in Court confirms his submission in as much as it has been

averred in the counter affidavit that possession of land measuring 1 bigha 7 biswas falling in Khasra no.319 i.e. land of the petitioners could not be

taken.

7. Mr. Jain fairly admits that possession of land measuring 1 bigha 7 biswas falling in Khasra no.319 has not been taken and compensation has not

been paid. He relies on para 4 of his counter affidavit, which reads as under :-

“4. That it is submitted that for the purpose of planned development of Delhi, the answering respondent issued a Notification u/s 4 of the Land

Acquisition Act, 1894 on 17.11.1980 which was followed by Notification u/s 6 of the said Act dated 29.9.1981 for the acquisition of the lands falling in

the khasra numbers under reference in village A, A, Dallupura, Delhi. That an Award No.79/82-83 dated 9.3.1983 was also passed and the actual

vacant physical possession of the notified lands were taken vide possession proceedings dated 11.3.1983 except for the land measuring (1-07) falling

in khasra number 319.

8. We have heard learned counsel for the parties. Taking into consideration the submissions made, we are of the considered view that the necessary

ingredients for the application of Section 24(2) of the 2013 Act, as has been interpreted by the Supreme Court of India, stand satisfied. The case of

the petitioners would be fully covered by the decision rendered in Pune Municipal Corporation & Anr. (supra), 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.

9. Since the award having been announced more than five years prior to the commencement of the 2013 Act and compensation having not been

tendered to the petitioners, the acquisition proceedings with respect to the subject land would deem to have lapsed. Consequently, the writ petition is

allowed. It is ordered accordingly.

10. The writ petition is disposed of.

CM APPL 17919/2017 (stay)

The application stands disposed of in view of order passed in the writ petition.