

Bimla Chhabra and Others Vs Union of India and Others

Court: Delhi High Court

Date of Decision: March 24, 2015

Acts Referred: Land Acquisition Act, 1894 - Section 11

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 - Section 19 (7), 24, 24(2)

Hon'ble Judges: Sanjeev Sachdeva, J.; Badar Durrez Ahmed, J.

Bench: Division Bench

Advocate: Sumit Bansal and Richa Oberoi, for the Appellant; Vikram Jetly, Advocates for the Respondent

Final Decision: Partly Allowed

Judgement

Badar Durrez Ahmed, J.

CM No. 5291/2015

This is an application for condonation of delay filed on behalf of the learned counsel for the DDA.

The application is allowed. The counter affidavit is taken on record.

W.P(C) 6607/2014 and CM No. 15708/2014

1. The counter affidavit handed over by Mr. Yeeshu Jain on behalf of respondent No. 2 is taken on record. The learned counsel for the petitioners

does not wish to file any rejoinder affidavit inasmuch as he would be relying on the averments already contained in the writ petition.

2. The petitioners seek the benefit of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

Resettlement Act, 2013 (hereinafter referred to as "the 2013 Act") which came into effect on 01.01.2014. A declaration is sought to the effect that

the acquisition proceeding, which is the subject matter of the present writ petition, ought to be deemed to have lapsed in view of Section 24(2) of

the 2013 Act.

3. The Award under the Land Acquisition Act, 1894 (hereinafter referred to as "the 1894 Act") was made vide Award No. 36/80-81 dated

19.06.1980 and it was in respect of, inter alia, the petitioners' land comprised in Khasra Nos. 154 Min (0-10) and 155 Min (2-00) measuring 2

bighas and 10 biswas in all village Lado Sarai.

4. It is an admitted position that the physical possession of the subject land has not been taken by the land acquiring agency. However, the learned

counsel for the respondents contend that the physical possession could not be taken because of the operation of the stay order passed in W.P.(C)

No. 1798/1980. It is an admitted position that the stay order continued to operate till 01.01.2014 when the 2013 Act came into effect. This aspect

of the matter concerning the submission that possession could not be taken because of the operation of the stay order and that in such a situation

the respondents should not be prejudiced, was considered by this Court in the case of Jagjit Singh and Ors. vs. UOI and Ors: W.P.(C)

2806/2004 and other connected matters which were decided by this Court on 27.05.2014. In that decision, this Court observed as under:-

8. The learned counsel for the respondents also submitted that no party can be put to a disadvantage because of an act of the Court. Since this

Court had passed interim orders, it cannot work to the disadvantage of the respondents.

9. We have already set out section 24 of the new Act in its entirety. It is evident that section 24(2) of the new Act is a non-obstante provision. The

conditions which are required to be satisfied before the deeming provision is triggered are:-

(i) The award should have been made under section 11 of the old Act, more than five years prior to the commencement of the new act; and

(ii) Physical possession of the land in question should not have been taken; or

(iii) The compensation should not have been paid.

These conditions are unqualified. It does not matter as to what was the reason behind the non-payment of compensation or for not taking

possession. If the legislature wanted to qualify the above conditions by excluding the period during which the proceedings of acquisition of land

were held up on account of stay or injunction by way of an order of a Court, it could have been expressly spelt out. In fact, whenever the

legislature thought that it was necessary to spell out such an intention, it did. An example of this is to be found in the first proviso to section 19 (7)

of the new Act which is as under:-

19(7).....Provided that in computing the period referred to in this sub-section, any period or periods during which the proceedings for the

acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.

10. Furthermore, it would be instructive to refer to the decision of the Supreme Court in the case of Pandurang Vinayak (supra) which has been

relied upon by Mr. Sethi, the learned senior counsel appearing on behalf of the petitioners. In that decision the purpose and meaning of a statutory

fiction was being considered. While doing so, the Supreme Court referred to an English decision in the case of East End Dwelling Co. Ltd. v.

Finsbury Borough Council: (1952) A.C. 109 and in particular to an observation of Lord Asquith which was to the following effect:-

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the

consequences and incidents which, if the putative, state of affairs had in fact existed, must inevitably have flowed from or accompanied it.....The

statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle

when it comes to the inevitable corollaries of that state of affairs.

11. Following the above observation, it is obvious that the deeming provision of section 24(2) is a legal fiction which is a created and an imagined

situation. We ought not to be concerned with the inevitable corollaries that may flow out of it unless there is a clear prohibition in the statute itself.

Once the state of affairs is imagined as real, the consequences and instances would also have to be imagined as real. Therefore, the fact that the

possession could not have been taken by the respondents because of interim orders of the Court, would not in any way prevent this Court from

imagining the state of affairs stipulated in Section 24(2) of the new Act. The only conditions that are required for the deeming provisions to be

triggered are that the award must have been made five years or more prior to the commencement of the new Act and that either physical

possession of the land has not been taken or that the compensation has not been paid. In fact in these writ petitions all the conditions stands

satisfied. Therefore, the contention of the learned counsel for the respondent cannot be accepted.

5. As a consequence, it has to be held that the respondents did not take physical possession of the subject land. With regard to the element of

compensation, it is an admitted position that compensation has not been paid in respect of the said land. The Award was also made more than five

years prior to the commencement of the 2013 Act. Therefore, all the ingredients of Section 24(2) of the 2013 Act as interpreted by the Supreme

Court and this Court in the following decisions stand satisfied:-

(1) Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others, ;

(2) Union of India (UOI) and Others Vs. Shiv Raj and Others, ;

(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 and Others: WP(C) 2294/2014 decided on 12.09.2014 by this Court; and

(5) Jagjit Singh and Ors. vs. UOI and Ors: W.P.(C) 2806/2004 decided on 27.05.2014.

6. The respondents also seek to invoke the second Proviso to Section 24(2) of the 2013 Act, which was introduced by virtue of the Right to Fair

Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 (hereinafter referred to as

the said Ordinance).

7. So far as the applicability of the second Proviso to Section 24(2) of the 2013 Act is concerned, the same cannot be relied upon by the

respondents inasmuch as it has been held to be prospective in nature and does not take away vested rights. This has so been held by the Supreme

Court in recent decision in M/s. Radiance Fincap (P) Ltd. and Ors. Vs. Union of India and Ors. decided on 12.01.2015 in Civil Appeal No.

4283/2011 wherein the Supreme Court held as under:-

The right conferred to the land holders/owners of the acquired land under Section 24(2) of the Act is the statutory right and, therefore, the said

right cannot be taken away by an Ordinance by inserting proviso to the abovesaid sub-section without giving retrospective effect to the same.

8. The same has been reinforced by the Supreme Court in Karnail Kaur and Ors. Vs. State of Punjab and Ors. Civil Appeal No. 7424/2013

decided on 22.01.2015.

9. From the above decisions, it is evident that the said Ordinance is prospective in nature and the rights created in favour of the petitioner as on

01.01.2014 by virtue of the 2013 Act are undisturbed by the second Proviso to Section 24(2) of the 2013 Act, which has been introduced by the

said Ordinance.

10. As a result, the petitioners are entitled to a declaration that the said acquisition proceedings initiated under the 1894 Act in respect of the

subject land are deemed to have lapsed. It is so declared.

11. The writ petition is allowed to the aforesaid extent. There shall be no order as to costs.