

\$~12

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 02.07.2015

+ **W.P.(C) 2642/2014, C.M. NOS. 5484/2014, 16202/2014, 18692/2014 & 3125/2015**

RAJESH KHANNA

..... Petitioner

Through : Sh. Sandeep Sethi, Sr. Advocate with
Sh. Manish Kumar, Sh. Amit Kumar, Sh. Piyush
Kaushik and Sh. Mohit Arora, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through : Sh. Jaswinder Singh, Advocate, for
UOI.
Sh. Yeeshu Jain and Ms. Jyoti Tyagi, Advocates,
for Respondent Nos. 2 and 5.
Sh. Arun Birbal and Sh. Sanjay Singh, Advocates,
for DDA.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

%

1. In the present proceeding under Article 226 of the Constitution of India, the relief claimed is a declaration that by reason of Section 24(2) of the *Right to Fair Compensation and Transparency in Land Acquisition*,

Rehabilitation and Resettlement Act, 2013 (hereafter referred to as the “new Act”), the acquisition proceedings initiated under the now repealed Land Acquisition Act, 1894 (hereafter referred to as the “old Act”), have lapsed. The appropriate consequential directions have also been sought by the petitioners. The brief facts are that the petitioner claimed to have acquired title to the suit property through a registered sale deed dated 17.03.1978 and consequently – in respect of another part – through registered gift deed dated 04.04.1985. The suit property along with other lands were subject matter of a notification under Section 9 of the old Act. The petitioner contends that he objected to the acquisition proceedings under Section 5A of the old Act on 16.12.1980. His earlier effort to have the acquisition proceedings invalidated were unsuccessful; W.P.(C) 1291/1981 initiated in that regard was dismissed by this Court on 16.11.1983. That order was affirmed by the Supreme Court. On 05.06.1987, the award in respect of the properties notified for acquisition, including the suit property was published. The petitioner sought for enhancement of compensation. Apparently, those proceedings have not ended. In the backdrop of these facts, the new Act was brought into force with effect from 01.01.2014. The petitioner contends that by virtue of Section 24(2) of the new Act, the reliefs claimed have to be granted by this Court. The petitioner alleges that neither was compensation paid and that the compensation determined by the Land Acquisition Collector (LAC) was not paid so as to trigger the operation of Section 24(2). It was also contended that the respondents did not take any positive step towards physically dispossessing the petitioner, hence the alternative requirement of Section 24(2), i.e. possession not having been taken by the respondents, also stands fulfilled.

2. The respondents have entered appearance and filed their reply. The stated position of the Govt. of NCT of Delhi (GNCTD) – which published a notification under the old Act and whose LAC also determined the compensation is as follows:

“8. That it is submitted that the physical possession of the lands under reference was taken on 31.12.2013 however the compensation was sent in RD. It is submitted that as per the Ordinance 2014, the compensation has been duly lying deposited in the account specifically maintained for the purpose of disbursement of compensation to the recorded owners thus the acquisition proceedings would not lapse on account of non-payment of compensation to the petitioners.”

3. The petitioners rely upon the decision of the Supreme Court in *Pune Municipal Corporation and Anr. v. Harakchand Misirimal Solanki and Ors.* 2014 (3) SCC 183. It is contended that since the requirement of Section 24(2) of the new Act are not cumulative but alternative, even if *arguendo*, it was accepted that paper possession/symbolic possession of the land was taken by the respondents, nevertheless, non-payment of compensation entitles relief under Section 24(2). Learned counsel for the respondents contends, on the other hand, that since possession was concededly taken on 31.12.2013, the relief ought not to be granted. In *Pune Municipal Corporation (supra)*, the Supreme Court had the occasion to interpret Section 24(2) of the new Act. The provision reads as follows:

“(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said Section 11

has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holding has not been deposited in the account of the beneficiaries under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

4. The Court observes that Section 24(2) begins with a non-obstante clause and has an overriding effect over Section 24(1). The Court highlighted that where an award has been made five years or more prior to commencement of the 2013 Act and, “either of the two contingencies is satisfied, viz.; (1) physical possession of the land has not been taken or (ii) the compensation has not been paid, such acquisition proceedings shall be deemed to have lapsed.”

5. The Court then dealt with the impact of Section 24(2) in the facts of the case before it and held as follows:

“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 Ivo Agnelo Santimano Fernandes and Ors. v. State of Goa and Anr. 2011 (11) SCC 506, relying upon the earlier decision in Prem Nath Kapur v. National Fertilizers

Corpn. of India Ltd. 1996 (2) SCC 71, 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."*

6. In the present case, even if one were to accept the status of the GNCTD's contention, that possession was indeed taken over on 31.12.2013, yet the second alternative requirement for applicability of Section 24(2) has undeniably been fulfilled, i.e. compensation was not paid to the petitioner. *Pune Municipal Corporation (supra)* is decisive on this. The award in the present case was made and published on 05.06.1987. The respondents nowhere state that or substantiated the payment or ever tendered it to the petitioner or offered it to him. Their averments are categorical that the payment was deposited in the treasury. According to the Supreme Court, this does not satisfy the requirement spelt out, i.e. of the payment being tendered to the land owner. In these circumstances, since the compensation was not paid, Section 24(2) clearly applies – the award was made five years prior to commencement of the Act, the acquisition proceeding under the old Act had lapsed. For the above reasons, the petition deserves to succeed. It is hereby declared that by virtue of Section 24(2), acquisition proceedings under the

old Act in respect of such lands had lapsed.

The writ petition is allowed in the above terms and the pending applications also stand disposed off.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

JULY 02, 2015

