

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2318 of 2015

- Bajrang Lal Kedia S/o Late Shri Nathu Lal Kedia, Aged About 80 Years R/o Bhogahapara, Shivrinarayan, District Janjgir Champa Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Revenue, Mantralaya, Mahandi Bhawan, Naya Raipur Chhattisgarh
2. Collector, Janjgir - Champa, District Janjgir Champa Chhattisgarh
3. Deputy Collector, Janjgir-Champa, District Janjgir Champa Chhattisgarh

---- Respondents

For Petitioner	:	Shri Sumesh Bajaj, Advocate.
For Respondent/State	:	Shri Shashank Thakur, G.A.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

05/08/2016

With the consent of the parties, the matter is heard finally.

02. The land in question bearing Khasra No.38/5, area 0.27 acre situated at Village - Bhogahpara (Shivrinarayan), Tahsil-Nawagarh, Distt. Janjgir-Champa (CG), was owned by Nathulal. During the lifetime of said Nathulal, this land was acquired by the government and on 26.9.2000 an award (Annexure P/1) was passed in favour of said Nathulal and nine other land owners. The petitioner herein is son of late Nathulal who expired after passing of the award. As the land

owner was assured by the government for providing alternative land and the same was not provided, the petitioner filed a writ petition i.e. W.P.(C) No.6484/2010 before this Court, which was disposed of by this Court on 12th November, 2010 (Annexure P/2) directing the petitioner to approach the government and in turn, the government was directed to take appropriate steps and pass orders in accordance with law expeditiously. Pursuant to this order, the petitioner had approached the government and on 11.11.2011 (Annexure P/3) an order was passed by the Dy. Collector/respondent No.3 that neither the alternative government land can be provided to the petitioner nor compensation can be paid to him as per market rate. Respondent No.3 has reiterated the award by saying that compensation of Rs.54,178/- has already been decided in favour of the petitioner and no change can be made in it.

03. The order dated 11.11.2011 passed by respondent No.3 was assailed by the petitioner before this Court in WPC No.338/2012, however, vide order dated 13.3.2013 (Annexure P/4) the said petition was disposed of granting liberty to the petitioner to assail the award dated 26.9.2000 by making reference under Section 18 of the Land Acquisition Act, 1894. Pursuant to this order, the petitioner by way of reference had approached the First Additional District Judge, Janjgir-Champa. However, vide order dated 30.12.2014 (Annexure P/5) his reference was rejected and the said order has been subjected to first appeal by the petitioner i.e. FA No.105/2015 which is listed today along with the present petition.

04. The instant petition has been filed by the petitioner mainly on the

ground that though his land was acquired and award was passed on 26.9.2000 but till date the petitioner has not received compensation awarded to him and therefore, in view of provisions 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 "Act, 2013"), the acquisition proceedings have lapsed and in such contingency, the respondents should either initiate fresh proceedings under the new law or return back and restore possession of the land in question to the petitioner.

Main grievance of the petitioner is that though possession of the land in question has been taken by the government and road has also been constructed thereon but despite lapse of about 16 years, neither the awarded amount has been paid to him nor the same has been deposited before the reference Court.

05. Counsel for the petitioner has placed his strong reliance on the judgment of the Apex Court in the matters of ***Pune Municipal Corporation and another Vs. Harakchand Misirimal Solanki and others, (2014) 3 SCC 183.***

06. In the return filed by the State Government, the date of award i.e. 26.9.2000 is not disputed and it has also been admitted that compensation has not been passed on to the petitioner. In para-3 it has been stated that "... *It is pertinent to submit here that the said amount of compensation is now with the State Government and the petitioner is free to take the said amount of compensation.*" Further, pursuant to the order passed by this Court, additional affidavit has

been filed by the Sub Divisional Magistrate, Janjgir, Distt. Janjgir-Champa stating in sub-para 2 that “... *It is most respectfully submitted that in the total compensation for the acquired land was calculated to the tune of Rs.54,178.00 but the original land owner namely Natthulal S/o Bhawandas did not accept the compensation amount, hence the same is lying with the Government.*”

07. Learned counsel for the State also does not dispute the fact that the amount of compensation has neither been paid to the petitioner nor has been deposited with the reference Court.

08. Heard learned counsel for the parties and perused the material on record.

09. Before further dealing with the issue, it would be apposite to mention the provision of Section 24 of the Act, 2013, which reads as under:

“24. Land acquisition process under Act No. 1 of 1894

shall be deemed to have lapsed in certain cases.

1. Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—

a. where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

b. where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

2. Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the

Land Acquisition Act, 1894 (1 of 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 the 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 holdings has not been deposited in the account of the beneficiaries, then all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

10. While considering and deciding the said issue, it has been held by the Apex Court in the matter of ***Pune Municipal Corporation*** (supra) in paras 11 to 20 as under:

“11. [Section 24\(2\)](#) also begins with non obstante clause. This provision has overriding effect over [Section 24\(1\)](#). [Section 24\(2\)](#) enacts that in relation to the land acquisition proceedings initiated under 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied, viz; (i) 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. On the lapse of such acquisition proceedings, if the appropriate government still chooses to acquire the land which was the subject matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the 2013 Act. The proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries then all the beneficiaries specified in Section 4 notification become entitled to compensation under 2013 Act.

12. To find out the meaning of the expression, “compensation has not been paid”, it is necessary to have a look at [Section 31](#) of the 1894 Act. The said Section, to the extent it is relevant, reads as follows:

“31. Payment of compensation or

deposit of same in Court. – (1) On making an award under [section 11](#), the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under [section 18](#) would be submitted.”

13. There is amendment in Maharashtra—Nagpur (City) in [Section 31](#) whereby in sub-section (1), after the words “compensation” and in sub- section (2), after the words, “the amount of compensation”, the words “and costs if any” have been inserted.

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[2]) 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[3], relying upon the earlier decision in Prem Nath Kapur[4], 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.”

11. If the facts of the present case are seen in the light of above principles of law, it is evident that though the award was passed on 26.9.2000 (Annexure P/1), possession of the petitioner's land has already been taken by the government, however, till date neither the petitioner has been paid compensation nor the same has been deposited before the reference Court. The above factual aspect has also not been disputed by the respondents. Thus, in view of the provisions of Section 24(2) of the Act, 2013, the land acquisition

proceedings in relation to petitioner's land have lapsed. However, the respondents, if so desire, may proceed to acquire the land of the petitioner afresh as provided under Section 24(2) of the Act, 2013 or otherwise to act in accordance with law.

12. With the aforesaid observations, the writ petition stands disposed of.

Sd/

(Pritinker Diwaker)

Judge

Khan