

THE HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.26582 of 2006

ORDER:

The petitioner challenges Notification Roc.No.G2/3809, dated 21-03-2016 issued under Section 4(1) of the Land Acquisition Act, 1894, as illegal, arbitrary and unconstitutional.

On 22-12-2016, this court granted interim direction directing the respondents not to dispossess the petitioner from the land under acquisition.

The interim order is subsisting as on date.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'Act 30 of 2013') has come into operation with effect from 01-01-2014. Section 24 of Act 30 of 2013 reads thus:

"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proceedings shall continue under the provisions of the said [Land Acquisition Act](#), as if the said Act has not been repealed.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, 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 holding 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.”

The sole contention urged by petitioner is that as possession of land under acquisition is not taken over and compensation paid, the acquisition initiated through 4(1) Notification rendered invalid by operation of Section 24(2) of Act 30 of 2013.

Counsel appearing for the petitioner places reliance upon the law laid down by the Hon'ble Supreme Court in *RATTAN SINGH Vs. UNION OF INDIA*¹ *DELHI DEVELOPMENT AUTHORITY Vs. SUKHBIR SINGH*², *SHARMA AGRO INDUSTRIES Vs. STATE OF HARYANA*³, *MAGNUM PROMOTERS PRIVATE LIMITED Vs. UNION OF INDIA*⁴, *RATTAN SINGH Vs. UNION OF INDIA*⁵ and *DELHI DEVELOPMENT AUTHORITY Vs. SUKHBIR SINGH AND OTHERS*⁶.

¹ 2015 SCC Online SC 1287

² 2016 SCC Online SC 929

³ (2015) 3 Supreme Court Cases 341

⁴ (2015) 3 Supreme Court Cases 327

The petitioner relies upon the following paras in *RA TTAN SINGH's* case (5 supra) :-

4. This Court has, in a number of decisions including (1) *Pune Municipal Corporation vs. Harakchand Misirimal Solanki* (2014) 3 SCC 183, (2) *Union of India vs. Shiv Raj* (2014) 6 SCC 564, (3) *Bimla Devi vs. State of Haryana* (2014) 6 SCC 583, (4) *Competent Automobiles Co. Ltd. vs. Union of India* AIR 2015 SC 3186, (5) *Radiance Fincap (P) Ltd. vs. Union of India* (2015) 8 SCC 544 and (6) *Rajiv Chaudhari HUF vs. Union of India* (2015) 3 SCC 541, elucidated the manner in which *Section 24(2)* is to be interpreted. In *Pune Municipal Corporation*, a three Judge Bench of this Court (which should bind all lesser as well as coordinate Benches) clarified the meaning of the expression "compensation has not been paid". It discussed *Section 31(1)* of the 1894 Act, which enjoins the Collector, on making an Award under *Section 11*, to tender payment of compensation to persons interested entitled thereto. *Section 31* mandates the Collector to make payment of compensation to such persons unless prevented by one of the contingencies contemplated in sub-section (2), namely (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 these contingencies the Collector is prevented from making payment of compensation to the persons entitled to compensation, the Collector is required to deposit the compensation in the Court to which reference under *Section 18* may be made. Thus compensation can be regarded as "paid" if the compensation has literally been paid to the person interested, or after being offered to such person, it has been deposited in the Court. The

⁵ 2015 SCC Online SC 1287

⁶ 2016 SCC Online SC 929

deposit of the Award in a Government Treasury would not amount to compensation being paid to the person interested. In order to send the matter to rest, since the same arguments are being regurgitated without end, the following paras from Pune Municipal Corporation are extracted:

“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.

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. The 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) 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.”

5. This Court in [IVO Agnelo Santimano Fernandes vs. State of Goa](#) (2011) 11 SCC 506, relying upon the earlier decision in [Prem Nath Kapur vs. National Fertilizers Corporation of India Ltd.](#) (1996) 2 SCC 71, had 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.

6. In the current Appeals, compensation was neither paid to the Appellants nor deposited in the appropriate Court. The retention of it by the Land Acquisition Collector till such time as the Appellants made applications for it would not amount to compensation being paid to them. The contention of the Respondent is thus entirely erroneous. Since the Award predated the commencement of the 2013 Act by well over five years and compensation has not paid to the Appellants, [Section 24\(2\)](#) comes into operation in favour of the Appellants. Whether possession was taken by the Respondent need not be dilated upon nor need it detain us any further. The acquisition is deemed to have lapsed in these circumstances. The Respondent may initiate fresh acquisition proceedings in accordance with the provisions of the 2013 Act, if it so wishes.

and in *DELHI DEVELOPMENT AUTHORITY's* case (6 Supra).

“13. Given the fact that the State has been prompt in acquiring land for public purposes, but tardy in tendering or paying compensation, the 2013 Act came in as a

beneficial legislation to the aid, in particular, of poor farmers whose lands had been acquired under the [Land Acquisition Act](#) but compensation had not been tendered or paid as required under the said Act. With this object in mind, [Section 24\(2\)](#) of the 2013 Act was enacted. [Section 24](#) reads as follows:

“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.”

14. [Section 24\(1\)](#) begins with a non-obstante clause and covers situations where either no award has been made under the [Land Acquisition Act](#), in which case the more beneficial provisions of the 2013 Act relating to determination of compensation shall apply, or where an award has been made under [Section 11](#), land acquisition proceedings shall continue under the provisions of the [Land Acquisition Act](#) as if the said Act had not been repealed.

15. To [Section 24\(1\)\(b\)](#) an important exception is carved out by [Section 24\(2\)](#). The necessary ingredients of [Section 24\(2\)](#) are as follows:

- (a) [Section 24\(2\)](#) begins with a non-obstante clause keeping sub-section (1) out of harm's way;
- (b) For it to apply, land acquisition proceedings should have been initiated under the [Land Acquisition Act](#);
- (c) Also, an award under [Section 11](#) should have been made 5 years or more prior to the commencement of the 2013 Act;
- (d) Physical possession of the land, if not taken, or compensation, if not paid, are fatal to the land acquisition proceeding that had been initiated under the [Land Acquisition Act](#);
- (e) The fatality is pronounced by stating that the said proceedings shall be deemed to have lapsed, and the appropriate Government, if it so chooses, shall, in this game of snakes and ladders, start all over again.

16. The picture that therefore emerges on a reading of [Section 24\(2\)](#) is that the State has no business to

expropriate from a citizen his property if an award has been made and the necessary steps to complete acquisition have not been taken for a period of five years or more. These steps include the taking of physical possession of land and payment of compensation. What the legislature is in effect telling the executive is that they ought to have put their house in order and completed the acquisition proceedings within a reasonable time after pronouncement of award. Not having done so even after a leeway of five years is given, would cross the limits of legislative tolerance, after which the whole proceeding would be deemed to have lapsed. It is important to notice that the Section gets attracted if the acquisition proceeding is not completed within five years after pronouncement of the award. This may happen either because physical possession of the land has not been taken or because compensation has not been paid, within the said period of five years. A faint submission to the effect that 'or' should be read as 'and' must be turned down for two reasons. The plain natural meaning of the sub-section does not lead to any absurdity for us to replace language advisedly used by the Legislature. Secondly, the object of the Act, and Section 24 in particular, is that in case an award has been made for five years or more, possession ought to have been taken within this period, or else it is statutorily presumed that the balance between the citizen's right to retain his own property and the right of the State to expropriate it for a public purpose gets so disturbed as to make the acquisition proceedings lapse. Alternatively, if compensation has not been paid within this period, it is also statutorily presumed that the aforesaid balance gets disturbed so as to free such property from acquisition."

Further, it is not the case of respondents that draft declaration is made within the time stipulated by Section 6 of the Act for there is no stay of proceeding further in the acquisition

proceedings, this court granted stay of dispossession of petitioner from subject land.

Learned Government Pleader does not dispute the applicability of decisions to the fact situation of this case and the publication of draft declaration on 10-05-2007.

Keeping in view the ratio laid down by Hon'ble Supreme Court in the decisions referred to above, having regard to change of law in acquisition of property, this court quashes 4(1) Notification and that draft declaration is published beyond one year from Section 4(1) Notification, this court sets aside Section 4(1) Notification impugned in the writ petition insofar as petitioner is concerned.

If the subject land is required for public purpose, the respondents are free to follow the procedure stipulated under Act 30/13 and proceed to acquire the land in accordance with law.

The writ petition is accordingly ordered. No order as to costs.

Dt: 19-09-2016
Prv

S. V. BHATT, J

THE HON'BLE SRI JUSTICE S.V.BHATT



WRIT PETITION No.26582 of 2006

19-09-2016

Prv

