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HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.No. 5206 of 1997

Order reserved on : 14 /07/2017

Order passed on : 11/08/2017

1. Shri Daya Lal Patel, S/o. Shri Narayan Bhai, aged about 27 years, Timber Merchant, Bilaspur Road, WRS Colony, Bhanpuri Raipur
2. Shri HimmR Lal Patel, S/o. Shri Ravji Bhai, aged about 31 years, Timber Merchant, Bilaspur Road, WRS Colony, Bhanpuri, Raipur
3. Shri Leela Ben Patel, W/o. Shri Dharamsi Bhai Patel, aged about 36 years, House Wife, R/o Gali No.2 Behind Shiva Temple, Fafadih, Raipur
4. Smt. Prabha Ben Patel W/o. Shri Vitthal Das Patel, aged about 33 years, House Wife, R/o Gali No.1 Fafadih, Raipur

-----Petitioners

Versus

1. The State of Madhya Pradesh through the Collector, Raipur
2. The Land Acquisition Officer cum Sub Divisional Officer, Raipur

-----Respondents

For Petitioner : Mr.Chandresh Shrivastava, Advocate

For Respondents : Mr.Arun Sao, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The petitioners, who are four in number, have preferred this writ petition calling in question land acquisition proceedings

initiated under the Land Acquisition Act, 1894. This Court during pendency of the proceedings granted interim order in favour of petitioners on 15.11.2002 to maintain *status quo* with regard to possession of land.

2. During the continuance of this proceedings, parliament enacted The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter called as "Act of 2013") w.e.f. 01.01.2014. Thereafter, the petitioners have filed this application under Section 24 of Act of 2013 stating inter alia that in the instant case after passing of the award, neither possession of land has been taken from the petitioners nor the amount of compensation has been disbursed to them or deposited before the reference Court under Section 31 of the Land Acquisition Act, 1894, therefore entire land acquisition proceedings qua the petitioners have lapsed by virtue of the provisions contained in Section 24(2) of the Act of 2013.
3. Reply to this application has been filed stating inter alia that General Manager, District Trade & Industry Centre had requested for acquisition of 303.65 hectares of private land situated at village Siltara, Tahsil and District Raipur for establishment of Industrial Growth Centre. Acting upon that the subject acquisition has been made and upon completion of

the acquisition, first award was passed on 31.05.1993 and thereafter for remaining land i.e. 221.915 hectares, second award was passed on 29.03.1994 which includes petitioners land bearing Khasra No. 769/2, 769/6, 770/2 and thereafter possession of entire land admeasuring 221.95 hectares was taken by handing over the possession to General Manager, District Trade & Industry Centre on 13.06.1996 in presence of Sarpanch of Gram Panchayat, Siltara and copy of *Panchnama* has been filed as Annexure R-A/AA along with the reply and in turn, possession has been transferred to the Chhattisgarh Industrial Development Corporation on 13.06.1996 in presence of independent witness vide Annexure—R/BB. Therefore, the application under Section 24(2) of the Act of 2013 deserves to be rejected.

4. Mr.Chandresh Shrivastava, learned counsel for the petitioners, would submit that the land acquisition proceedings quo the petitioners have already lapsed by virtue of the provisions contained in Section 24(2) of the Act of 2013, therefore, it be declared that land acquisition proceedings have already been lapsed by operation of law.
5. Mr.Arun Sao, learned Deputy Advocate General, would oppose the prayer and submit that application under Section 24(2) of Act of 2013 filed by the petitioners deserves to be rejected.

6. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also gone through the records with utmost circumspection.
7. In order to judge the correctness of pleas raised at the Bar, it would be appropriate to notice Section 24 of Act of 2013, which states 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.”

8. The Scope and ambit of Section 24(2) has been considered recently by Their Lordships of the Supreme Court in catena of judgments, which may be noticed herein profitably and gainfully.

(i) In Pune Municipal Corporation v. Harakchand Misrimal Solanki¹, the Supreme Court has considered the meaning of expression “compensation has not been paid” contained in Section 24(2) of Act of 2013 and held as under:-

“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

1 AIR 2014 SC 982

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 v. King Emperor* [A.I.R. 1936 PC 253 (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.

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.

22. In view of the foregoing discussion, it is not necessary to consider the correctness of the impugned judgment on merits.”

(ii) In Rattan Singh v. Union of India² relying upon its earlier decision including **Pune Municipal Corporation** (supra) the Supreme Court has held that deposit of award in a government treasury would not amount to compensation being paid to person interested. The said report states as under:-

“4. This Court has, in a number of decisions including (1) *Pune Municipal Corporation v. Harakchand Misirimal Solanki* AIR 2014 SC 982: (2014) 3 SCC 183, (2) *Union of India v. Shiv Raj* AIR 2014 SC 2242 : (2014) 6 SCC 564, (3) *Bimla Devi v. State of Haryana* (2014) 6 SCC 583, (4) *Competent Automobiles Co. Ltd. v. Union of India* AIR 2015 SC 3186, (5) *Radiance Fincap (P) Ltd. v. Union of India* (2015) 8 SCC 544 and (6) *Rajiv Chaudhari HUF v. Union of India* AIR 2015 SC 614 : (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

2 AIR 2015 SCW 6843

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 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.....”

(iii) In **Banda Development Authority v. Motilal Agrawal and others**³ qua taking of possession by land acquisition officer, the Supreme Court held as under:-

“37. The principles which can be culled out from the above noted judgments are:

(i) No hard and fast rule can be laid down as to what act would constitute taking of possession of the acquired land.

(ii) If the acquired land is vacant, the act of the concerned State authority to go to the spot and prepare a *panchnama* will ordinarily be treated as sufficient to constitute taking of possession.

(iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the concerned authority will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the concerned authority will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take

3 (2011) 5 SCC 394

possession in the presence of independent witnesses and get their signatures on the *panchnama*. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

(iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

(v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3A) and substantial portion of the acquired land has been utilized in furtherance of the particular public purpose, then the Court may reasonably presume that possession of the acquired land has been taken.”

(iv) Very recently, in matter of Delhi Development Authority v. Sukhbir Singh and others⁴ the Supreme Court revisited the law on the subject by considering the scope and object of Section 24(2) of the Act of 2013. It has been held as under:-

“13. 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.

14. 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.”

9. Applying the principles of law laid down by Their Lordships of the Supreme Court in the above-stated judgments (supra) to the facts of the present case, it is *quite vivid*:

(1) That possession of land admeasuring 221.95 hectares of land including the petitioners land was handed over to the General Manager, District Industry & Trade Centre on 13.06.1996 after preparation of *Panchanama* in presence of independent witness and further, possession was re-transferred to Chhattisgarh Industrial Development Corporation on 13.06.1996 in presence of witnesses which is strictly as per paragraph 37 (ii) and (iv) of judgment of the Supreme Court in Banda Development Authority (supra) reaffirmed in Delhi Development Authority (supra).

(2) Compensation of the petitioners' land was quantified as ₹ 1,05,196/-, however, it was not paid to them and in accordance with the circular of the State Government dated 12.12.2013, the said amount of compensation was deposited in PD account of Collector on 16.12.2013, which is not in the reference Court as required under Section 31(2) of Act of 1894 and such deposit cannot be said to be compensation deposited in accordance with decision of the Supreme Court and in teeth of decision of the Supreme Court rendered in the matter of Pune Municipal Corporation (supra) followed in the matter of Delhi Development Authority (supra).

10. On conclusion, it is held that though possession of the

petitioners' land has been taken from them in accordance with law, but compensation has neither been paid to them nor deposited before the reference Court, therefore the acquisition proceedings qua petitioners' land is held to have been lapsed. However, the respondent/State is given a period of one year to exercise its liberty available under Section 24(2) of Act of 2013 for initiation of acquisition proceedings afresh. If no proceedings are initiated within said period of one year from today, by issuing notification under Section 11 of Act of 2013, the State shall, return the physical possession of land to the petitioners. [See Delhi Development Authority v. Ran Singh and others⁵, Delhi Development Authority v. Kusham Jain and another⁶].

11. The application under Section 24(2) of the Act of 2013 is allowed to extent indicated hereinabove and the writ petition stands disposed of accordingly. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

5 AIR 2017 SC 928

6 2016 (9) Scale 623