

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.21126 OF 2008

ORDER:

This writ petition is filed seeking a Writ of Mandamus declaring the notification under Section 4 (1) of the Land Acquisition Act, 1894, dated 4.1.2006, proposing to acquire lands of the petitioner in Sy.Nos.124/6, 7 & 8 admeasuring Ac.0-34 cents, Ac.0-05 cents and Ac.0-06 cents respectively, situated in Pogiri Village, Rajam Mandal, Srikakulam District, as illegal, arbitrary and unconstitutional.

By an order, dated 29.09.2008, this Hon'ble Court granted interim direction as prayed for, thereby directing the respondent authorities not to interfere with possession of lands of the petitioner.

The 2nd respondent – Revenue Divisional Officer, Palakonda, Srikakulam District filed a counter on behalf of the respondents denying the averments made in the affidavit filed in support of the writ petition. However, it is stated that Award No.41 of 2008, dated 11.09.2008, was passed by the District Collector on 5.9.2008. It is also stated that petitioner refused to receive the compensation and accordingly the compensation amount was deposited in revenue deposit vide Challan No.9014, dated 23.10.2008. However, possession of the land could not be taken in view of the interim orders passed by this Court.

The question that arises for consideration before this Court is whether the proceedings initiated under the provisions of the Land Acquisition Act, 1894 get lapsed in view of new Act i.e., Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, '2013 Act').

Heard learned counsel for the petitioner and learned Government Pleader for land acquisition.

An identical issue came up before the Apex Court for consideration in **RAJIV CHOWDHRIE HUF v. UNION OF INDIA & ORS.**¹. It was a case where award was passed, but possession could not be taken in view of interim orders passed by the High Court as well as by the Hon'ble Supreme Court. After referring to various judgments of the Apex Court and also Section 24 (2) of the 2013 Act, which came into force w.e.f. 1.1.2013, the Hon'ble Supreme Court held as follows:

14. We have carefully gone through the factual and rival legal contentions urged on behalf of both the parties in the backdrop of the case laws cited above. On examining the facts and circumstances of the case on hand, it is an undisputed fact that the award was made 5 years prior to the date of commencement of the Resettlement Act, 2013 i.e. on 06.08.2007 vide Award No. 1/2007-2008 and either physical possession of the land should have been taken or compensation has been paid to the appellant in respect of his acquired land. Therefore, the acquisition proceedings of the land of the appellant are lapsed in view of Section 24 (2) of the Act of 2013, which provision has been rightly interpreted by this Court by a three Judge Bench decision in the case of **Pune Municipal Corporation and Anr. V. Harakchand Misirimal Solanki & Ors.**² and other cases referred to supra, the relevant paras of the aforesaid case are extracted hereunder:-

"20.....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.

¹ (2015) 3 SCC 541

² (2014) 3 SCC 183

21. The argument on behalf of the Corporation that the subject land acquisition proceedings have been concluded in all respects under the 1894 Act and that they are not affected at all in view of Section 114 (2) of the 2013 Act, has no merit at all, and is noted to be rejected. Section 114 (1) of the 2013 Act repeals the 1894 Act. Sub-section (2) of Section 114, however, makes Section 6 of the General Clauses Act, 1897 applicable with regard to the effect of repeal but this is subject to the provisions in the 2013 Act. Under Section 24 (2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of the 2013 Act and possession of the land is not taken or compensation has not been paid. The legal fiction under Section 24 (2) comes into operation as soon as conditions stated therein are satisfied. The applicability of Section 6 of the General Clauses Act being subject to Section 24 (2), there is no merit in the contention of the Corporation."

15. Further, with regard to the legal contention that physical possession of the land could not have been taken by the respondents in view of the interim order of "status quo" passed by this Court. This Court in the case of **Sree Balaji Nagar Residential Association v. State of Tamil Nadu & Ors.** 2014 (10) SCALE 388, held that Section 24 (2) of the Act of 2013 does not exclude any period during which the land acquisition proceedings might have remained stayed on account of stay or injunction granted by any court. It was conclusively held that the Legislature has consciously omitted to extend the period of five years indicated in Section 24 (2) of the Act of 2013 for grant of relief in favour of land owners even if the proceedings had been delayed on account of an order of stay or injunction granted by a court of law or for any reason. Thus, the said period has to be excluded as provided under the amended proviso to Section 6 of the L.A. Act by way of an amendment by the legislature to the above Section 6 through an Amendment Act 68 of 1984, to add Explanation 1 to the Act, for the purpose of excluding the period, when the proceedings suffered stay by an order of the Court, in the context of limitation provided for publishing the declaration notification under Section 6 (1) of the Act. The Explanation to Section 11A, , which was added by Amendment Act 68 of 1984 was to a similar effect. This Court in the above case has examined this legal contention and held that the legislature in its wisdom made the period of five years under Section 24(2) of the Resettlement Act, 2013, absolute and unaffected by any delay in the proceedings on account of any order of stay by a court of Law. The plain wordings used by the Legislature under the provisions of Section

24 (2) are made very clear and do not create any ambiguity or conflict. In such a situation, the court is not required to depart from the literal rule of interpretation, as held by this Court in the case of *C.I.T., Mysore v. The Indo Merchantile Bank Ltd.* AIR 1959 SC 713 as under:-

"10. Lord Macmillan in ***Madras & Southern Maharatta Railway Co. v. Bezwada Municipality*** laid down the sphere of a proviso as follows:

"The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where, as in the present case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it by implication what clearly falls within its express terms.

The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that that is its necessary effect."

16. Upon examining the aforesaid decisions with reference to the facts and circumstances of the case on hand, we are of the view that physical possession of the land belonging to the appellant has neither been taken by the respondents nor compensation paid to him in respect of the land acquired even though more than five years have lapsed since the award was passed on 06.08.2007, when the Act of 2013 came into force. Therefore, the conditions mentioned in Section 24 (2) of the Act of 2013 are satisfied in this case for allowing the plea of the appellant that the land acquisition proceedings are deemed to have lapsed in terms of Section 24 (2) of the Act of 2013. The said legal principle laid down by this Court in the case of ***Pune Municipal Corporation*** (supra) and other cases referred to supra with regard to the interpretation of Section 24 (2) of the Act of 2013, is applicable with all fours to the fact situation in respect of the land covered in this appeal for granting the relief as prayed by the appellant in the application."

A reading of the judgment of the Apex Court referred to above makes it clear that the acquisition proceedings initiated in respect of the

lands get lapsed if the possession is not taken and no compensation is paid though more than five years have lapsed. The judgment referred to above clearly states that Section 24 (2) of the 2013 Act does not exclude any period during which the land acquisition proceedings have been remained stayed by any Court. In the instant case, though award is passed but no possession is taken and no compensation has been paid to the claimants as the same was deposited before a revenue forum totally no compliance with the provisions of the Act and the ratio laid down in ***Pune Municipal Corporation and Anr. V. Harakchand Misirimal Solanki & Others*** (2 supra), wherein the Apex Court held as under:

“It is an 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.”

For the aforesaid reasons, this Writ Petition is allowed setting aside the award. However, the respondent authorities are at liberty to issue fresh notification under the Act 30 of 2013 for acquisition of the land and then proceed in accordance with law, if they are still in need of the land. No order as to costs.

As a sequel, miscellaneous petitions if any pending in the writ petition shall stand closed.

C. PRAVEEN KUMAR, J

Dt. 24.01.2017
GBS