

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.37427 of 2016

ORDER:

In the present writ petition, challenge is to the Award No.32/2007 dated 16.03.2007, passed by the Special Deputy Collector, Land Acquisition, Unit-I, Vamsadhara Reservoir Project, Hiramandalam, Srikakulam District.

2. Heard Sri D.Krishna Murthy, learned counsel for the petitioners and the learned Government Pleader for Land Acquisition for the respondents.

3. The short question that arises for consideration of this Court in the present writ petition is "whether the Land Acquisition Proceedings which culminated in the impugned award have lapsed in view of sub-Section (2) of Section 24 of the Right to Fair Compensation And Transparency in Land Acquisition, Resettlement and Rehabilitation Act, 30 of 2013.

4. In the instant writ petition, it is the categorical case of the petitioners herein that though the respondents passed the impugned award on 16.03.2007, they have not taken possession of the houses of the petitioners herein till date.

5. In the counter affidavit filed by the Special Deputy Collector/third respondent herein at paragraph 13 it is stated that the award was passed on 14.03.2007 and possession of the houses of the petitioners is also taken and handed over to the Requisition Department i.e., Irrigation Department on 03.03.2016 and 01.11.2006.

6. According to the learned counsel for the petitioners possession of the houses of the petitioners herein has not been taken so far and no

panchanama has been conducted and there is no evidence on record to show that the respondents conducted any such panchanama and the certificates enclosed along with the counter affidavit to show that the possession was taken are of no consequence.

7. In order to resolve the issue in the present writ petition, it may be appropriate to refer to the provisions of sub-section (2) of Section 24 of Right to Fair Compensation And Transparency in Land Acquisition, Resettlement and Rehabilitation Act, 30 of 2013. The said provision of law reads as under:

“(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 holdings has not been accepted, 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. While dealing with the above provision of law the Hon'ble Supreme Court in *PUNE MUNICIPAL CORPORATION AND ANOTHER v. HARAKCHAND MISIRIMAL SOLANKI AND OTHERS*¹ at paragraph 21, held as follows:

“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

¹ (2014) 3 SCC 183

be rejected. Section 114(1) of the 2013 Act repeals 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 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.“

9. The Hon'ble apex Court in *VELAXAN KUMAR v. UNION OF INDIA & ORS*² while dealing with the aspect of possession considered the earlier judgment reported in *SITA RAM BHANDAR SOCIETY, NEW DELHI v. LT. GOVERNOR, GOVT. OF N.C.T. DELHI AND ORS*³ wherein the Hon'ble Apex court held that it is permissible in law to take possession by a properly executed panchnama attested by independent witnesses.

10. In *DELHI DEVELOPMENT AUTHORITY v. SUKHBIR SINGH AND OTHERS*⁴ the Hon'ble apex Court while dealing with the aspect of taking possession of the property, at paragraph 28 (iii) held as under:

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

² (2015) 4 SCC 325

³ (2009) 10 SCC 501

⁴ AIR 2016 SC 4275

11. In the instant case, it is very much evident from the material available on record that the respondents herein failed to produce any evidence as to taking possession of the property/subject houses by conducting panchanama. Therefore by any stretch of imagination, it cannot be said that such handing over did take place.

12. Therefore, having regard to the judgments cited supra, this writ petition is allowed, setting aside the Award No.32/2007 dated 16.03.2007, passed by the Special Deputy Collector, Land Acquisition, Unit-I, Vamsadhara Reservoir Project, Hiramandalam, Srikakulam District. However, the respondents are at liberty to initiate proceedings afresh for acquisition of the subject property, if the properties are required, in accordance with law. It is also made clear that if the respondents do not require the subject houses, the petitioners herein shall refund the amounts paid to them with interest payable on Bank deposits from the date of payment to the petitioner under the impugned award. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 13.04.2017
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



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