

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of decision: October 30, 2017

+ W.P.(C) 618/2016
PRASHANT TOKAS & ANR

..... Petitioners

Through: Mr. B.D. Sharma, Adv., Mr. Pramod
Kumar and Ms. Shalu Jain, Adv.

versus

UNION OF INDIA & ORS

..... Respondent

Through: Mr. Rajan Khosla, Senior Panel
Counsel for UOI
Ms. Sapna Chauhan, Adv. for DDA
Mr. Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi, Adv. for
L&B/LAC

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V. KAMESWAR RAO

G.S.SISTANI, J. (ORAL)

1. The petitioners seek a declaration that the acquisition proceedings in respect of land admeasuring 03 Bighas and 14 Biswas, out of Khasra No.29/8/3(1-5), 13/2 (1-5) and 18/3(1-4), situated in village Bamnoli, Delhi are deemed to have lapsed in view of Section 24(2) of the right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013.

2. Counsel for the petitioners submits that Section 4 notification was issued in the year 4th November, 2004. Section 6 notification was issued on 31st October, 2005 and the award bearing No.1/2007-2008/DC(NW) was announced on 6th August, 2008.

3. It is also the case of the petitioners that neither possession was taken over nor compensation paid. He relies Section 24(2) which reads as under:

“24(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 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.”

4. Learned counsel has also drawn the attention of the Court in Para five of the counter-affidavit which reads as under:

“5. That it is submitted that the physical possession of the lands falling in khasra number 29//8/3 (1-05), 29//13/2 (1-05) and 29//18/3 (1-04) total measuring (3-14) could not be taken due to being built up as also the compensation could not be paid.”

5. Learned counsel for the respondents does not dispute the factual position. The law with regard to application of Section 24(2) of the 2013 Act as interpreted by the Supreme Court in the case of ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors., 2014 3 SCC 183***, is well settled, wherein the Supreme Court has held 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:

xxxx xxxx xxxx xxxx”

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[1]) 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[2], relying upon the earlier decision in Prem Nath Kapur[3], 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.”

6. That apart the aforesaid position of law has been reiterated in the case of

(1) Union of India and Ors. v. Shiv Raj and Ors. (2014) 6SCC 564;

(2) *Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors. Civil Appeal No.8700/2013 decided on 10.09.2014;*

(3) *Surender Singh v. Union of India & Others: WP(C) 2294/2014 decided on 12.09.2014 by this Court; and*

(4) *Girish Chhabra v. Lt. Governor of Delhi and Ors. WP(C) 2759/2014 decided on 12.09.2014 by this Court.*

8. In the case in hand the award having been announced more than five years prior to the commencement of the Act 2013, neither the possession has been taken or compensation paid, the petitioners are entitled to declaration that the acquisition proceedings initiated under the 1894 Act, in respect of the subject land deemed to have lapsed. Ordered accordingly.

The writ petition is disposed of. There shall be no order as to costs.

CM No.2541/2016

The interim order dated 25th January, 2016 is confirmed.

Application stands disposed of.

G.S.SISTANI, J

V. KAMESWAR RAO, J

OCTOBER 30, 2017/aky