

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

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Date of decision: December 21, 2017

+ W.P.(C) 1281/2015
DHOOM SINGH

..... Petitioner

Through: Mr. Sundeep Srivastava, Adv.

versus

GOVT. OF NCT OF DELHI AND ORS.

..... Respondent

Through: Mr. Yeeshu Jain, Adv. with Ms. Jyoti
Tyagi, Adv.
Mr. Parvinder Chauhan, SC for
DUSIB with Mr. Nitin Jain, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V. KAMESWAR RAO

G.S.SISTANI, J. (ORAL)

1. Rejoinder filed.
2. This is a petition under Article 226 of the Constitution of India filed by the petitioner seeking a declaration that the acquisition proceedings with respect to the land of the petitioner comprised in Khasra Nos. 670 (0-14) and 671 (0-14) situated in the Revenue Estate of village Bhalsva, Jahangirpur, Tehsil North-West (hereinafter referred to as 'the subject land') are deemed to have lapsed on account of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the Act') as neither physical possession of the subject land has been taken nor compensation paid.

3. The brief facts necessary for disposal of the writ petition are that Section 4 Notification was issued on 4th March, 2003, Section 6 Notification was issued on 4th February, 2004 and thereafter Award was rendered on 3rd February, 2006. Reliance is placed on the counter affidavit filed by the Land Acquisition Collector in support of the above submission, wherein it has been averred that no compensation could be paid with respect to the land in Khasra No. 670. As far as Khasra No. 671 is concerned, Mr. Jain learned counsel for the LAC submits that he has received instructions on 6th December, 2017 that in fact no compensation could be paid with respect to land in Khasra No. 671 measuring 14 biswas (762 sq. yds.) as well, as claimed by the petitioner.

4. Mr. Chauhan, counsel appearing for the DUSIB however submits that possession of the land with respect to Khasra No. 671 has been handed over on 2nd September, 2008 and possession with respect to Khasra No. 670 has been handed over on 26th April, 2008 to the Delhi Urban Shelter Improvement Board. However, the land is yet to be put to use. Mr. Chauhan also submits that vide order dated 14th May, 2004 passed in ***W.P.(C) No. 7297/2004*** titled ***Rohtash Yadav and others v. Union of India***, status quo with respect to nature, title and possession was directed to be maintained. He also points out that the aforesaid writ petition came to be allowed on 27th May, 2014, hence, the period commencing from 14th May, 2004 upto 27th May, 2014 is liable to be ignored for the purposes of computing the period of five years in terms of Section 24(2) of the Act. Resultantly, as on 1st January, 2014, the Award could not be said to be more than five years old and thus the petitioner is not entitled to the reliefs so claimed.

5. Counsel for the petitioner submits that the submissions so made, is without any force as the petitioner did not approach the Court, did not obtain

any stay and was not a party in the writ petition filed by Rohtash Yadav and others. He however, submits that the Award would show that the name of the petitioner finds mentioned at Sl. No. 64 for seeking claim and compensation, which was denied to him. Counsel for the petitioner submits that since the actual physical possession still continues to remain with the petitioner and admittedly compensation has not been paid, the petitioner would be entitled to a declaration and he relies on ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors., 2014 3 SCC 183***, paras 14 to 20 of which reads as under:

“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. We have heard the learned counsel for the parties, considered the rival submissions. The LAC has fairly stated that compensation with respect to the subject land has not been paid. It is not disputed before us that the land has not been put to use by the DUSIB. Resultantly, the writ petition is allowed.

The acquisition proceedings qua the land of the petitioner comprised in Khasra No. 670 (0-14) and 671 (0-14) situated in the Revenue Estate of village Bhalsva, Jahangirpur, Tehsil North-West stands lapsed. We find no force in the submission on behalf of DUSIB that the Award is not more than five years old as the petitioner has neither filed any writ petition nor challenged the acquisition proceedings nor obtain any order of status quo. No costs.

G.S.SISTANI, J

V. KAMESWAR RAO, J

DECEMBER 21, 2017/ak

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