*   IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 22.08.2017
Pronounced on: 22.09.2017

\+   **W.P.(C) 6674/2015, C.M. APPL.12173/2015 & 14593/2017**

RAMJAS FOUNDATION ..... Petitioner

Through : Sh. Ravinder Sethi, Sr. Advocate with Sh. Parvinder Chauhan and Sh. Nitin Jain, Advocates.

versus

UNION OF INDIA & ORS ..... Respondents

Through : Sh. Ajay Verma, Standing Counsel with Sh. Arjun Pant and Ms. Diviani Khanna, Advocates, for DDA.

Ms. Archana Gaur and Sh. R.M. Tripathi, Advocates, for UOI.

Sh. Yeeshu Jain, Standing Counsel with Ms. Jyoti Singh, Advocate, for L&B.

Sh. Gajendra Kumar Chauhan, Advocate, for applicant/Bhagwan Dass.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SUNIL GAUR

MR. JUSTICE S. RAVINDRA BHAT

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Facts

1. The Petitioner, owner of land measuring 651 Bigha in revenue estate of Village-Sadhora Khurd (now known as Anand Parbat, referred to hereafter as "the suit lands"), Delhi, seeks a direction from this Court, under Article 226 of the Constitution of India, that the lands notified for acquisition, by the appropriate government, have lapsed, by virtue of Section 24 (2) of the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* (hereafter "the 2013 Act").

2. The facts are that Notifications were issued for acquisition of certain lands under Section 4 of the *Land Acquisition Act, 1894* [hereafter "the old Act"] for planned development of Delhi on 13.11.1959 - these included the suit lands. The petitioner's objection under Section 5A of the old Act did not find favour with the concerned Authority. On 21.11.1977, notifications were issued under Section 6 of the old Act. On 30.03.1977, a writ petition [W.P.(C) 213/1973], filed by the petitioner, challenging the acquisition, was dismissed as withdrawn. W.P.(C) 106/1978 was filed for quashing the notifications issued under Sections 4 and 6 of the old Act and notices issued under Sections 9 and 10 of the old Act and that writ petition was dismissed by the Division Bench of the Delhi High Court by order dated 31.01.1978. On 13.11.1992, Civil Appeal No. 2213/1978 against the order dated 31.01.1978 was dismissed by the Supreme Court. The said judgment is reported as *Ramjas Foundation v. Union of India* (1993) Supp(2) SCC 20.

3. During 1994-95, physical possession of 87 bighas 13 biswas of land was taken by the Respondents. W.P.(C) 1811/1995 was filed in 1995 by certain tenants of the Petitioner by way of public interest litigation, which sought directions to the authorities to take possession of 730 *bighas* for

implementation of the zonal plan of Zone-B5, which was rendered impossible to implement since the area was heavily built-up, and thickly populated. On 16.11.1995 and 01.03.1997, the petitioners made representations for denotification of the lands under Section 48(1) of the old Act. Again in 1997, they preferred a writ petition, W.P.(C) 4343/1997, seeking disposal of its representation and de-notification of lands. On 19.06.1998 the Respondents took 'Paper possession' of the land measuring 563 Bighas 07 Biswas on *"as is where is"* basis**.**

4. In 1999, Petitioner filed W.P.(C) 5493/1999, for declaration that the land situated in village Sadhora Khurd continued to be in its possession. On 26.04.2000, this Court disposed of W.P.(C) 1811/1995, W.P.(C) 4343/1997 and W.P.(C) 5493/1999, and gave directions to the Lieutenant Governor to pass appropriate order on the application made by Petitioner for de-notification of the acquired land within a period of 8 weeks.

5. On 05.02.2002 SLP No. 15097/2000 was disposed of directing that the representations be disposed of within six weeks by the Lieutenant Governor of Delhi. On 18.06.2002, the Lieutenant Governor of Delhi dismissed the Petitioner's representation, stating that the land was needed for the redevelopment of the congested and degraded area. On 06.02.2004, W.P.(C) 5138/2002 seeking *inter-alia* quashing of the orders dated 18.06.2002 passed by Lieutenant Governor and a consequent de-notification of the land besides release of land in question, was dismissed. Subsequently, the Supreme Court also dismissed SLP(C) 7026/2004. On 28.06.2004 the Petitioners before the Lieutenant Governor of Delhi seeking de-notification of land made another representation. This representation stands undecided.

6. It is urged and contended by learned counsel for the Petitioners that though the notification under Section 4 of the old Act had been issued as early as on 13.11.1959, except 87 Bighas 13 Biswas of vacant land of which physical possession was taken in 1994 and 1995, actual physical possession of 563 Bighas 07 biswas of the land, has not been taken by the Respondents. It was pointed out that only symbolic paper possession has been taken on as-is-where-is basis. It is also pointed out that the actual physical possession still vests with the Petitioners through the case of *Raghbir Singh Sehrawat v. State of Haryana & Ors* 2012 (1) SCC 792 which held that taking over physical possession of the acquired land means the actual taking of possession of it from the land owners/interested persons. Additionally, it was urged that compensation was not tendered or paid to the Petitioner till date or, to the information of the petitioner, been deposited in reference court. It was pointed out that the question of depositing the amount of compensation with the reference court does not and cannot arise unless the compensation is first tendered to the Petitioner. It was further contended that the conditions which are required for enabling the deeming provisions of Section 24 of the 2013 Act are that the award must have been made 5 years or more prior to the commencement of the 2013 Act and that either physical possession of the land has not been taken or the compensation has not been paid. It was contended by referring to the case of *Sree Balaji Nagar Residential Association v. State of Tamil Nadu* 2015 (3) SCC 353 that the period of five years under Section 24(2) is absolute and unaffected by any delay in the proceedings on account of any order of stay by a Court. Thus, these conditions have been contended to be fulfilled as per the facts of the case as

mentioned before and thus the proceedings are deemed to lapse as per the provision of Section 24(2).

7. It was also pointed out that the right conferred to the landholders/owners of the acquired lands under Section 24(2) of the Act is a statutory right which cannot be taken away by an Ordinance by inserting proviso to the sub-section without giving retrospective effect to it. It was also emphasized through the case of *Suraj Bhan & Ors. v. Govt. of NCT of Delhi & Ors.* that the Ordinance of 2014 and 2015 is prospective in nature and the rights created in favour of the petitioners on 01.01.2014 by virtue of the 2013 Act are undisturbed by the second Proviso to Section 24(2) of the 2013 Act, which has been introduced by the said Ordinances.

8. Moreover, it was contended that the said land continues to remain a 'private land' as contemplated by Order No.F.No.1-33/UC/UD/Policy/2007/20670-20686 dated 12.12.2007 issued by Pr. Secretary (UD), Urban Development Department, and has been in use, occupation and possession of the Ramjas Foundation.

9. The Respondents state that Parliament did not provide for reopening the acquisition proceedings, which became final under the provisions of the old Act. It was further contended that the provisions of the 2013 Act would be applicable only where the challenge to the acquisition proceeding is alive. It was pointed out that it is not the intention of Section 24(2) to negate the acquisition proceedings. The case of *K. N Aswathnarayana Setty v. State of Karnataka* AIR 2014 SC 279 was relied on to point out that once the possession of the land is taken, the persons interested are entitled to compensation only. It is further submitted that the process of lapsing would mean that the acquisition proceedings have not yet achieved finality, for

there cannot be any lapsing of something which has already achieved finality under the 1894 Act. The case of *V. Chandrasekaran and Another v. Administrative Officer and Others* 2012 (12) SCC 133 was relied on to point out that once the land is vested in the State, free from all encumbrances, it cannot be divested and proceedings under the Act would not lapse, even if the Award is not made within the statutory stipulated period. Learned counsel also questioned the maintainability of the petition on account of *res judicata* and on account of absence of a document granting the Petitioner a locus to file the application.

10. The counsel contended that as per the proviso to Section 24 if possession of substantial part of the land has been taken and compensation has been paid to large number of interested persons, the acquisition does not lapse. It was finally contended that the ownership of the subject land lies with the Ramjas Foundation which is a society registered under the *Societies Registration Act* and only occupancy rights were given to various persons and thus the Petitioner is only a subsequent transferee and thereby not entitled for payment of compensation or to challenge the acquisition proceedings.

Reasoning and decision

11. The question that arises in the present case is whether Section 24(2) of the 2013 Act will apply, i.e. whether the proceedings shall be deemed to have lapsed. Section 24 of the 2013 Act says that-

> *" 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 (1 of 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."

12. Thus Section 24(2) is an exception to Section 24(1) (b) and entails the following ingredients as laid down by the Supreme Court in the case of *Delhi Development Authority v. Sukhbir Singh 2016 SCC OnLine SC 929*

"(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*"

13. Thus, two conditions need to be fulfilled for the application of Section 24(2) - the award must have been made 5 years or more prior to the commencement of the Act and that either compensation has not been paid or physical possession of the land has not been taken by the respondents.

14. The Supreme Court in *Delhi Development Authority v. Sukhbir Singh* AIR 2016 SC 4275 explained the Parliamentary intent for enacting such a provision.

> *"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. 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."

15. Thus, it is clear from the present holding that the legislature through this provision intended that if the executive does not complete the acquisition process within a reasonable time, the proceedings under the Act would lapse even if the award has been passed and the proceedings have attained finality. The objective of this provision is to balance between the citizen's right to retain his own property and the right of the State to expropriate it for a public purpose. The contention of the learned counsel for the Respondents that the legislative intent cannot be to lapse the proceedings that have attained finality and that the provision is applicable only when the challenge is alive does not hold truth in light of this interpretation.

16. The Supreme Court in the case of *Sree Balaji Nagar Residential Association (supra)* discussed whether the period of stay or injunction will be excluded while computing the period for purposes of Section 24(2) of the Act.

"From a plain reading of Section 24 of the 2013 Act it is clear that Section 24(2) of the 2013 Act does not exclude any period during which the land acquisition proceeding might have remained stayed on account of stay or injunction granted by any court. In the same Act, proviso to Section 19(7) in the context of limitation for publication of declaration under

Section 19(1) and the Explanation to Section 69(2) for working out the market value of the land in the context of delay between preliminary notification under Section 11 and the date of the award, specifically provide that the period or periods during which the acquisition proceedings were held upon account of any stay or injunction by the order of any court be excluded in computing the relevant period. In that view of the matter it can be safely concluded that the Legislature has consciously omitted to extend the period of five years indicated in Section 24(2) 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. Such casus omissus cannot be supplied by the court in view of law on the subject elaborately discussed by this Court in the case of Padma Sundara Rao (Dead)&Ors. V. State of T.N. &Ors. (2002) 3 SCC 533.

Clearly the Legislature has, in its wisdom, made the period of five years under Section 24(2) of the 2013 Act absolute and unaffected by any delay in the proceedings on account of any order of stay by a court. The plain wordings used by the Legislature are 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."

17. In the present case, the awards were passed in 1994, i.e. more than 5 years prior to the commencement of the Act, i.e. more than 5 years prior to 01.01.2014. Moreover, the stay and injunctions by the Court will not be excluded for the computation of this period. Thus, this condition laid down in Section 24(2) has been fulfilled as per the facts of the case.

18. The term "compensation has not been paid" in Section 24(2) was interpreted in the case of *Pune Municipal Corporation and Anr. v. H.M. Solanki,* 2014 (2) SCC 183 decisively. The court held that

"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 the 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."

19. Thus, in order for compensation to be paid, it must be offered to the interested person and must be deposited in the court where reference has been made. As per the facts of the present case, no such requirements were fulfilled and thus no compensation was paid to the Petitioners. This is evident from the counter affidavit filed by the LAC, which in relevant part reads:

"10. That it is submitted the compensation for the above-said lands could not be paid as the DDA has sent the awarded

compensation for all the above-said Awards to the Land & Building Department vide cheque No. 642792 dated 15.10.2014 amounting to Rs. 67,28,255/- which however could not be received in the office of the answering respondent."

20. In the present case, actual possession was, no doubt, taken. The petitioners' argument that possession taken, was not of the whole, but rather only a portion of the lands, is insubstantial. In this regard, this Court cannot undertake a factual inquiry whether the procedure adopted was such that some notice was issued, before possession was taken. What is apparent is that the petitioner approached the Courts almost like a serial litigant, each time successfully stalling further proceedings. But for the Court's obligation to undertake the twin inquiry under Section 24 of the 2013 – which it is duty-bound to- these proceedings would have been summarily dispatched on the ground that possession had been taken or that entertaining them would have meant that litigate, litigate, and some day you would succeed. This Court, however, has to see if in fact, the essentials of Section 24 (2) exist as to enable relief to the petitioners.

21. This Court in the case of *Tarunpal Singh v. Lt. Governor* 2015 SCC Online del 9789 discussed the difference in application of the first proviso to Section 24 and Section 24(2).

"It is evident that under section 24(1), two situations are set out. One where no award has been made under section 11 of the 1894 Act and the other where an award has been made under section 11 of the said Act. Insofar as the latter case is concerned, section 24(2) provides an exception and it begins with a non-obstante clause. In other words, in cases where Awards have been made under section 11 of the 1894 Act, another subcategory of Awards has been carved out by virtue of section 24(2) and those relate to Awards which had been made more

than five years prior to the commencement of the 2013 Act, that is, more than five years prior to 01.01.2014. In such cases, that is, where the Awards have been made more than five years prior to the commencement of 2013 Act, if physical possession of the land in question has not been taken or compensation has not been paid, the acquisition proceedings are deemed to have lapsed. [see: (i) Pune Municipal Corporation and Anr v. Harakchand Misirimal Solanki and Ors: (2014) 3 SCC183 (ii) Union of India and Ors v. Shiv Raj and Ors: (2014) 6 SCC564 (iii) Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors: Civil Appeal No.8700/2013 decided on 10.09.2014; and (iv) Surender Singh v. Union of India and Ors.: W.P.(C) 2294/2014 decided 12.09.2014 by this Court]..

It is, therefore, clear that in those cases where the Awards have been made more than five years prior to the commencement of the Act, section 24(2) would have applicability, subject to the other conditions being fulfilled. But, in cases where the Awards have been made within five years of the commencement of the 2013 Act, section 24(2) would not apply. It is also clear that once the conditions of section 24(2) are met, the acquisition itself lapses and therefore no occasion would arise for invoking the first proviso which is set out after section 24(2). This is so because the first proviso entails a situation where the acquisition is saved but the compensation is awarded under the 2013 Act. The proviso cannot blow life into the acquisition which has lapsed under the main provision of sub-section (2) of Section 24 of the 2013 Act. It is for this reason that we think that the first proviso which has been placed after section 24(2) is not really a proviso to section 24(2) but, a proviso to Section 24(1)(b). The said first proviso and Section 24(1)(b) can easily be read together. Section 24(1)(b) in effect relates to all cases where awards have been under the 1894 Act except those which are covered under Section 24(2). Clearly, awards made less than five years prior to the commencement of the 2013 Act would fall under Section 24(1)(b). As such, the general rule in such cases is that the provisions of the 1894 Act would continue to be applicable, as if the 1894 Act had not been repealed. However, the said first proviso carved out an exception to this general rule *by providing that in cases where 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 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. This is a provision for the benefit of landowners inasmuch as even in cases of completed acquisitions, if the conditions stipulated under the said first proviso stand satisfied, the compensation would have to be provided under the more beneficial provisions of the 2013 Act."*

22. In the present case, at least one condition prescribed in Section 24(2) is fulfilled. The State, i.e the appropriate government, acknowledges in its counter affidavit that the compensation for the suit lands was deposited. Now, *Pune Municipal Corporation (supra)* and the later judgments that have relied on it, are forthright in that "paid" under Section 24 (2) has to be given a literal interpretation and that unless the conditions outlined in Section 30/31 are fulfilled, and the procedure prescribed for it, followed, the inexorable consequence of the acquisition lapsing, would ensure. In this case, the consequence set out in 24(2) will follow, i.e. the acquisition itself will lapse because compensation was never tendered or offered and, therefore, not paid.

23. The respondents' objections as to bar of proceedings by *res judicata* is not merited because the claim in this case was different from the previous writ proceedings. The earlier claims focused on denotification of land while the present case deals with Section 24 of the 2013 Act. This provision is designed to benefit the land owners whose land has been acquired but the actual physical possession has not been taken for more than 5 years, or

compensation not paid to them. Applicability of *res judicata* in such circumstances would defeat the very purpose of the provision.

24. In the circumstances, therefore, this Court is of the opinion that Section 24(2) of the 2013 Act would apply and hence the acquisition proceedings stood lapsed. A declaration to that effect is issued. The parties are left to bear their own costs. The petition is allowed in the above terms.

S. RAVINDRA BHAT
(JUDGE)

SUNIL GAUR
(JUDGE)

SEPTEMBER 22, 2017