

Sparsh Properties Pvt. Ltd. Vs. Union of India and Ors.

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Court : Delhi

Decided On : Nov-24-2014

Judge : Badar Durrez Ahmed

Appellant : Sparsh Properties Pvt. Ltd.

Respondent : Union of India and Ors.

Judgement :

\$~ 46 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

24. 11.2014 W.P.(C) 4622/2014 & CM91952014 SPARSH PROPERTIES PVT. LTD. Petitioner versus UNION OF INDIA AND ORS. Respondents
Advocates who appeared in this case: For the Petitioner : Mr Sumit Bansal For the Respondents : Mr Vivek Goyal, CGSC with Ms Hanupaii for R-1. Mr Siddharth Panda Mr Arjun Pant for DDA. CORAM:HONBLE MR JUSTICE BADAR DURREZ AHMED HONBLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL) 1. The petitioner seeks the benefit 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 2013 Act) which came into effect on 01.01.2014. A declaration is sought to the effect that the acquisition proceeding, which is the subject matter of the present writ petition,

ought to be deemed to have lapsed in view of Section 24(2) of the 2013 Act.

2. The Award under the Land Acquisition Act, 1894 (hereinafter referred to as the 1894 Act) was made vide Award No.15/1987-88 dated 27.06.1987 and it was in respect of, inter alia, the petitioners land comprised in Khasra Nos. 926/1(0-7), 928(4-7), 942 (4-16), 943 (0-4), 944 min (0-4) and 946/1 (2-3) measuring 12 bighas 1 biswas in all in village Chattarpur, New Delhi.

3. It is an admitted position that the physical possession of the subject land was not taken by the land acquiring agency. It is also an admitted position that the compensation has not been paid in respect of the subject land except insofar as khasra number 946/1(2-3) is concerned. According to the learned counsel for the respondents the compensation for the said khasra was deposited before the court of the District Judge. However, no date or particulars are given. In any event, it is not mentioned that the deposit was made after an offer had been made to the petitioner and he had refused to accept the same.

4. With regard to the such a deposit being made, the law has been settled in Pune Municipal Corporation and Anr v. Harakchand Misirimal Solanki and Ors: (2014) 3 SCC183 wherein the Supreme Court held 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. xxxx xxxx xxxx xxxx 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 subsection [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.

5. From the above extract it is clear that unless and until compensation is first tendered to the persons interested, mere depositing of the same in the court would not be sufficient. In the present case it is not even contended by the respondents that the compensation amount in respect of the khasra number 946/1 had been even offered to the petitioner. Therefore, in view of the clear dictum of the Supreme Court in Pune Municipal Corporation (supra), such deposit of

compensation in court cannot be regarded as a payment of compensation as contemplated under the provisions of Section 24(2) of the 2013 Act. This is so because the Supreme Court categorically held that for the purposes of Section 24(2), the compensation could be regarded as having been paid only if the compensation has been offered to the person interested and such compensation has been deposited in the court where a reference under Section 18 could be made on the happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act.

6. In view of the foregoing it is abundantly clear that the award was made more than five years prior to the commencement of the 2013 Act; physical possession of the subject land has not been taken by the land acquiring agency nor has any compensation been paid to the petitioner. All the ingredients necessary for the applicability of section 24(2) of the 2013 Act, as interpreted by the Supreme court and this court in the following decisions, stand satisfied: (1) Pune Municipal Corporation and Anr v. Harakchand Misirimal Solanki and Ors: (2014) 3 SCC183 (2) Union of India and Ors v. Shiv Raj and Ors: (2014) 6 SCC564 (3) Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors: Civil Appeal No.8700/2013 decided on 10.09.2014; (4) 7. Surender Singh v. Union of India & Others: WP(C) 2294/2014 decided on 12.09.2014 by this Court; and The learned counsel appearing on behalf of the DDA contended that the present petition is not maintainable inasmuch as the petitioner is a subsequent purchaser. While it is true that, in the context of 1894 Act, the Supreme Court held that a subsequent purchaser would not have a right to challenge the acquisition and would only have a right of compensation, we agree with the learned counsel for the petitioner that the present petition as it now stands is not a challenge to acquisition proceedings but is a petition seeking declaration of a right which has already accrued to the petitioner by virtue of the deeming provision of section 24(2) of the 2013 Act. Once the acquisition has lapsed because of the triggering of the deeming provision of section 24(2) of the 2013 Act, the benefit of the same cannot be denied to the petitioner on the ground that he is a subsequent purchaser.

8. As a result, the petitioner is entitled to a declaration that the said acquisition proceedings initiated under the 1894 Act in respect of the subject land are deemed

to have lapsed. It is so declared.

9. The writ petition is allowed to the aforesaid extent. There shall be no order as to costs. BADAR DURREZ AHMED, J SIDDHARTH MRIDUL, J NOVEMBER24 2014 Kb

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