

Sarbati Devi & Ors vs.union of India & Anr

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SooperKanoon Citation : sooperkanoon.com/1211527

Court : Delhi

Decided On : Dec-20-2017

Appellant : Sarbati Devi & Ors

Respondent : Union of India & Anr

Advocate for Def. : Mr. Yeeshu Jain, Ms. Jyoti Tyagi, Mr. Sanjeev Sabharwal, Mr. Hem Kumar, Mr. Simmee Kumari

Advocate for Pet/Ap. : Mr. Anil Kumar

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + W.P.(C) 6990/2016 Date of decision:

20. h December, 2017 SARBATI DEVI & ORS

... Petitioner

s Through: Mr. Anil Kumar, Adv. versus UNION OF INDIA & ANR

... RESPONDENTS

Through: Mr. Yeeshu Jain, Standing Counsel with Ms. Jyoti Tyagi, Adv. for L&B/LAC Mr. Sanjeev Sabharwal, Standing Counsel for DDA with Mr. Hem Kumar, Adv. and Mr. Simmee Kumari, Adv. for DDA CORAM: HON'BLE MR. JUSTICE G.S.SISTANI HON'BLE MR. JUSTICE V. KAMESWAR RAO G.S.SISTANI, J.

(ORAL) 1. With the consent of the parties, the writ petition is set down for final hearing and disposal.

2. This is a petition filed under Article 226 of the Constitution of India filed by the petitioners. The petitioners seek a declaration that the acquisition proceedings with respect to

share of the land comprised in Khasra Nos. 202 min (1-05),

min (0-17),

min (0-14), 204 (2-03) 211 min (0-15) total land measuring 5 bigha 14 biswas situated in the revenue estate of village Haider Pur, Delhi has lapsed. As per the writ petition, the predecessor in W.P.(C) No.6990/2016 Page 1 of 7 interest of the petitioners i.e. Smt. Brahma Devi w/o Late Sh. Ram Chander and Late Sh. Nathu Singh s/o Late Shr. Ram Chander were the recorded owners of the (each) share in the land bearing Khasra Nos.202 min (1-05),

min (0-17),

min (0- 14), 204 (2-03) 211 min (0-15) total land measuring 5 bigha 14 biswas situated in the revenue estate of village Haider Pur, Delhi (hereinafter referred to as subject land) alongwith the copy of the Khatauni with respect to the above mentioned land reflecting the shares of Late Smt. Brahma Devi and Late Sh. Nathu Ram has been filed.

3. Necessary facts to be noticed for disposal of this writ petition are that a notification under Section 4 notification of the Land Acquisition Act, 1894 was issued on 24th October, 1961, thereafter a Section 6 notification of the Act was issued on 6th December, 1966 and an award bearing No.50/80-81 was announced on 18th July, 1980. Smt. Brahma Devi died on 3rd November, 1987 and Sh. Nathu Singh expired on 17th May, 2000.

4. Counsel for the petitioners relies on the decision of the Supreme Court of India in the case of Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors., reported at (2014) 3 SCC183 in support of his submission that since neither compensation has been paid nor possession of the subject land has been taken over, the petitioners are entitled to a declaration that the acquisition proceedings qua the land of the petitioners stand lapsed.

5. Counter-affidavit has been filed by the DDA as also the LAC. In para 6 of the counter-affidavit filed by the LAC, it has W.P.(C) No.6990/2016 Page 2 of 7 been stated that Khasra No.202(0-15) for which the possession was taken at the spot, the possession of the balance land has not been taken and also states the compensation has not been paid.

6. In para VII of the counter-affidavit filed by the DDA, a similar averment with regard to the possession over Khasra No.202(0-15) has been made on 19th July, 1980. Para VII of the counter-affidavit filed by the DDA read as under: vide notification No.F10(15)/78/L&B VII. It is further submitted that the physical possession of the acquired land i.e. only Khasra No.202 min (0-15) of village Haiderpur, Delhi has been handed over to the respondent-Delhi Development Authority by the LAC/Land and Building Department, Government of NCT of Delhi 19.07.1980. The handed over acquired land is disposal of DDA dated 27.08.1980 u/s 22(i) of the DD Act, 1957 and the same transfer to Horticulture department, DDA on 07.08.1980 and the balance acquired land has not been handed over to the respondent-DDA. Copy of possession proceedings dated 19.07.1980 is annexed herewith marked as Annexure A-1. It is further submits that the petitioner has not placed on the records of the present case any document to show its possession over the acquired land. The photographs filed before the Honble Court can be of any areas. 7. Para 6 of the counter-affidavit filed by the LAC read as under: 6. That the present writ petition is liable to be dismissed on the ground of limitation as the actual vacant physical possession of the subject land falling in Khasra number 202(0-15) to the extent was taken on the spot on 19.07.1980 and handed over to the DDA on the spot by preparing possession proceeding. The possession of subject land as shown in prayer clause could not be taken nor the compensation be paid. W.P.(C) No.6990/2016 Page 3 of 7 8. We have heard learned counsel for the parties and consider their rival submissions and also examined the counter-affidavit filed by the LAC as also the DDA.

9. It is clearly established that compensation has not been paid to the petitioners with respect to the subject land and as far as the possession is concerned, even as per the LAC and DDA only part possession has been taken which is also disputed by the counsel for the petitioners to submit that the petitioner is in actual

physical possession of the entire land.

10. Resultantly, in our view, the case of the petitioners is fully covered by the decision of the Supreme Court of India in the case of Pune Municipal Corporation & Anr. (supra). Paras 14 to 20 read as under: the 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 contingencies 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. W.P.(C) No.6990/2016 Page 4 of 7 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 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 literal construction to give a to W.P.(C) No.6990/2016 Page 5 of 7 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 states 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 W.P.(C) No.6990/2016 Page 6 of 7 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 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. compensation paid equivalent to to 11. The writ petition is allowed. It is clear that the acquisition proceedings with respect to the land of the petitioners have lapsed. CM. No.28699/2016 This application has become infructuous in view of the order passed in the Writ Petition. G.S.SISTANI, J V. KAMESWAR RAO, J DECEMBER20 2017/aky W.P.(C) No.6990/2016 Page 7 of 7