

Attro Devi & Ors. Vs.land Acquisition Collector & Ors.

Attro Devi & Ors. Vs.land Acquisition Collector & Ors.

SooperKanoon Citation : sooperkanoon.com/1211539

Court : Delhi

Decided On : Dec-20-2017

Appellant : Attro Devi & Ors.

Respondent : Land Acquisition Collector & Ors.

Judgement :

\$~11 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Judgment:

20. h December, 2017 + W.P.(C) 10075/2015 ATTRO DEVI & ORS. LAND ACQUISITION COLLECTOR & ORS. versus

... Petitioner

s Through: Mr.Deepak Rajpal, proxy counsel.

... RESPONDENTS

Through: Mr.Yeeshu Jain, standing counsel for LAC/L&B with Ms.Jyoti Tyagi, adv. Mr.Pawan Mathur, Adv. for DDA. CORAM: HON'BLE MR. JUSTICE G.S.SISTANI HON'BLE MR. JUSTICE V. KAMESWAR RAO G.S.SISTANI, J.

(ORAL) 1. Counter affidavit has been handed over in Court by Mr.Yeeshu Jain. Copy supplied to the counsels for the parties.

2. With the consent of the parties, the writ petition is set down for final hearing and disposal.

3. This is a petition under Article 226 of the Constitution of India filed by the petitioners. The petitioners seek a declaration that the acquisition proceedings with respect to the land of the petitioners comprised in Khasra no.1 Etc./5

measuring 3 bighas 9 biswas and Khasra No.1 Etc./5

measuring 1 bigha 15 biswas situated in the revenue estate of village Ghonda, Chauhan Khadar, District North- East, Delhi (hereinafter referred to as the subject land) are deemed to have lapsed in view of Section 24(2) of the Right to Fair W.P. (C) No.10075/2015 Page 1 of 7 Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as New Act), as neither the compensation has been paid to the petitioners nor the possession has been taken.

4. The necessary facts to be noticed for disposal of this writ petition are that a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) was issued on 23.06.1989. A Section 6 declaration was made on 20.06.1990. Thereafter, an Award was rendered on 19.06.1992. It is the case of the petitioners that neither possession has been taken nor the compensation has been paid.

5. Counsel for the petitioners submits that the case of the petitioners stands fully covered by the decision rendered by the Supreme Court of India in the case of Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors., reported at (2014) 3 SCC183 6. The Land Acquisition Collector in its counter affidavit has stated that although possession was taken and handed over to the Delhi Development Authority (DDA), the recorded owner never came forward to receive any compensation. Counsel for the DDA submits that the subject land is situated in an area meant for green belt, agriculture and water body as the land falls in O Zone.

7. We have heard the learned counsels for the parties. Paragraphs 4 of the counter affidavit filed by LAC reads as under: 4. That it is submitted that for the purpose of planned development of Delhi, the answering respondent issued a Notification u/S4 of the Land Acquisition Act, 1894 on 23.06.1989 which was followed by Notification u/S6 of the said Act dated 20.6.1990 for planned

development of Delhi for the acquisition of the lands falling in village W.P. (C) No.10075/2015 Page 2 of 7 Ghonda Chauhan Khadar. That an Award bearing No.10/92-93 dated 19.06.1992 and the land falling in Khasra No.1 etc/5 (3-08) and 1 etc/5

(0-09) was taken on the spot on 6.12.2012 and handed over to the DDA on the spot however the recorded owner/s never came forward to receive any compensation. It is submitted that the petitioners have also admitted in the writ petition that the Government has taken paper possession of the subject land however the subject land is lying unutilized. 8. The case of the petitioners is fully covered by the decision rendered by the Apex Court in the case of Pune Municipal Corporation & Anr.(supra). Paras 14 to 20 read 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 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. is prevented 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 W.P. (C) No.10075/2015 Page 3 of 7 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. the 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 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 W.P. (C) No.10075/2015 Page 4 of 7 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, 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. this 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.10075/2015 Page 5 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 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. 9. Taking into consideration the submissions made and the fact that admittedly compensation has not been paid to the petitioner and the stand taken by the LAC in the counter affidavit, we are of the considered view that the necessary ingredients for the application of Section 24(2) of the New Act as has been interpreted by the Supreme Court of India and this Court in the following cases stand satisfied: (1) Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors., reported at (2014) 3 SCC183 (2) Union of India and Ors v. Shiv Raj and Ors., reported at (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) Surender Singh v. Union of India & Others, W.P.(C).2294/2014 decided on 12.09.2014 by this Court; and (5) Girish Chhabra v. Lt. Governor of Delhi and Ors; W.P.(C).2759/2014 decided on 12.09.2014 by this Court.

10. In view of the discussion above, the petitioners are entitled to a declaration that the acquisition proceedings initiated under the Land Acquisition Act, 1894 with regard to the subject land are deemed to have lapsed. It is so declared. W.P. (C) No.10075/2015 Page 6 of 7 11. The petition stands disposed of. G.S.SISTANI, J.

DECEMBER20 2017 rb V. KAMESWAR RAO, J.

W.P. (C) No.10075/2015 Page 7 of 7

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com