

Rattan Singh vs Union Of India & Anr on 8 December, 2015

Equivalent citations: 2015 AIR SCW 6843, 2015 (16) SCC 342, 2016 (1) ABR 557, AIR 2016 SC (CIVIL) 431, (2016) 1 MAD LW 881, (2016) 1 PAT LJR 241, (2016) 1 JLJR 118, (2016) 1 KCCR 481, (2016) 1 CGLJ 356, (2016) 1 ALL WC 657, (2016) 1 CAL LJ 186, (2015) 3 ICC 879, (2015) 153 ALLINDCAS 582 (CAL), (2015) 3 CALLT 442, (2016) 114 ALL LR 717, (2016) 1 ANDHLD 135, (2016) 1 CALLT 33, (2016) 1 RECCIVR 866, (2015) 13 SCALE 594, (2016) 158 ALLINDCAS 136 (SC), (2016) 1 CLR 510 (SC), (2015) 4 CURCC 424, (2016) 1 BOM CR 614

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Bench: Shiva Kirti Singh, Vikramajit Sen

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO.4

IN

CIVIL APPEAL NO. 2851 OF 2009

RATTAN SINGH

.. APPELLANT

VERSUS

UNION OF INDIA AND ANR

.. RESPONDENTS

W I T H

I.A.NO.5

IN

CIVIL APPEAL NO. 2852 OF 2009

SARDAR SINGH

.. APPELLANT

VERSUS

UNION OF INDIA AND ORS.

.. RESPONDENTS

J U D G M E N T

VIKRAMAJIT SEN, J.

1. These Appeals were admitted before the commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for brevity ‘2013 Act’). Upon commencement thereof, the Appellants have changed the tack of their challenge by seeking to invoke the deemed lapse of proceedings under Section 24(2) of the 2013 Act. As we have repeatedly opined, any determination under this Section must proceed sequentially. First, the factum of an Award under Section 11 of the Land Acquisition Act, 1894, must be clearly established. The said Award must predate the commencement of the Act, i.e., 1.1.2014, by at least five years, i.e., the Award must have been passed on or before 1.1.2009. This having been established, if possession is found to not have been taken, or compensation not paid, then the proceedings shall be deemed to have lapsed. Thereafter, the appropriate Government, if it so chooses, may reinitiate acquisition proceedings in respect of the same land, but under the regime of the 2013 Act.

2 In the matter before us, a Section 4 Notification was issued on 13.11.1959, followed by a Section 6 Declaration on 12.7.1966. An Award was finally passed on 24.6.1968. The first requirement is thus made out. The possession of the land appears to be in dispute, as the Appellants allege that mere paper possession has been taken by the Respondent, while the Respondent alleges that possession was taken on 18.1.2000. Sagaciously, learned Counsel for the Appellants has steered away from this controversy. Instead, the Appellants allege that compensation has not been paid to them as is evident from the affidavit of the Respondent where it has asseverated thus:

“That the procedure adopted for payment of compensation is that after announcement of the Award, the land owner makes an application before the Land Acquisition Collector for payment of compensation awarded to him under the Award by submitting the documents showing his title to the land. The land owner is also required to execute a surety bond before receiving the payment of compensation. The aforesaid procedure was adopted by other land owners of this acquisition for whom different Awards were passed.”

“Contents of para (11) are not correct in the manner they have been stated. The possession of the land was taken on 18.01.2000 after announcement of the Award. It is submitted that the Appellant had filed his claim in pursuance of notice issued under Sections 9 and 10 of the Land Acquisition Act and had participated in the acquisition proceedings. The Appellant was even present when the Award was announced and yet he did not take any steps to receive compensation. He neither filed any application nor presented his document to show his title on the land. These are the steps required to be taken by the land owners to receive compensation. The other owners of the land, which was acquired under the same Notification, had filed the appropriate application and submitted the documents showing their title and also filed surety bond before receiving compensation. When the Appellant himself did not

come forward to receive the compensation, the authorities cannot be faulted with for non-payment of compensation”.

3 The Respondent, on the other hand, has sought to contend that the procedure for payment of compensation is that after the announcement of the Award, the land owners make applications before the Land Acquisition Collector for payment of compensation by submitting documents showing their title to the land and by executing a surety bond. This procedure was followed by other land owners who then received the compensation due to them. Since the Appellants chose not to comply with this procedure, it cannot be said that the compensation was not paid to them.

4 This Court has, in a number of decisions including (1) Pune Municipal Corporation vs. Harakchand Misirimal Solanki (2014) 3 SCC 183, (2) Union of India vs. Shiv Raj (2014) 6 SCC 564, (3) Bimla Devi vs. State of Haryana (2014) 6 SCC 583, (4) Competent Automobiles Co. Ltd. vs. Union of India AIR 2015 SC 3186, (5) Radiance Fincap (P) Ltd. vs. Union of India (2015) 8 SCC 544 and (6) Rajiv Chaudhari HUF vs. Union of India (2015) 3 SCC 541, elucidated the manner in which Section 24(2) is to be interpreted. In Pune Municipal Corporation, a three Judge Bench of this Court (which should bind all lesser as well as coordinate Benches) clarified the meaning of the expression “compensation has not been paid”. It discussed Section 31(1) of the 1894 Act, which enjoins the Collector, on making an Award under Section 11, to tender payment of compensation to persons interested entitled thereto. Section 31 mandates the Collector to make payment of compensation to such persons unless prevented by one of the contingencies contemplated in sub-section (2), namely (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 these contingencies the Collector is prevented from making payment of compensation to the persons entitled to compensation, the Collector is required to deposit the compensation in the Court to which reference under Section 18 may be made. Thus compensation can be regarded as “paid” if the compensation has literally been paid to the person interested, or after being offered to such person, it has been deposited in the Court. The deposit of the Award in a Government Treasury would not amount to compensation being paid to the person interested. In order to send the matter to rest, since the same arguments are being regurgitated without end, the following paras from Pune Municipal Corporation are extracted:

“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.

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. The 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*) 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.”⁵ This Court in *IVO Agnelo Santimano Fernandes vs. State of Goa* (2011) 11 SCC 506, relying upon the earlier decision in *Prem Nath Kapur*

vs. National Fertilizers Corporation of India Ltd. (1996) 2 SCC 71, had 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.

6 In the current Appeals, compensation was neither paid to the Appellants nor deposited in the appropriate Court. The retention of it by the Land Acquisition Collector till such time as the Appellants made applications for it would not amount to compensation being paid to them. The contention of the Respondent is thus entirely erroneous. Since the Award predated the commencement of the 2013 Act by well over five years and compensation has not paid to the Appellants, Section 24(2) comes into operation in favour of the Appellants. Whether possession was taken by the Respondent need not be dilated upon nor need it detain us any further. The acquisition is deemed to have lapsed in these circumstances. The Respondent may initiate fresh acquisition proceedings in accordance with the provisions of the 2013 Act, if it so wishes.

7 In view of the foregoing, it is not necessary to consider the correctness of the impugned Judgment on merits. These Appeals are allowed with no orders as to costs.

.....J [VIKRAMAJIT SEN]J [SHIVA KIRTI SINGH] New Delhi;

December 08, 2015.