

Pune Municipal Corp.& Anr vs Harakchand Misirimal Solanki & Ors on 24 January, 2014

Equivalent citations: AIR 2014 SUPREME COURT 982, 2014 (3) SCC 183, 2014 AIR SCW 787, 2014 (2) AJR 35, (2016) 7 BOM CR 573, 2014 (1) SCALE 618, (2014) 135 ALLINDCAS 113 (SC), (2014) 2 MAD LW 430, (2014) 3 PUN LR 354, (2014) 1 RECCIVR 880, (2014) 1 CLR 522 (SC), (2014) 1 LANDLR 589, (2014) 2 CURCC 40, (2014) 3 ALL WC 2450, (2014) 4 MAH LJ 566, (2014) 123 REVDEC 3, (2014) 2 JCR 14 (SC), (2014) 2 CALLT 45, (2014) 1 WLC(SC)CVL 297, (2014) 2 ALLMR 923 (SC), (2014) 4 CIVLJ 770, (2014) 2 CIVLJ 30, (2014) 1 KCCR 521, (2014) 4 RAJ LW 3096, (2014) 3 MPLJ 294, (2014) 2 ICC 555, (2014) 1 UC 673, AIR 2014 SC (CIVIL) 729, (2014) 1 CIVILCOURTC 669, (2014) 1 KER LT 470, (2014) 1 MAD LJ 874, (2014) 103 ALL LR 212, (2014) 1 SCALE 618

Author: R.M. Lodha

Bench: Kurian Joseph, Madan B. Lokur, R.M. Lodha

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 877 OF 2014
(Arising out of SLP(C) No. 30283 of 2008)

Pune Municipal Corporation & Anr.

... Appellants

Versus

Harakchand Misirimal Solanki & Ors.

... Respondents

WITH

CIVIL APPEAL NO. 878 OF 2014
(Arising out of SLP(C) No. 30455 of 2008)

WITH

CIVIL APPEAL NO. 879 OF 2014
(Arising out of SLP(C) No. 30470 of 2008)

WITH

CIVIL APPEAL NO. 880 OF 2014
(Arising out of SLP(C) No. 30467 of 2008)

WITH

CIVIL APPEAL NO. 881 OF 2014
(Arising out of SLP(C) No. 30465 of 2008)

WITH

CIVIL APPEAL NO. 882 OF 2014
(Arising out of SLP(C) No. 30469 of 2008)

WITH

CIVIL APPEAL NO. 883 OF 2014
(Arising out of SLP(C) No. 30543 of 2008)

WITH

CIVIL APPEAL NO. 884 OF 2014
(Arising out of SLP(C) No. 30546 of 2008)

WITH

CIVIL APPEAL NO. 885 OF 2014
(Arising out of SLP(C) No. 30548 of 2008)

AND

CIVIL APPEAL NOS. 886-894 OF 2014
(Arising out of SLP(C) Nos. 15847-15855 of 2010)

JUDGMENT

R.M. LODHA, J.

Delay condoned in S.L.P. (C) Nos.15847-15855 of 2010. Leave granted.

2. In these 18 appeals, by special leave, it is argued on behalf of the respondents-landowners that in view of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, '2013 Act') which has come into effect on 01.01.2014, the subject land acquisition proceedings initiated under the Land Acquisition Act, 1894 (for short, '1894 Act') have lapsed. The question for decision relates to true meaning of the expression:

“compensation has not been paid” occurring in Section 24(2) of the 2013 Act.

3. It may not be necessary at all to go into the legality and correctness of the impugned judgment, if the subject land acquisition proceedings are held to have lapsed. We, therefore, deal with this aspect first.

4. The brief facts necessary for consideration of the above question are these. On 06.08.2002, the proposal of the Municipal Commissioner, Pune Municipal Corporation (for short, “Corporation”) duly approved by the Standing Committee for acquisition of lands admeasuring 43.94 acres for development of “Forest Garden” was sent to the Collector, Pune. The Collector sanctioned the proposal and on 20.02.2003 forwarded the same to Special Land Acquisition Officer (15), Pune for further action. On 30.09.2004, the notification under Section 4 of the 1894 Act was published in the official gazette. Then notices under Section 4(1) were served upon the landowners/interested persons. On 26.12.2005, the declaration under Section 6 was published in the official gazette and on 02.02.2006, it was also published at the site and on the notice board of the Office of Talalitti. Following the notices under Section 9, on 31.01.2008 the Special Land Acquisition Officer made the award under Section 11 of the 1894 Act.

5. The landowners challenged the above acquisition proceedings before the Bombay High Court in 9 writ petitions. Of them, 2 were filed before making award and 7 after the award. The challenge to the acquisition proceedings and the validity of the award was laid on diverse grounds including (i) absence of resolution of the General Body of the Corporation; (ii) non-compliance with the provisions of Section 5A, (iii) non-compliance with the provisions of Section 7, and (iv) lapsing of acquisition proceedings under Section 11A. The High Court on consideration of the arguments advanced before it by the parties has held that the acquisition proceedings for the development of “Forest Garden” could not be initiated by the Commissioner with the mere approval of the Standing Committee without resolution of the General Body of the Corporation. The acquisition proceedings were also held bad in law for non-compliance of Section 7 and other statutory breaches. Inter alia, the High Court has quashed the acquisition proceedings and gave certain directions including restoration of possession.

6. It is argued on behalf of the landowners that by virtue of Section 24(2) of the 2013 Act, the subject acquisition shall be deemed to have been lapsed because the award under Section 11 of the 1894 Act

is made more than five years prior to the commencement of 2013 Act and no compensation has been paid to the owners nor the amount of compensation has been deposited in the court by the Special Land Acquisition Officer.

7. On the other hand, on behalf of the Corporation and so also for the Collector, it is argued that the award was made by the Special Land Acquisition Officer on 31.01.2008 strictly in terms of 1894 Act and on the very day the landowners were informed regarding the quantum of compensation for their respective lands. Notices were also issued to the landowners to reach the office of the Special Land Acquisition Officer and receive the amount of compensation and since they neither received the compensation nor any request came from them to make reference to the District Court under Section 18, the compensation amounting to Rs.27 crores was deposited in the government treasury. It is, thus, submitted that there was no default on the part of the Special Land Acquisition Officer or the government and, hence, the acquisition proceedings have not lapsed. Moreover, reliance is also placed on Section 114 of the 2013 Act and it is argued that the concluded land acquisition proceedings are not at all affected by Section 24(2) and the only right that survives to the landowners is to receive compensation.

8. 2013 Act puts in place entirely new regime for compulsory acquisition of land and provides for new scheme for compensation, rehabilitation and resettlement to the affected families whose land has been acquired or proposed to be acquired or affected by such acquisition.

9. To turn, now, to the meaning of the expression “compensation has not been paid” in Section 24(2) of the 2013 Act and its effect on the subject acquisition, it is necessary to refer to Section 24 which reads as follows:

“24. (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 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, 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 holding 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.”

10. Insofar as sub-section (1) of Section 24 is concerned, it begins with non obstante clause. By this, Parliament has given overriding effect to this provision over all other provisions of 2013 Act. It is provided in clause (a) that where the land acquisition proceedings have been initiated under the 1894 Act but no award under Section 11 is made, then the provisions of 2013 Act shall apply relating to the determination of compensation. Clause (b) of Section 24(1) makes provision that where land acquisition proceedings have been initiated under the 1894 Act and award has been made under Section 11, then such proceedings shall continue under the provisions of the 1894 Act as if that Act has not been repealed.

11. Section 24(2) also begins with non obstante clause. This provision has overriding effect over Section 24(1). Section 24(2) enacts that in relation to the land acquisition proceedings initiated under 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied, viz; (i) physical possession of the land has not been taken or

(ii) the compensation has not been paid, such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the appropriate government still chooses to acquire the land which was the subject matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the 2013 Act. The proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act 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 the beneficiaries specified in Section 4 notification become entitled to compensation under 2013 Act.

12. To find out the meaning of the expression, “compensation has not been paid”, it is necessary to have a look at Section 31 of the 1894 Act. The said Section, to the extent it is relevant, reads as follows:

“31. Payment of compensation or deposit of same in Court. – (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:

XXXX XXXX XXXX XXXX”

13. There is amendment in Maharashtra—Nagpur (City) in Section 31 whereby in sub-section (1), after the words “compensation” and in sub-

section (2), after the words, “the amount of compensation”, the words “and costs if any” have been inserted.

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.

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. 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 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.

20. From the above, it is clear that the award pertaining to the subject land has been made by the Special Land 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.

21. The argument on behalf of the Corporation that the subject land acquisition proceedings have been concluded in all respects under the 1894 Act and that they are not affected at all in view of Section 114(2) of the 2013 Act, has no merit at all, and is noted to be rejected. Section 114(1) of the 2013 Act repeals 1894 Act. Sub-section (2) of Section 114, however, makes Section 6 of the General Clauses Act, 1897 applicable with regard to the effect of repeal but this is subject to the provisions in the 2013 Act. Under Section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of 2013 Act and possession of the land is not taken or compensation has not been paid. The legal fiction under Section 24(2) comes into operation as soon as conditions stated therein are satisfied. The applicability of Section 6 of the General Clauses Act being subject to Section 24(2), there is no merit in the contention of the Corporation.

22. In view of the foregoing discussion, it is not necessary to consider the correctness of the impugned judgment on merits.

23. The appeals fail and are dismissed with no order as to costs.

.....J. (R.M. Lodha)J. (Madan B. Lokur)
.....J. (Kurian Joseph) New Delhi, January 24, 2014.

[1] Nazir Ahmad v. King Emperor; [A.I.R. 1936 Privy Council 253(2)] [2] Ivo Agnelo Santimano Fernandes and Others v. State of Goa and Another; [(2011) 11 SCC 506] [3] Prem Nath Kapur v. National Fertilizers Corpn. of India Ltd.; [(1996) 2 SCC 71]
