

SUPREME COURT OF INDIA

The Working Friends Coopertive House

Vs.

The State of Punjab & Ors.

C.A.No.8468 of 2015

(Madan B.Lokur and R.K.Agrawal,JJ.,)

12.10.2015

JUDGMENT

Madan B.Lokur,J.,

SLP(Civil)No.28369 of 2012)

1. Leave granted.
2. The question for consideration is whether the compulsory acquisition of the appellant's land under the Land Acquisition Act, 1894 lapses in view of the provisions of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act'). In our opinion, the question must be answered in the affirmative and it must be held that the compulsory acquisition of the appellant's land has lapsed.

The Facts

3. A notification was issued by the State Government under Section 4 of the Land Acquisition Act, 1894 on 12 th November, 1992 proposing to acquire a large chunk of land. This was followed by a notification under Section 6 of the Land Acquisition Act issued on 21st July, 1993. Although, a large chunk of land was acquired by virtue of these two notifications, the appellant is concerned only with its land admeasuring about 14.90 acres.

4. The compulsory acquisition of the appellant's land led to proceedings for adjudication of the compensation due from the State Government. Accordingly, an Award was passed by the Land Acquisition Collector on 22nd February, 1995 and the compensation determined at Rs.35,52,528/-. For reasons that are not clear, the compensation was not tendered to the appellant but was deposited in the Treasury. The appellant challenged the quantum of compensation in the Reference Court and when that was enhanced, the enhanced compensation was deposited in the Reference Court.

5. Feeling aggrieved by the acquisition of its land, the appellant preferred C.W.P. No. 2996 of 1995 in the Punjab and Haryana High Court wherein the above two notifications were challenged. As an interim measure, the High Court directed the maintenance of status quo and since the appellant was in actual, physical, vacant and peaceful possession it continued to remain so in view of the interim orders.

6. The writ petition filed by the appellant was eventually dismissed by the High Court by the impugned judgment and order dated 24th April, 2012.

7. The appellant has challenged the decision of the High Court in this Court and during the pendency of this appeal, Parliament enacted the Act which came into force with effect from 1st January, 2014. Proceedings in this Court

8. As a result of the coming into force of the Act, the appellant moved I.A. No. 4 of 2014 in this Court being an application for directions to the effect that the acquisition proceedings by which the appellant's land was acquired had lapsed. Reference was made in the application to the provisions of Section 24(2) of the Act as well as a decision of this Court in *Pune Municipal Corporation v. Harakchand Misirimal Solanki*¹. It was stated in the application that the appellant was in possession of the acquired land and that the respondents had only taken paper possession thereof. It was also stated that the compensation for the compulsory acquisition of the land was deposited in the Treasury and not in the Reference Court and that the appellant has not withdrawn the compensation so awarded. The enhanced compensation was, however, deposited in the Reference Court.

9. A reply to I.A. No.4 of 2014 was filed by respondent no. 3 on or about 12th August, 2014 in the form of a counter affidavit. It was stated in the reply that the entire acquired land was taken over by the Land Acquisition Collector and handed over to the then Estate Officer, Urban Estates, Punjab. The compensation of Rs. 35,52,528/- was deposited with the Treasury of the State Government and subsequently deposited in the Reference Court by the Land Acquisition Collector on 26th June, 2014. However, the enhanced compensation of Rs. 2,91,77,074/- was deposited in the Reference Court.

10. With regard to possession of the acquired land it was stated that the respondents are in actual, physical possession of the land. On this basis, it was contented that this appeal itself deserves dismissal.

11. The respondents filed an additional affidavit in response to the application on or about 20th February, 2015. In the additional affidavit it was reiterated that physical possession of the entire acquired land was taken over from the land owners by the Land Acquisition Collector and handed over to the Estate Officer, Urban Estates, Punjab in 1995. It was stated that the physical possession of the acquiring department was also reflected in the revenue records. It was stated that in the reply to the writ petition filed in the High Court it was pointed out as early as on 28th March, 1995 that possession of the acquired land had been taken over by the respondents.

12. With regard to the payment of compensation, it was stated in the additional affidavit that the compensation due to the appellant was deposited in the Government Treasury on 7th July, 1995 and the enhanced compensation was deposited in the Reference Court first on 3rd September, 2004 and thereafter on 24th February, 2012. It was further stated that the original compensation awarded to the appellant, that is, Rs. 35,52,528/- was subsequently deposited in the Reference Court by the Land Acquisition Collector on 26th June, 2014 after the Act came into force.

Law on the subject

13. The law on the subject is now no longer *res integra*. The leading judgment in respect of Section 24(2) of the Act was delivered in *Pune Municipal Corporation*. It was concluded in paragraph 20 of the aforesaid decision, that the Award had been made by the Land Acquisition Collector more than five years prior to the commencement of the Act and compensation had not been paid to the landowners/persons interested nor deposited in the Court. It was held that the deposit of compensation in the Government Treasury is of no avail. Consequently, there was no option but to hold that the land acquisition proceedings were deemed to have lapsed under Section 24(2) of the Act. Paragraph 20 reads as follows:-

“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.”

14. Subsequently, this decision was followed in *Union of India v. Shiv Raj*.² It was held, after examining the Objects and Reasons for the Act that since the possession of the acquired land had not been taken and compensation had been deposited with the Revenue Department, it could not be termed as “deemed payment” of the compensation as held in *Pune Municipal Corporation*. Accordingly, the appeals filed by the Union of India were liable to be dismissed. In this context, it may be noted that reference was also made to two other decisions of this Court namely *Bharat Kumar v. State of Haryana*³ and *Bimla Devi v. State of Haryana*⁴ which were to the same effect.

15. The issue again came up for consideration in *Sree Balaji Nagar Residential Association v. State of Tamil Nadu*⁶ and the decision rendered in *Pune Municipal Corporation* and *Shiv Raj* were followed. In that case, it was noted that there is a lack of clarity on the issue whether compensation has been paid for majority of the land holding under acquisition, but there was no dispute that possession of the land under consideration had not been taken by the State or any other authority. It was also noted that more than five years had elapsed since

the making of the Award. On this basis, it was held that Section 24(2) of the Act was applicable and the land acquisition proceedings must be deemed to have lapsed.

16. Finally, in *Karnail Kaur v. State of Punjab* the issue was once again examined, this time a little more elaborately but there was no deviation from any of the decisions rendered by this Court. The additional submission made in this case on behalf of the State of Punjab and negated by this Court, related to The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014, whereby a second proviso was inserted in Section 24(2) of the Act. The Ordinance came into force with effect from 1st January, 2015 and it was held by this Court that the Ordinance had only prospective effect and was not retrospective. Therefore, the period of the grant of stay or injunction by any Court from taking possession of the acquired land would not be excluded retrospectively for computing the period of five years referred to in Section 24(2) of the Act. This issue does not arise in so far as the present appeal is concerned since no argument based on the Ordinance was raised and in any case the Ordinance has since lapsed. However, we are mentioning this only to highlight the fact that the interpretation of Section 24(2) of the Act has been considered by this Court from all possible angles.

17. The issue of retrospectivity of the Ordinance has also been considered in *Radiance Fincap (P) Ltd. v. Union of India*⁷, *Arvind Bansal v. State of Ha.rya.na*⁸ and *Rajiv Choudhrie HUF v. Union of India*⁹.

18. On the issue of retrospectivity, we may only mention the view taken by a Constitution Bench of this Court in *Commissioner of Income Tax v. Vatika Township Pvt. Ltd*¹⁰. It was held in paragraph 29 of the Report as follows:-

“The obvious basis of the principle against retrospectivity is the principle of “fairness” which must be the basis of every legal rule as was observed in *L’Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd.* Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties.”

19. Applying the law laid down by the Constitution Bench, it must be held that the appellant had an accrued right which must be recognized by Section 24(2) of the Act. The Ordinance which purported to take away such an accrued right would have to be treated as prospective unless the legislative intent was clearly to give it retrospective effect. As mentioned above, this issue does not arise in the present case but is being mentioned only to buttress the conclusion arrived at by this Court in *Karnail Kaur* and subsequent decisions.

20. In so far as the facts of the present appeal are concerned, there is considerable doubt whether the appellant is in possession of the acquired land or whether the respondents are in possession of the acquired land. It is not necessary for us to go into this issue at all. This is for the reason that one of the requirements mentioned in Section 24(2) of the Act is that the compensation should have either been paid to the land owner or should have been deposited in the Reference Court. The admitted position is that the compensation of Rs. 35,52,528/- was neither paid to the appellant nor was it deposited in the Reference Court. It was admittedly deposited in the Government Treasury of the State. The deposit was, apart from anything else, made only after the Act came into force and was perhaps with a view to get over the provisions of Section 24(2) of the Act and the prayer made in I.A. No. 4. Unfortunately, even the deposit of the compensation amount in the Reference Court on 26 th June, 2014 does not come to the aid of the appellant under any circumstances and cannot be taken as “deemed payment”.

21. Taking into account all the facts of the appeal as well as the consistent view taken by this Court on several occasions, we have no hesitation in coming to the conclusion that acquisition proceedings in so far as the appellant is concerned lapsed with the enactment of the Act.

22. The judgment and order passed by the High Court is consequently set aside and it is held that the acquisition proceedings initiated by the notifications dated 12th November, 1992 and 21st July, 1993 followed by the Award dated 22 nd February, 1995 have lapsed only in so far as the appellant is concerned.

23. The appeal is allowed.

Judgment Referred.

¹(2014) 3 SCC 0183

²(2014) 6 SCC 0564

³(2014) 6 SCC 0586

⁴(2014) 6 SCC 0583

⁵(2015) 3 SCC 0353

⁶(2015) 3 SCC 0206

⁷MANU/SC/0064/2015

⁸MANU/SC/0260/2015

⁹MANU/SC/0261/2015

¹⁰(2015) 1 SCC 0001