

SUPREME COURT OF INDIA

Govt. of NCT of Delhi & Anr.

Vs.

Mahender Singh & Ors.

C.A.No.9596 of 2016

(Kurian Joseph and R.F.Narima,JJ.,)

22.09.2016

JUDGMENT

Kurian Joseph.,J.,

SLP(Civil)No.19553 of 2015

1. Leave granted.

2. For the purpose of operation of Section 24(2) of the The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "2013 Act"), whether the stay granted in one of the items covered by the very same Section 4(1) notification could have the effect on other lands covered by the same notification, is the short question involved in this appeal.

SHORT FACTS

3. Land acquisition proceedings were initiated by publishing Section 4(1) notification under the 1894 Act on 04.03.2003. Section 6 declaration was duly published on 04.02.2004 and the award was passed under Section 11 on 03.02.2006. It is not in dispute that neither physical possession has been taken nor compensation paid within five years prior to the implementation of 2013 Act.

4. 2013 Act came into force into effect on 01.01.2014. The High Court rendered a declaration that the land acquisition proceedings have elapsed in terms of Section 24(2) of the 2013 Act. Thus aggrieved, the appellants are before this Court.

5. It is the main contention of the learned Counsel for the appellants that in view of the stay order granted by the High Court in respect of the adjoining land covered by the Section 4(1) notification dated 04.03.2003, the acquisition proceedings could not be completed within time. The benefit of the operation of stay should be extended to the entire lands covered by Section 4(1) notification and that such period should be excluded while computing the period

of five years referred to under Section 24 (2) of the 2013 Act. To buttress the point, the learned Counsel has relied on a decision of this Court in *Om Prakash v. Union of India and others*¹.

6. *Om Prakash* (supra) was a case where stay operated for certain lands notified under Section 4(1) of 1894 Act, and on account of such stay, the declarations under Section 6 were made after the prescribed period. However, in view of the Explanation under Section 6, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4(1) had been stayed by an order of the court, was liable to be excluded. It was held by this Court that the interim order of stay granted in some of the lands notified under Section 4(1) of the 1894 Act would put a complete restraint to proceed with the declaration under Section 6 of the 1894 Act, meaning thereby, the benefit of that interim stay could be extended to the entire lands covered by Section 4(1) notification.

7. Paragraphs-70 to 72 in *Om Prakash* case (supra) have dealt with the issue and they are extracted herein below:

"70. Perusal of the opinion of the Full Bench in *B.R. Gupta-I* would clearly indicate with regard to interpretation of the word "any" in Explanation 1 to the first proviso to Section 6 of the Act which expands the scope of stay order granted in one case of landowners to be automatically extended to all those landowners, whose lands are covered under the notifications issued under Section 4 of the Act, irrespective of the fact whether there was any separate order of stay or not as regards their lands. The logic assigned by the Full Bench, the relevant portions whereof have been reproduced hereinabove, appear to be reasonable, apt, legal and proper.

71. It is also worth mentioning that each of the notifications issued under Section 4 of the Act was composite in nature. The interim order of stay granted in one of the matters i.e. *Munni Lal* and confirmed subsequently have been reproduced hereinabove. We have also been given to understand that similar orders of stay were passed in many other petitions. Thus, in the teeth of such interim orders of stay, as reproduced hereinabove, we are of the opinion that during the period of stay the respondents could not have proceeded further to issue declaration/notification under Section 6 of the Act. As soon as the interim stay came to be vacated by virtue of the main order having been passed in the writ petition, the respondents, taking advantage of the period of stay during which they were restrained from issuance of declaration under Section 6 of the Act, proceeded further and issued notification under Section 6 of the Act.

72. Thus, in other words, the interim order of stay granted in one of the matters of the landowners would put complete restraint on the respondents to have proceeded further to issue notification under Section 6 of the Act. Had they issued the said notification during the period when the stay was operative, then obviously they may have been hauled up for committing contempt of court. The language employed in the interim orders of stay is also such that it had completely restrained the respondents

from proceeding further in the matter by issuing declaration/notification under Section 6 of the Act.”

8. On the same analogy, it is contended that the benefit of stay preventing lapse of one or more of the acquisition proceedings by operation of Section 24 (2) of the 2013 Act should be extendable to entire lands for which the acquisition proceedings were initiated as per Section 4(1) notification under the 1894 Act.

9. There is one situation of lapse under the 1894 Act itself. In Section 11A, as under Section 6, the Explanation has saved the period during which any action or proceeding to be taken in pursuance of the declaration under Section 6 was stayed by an order of the court. But what is lapsed under Section 11A are the proceedings for acquisition of the particular land for which an award under Section 11 of the 1894 Act had to be passed. Section 11 has to be preceded by a notice under Section 9 of the said Act to the persons interested in the land to be acquired. Section 9 of the 1894 Act reads as follows:

"9. Notice to persons interested.-(1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and 37 [registered under sections 28 and 29 of the Indian Post Office Act, 1898 (6 of 1898)]."

10. Under the scheme of acquisition, an award under Section 11 has to be passed in respect of each land owned by a person/persons interested. Therefore, what is lapsed under Section 11A is not the entire land as declared under Section 6 but the particular land belonging to person/persons in whose favour an award under Section 11 had to be passed within two years of the declaration under Section 6 of the 1894 Act.

11. Effect of lapse under Section 11A was subject matter of many decisions of this Court. In *Laxman Pandya and others v. State of Uttar Pradesh and others*². *Mulchand Khanumal Khatri v. State of Gujarat and others*³, *Singareni Collieries Company Limited v. Vemuganti Ramakrishan Rao and others*,⁴, this Court has consistently taken the view that the lapse is limited only to the land covered by the particular award(s).

12. Section 24(2) of the 2013 Act also deals with a similar situation of lapse. The provision reads as follows:

"24. xxxx xxxx xxxx xxxx

(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."

13. The crucial difference between lapse under Section 11A of the 1894 Act and that under Section 24(2) of the 2013 Act is that the former is a pre-award situation whereas the latter is post-award. In other words, what gets lapsed under Section 11A of the 1894 Act is the ... "entire proceedings for the acquisition of the land", whereas, under Section 24(2) of the 2013 Act, what gets lapsed is the land acquisition proceedings initiated under The Land Acquisition Act, 1894 which has culminated in passing of an award under Section 11 but where either possession is not taken or compensation not paid within five years prior to 01.01.2014.

14. The land acquisition proceedings referred under Section 24 (2) of the 2013 Act would include the steps for taking physical possession of the land and payment of compensation, as held by this Court in *Delhi Development Authority v. Sukhbir Singh*⁵

15. Since the lapse under Section 24(2) of the 2013 Act is post-award, that would affect only the land referred to in the award and not the entire lands covered by the Section 4(1) notification under which the proceedings for acquisition were initiated. Therefore, the ratio in *Om Prakash* (supra) is of no avail to the appellants.

16. In the case before us, there is no dispute on facts that after passing the award under Section 11 of the 1894 Act, no compensation has been paid and the possession also has not been taken within five years prior to 01.01.2014. Therefore, Section 24(2) of the 2013 Act has to operate, and the acquisition proceedings in respect of respondents' lands where award under Section 11 of the 1894 Act had been passed, have lapsed.

17. However, the declaration as above and the consequent dismissal of this appeal is without prejudice to the liberty available to the appellants to initiate proceedings afresh for the acquisition of the subject land under the provisions of the 2013 Act.

18. In the peculiar facts and circumstances of this case, the appellants are given a period of one year to exercise its liberty granted under Section 24(2) of the 2013 Act for initiation of the acquisition proceedings afresh.

19. Pending applications, if any, stand disposed of.

20. The appeal is disposed of as above. There shall be no order as to costs.

¹(2010) 4 SCC 0017

²(2011) 6 SCALE 0468

³(2012) 4 SCALE 0159

⁴(2013) 10 SCALE 0627

⁵2016 INSC 0621