

# SUPREME COURT OF INDIA

Indore Development Authority

Vs.

Shailendra

C.A.No.20982 of 2017

(Arun Mishra and Amitava Roy,JJ.,)

07.12.2017

## JUDGMENT

**Arun Mishra,J.,**

SLP(C) No.2131 of 2016

1. Leave granted.

2. The question arises whether by virtue of the provisions contained in section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the Act of 2013"), the proceedings lapsed in the instant case. The facts in short are that the Indore Development Authority (for short, "the IDA") established under section 38 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (for short, "the Adhiniyam of 1973") prepared a Master Plan which came into force on 21.3.1995, formulated scheme Nos.124(A) and (B) under section 50(1) of the Adhiniyam of 1973 and decided to acquire land for the purpose of constructing Ring Road and Link Road on the outskirts of Indore city. The ring road has been fully constructed. The land was acquired for the purpose of constructing Link Road, for joining the major road to the Ring Road under Scheme 124(B). Possession of the land is stated to be with the encroachers and not with the landowners. The compensation was deposited by the IDA with the Land Acquisition Collector. The landowners were informed to collect it but they had refused and did not receive the compensation. The IDA published the schemes as per the provisions of the Adhiniyam of 1973. On 6.2.1991, a prayer was made to the Collector to acquire the land and on 2.3.1994 compensation was deposited with the Land Acquisition Collector. Notification under section 4 was issued on 23.12.1994. Section 17(1) was also invoked. Enquiry under section 5A was dispensed with. Declaration under section 6 was published on 17.3.1995 under the Land Acquisition Act, 1894 (hereinafter referred to as "the Act of 1894"). Respondent No.1 - owner filed objections before the Land Acquisition Officer claiming compensation of Rs.32,50,000/-. Award was passed by the LAO on 14.3.1997 and the sum awarded to respondent No.1 was Rs.7,90,813/-. A belated W.P. No.1182 of 1997 was filed for quashing the acquisition proceedings. It was allowed on 28.8.1998 holding that

the scheme lapsed on expiry of three years. Enquiry under section 5A was illegally dispensed with. Letters Patent Appeal No.480 of 1998 was preferred before the Division Bench and on 29.1.2000 an order of status quo was passed. The LPA was dismissed as not maintainable. However this Court remitted the matter to the High Court to file writ appeal under the provisions of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005.

On 4.4.2007 the High Court directed maintenance of status quo.

4. The respondent filed an application raising the ground under section 24(2) of the Act of 2013. It was resisted by the IDA on the ground that the acquisition had been completed and the amount has been deposited with the Land Acquisition Collector. Construction is almost complete. If it is not completed in the remaining area, it will cause great hardship to the citizens and widening of road was necessary for smooth flow of traffic. The High Court by the impugned order dated 3.11.2014 held that the proceedings had lapsed in view of the decisions of this Court in *Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & Anr*<sup>1</sup>. and *Shree Balaji Nagar Residential Association v. State of Tamil Nadu*<sup>2</sup>.

5. Shri P.S. Patwalia, learned senior counsel urged that there was no lapse of proceedings in the instant case as compensation was offered but was not accepted by landowners. For their own refusal they cannot lay the blame at the door of the IDA. The provisions of section 24 cannot come to the rescue of such incumbents. Even if the compensation has not been deposited with the Reference Court under section 31(2) of the Act of 1894 the effect would be of payment of higher interest under section 34. The expression used in section 24 of the Act of 2013 is 'compensation has not been paid'. It is not that that the expression used is that it has not been deposited under section 31. It was further submitted there was no lapse of the proceedings under the Act of 1894 in view of non-deposit under section 31. The only liability was of higher interest of 9% for the first year from the date of taking possession and thereafter to pay the interest at 15%. When the consequence of lapse of land acquisition proceedings was not provided in the Act of 1894, in case of failure to deposit under section 31(2), the provision of section 34 is attracted regarding payment of interest. Thus it could not be said that due to failure to deposit or in the case of refusal, proceedings would lapse. Section 24(2) would apply to a case where compensation has not been tendered to the landowners and has not been deposited with the Land Acquisition Collector for payment. In other words, no arrangement has been made by the acquisition authority or the beneficiary for payment of compensation. The provisions of section 24 would not be applicable in case there is refusal to accept the compensation and there was litigation by the landowner or on his behalf by successor-in-interest, to quash the land acquisition proceedings in such a case for their own wrong and for non-acceptance of compensation, it could not be claimed by such incumbents when they have themselves obtained interim orders from the court or where the proceedings have been illegally quashed by the High Court and an appeal etc. is pending to invoke the benefit of the provisions of section 24 of the Act of 2013. In the instant case award has been passed, compensation has been deposited with the Land Acquisition Collector for payment to landowners and they had declined to accept it. The stale claims are also being agitated in this Court under the guise of section 24 whereas it does not protect

such claims. It was also submitted that when the High Court has illegally quashed the notification and interim order was passed, the benefit of section 24 cannot enure to the landowners in such cases as the act of court cannot prejudice anybody.

6. It was contended on behalf of the landowners that the impugned order is proper. It is in tune with Pune Municipal Corporation (supra) and other decisions like Shree Balaji (supra) etc. referred to therein, hence no case for interference was made out. Sections 31 and 34 of the Act of 1894 are extracted hereunder :

"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:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section the Collector may, with the sanction of [appropriate Government] instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

34. Payment of interest.-- When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of [nine per centum] per annum from the time of so taking possession until it shall have been so paid or deposited:

[Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date or expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.]"

7. Section 24 of the Act of 2013 is extracted hereunder :

"24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.-(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 (1 of 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 holdings 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."

Provisions of section 12 of the Act of 1894 are extracted hereunder :

"12. Award of Collector when to be final. (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the appointment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made."

8. Shri Patwalia, learned senior counsel, urged that the expression used 'compensation has not been paid' in section 24(2) does not relate to deposit of the amount as envisaged under section 31(2) of the Act of 1894. The proviso to sub-section (2) of section 24 uses the expression "where 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". Compensation in respect of a majority of land holdings is not deposited in the account of beneficiaries, is not applicable as it was not the case set up and that the claim was not made under the proviso to sub-section (2) of section 24. There is vast difference between the provision of section 24(2) and its proviso. The expressions payment and deposit are used with different objectives. They have to be given the proper meanings which aspect has not been considered in any of the decisions relied upon by the High Court including Pune Municipal Corporation (supra).

9. It was also submitted by learned senior counsel on behalf of the IDA that in case of failure to deposit the amount before the Reference Court where the "reference would be submitted", the only consequence to follow would be higher rate of interest as per the amended provision of section 34. The proviso has been added in the year 1984 providing 15% interest payable from the date of expiry of the said period of one year and for the first year the rate of interest would be 9% per annum. The proceedings of acquisition would not lapse. It is in order to save the liability to make payment of higher interest that the provision of section 31 has been enacted, and the rate of interest, as prescribed under section 34, is higher than in any Government security/FD with the bank. Thus the failure to deposit the amount in the Reference Court entails the consequence of attraction of section 34. Thus, the proceedings would not lapse under the Act of 1894. When it was so contemplated that under the Act of 1894 the provisions of section 24 cannot be assigned that meaning which would invalidate the proceedings owing to the procedural lapse of deposit of the amount in the court where the reference would be submitted.

10. It was also submitted that section 24 in fact is attracted to a case where there is deliberate failure on the part of the acquisition authority not only to tender the amount but also where no arrangement has been made and the amount has not been deposited with the Land Acquisition Collector, and the land has been acquired. Proviso to section 24(2) makes it clear that the amount of compensation required to be deposited in the account of beneficiaries (in case of failure to make the deposit) with respect to majority of the land holdings, all the beneficiaries would become entitled for higher compensation under the new Act. In case amount has been tendered/deposited with the Land Acquisition Collector and has been deposited in the separate account of the beneficiaries in the concerned Treasury as per the provisions of the Finance Code/Rules of the concerned State, that has to be treated as sufficient compliance of the proviso to section 24(2) of the Act of 2013.

11. It was urged that in case landowners do not consent to receive the amount, the Collector was required to deposit it in the Reference Court as provided in section 31(2) but failure

to make the deposit has been culled out in the Act itself as provided in section 34. Thus proceedings would not lapse.

12. It was also urged that section 31 of the Act clearly shows that consequence of non-compliance of sub-section (1) or sub-section (2) thereof is not that of the acquisition proceedings becoming invalid. The Act of 1894 never intended that the consequence of non-compliance of said provision of the Act, proceedings would become invalid. Reliance has been placed on *Hissar Improvement Trust vs. Rukmani Devi and Anr*<sup>3</sup>. in which this Court has laid down thus :

"5. It cannot be gainsaid that interest is due and payable to the landowner in the event of the compensation not being paid or deposited in time in Court. Before taking possession of the land, the Collector has to pay or deposit the amount awarded, as stated in Section 31, failing which he is liable to pay interest as provided in Section 34.

7. We make it clear that insofar as the landowner is concerned, his right to be compensated is enforceable against the State. It is the liability of the Collector in terms of the relevant provisions to pay the amount awarded, together with interest in the event of the amount not being paid in time. The liability of the appellant-Trust arising under its agreement with the Government for payment in respect of the property acquired is a matter on which we express no view."

13. Reliance has also been placed on *Shri Kishan Das & Ors. v. State of U.P. & Ors*<sup>4</sup>, wherein This Court has observed that the liability to pay the interest arises when possession of the acquired land was taken and the amount was not deposited under section 31. This Court took note of the delay caused by the petitions filed by the claimants in the High Court and this Court, and held that even payment of interest under section 34 cannot be ordered. This Court has observed in *Shri Kishan Das* (supra) thus:

"3. Shri S.B. Sanyal, learned senior counsel for the appellants, contended that the award was made on March 22, 1983 though the acquisition was made in September 1976. Therefore, the appellants should be compensated by payment of interest @ 12 per cent per annum. In support of his contention, he placed reliance on the decision of this Court in *Ram Chand and Ors. v. Union of India and Ors.* (1994) 1 SCC 44 and in particular on paragraph 16 of the judgment. It is seen that in *Ram Chander*'s case even after the dismissal of the writ petitions by this Court in *Aflatoon v. Lt. Governor of Delhi* [1975] 1 SCR 802, no action was taken by the Land Acquisition Officer to pass the award. Thus, till 1980-81 no award was made in respect of any of the acquisitions. Under these circumstances, this Court had directed the Government to pay interest @ 12 per cent on the amount awarded to compensate the loss caused to the appellants therein. In this case it is seen that though the notification was issued in September 1976, the writ petitions came to be filed in the High Court immediately thereafter in 1977 in the High Court and obviously further proceedings were stayed.

Accordingly, the Land Acquisition Officer delayed the award. After the dismissal of the writ petitions, the appellants came to this Court and obtained status quo. Obviously, the Land Acquisition Officer was not in a position to pass the award immediately. Thereafter it would appear that he passed the award on March 22, 1983. Section 34 of the Act obligates the State to pay interest from the date of taking possession under the unamended Act @ 6 per cent and after the Amendment Act 68 of 1984 at different rates mentioned therein. The liability of the State to pay interest ceases with the deposit made as per Section 34 of the Act. Further liability would arise only when the court on reference under Section 18 enhances the compensation under Section 28 of the Act. Similarly, in an appeal under Section 54 of the Act if the appellate court further increases the compensation, then again similar obligation under Section 28 arises.

4. In the light of the operation of the respective provisions of Sections 34 and 28 of the Act, it would be difficult to direct payment of interest. In fact, Section 23(1-A) is set off for loss in cases of delayed awards to compensate the person entitled to receive compensation; otherwise a person who is responsible for the delay in disposal of the acquisition proceedings will be paid premium for dilatory tactics. It is stated by the learned Counsel for the respondents that the amount of interest was also calculated and total amount was deposited in the account of the appellants by the Land Acquisition Officer after passing the award, i.e., on November 15, 1976 in a sum of Rs.20,48,615. Under these circumstances, the liability to pay interest would arise when possession of the acquired land was taken and the amount was not deposited. In view of the fact that compensation was deposited as soon as the award was passed, we do not think that it is a case for us to interfere at this stage."

14. It was also urged that ordinarily when a reference is submitted, the Collector should deposit the amount of compensation into court, but the deposit of the amount is not a condition precedent to the entertainability of the reference as held in *Jogesh Chandra v. Yakub Ali*<sup>5</sup>.

15. It was also urged that the payment is tendered by issue of a notice on the party fixing the date on which and the place where the payment would be made. The notice is given along with the notice of award under section 12(2) in which the date on which possession would be taken is also mentioned.

16. It was also urged that there are Financial Department's orders in various States prevailing as well as in certain States Civil Court Rules also prevail which require the deposit of the Government money in the Treasury after particular time necessarily money goes to the treasury. Thus, a deposit in the treasury in the landowner's account cannot be said to be illegal or impermissible as that is as per the standing orders and it is a matter of procedure only where the deposit is made. In case the deposit is made in the treasury, liability would still remain to make the payment of interest under section 34 of the Act of 1894. There are five methods of making payment: (i) by direct payments; (ii) by order on treasury; (iii) by money order; (iv) by cheque; and (v) by deposit in a treasury. They are governed by the rules

contained in the Civil Account Code and in the local instructions issued by various Provincial Governments, which are required to be scrupulously followed. For Punjab, Financial Commissioner's standing order No.28 paras 74 and 75 lay down such procedure. It was also urged that in *Damadilal v. Parashram*<sup>6</sup>, it was observed that payment by cheque is a valid tender.

17. It was also urged that when a reference is made to a District Court and in case amount of compensation is increased, the amount also is required to be deposited as ordered by the court but it would not invalidate acquisition proceedings. Reliance has been placed on *Viraraghava v. Krishnasami*<sup>7</sup>, in which it was observed that the money paid into the treasury is to be considered as money or movable property impressed with the trusts and obligations of the immovable property which it represents. The rights of parties to the land, and to any mortgage on, or interest in it, are transferred to the compensation money.

18. It was also urged that the object of such deposit is to prevent unnecessary prolongation of the proceedings and accumulation of Collector's liability for interest. When a party willfully refuses to receive payment by depositing the money in the court, the liability for interest will cease. It was also urged that section 32 does not intend to give the advantage of one's own act or the act of the court.

19. It was also urged that this Court is also bound to prevent the abuse of process of law. The cases which have been concluded are being revived. In spite of not accepting the compensation deliberately and statements are made in the court that they do not want to receive the compensation at any cost and they are agitating the matter time and again after having lost the matters and when proceedings are kept pending by interim orders by filing successive petitions, the provisions of section 24 cannot be invoked by such landowners.

20. There is already a reference made as to the applicability of section 24 in SLP [C] No.10742/2008 -- *Yogesh Neema & Ors. v. State of M.P. & Ors.* vide order dated 12.1.2016. There are several other issues arising which have been mentioned above but have not been considered in *Pune Municipal Corpn. (supra)*. Thus, here is a case where the matter should be considered by a larger Bench. Let the matter be placed before Hon'ble the Chief Justice of India for appropriate orders.

Judgment Referred.

<sup>1</sup>(2014) 3 SCC 0183

<sup>2</sup>(2015) 3 SCC 0353

<sup>3</sup>(1990) (Supp) SCC 0806

<sup>4</sup>AIR 1996 SC 0274

<sup>5</sup>29 IC 111

<sup>6</sup>AIR 1976 SC 2229

<sup>7</sup>ILR 6 Mad. 0347