

RATTAN SINGH

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v.

UNION OF INDIA AND ANR.

(I.A. NO.4

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IN

Civil Appeal No. 2851 of 2009)

DECEMBER 08, 2015

[VIKRAMAJIT SEN AND SHIVA KIRTI SINGH, JJ.]

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Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – s.24(2) – Applicability of – To the land acquired under Land Acquisition Act, 1894 – Held: The acquisition proceedings shall be deemed to have lapsed, where passing of award is established, the award predates the commencement of the 2013 Act by at least five years and possession is found not to have been taken or compensation not paid, then s.24(2) would be applicable – In the present case, since the above requirements are made out, hence s.24(2) comes into operation in favour of landowners – Acquisition is deemed to have lapsed – Authorities concerned may initiate fresh acquisition proceedings in accordance with provisions of 2013 Act.

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Land Acquisition Act, 1894 – ss.11 and 31-34 – Compensation – Payment of – When complete – Held: Mode and manner for payment of compensation are prescribed u/ ss.31-34 – The Collector can only act in the manner so provided – Thus compensation can be regarded as paid, if it has literally been paid to the person interested or after being offered to such person, has been deposited in the Court – Deposit of the award in a Government Treasury would not amount to compensation being paid to the person interested.

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A **Allowing the appeals, the Court**

B **HELD: 1. Any determination under Section 24(2)**
of Right to Fair Compensation and Transparency in Land
C **Acquisition, Rehabilitation and Resettlement Act, 2013**
must proceed sequentially. First, the factum of an Award
D **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. [Para 1] [1225-C-E]

E **2. The procedure, mode and manner for payment**
of compensation are prescribed in Part V (Sections 31-
F **34) of the 1894 Act. Section 31(1) of the 1894 Act, which**
enjoins the Collector, on making an Award under Section
G **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
H **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. The Collector, with regard to the payment of compensation, can only act in the manner so provided. 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 the present case, 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. [Paras 4, 5] [1227-E-H; 1228-A; 1230-E]

- *Pune Municipal Corporation v. Harakchand Misirimal Solanki* 2014 (1) SCR 783 : (2014) 3 SCC 183; *Union of India v. Shiv Raj* 2014 (8) SCR 751 : (2014) 6 SCC 564; *Bimla Devi vs. State of Haryana* (2014) 6 SCC 583; *Competent Automobiles Co. Ltd. vs. Union of India* AIR 2015 SC 3186; *Radiance Fincap (P) Ltd. v. Union of India* (2015) 8 SCC 544; *Rajiv Chaudhari HUF vs. Union of India* (2015) 3 SCC 541; *IVO Agnelo Santimano Fernandes v. State of Goa* 2011 (2) SCR 1142 : (2011) 11 SCC 506; *Prem Nath Kapur v. National Fertilizers Corporation of India Ltd.* 1995 (5) Suppl. SCR 790 : (1996) 2 SCC 71 – relied on.

3. Thus, in the present case, 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

A of the Appellants. 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. [Para 6] [1230-G-H; 1231-A]

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Case Law Reference

2014 (1) SCR 783 relied on Para 4

2014 (8) SCR 751 relied on Para 4

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(2014) 6 SCC 583 relied on Para 4

AIR 2015 SC 3186 relied on Para 4

(2015) 8 SCC 544 relied on Para 4

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(2015) 3 SCC 541 relied on Para 4

2011 (2) SCR 1142 relied on Para 5

1995 (5) Suppl. SCR 790 relied on Para 5

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CIVIL APPELLATE JURISDICTION : I.A. No. 4 of 2015 in Civil Appeal No. 2851 of 2009.

From the Judgment and Order dated 18.11.2005 of the High Court of Delhi at New Delhi in Writ Petition No. 7839 of 1999 and against the final judgment and order dated 28.04.2006 in Review Petition No. 82 of 2006 in Writ Petition (C) No. 7839 of 1999.

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I. A. No. 5 in Civil Appeal No. 2852 of 2009.

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Vikas Mehta, Karandeep Khanna, Varun Singh, Advs. for the Appellant.

Tushar Mehta, ASG, Ms. Rachana Srivastava, Vishnu B. Saharya, Viresh B. Saharya, M/s. Saharya & Co., Advs. for the Respondents.

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The judgment of the Court was delivered by

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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 reinstitute acquisition proceedings in respect of the same land, but under the regime of the 2013 Act.

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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:

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A “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
B 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.”

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D “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
E 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
F 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
G 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
H 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

A “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:

C “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.

G 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

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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.

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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

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A 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.

B 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.”

D 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.

F 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

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[VIKRAMAJIT SEN, J.]

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acquisition is deemed to have lapsed in these circumstances. A
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 B
Appeals are allowed with no orders as to costs.

Kalpana K. Tripathy

Appeals allowed.