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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Judgment: 30th January, 2018

+ **W.P.(C) 3392/2016**

BHAGIRATH LAL MITTAL AND ORS Petitioners

Through: **Ms.Richa Oberoi, Advocate.**

versus

UNION OF INDIA AND ORS Respondents

Through: **Mr.Anuj Aggarwal and Mr.Kanishk Rana, Advocates for respondent no.1.**
Mr.Sanjeev Sabharwal, Standing Counsel for DDA with Mr.Hem Kumar and Ms.Simsee Kumari, Advocates for respondent no.3.
Mr.Nasir Ahmed, Advocate for intervenor Ishak Ahmed.
Mr.Ram Kumar and Mr.K.K.Rana, Advocates for applicant in CM No.41113/2017.
Mr.Siddharth Panda, Advocate for respondent/LAC-L&B Department.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. This is a petition under Article 226 of the Constitution of India filed by the petitioners.
2. The petitioners seek a declaration that the acquisition proceedings initiated in respect of 2/3rd share in land bearing Khasra No.453 min

9

(1-02), situated in the revenue estate of village Sahoorpur, Tehsil-Saket, New Delhi (hereinafter referred to as 'the subject land') is deemed to have lapsed in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'New Act'), as the possession has been taken but compensation has not been tendered to the petitioners.

3. In this case, a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 25.11.1980; a declaration under Section 6 of the Act was made on 20.05.1985. Thereafter, an Award bearing no.10/87-88 was made on 14.05.1987. Counsel for the petitioner while relying on a decision rendered by Apex Court in *Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.*, reported at (2014) 3 SCC 183, submits that since no compensation was tendered, acquisition proceedings is deemed to have lapsed.
4. The counter affidavit has been filed by the LAC. In para 8 of counter affidavit, details have been given to show that the compensation was sent in RD. Para 8 of the counter affidavit filed by LAC reads as under:

"8. That in the present case, the possession of the land in question was taken over and handed to the beneficiary department 14.07.1987. As per Statement-A the status of compensation with respect to the above land is as under:-

NAME	AMOUNT	REMARKS
Rajaaq Mohd.	859.13	Sent in RD
Ati Mohd.	859.13	Sent in RD
Mohd. Ishtaq	859.13	Sent in RD
Chau Khan	10309.59	Sent in RD

<i>Shibbi</i>	<i>10309.56</i>	<i>Sent in RD</i>
<i>Mohd. Yusuf</i>	<i>2577.40</i>	<i>Sent in RD</i>
<i>Mohd. Kha</i>	<i>2577.40</i>	<i>Sent in RD</i>
<i>Mohd. Sharif</i>	<i>2577.38</i>	<i>Sent in RD</i>

The respondent has written a letter dated 13.11.2017 to the Pay & Accounts, PAO-6, Tis Hazari, Delhi for information about any payment made through Refund Voucher or otherwise from RD and it is prayed that a reply from the same may kindly be awaited”.

5. We have heard learned counsels for the parties.
6. Having regard the submissions made and the fact that the compensation was not tendered to the petitioners and was sent to RD, we are of the considered view that the case of the petitioner is fully covered by the decision rendered by the Apex Court in the case of ***Pune Municipal Corporation & Anr.*** (supra). Paras 14 to 20 of which read as under:

“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.

11

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."

7. Since, the award having been announced more than five years prior to the commencement of the New Act, the petitioner is entitled to a declaration that the acquisition proceedings in respect of the subject land is deemed to have lapsed. It is ordered accordingly.
8. The writ petition stands disposed of.
9. At this stage, Mr.Kumar submits that the petitioner is not the rightful owner as land was purchased by the petitioner after the acquisition proceedings.
10. We make it clear that we have not expressed any opinion with respect to the title of the petitioner which would be open to applicant to seek such remedy available in accordance with law.

CM No.41113/2017 (impleadment)

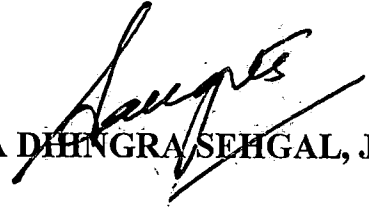
This is an application under Order I Rule-10 of Code of Civil Procedure, 1908 seeking impleadment.

The application is dismissed as withdrawn in view of order passed in the writ petition making it clear that the question of title is kept open.

CM No.14479/2016 (stay)

The application is disposed of, in view of order passed in the writ petition.


G. S. SISTANI, J.


SANGITA DHINGRA SEHGAL, J

JANUARY 30, 2018

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GOVERNMENT OF PUNJAB