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

% Judgment delivered on: 12.07.2016

\+ **W.P.(C) 1680/2015 & CM 3027/2015**

VIRENDER SINGH AND ORS. .... Petitioners

versus

GNCT OF DELHI AND ORS ..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Vishal Maan with Mr Naresh Maan
For the Respondent L&B/LAC. : Mr Sanjay Kumar Pathak with Mrs Kiran Kaomudi Pathak, Mr Sunil Kumar Jha, and Mr Kushal Raj Tater.
For the Respondent DDA : Mr Himanshu Bajaj

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE ASHUTOSH KUMAR

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. The petitioners seek the benefit of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the 2013 Act') which came into effect on 01.01.2014. A declaration is sought to the effect that the acquisition proceeding initiated under the Land Acquisition Act, 1894 (hereinafter referred to as 'the 1894 Act') in respect of which Award No.1/2008-09 dated 30.06.2008 was made, *inter alia*, in respect of

the petitioners' land comprised in Khasra Nos. 12 min (0-07) measuring 07 biswas in all in village Nasirpur, New Delhi, shall be deemed to have lapsed.

2. The respondents claim that possession of the said land was taken on 30.04.2009. However, the petitioners dispute this and state that physical possession is still with them. With regard to compensation, the plea taken by the respondents is that notices under section 12(2) of the 1894 Act were sent to Om Prakash, Attar Singh and Smt Sudesh. The learned counsel for the petitioners states that no notices were sent to Virender Singh and Devender Singh and that even Attar Singh and Smt Sudesh have not received the purported notices under section 12(2) of the 1894 Act. In response to this, the learned counsel for the respondents submit that Virender Singh and Devender are sons of late Shri Om Prakash to whom notices under section 12(2) were sent. The petitioners, however, disputed that any notices were received by them which were allegedly sent by the respondents.

3. The question which arises in this case is whether compensation can be regarded to have been paid under section 24(2) of the 2013 Act. The

answer is provided by the Supreme Court decision in the case of ***Pune Municipal Corporation and Anr v. Harakchand Misirimal Solanki and Ors:*** **(2014) 3 SCC 183.** The Supreme Court while considering this issue of payment of compensation observed as under:-

> **"12.** To find out the meaning of the expression, "compensation has not been paid", it is necessary to have a look at Section 31 of the 1894 Act. The said section, to the extent it is relevant, reads as follows:
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> > "**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:"
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> **13.** There is amendment in Maharashtra—Nagpur (City) in Section 31 whereby in sub-section (1), after the words "compensation" and in sub-section (2), after the words, "the amount of compensation", the words "and costs if any" have been inserted.
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> **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.

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 the 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."

(underlining added)

From the above extract it is evident that for the purposes of section 24(2) of the 2013 Act, 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 by the reference under section 18 can be made on the happening of any of the contingency contemplated under section 31(2) of the 1894 Act". Thus, unless and until an offer of compensation is made followed by deposit of the same in the reference court, compensation cannot be regarded as having been paid. In the present case, even assuming that the notices under section 12(2) offering compensation to the petitioners were issued by the respondents and received by the petitioners it is an admitted position that the Land Acquisition Collector did not deposit the said amount in the reference court. That being the case, the compensation cannot be regarded as having been paid in terms of section 24(2) as construed by the Supreme Court in ***Pune Municipal Corporation*** *(supra).*

4. Without going into the controversy of physical possession, this much is clear that the Award was made more than five years prior to the commencement of the 2013 Act and the compensation has also not been paid. The necessary ingredients for the application of Section 24(2) of the 2013 Act as interpreted by the Supreme Court and this Court in the following cases stand satisfied:-

(1) ***Pune Municipal Corporation and Anr v. Harakchand Misirimal Solanki and Ors*: (2014) 3 SCC 183**;

(2) ***Union of India and Ors v. Shiv Raj and Ors*: (2014) 6 SCC 564**;

(3) ***Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors*: Civil Appeal No. 8700/2013** decided on 10.09.2014;

(4) ***Surender Singh v. Union of India & Others: WP(C) 2294/2014*** decided on 12.09.2014 by this Court; and

(5) ***Girish Chhabra v. Lt. Governor of Delhi and Ors*: *WP(C) 2759/2014*** decided on 12.09.2014 by this Court.

5. As a result, the petitioners are entitled to a declaration that the said acquisition proceedings initiated under the 1894 Act in respect of the subject land are deemed to have lapsed. It is so declared.

6. The writ petition is allowed to the aforesaid extent. There shall be no order as to costs.

BADAR DURREZ AHMED, J

JULY 12, 2016 **ASHUTOSH KUMAR, J**
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