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

% *Date of decision: 1st November, 2017*

\+ W.P.(C) 171/2015

KASHI RAM ..... Petitioner

Through: Mr. N.S. Vasisht and Mr. M.P. Bhargava, Advs.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr. Anurag Ahluwalia, CGSC for R1.
Mr. Yeeshu Jain and Ms. Jyoti Tyagi, Advs. for L&B/LAC.
Mr. Dhanesh Relan and Ms. Gauri Chaturvedi, Advs. for DDA.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE V. KAMESWAR RAO

G.S.SISTANI, J (ORAL)

1. Rule was issued in this matter on 28th February, 2017.

2. Petitioner claims to be the co-owner of the land measuring 18 Bigha and 7 Biswas comprised in Khasra Nos.1444/1093/601 (3-17), 792/2 (1-16), 1390/792 (6-14) and 792/3 (3-0), situated in the Revenue Estate of Village Mandawali, Fazalpur, NCT of Delhi, seeks a direction declaring the entire acquisition proceedings in respect of the above land as having lapsed. He also seeks quashing of the impugned Notification bearing No. F.15(3)/59-LSG dated 13.11.1959 issued under Section 4 of the Land Acquisition Act, 1894; Notification bearing No. F.4(19)/65-L&H dated 12.07.1966 issued under Section 6 of the Land Acquisition Act, 1894 and the Award No. 49-C/70-

71/Supplementary dated 22nd December, 1982 with respect to the aforesaid land.

3. Mr. N.S. Vashisht, learned counsel appearing for the petitioner submits that possession of the land in question is with the petitioner and also no compensation has been paid. Resultantly, the petitioner would be entitled to aforesaid declaration as prayed in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (New Act).

4. Counter-affidavit has been filed by the respondent LAC as per which the compensation could not be paid to the petitioner. Para 6 of the counter-affidavit reads as under: -

> *"That it is submitted that for the purpose of planned development of Delhi, the answering respondent issued a Notification u/s 4 of the Land Acquisition Act, 1894 on 13.11.1959 which was followed by Notification u/s 6 of the said Act dated 12.07.1966 for the acquisition of the lands falling in the Khasra numbers under reference in Village Mandawali Fazalpur. That an Award bearing No. 49-C/70-71 dated 22.12.1982 was also passed and the actual vacant physical part possession of the subject land was also taken vide possession proceedings dated 4.12.1984. It is submitted that out of the total land falling in Khasra numbers 1444/1093/601 (6-17), 792/2 (1-16) & 792/3 (3-00), the answering respondent has taken the actual physical vacant possession of the land measuring 1444/1093/601 (3-00),792/2(1-16) and 792/3 (3-00) and the possession of the remaining land falling in khasra number 1444/1093/601 (3-17) could not be taken. The compensation however could not be paid as per the RD register."*

5. The reading of the counter-affidavit would show that even as per the case of the LAC, only part physical possession of the land was taken and remaining part of the land is still in the actual physical possession of the petitioner.

6. Having heard the learned counsel for the petitioners and taking into consideration the observations made by the Supreme Court in Paras 14 to 21

in the case reported as ***(2014) 3 SCC 183, Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors.,*** which are reproduced as under, we are of the view that the present petition is liable to be allowed:

> *"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.*
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> *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.*
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> *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, 33and 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 underSection 24(2) of the 2013 Act.

7. As per Para 6 of the counter-affidavit filed by the respondent / LAC, the amount of compensation is lying deposited in the treasury. Para 17 of ***Pune Municipal Corporation (supra)*** makes it abundantly clear that deposit made in the treasury would not amount to a tender.

8. Insofar as the objection, that the present petition is only by a co-owner, Mr. Vashisht submits that this issue is no more *res integra* as identical issue has been decided by the Division Bench of this Court in the case of ***Habeeb Khan & Ors. v. Govt. of NCT of Delhi & Ors. W.P.(C) 7353/2014.*** We note Paragraph 4 of the same which reads as under:

"4. There is, however, one more point which needs to be considered. An objection has been raised on behalf of the respondents that all the co-owners have not been made parties to the present petition. The learned counsel for the petitioners submits that each of the petitioners has an undivided share in the entire subject land. As a result, the petition is maintainable by the petitioners on behalf of themselves as also on behalf of the other co-owners. The petition cannot be thrown out on the ground that some of the co-owners have not been made parties to this proceeding. We agree with the submission made by the learned

counsel for the petitioners that since the petitioners only have an undivided share in the subject land, this petition shall enure to their benefit and also to the benefit of the other co-owners who are not before this court. We are not called upon to decide the issue of the apportionment of their shares or the inter-se claims between the co-owners. In fact we are not deciding the issue of title at all."

9. We find no reason to take a view other than the view taken in the case of ***Habeeb Khan (supra).***

10. Resultantly the writ petition is allowed, the acquisition proceedings initiated under the Land Acquisition Act, 1894 with respect to land at measuring 18 Bigha and 7 Biswas comprised in Khasra Nos.1444/1093/601 (3-17), 792/2 (1-16), 1390/792 (6-14) and 792/3 (3-0), situated in the Revenue Estate of Village Mandawali, Fazalpur, NCT of Delhi stands lapsed. It is so declared.

The petition stands disposed of. No costs.

G.S.SISTANI, J

V. KAMESWAR RAO, J

NOVEMBER 01, 2017/*jg*