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

% *Date of Judgment: 14th November, 2017*

+ W.P.(C) 1031/2015 & CM. No. 1820/2015

MUKESH DAGAR AND ORS.

..... Petitioner

Through: Mr. Vikas Mehta, Mr. Rajat Sehgal,
Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi, Adv. for
L&B/LAC
Ms. Mrinalini Sen, Ms. Sarita Panda,
Advs. for DDA.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V. KAMESWAR RAO

G.S.SISTANI, J. (ORAL)

1. This is a petition filed under Article 226 of Constitution of India by the petitioners seeking a direction that the acquisition proceedings in respect of land measuring 2 bighas and 6 biswas (approx.) comprised in Khasra nos.462(3-17), 464(7-06), 465(0-19), 480 Asal (7-07), 480 min. (0-09), 481 (6-18), 486(1-19), min. 463(0-10), min. 463(4-06), 2289/469 (4-0), 2290/469 (2-15), min. 479(7-01), min.479(0-06) total (47-13), situated in the revenue estate of village Khirki, Tehsil Saket, NCT of Delhi (hereinafter referred to as the 'subject land'), to have lapsed in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013 (hereinafter referred to as 'New Act').

2. It is the case of the petitioners that the subject land has been inherited by the petitioners from their forefather, Shri Pokhar Singh, who had 7/84 share in the aforesaid total land of 47 bighas 13 biswas. Counsel for the petitioners contends that neither possession of subject land has been taken nor compensation paid. Attention of the Court is invited by counsel for the petitioners to the stand taken by LAC in para 10 of its counter affidavit to show that the compensation has not been paid. Counsel relies on the judgment of ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.***, reported at 2014 3 SCC 183.
3. Per contra, learned counsel for the DDA and LAC dispute the statement made by the petitioners that petitioners are in possession of the subject land. Learned counsel appearing for the respondent-DDA submits that part possession of the subject land could not be taken as the area was built up, which fact has also been averred in para III of the counter affidavit. Counsel for the respondent-LAC submits that on account of non-availability of record, it cannot be said that the compensation has not been paid to the petitioners.
4. We have heard learned counsel for the parties and considered their rival submissions. Section 24(2) of New Act reads as under :-

“24 (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 holding 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.”

5. Para 3 of counter affidavit filed by DDA reads as under :-

“III.The physical possession of land Khasra no.462 min (3-14), 463 min (4-12), 464 min (7-0), 465 min (0-18), 2289/469 min (3-17), 2290/469 min (2-13), 479 min (5-16), 480 min (3-19) and 481 min (6-2) was handed over to the Answering Respondent by the LAC/L&B of the Government of NCT of Delhi on 17.7.1987. It is also submitted that the physical possession of the land bearing Khasra no.479 min (1-0) and 481 min (0-10) could not be taken over because of built up at site and same could not be taken over of the land bearing Khasra Nos.462 min (0-3), 463 min (0-4), 464 min (0-6), 465 min (0-8), 2289/469 (0-3), 2290/469 min (0-2), 479 min (0-6), 480 min (0-7), 481 min (0-6) due to a stay order passed by this Hon’ble Court according to Stay Dispossession as per possession Report dated 17.7.1987.”

6. In the case of ***Pune Municipal Corporation*** (*supra*), Supreme Court of India in paragraphs 14 to 20 held 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.

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. It is the case of the petitioner that neither compensation has been tendered nor possession taken, thus, the petitioner would be entitled to the relief so prayed. As per the counter affidavit filed by the DDA part possession could not be taken as the area was built up and for the balance possession could not be taken on account of a stay order.
8. In the absence of any proof that payment of compensation has been made to the petitioners and having regard to the statement made by counsel for the petitioners that the petitioners have not received any compensation and also the fact that possession of the subject land is still with the petitioners, present writ petition is allowed. The acquisition proceedings initiated under the Land Acquisition Act, 1894 with regard to the subject land are deemed to have lapsed. It is so declared.

CM No.1820/2015

9. The interim order dated 03.02.2015 is confirmed.
10. Application stands disposed of.

G.S.SISTANI, J

V. KAMESWAR RAO, J

NOVEMBER 14, 2017/ck