

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

% Date of decision: 7th November, 2017

+ W.P.(C) 1191/2016

SURESH CHAND

..... Petitioner

Through: Mr. Raj Kishore, Adv.

versus

LAND ACQUISITION COLLECTOR (NW) Respondent

**Through: Mr. Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi, Adv. for
L&B/LAC.**

Mr. K.K. Jha, Adv. for LAC.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V. KAMESWAR RAO

G.S.SISTANI, J (ORAL)

1. With the consent of the parties, the writ petition is set out for final hearing and disposal.

2. This is a petition filed by the petitioner under Article 226 of the Constitution of India. Counsel for the petitioner prays that in view of the fact that compensation has not been paid to the petitioner, the acquisition proceedings qua the agricultural land measuring 1 Bigha out of Khasra No. 96/5 Min (4-09), Village Karala, Delhi would stand lapsed in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

3. The petitioner claims to be the owner of the agricultural land measuring 1 Bigha out of Khasra No. 96/5 min (4-09) situated in the Revenue Estate of Village – Karala, Delhi. It is contended that initially Sh. Bhoop Singh (1/4 Share), Sh. Rati Ram (1/2 Share) and Sh. Wazir Singh (1/4 Share) were the co-bhumidars of the aforesaid land. It is the case of the petitioner that on 27th February, 1988, Sh. Wazir Singh for himself and being the attorney of Sh. Bhoop Singh and Sh. Rati Ram executed a sale deed of land measuring 1 Bigha (1000 Sq. Yds. approx.) out of the aforesaid land in favour of the petitioner for a valuable consideration amount of Rs.20,000/-. Petitioner paid the entire amount of consideration in cash and the actual physical possession of the aforesaid land was handed over to the petitioner. It is further the case of the petitioner that he could not get the land mutated in his favour for lack of knowledge and ignorance of the law. The said land remained vacant and when with the passage of time the adjoining land was converted in plots the petitioner also bounded the said land. As per the petition, on 16th November, 1990 the petitioner sold the said land to one Sh. Om Prakash, S/o, Sh. Rampat and executed a General Power of Attorney and Cash receipt of Rs.50,000/- involving the said land in his favour. However, no sale deed was ever executed by the petitioner in favour of said Sh. Om Prakash, therefore the transfer remained ineffective and the land remained in his ownership and under the title of the petitioner. On 21st March, 2003, the subject land was notified vide notification under Section 4 of the Land Acquisition Act followed by the notification under Section 6 of the Land Acquisition Act which was issued on 19th March, 2004. It is further the case of the petitioner that on 2nd January, 2006, the respondent under

section 11 of the Land Acquisition Act announced the Award No. 22/2005-06/DC/NW involving the said land under Khasra No. 96/5 min vide item No. 621-624. However, in the award the name of petitioner could not be entered in the absence of mutation entries in favour of the petitioner in revenue records. It is also the case of the petitioner that on 21st February, 2007, the respondent took symbolic possession of the entire Khasra No. 96/5 total admeasuring 5 Bigha and 16 biswas by carrying out demolition of boundary walls. It is the case of the petitioner that since 21st February, 2007, the respondent has neither paid the compensation amount to either the recorded owners, interested persons or the objectors nor deposited the same. Counsel contends that almost 10 years have expired after the date of passing of Award No. 22/2005-06 dated 2nd January, 2006, the respondent neither paid compensation to the petitioner or to any other person nor deposited the compensation amount.

4. Counter-affidavit has been filed respondent / LAC. Para 6 of which reads as under:

“That it is submitted that the lands of Village Karala were notified vide Notification under Section 4 of the Land Acquisition Act, 1894 dated 21.3.2003 which was followed by the Notification under Section 6 of the Act dated 19th March, 2004. The Award was also passed vide Award no. 22/2005-06 dated 28.12.2005 and the possession of the lands falling in Khasra number 96/5 (5-16) was also taken in the year 2007 itself on the spot and handed over to the DDA on the spot by preparing possession proceeding on the spot. The compensation however could not be paid as there are shown various recorded owners in the said

khasra number. It is further submitted that after the possession was taken of the lands notified under the said Award from the recorded owners / petitioners herein, the acquisition proceedings became complete, final and binding as the petitioners thereafter never challenged the same before any Court of law. It is submitted that the petitioner is claiming only one bigha out of the said khasra number.”

5. We have heard the learned counsel for the parties. Having regard to the stand taken by the respondent / LAC that compensation has not been paid to the petitioner, present case is fully covered by the decision rendered by the Apex Court in the case of ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors., reported at 2014 3 SCC 183***, the Supreme Court of India in paras 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.

6. For the reasons aforesaid, we are of the considered view that the necessary ingredients for the application of Section 24(2) of the New Act as has been interpreted by the Supreme Court of India and this Court in the following cases stand satisfied:

(1) Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors., reported at 2014 3 SCC 183;

(2) Union of India and Ors v. Shiv Raj and Ors., reported at (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, W.P.(C).2294/2014 decided on 12.09.2014 by this Court; and

(5) Girish Chhabra v. Lt. Governor of Delhi and Ors; W.P.(C).2759/2014 decided on 12.09.2014 by this Court.

7. In view of the discussion above, the petitioner is entitled to a declaration that the acquisition proceedings with respect to agricultural land measuring 1 Bigha out of Khasra No. 96/5 Min (4-09), Village Karala, Delhi initiated under the Land Acquisition Act, 1894 qua the petitioner is deemed to have lapsed. It is so declared.

8. We make it clear that in case the land has already been put to use by the DDA, petitioner would only be entitled to compensation.

G.S.SISTANI, J

V. KAMESWAR RAO, J

NOVEMBER 7, 2017/jg