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

% *Date of Judgment: 22nd November, 2017*

+ W.P.(C) 1457/2015

SEWARAM & ORS.

..... Petitioners

Through: Dr. Rajeev Sharma, Adv.

versus

LAND ACQUISITION COLLECTOR & ANR. Respondents

Through: Ms. Jyoti Tyagi, Adv. for Mr. Yeeshu Jain, Standing Counsel for L&B/LAC
Mr. Pawan Mathur, Standing Counsel for DDA.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V.KAMESWAR RAO

G.S.SISTANI, J. (ORAL)

CM.APPL No. 41066/2017(direction)

1. Counsel for the petitioners submit that by the present application he prays that the date 06.02.2018 may be cancelled and the matter may be heard at an early date.
2. The prayer made in this application is not opposed. Accordingly, the application is allowed. The date fixed on 06.02.2018 stands cancelled.
3. The application is disposed of.

CM.APPL No. 39779/2016

4. The application is dismissed as not pressed, in view of the order passed in CM.APPL 41066/2017.

CM.APPL No. 7339/2016(delay)

5. This is an application seeking condonation of 43 days delay in filing CM. APPL 7338/2016.

6. Notice. Counsels for the respondents accept notice.
7. The prayer made in this application is not opposed. Accordingly, the delay is condoned.
8. The application stands disposed of.

CM.APPL No. 7338/2016

9. This is an application filed by the petitioners to bring on record the legal heirs of deceased Sewaram.
10. Notice. Counsels for the respondents accept notice. The legal heirs of deceased Sewaram be brought on record. This order has been passed subject to all just exception.
11. The application stands disposed of.

CM.APPL No. 2557/2015

12. There is no interim order since 2015. Accordingly, the application is dismissed as not pressed, at this stage.

W.P.(C) 1457/2015

13. With the consent of the parties, the writ petition is set down for final hearing and disposal.
14. This is a petition filed under Article 226 of the Constitution of India by the petitioners. The petitioners claim that the acquisition proceedings with respect to 1/4th share of their land measuring 2 bighas, 15 biswas and 10 biswansi, out of total land measuring 11 bighas and 2 biswas comprised in Khasra No.16/2, 17, 18/2, 19/2 and 22/1, situated in revenue estate of village Aali, New Delhi(hereinafter referred to as the 'subject land') stand lapsed as neither compensation has been paid to the petitioners with respect to their share nor possession has been taken. Reliance is placed by the counsel for the petitioners on the copy of

Khatauni for the year 1979-80 to show the names of the petitioners find mentioned. Learned counsel also submits that in this case a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') was issued on 04.04.1964. A Section 6 notification of the Act was issued on 17.12.1966 and an Award was passed on 5/10.12.1997.

15. Learned counsel for the petitioner contends 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. v. Harakchand Misirimal Solanki & ors.***, reported at (2014) 3 SCC 183, more particularly, paragraphs 14 to 20, 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.

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.”

16. The learned counsel for the petitioners also relies on para 4 of the counter affidavit wherein it has been averred that actual vacant physical possession of the subject land was taken but the compensation could not be paid except to one person who, counsel for the petitioner, submits is not a petitioner in this case. Counsel further submits that since the compensation was not paid, the entire proceedings would stand lapsed. Counsel for the petitioner further relies on the decision rendered by the Supreme Court in the case of **Delhi Development Authority vs. Madan Mohan Singh and Others**, Civil Appeal No.8498 of 2016 arising out of S.L.P. (C) No.15458 of 2015, in support of his contention that even if the possession of the land has been handed over, the same is to be returned to the original owner. He submits that the aforesaid matter relates to the 1/4th share of one of the co-owners of the land which is subject matter of this writ petition.
17. Learned counsel appearing for the LAC submits that as per the record the compensation has not been paid to the petitioners. Learned counsel appearing for the DDA also relies on the counter affidavit which has been filed in support of his submission that the possession of the subject land has been handed over to the DDA and the same has been transferred to the Freight Complex Scheme.
18. We have heard learned counsel for the parties and considered their rival submissions.

19. As per the pleas raised by the DDA that the physical possession has been taken over and land is put to use for the Freight Complex Scheme and thus the petitioners are only entitled to compensation is without any force for the reason that in an identical situation with respect to 1/4th share of land of a co-owner, the Supreme Court of India in the case of ***Delhi Development Authority v. Madan Mohan Singh and Others*** (supra) has *inter alia* directed in case no fresh acquisition proceedings are initiated within a period of one year the appellant, if in possession, shall return the physical possession of the land to the original land owner. On 31.08.2016, the following order was passed:

“In the peculiar facts and circumstances of this case, the appellant is given a period of one year to exercise its liberty granted under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for initiation of the acquisition proceedings afresh.

We make it clear that in case no fresh acquisition proceedings are initiated within the said period of one year from today by issuing a Notification under Section 11 of the Act, the appellant, if in possession, shall return the physical possession of the land to the original land owner.”

20. Accordingly, the same terms of the order of 31.08.2016 of the Supreme Court would apply to the case of the present petitioners as well. The respondents are given a period of one year to exercise its liberty granted under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for initiation of the acquisition proceedings afresh.
21. We make it clear that in case no fresh acquisition proceedings are initiated within the said period of one year from today by issuing a

Notification under Section 11 of the Act, the DDA, if in possession, shall return the physical possession of the land to the original land owner.

22. The writ petition stands disposed of.

G.S.SISTANI, J

V. KAMESWAR RAO, J

NOVEMBER 22, 2017/aky/tb

