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

% *Date of decision: 28th November, 2017*

+ W.P.(C) 1617/2016

MANOJ BAWA

..... Petitioner

Through: Ms. Deepika Marwaha and
Ms. Worthing Kassar, Advs.

versus

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI &
ORS.

..... Respondents

Through: Mr. Sanjay Kumar Pathak, Mr. Suil
Kumar Jha and Mr. Kushal Raj Tater,
Advs. for LAC/L&B/GNCTD.
Mr. M.K. Singh and Mr. Rakesh
Kumar, Advs. for DDA.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V. KAMESWAR RAO

G.S.SISTANI, J. (ORAL)

1. Petitioner has filed the present petition under Article 226 of the Constitution of India seeking a writ of certiorari and declaration that the acquisition proceedings with respect to the land of the petitioner comprised in Khasra No. 1805 admeasuring 3 Bighas and 10 Biswas having ¼ share of the land of the petitioner, situated in the Revenue Estate of Village Malikpur Kohi @ Rangpuri, New Delhi (hereinafter referred to as 'subject land') stand lapsed.

2. Counsel for the petitioner submits that Notification under Section 4 of the Land Acquisition Act, 1894 was issued on 27th June, 1996, followed by Section 6 Notification on 3rd March, 1997 and thereafter Award bearing no. 3/1998-99/S.W was made on 26th February, 1999. Counsel for the petitioner contends that neither possession of the subject land has been taken nor compensation has been paid to the petitioner. She submits that case of the petitioner would stand fully covered by the decision rendered by the Supreme Court of India in the case of ***Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors. (2014) 3 SCC 183*** and decision rendered by this Court from time to time. Reliance is placed on Paragraphs 14 to 20 of the ***Pune Municipal Corporation & Anr. (Supra)***, 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.

3. Learned counsel appearing for the respondent / LAC has drawn the attention of this Court to Para 7 of the counter-affidavit. It is contended that the possession of the subject land was taken and handed over to the PWD through the Land and Building Department. It has been fairly stated that compensation amount has not been received from the requisitioning department, thus, the compensation could not be tendered to the interested persons.

4. Paragraph 7 of the counter-affidavit reads as under:

“That as regards possession, it is humbly submitted that possession of the subject land comprised in Khasra No. 1805(3-10) was taken on 31.12.2013 and handed over to PWD through Land and Building Department. So far as compensation is concerned, it is humbly submitted that the compensation amount has not been received from requisitioning department / authority. Thus, the compensation amount could not be paid to the interested persons.”

5. We have heard the counsel for the parties and considered their rival submissions. Paragraph 7 of the counter-affidavit makes it clear that the compensation of the subject land was not tendered to the petitioner, thus, the petitioner would be covered by Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

6. Having regard to the fact that the compensation has not been tendered to the petitioner, the acquisition proceedings with respect to the subject land of the petitioner would stand lapsed.

7. The writ petition is allowed in above terms.

CM. No. 7000/2016

Interim order dated 26th February, 2016 stands confirmed.

The application stands disposed of.

G.S.SISTANI, J

V. KAMESWAR RAO, J

NOVEMBER 28, 2017/jg

