

\$~11

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

% *Date of decision: 13th December, 2017*

+ W.P.(C) 5474/2014

INDRAJ AND ORS.

..... Petitioners

Through: Mr. Anuroop P.S., Adv.

versus

LAND ACQUISITION COLLECTOR AND
ANR.

..... Respondents

Through: Mr. Yeeshu Jain, Standing Counsel for
LAC.
Mr. Dhanesh Relan, Mr. Akshita and
Ms. Kajri Gupta, Advs. with Mr. Sada
Shiv, Dy. Director, (New Lease-I),
DDA.

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, present petition is set down for final hearing and disposal. This is a petition under Article 226 of the Constitution of India filed by the petitioners seeking a declaration that the acquisition proceedings with respect to the land comprised in Khasra no. 170 (0-4), 315 (4-16), 316 (1-10), 317 (6-0) measuring 12 bighas 10 biswas in which the petitioners have 1/12 share and land comprised in Khasra No. 213 (4-12), 214/1 (0-17), 214 (4-14), 217 (4-16), 218 (4-16), 237/2 (3-18), 271 (4-16), 302 (4-16), 303 (4-16) measuring 38 Bighas and 1 Biswas, in which

petitioners have 1/3 share situated in the revenue estate of village-Kotla Maigiran, New Delhi (hereinafter referred to as 'subject land'), are deemed to have lapsed in view of the provisions of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as neither compensation has been paid nor possession has been taken over.

2. The necessary facts to be noticed for disposal of this writ petition are that Section 4 notification of the Land Acquisition Act, 1894 was issued on 6th April, 1964, a notification under Section 6 was made on 7th December, 1966 and thereafter Award 205/1986-87 was announced on 19th September, 1986. Counsel for the petitioners submits as the possession of the subject land has not been taken nor compensation paid, the case of the petitioners fully covered by the decision rendered by the Supreme Court of India in the case of ***Pune Municipal Corporation & Anr. V. Harak Chand Misirimal Solanki & Ors***(2014) 3 SCC 183 and other decisions as detailed below to submit that the acquisition proceedings would lapse:

- (1) ***Union of India and Ors v. Sshiv Raj and Ors., reported at (2014) 6 SCC 564;***
- (2) ***Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors, Civil Appeal no.8700/2013 decided on 10.09.2014;***
- (3) ***Surender Singh v. Union of India & Others, W.P.(C).2294/2014 decided on 12.09.2014 by this Court; and***
- (4) ***Giri Chhabra v. Lt. Governor of Delhi and Ors; W.P.(C).2759/2014 decided on 12.09.2014 by this Court.***

3. Mr. Yeeshu Jain, Standing Counsel for the respondent / LAC has drawn the attention of this court to the counter-affidavit filed more particularly paragraph 6 of the counter-affidavit as per which possession of

the land has been taken over on different dates. Mr. Jain further contends that no compensation has been paid to the petitioners although compensation has been paid to some of the co-owners. Counsel for the DDA submits that the possession of the land has been taken, however the land has not been put to use. Mr. Sada Shiv, Dy. Director, (New Lease-I), DDA, who is present in the Court submits that the photographs filed by him with the additional affidavit would show that the steel and other equipments which were lying, were in fact stacked by the DMRC during their construction, but the land in question has not been put to use.

4. We have heard the learned counsel for the parties.

5. The basic facts are not disputed as far as the issuance of notification under Section 4 notification of the Land Acquisition Act, 1894 was issued on 6th April, 1964, a notification under Section 6 was made on 7th December, 1966 and thereafter Award 205/1986-87 was announced on 19th September, 1986. Para 6 of the counter-affidavit filed by the respondent LAC reads as under:

“8. That the land in question, i.e., Khasra no. 170 (0-4), 315 (4-16), 316 (1-10), 317 (6-0) ad-measuring 12 bighas and 10 biswas (having 1/12 share) and land comprised in Khasra No. 213 (4-12), 214/1 (0-17), 214 (4-14), 217 (4-16), 218 (4-16), 237/2 (3-18), 271 (4-16), 302 (4-16), 303 (4-16) total 38 Bighas and 1 Biswas (having 1/3rd share), situated in the revenue estate of village-Kotla Maigiran, New Delhi was notified under Section 4 of Land Acquisition Act on 06.04.1964 followed by declaration under Section 6 of Land Acquisition Act on 07.12.1966 for Planned Development of Delhi. In pursuance of said notification, notices under Section 9 & 10 as provided under the Act, were issued to the interested persons, inviting the claims from all the interested personas and claims were also filed by the interested persons. The then Land Acquisition Collector passed Award No. 205/1986-87 dated 19.09.1986 after

considering the claims of the claimants. Further, possession of all the above mentioned land were taken on various dates i.e. 4.12.1986, 17.07.1987, 12.12.1996 and 05.03.1997 and handed over by the beneficiary department. That part payment of the compensation with respect to Khasra No. 170, 315, 316 and 317 has been given to Sh. Bijender Kumar, Narender, Vinod Kumar, R. Kumar, Lekh Chand, Khem Chand, R. Singh, Harnam Singh, Rattan Singh, Mahesh Singh and compensation with respect to remaining lands were not made. ”

6. The reading of the counter-affidavit filed by the LAC clearly shows that possession of the land in question has been taken, however, compensation has not been paid to the petitioners. 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.

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

8. In view of the discussion above, the petitioners are entitled to a declaration that the acquisition proceedings with respect to their share in the subject land as detailed in Para 1 of the judgment stand lapsed. It is so declared.

Accordingly, the writ petition is disposed of.

G.S.SISTANI, J

V. KAMESWAR RAO, J

DECEMBER 13, 2017/jg