

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

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Date of decision: 8th November, 2017

+ W.P.(C) 4255/2016

PARSHOTAM JOSHI

..... Petitioner

Through: Mr. B.S. Mann and Mr. Vishal Mann,
Advs.

Versus

GOVT OF NCT OF DELHI AND ORS

..... Respondents

Through: Mr. Kamal Kant Jha, Adv. for LAC.
Ms. Manish Aggarwal Narain and Ms.
Vineeta Bansal, Advs. for DDA.
Mr. Jayendra, Adv. for R4.

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 out for final hearing and disposal.
2. Petitioner seeks a writ of mandamus and direction that the entire acquisition proceedings in respect of the property bearing Plot No. 24 measuring 150 Sq. Yds., Part of Khasra No. 631/2 situated in the Revenue Estate of Village Roshanpura, Colony known as Shyam Vihar, Nazafgarh, New 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 (New Act).

3. It is the case of the petitioner that neither compensation has been paid to the petitioner nor possession has been taken. While relying on Paras 14 to 20 of the judgment of the Supreme Court of India in the case of ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors., reported at 2014 3 SCC 183***, Mr. B.S. Mann, learned counsel for the petitioner contends that declaration so prayed may be granted. Mr. Maan further submits that in the counter-affidavit filed by the LAC, it has categorically been stated in Para 7 that possession of the land in question has not been taken nor there is an entry in the Award file whether the compensation amount was sent to the Court of Additional District Judge under Section 30 & 31 of the Land Acquisition Act. It is next contended by Mr. Maan that an objection has been raised with regard to the maintainability of this petition by the respondent on the ground that the subject land vests in the Gaon Sabha.

4. Learned counsel appearing for respondent no.4 Gaon Sabha submits that proceedings under Section 81 were initiated against the previous owner of the land and a decree was passed. To show that the land now vests in Gaon Sabha, a copy of the Khatauni pertaining to the year 2012-13 has been placed on record. In response to the submissions made by the counsel for the respondent, Mr. Mann submits that the petitioner has disclosed in the writ petition that Section 4 and Section 6 Notifications were issued on 7th April, 2006 and 4th April, 2007 respectively and the Award bearing No. 08/2008-2008/SW was made in the year 2008-2009. Mr. Mann also contends that a categorical assertion has been made that possession of the land in question has not been taken by the respondent authorities and the same is with the petitioner till date who is in actual physical possession of the land. It has also

been averred in the writ petition that the predecessor-in-interest of the petitioner was the recorded bhumidar and was in actual, physical and cultivatory possession of the land in question. Subsequently, various plots were carved out and post the construction, the Revenue Assistant initiated the proceedings under Section 81 of the Delhi Land Reforms Act, 1954 and thereafter the land vested in the Gaon Sabha.

5. It is the submission of the learned counsel for the petitioner that despite a decree passed in favour of the Gaon Sabha under Section 81 of the Delhi Land Reforms, 1954, the Gaon Sabha never executed the decree till date and thus petitioner continues to remain in actual, physical and cultivatory possession of the land in question.

6. The sum and substance of the arguments of Mr. Mann is that the judgment and decree passed by the Revenue Assistant has become non-est and no right, title or interest was ever created in favour of the Gaon Sabha. Reliance is also placed on an order passed by the Lt. Governor of Delhi dated 12th December, 2007 wherein it was ordered that all land vested with the Gaon Sabha under Section 81 of the Delhi Land Reforms Act, 1954 where the actual physical possession is with the original owners, the same shall be treated as private land. Relying on the aforesaid order, it is submitted by Mr. Mann that the land would not vest with the Gaon Sabha. Attention of the Court is drawn to Section 27 of the Land Reforms Act to show that any right in favour of the Gaon Sabha would stand extinguished if the decree has not been executed. Mr. Mann also relies on various provisions of Delhi Land Reforms Act, 1954 more particularly Section 85 in support of his contention that post the decree, no steps were taken by the Gaon Sabha to execute a decree and take over the

possession. Mr. Mann further submits that the only prayer sought in this writ petition is that the acquisition proceedings would stand lapsed and inter-se disputes between the petitioner and the Gaon Sabha, if any, would be decided in the appropriate court of jurisdiction. He relies upon a judgment passed by another Division Bench of this Court in the case of **Sanjeev Solanki v. Delhi Development Authority & Ors. W.P.(C) 1999/2015** dated 24th January, 2017, in Paras 5 and 6, has observed as under:

“5. While we have declared that the subject acquisition has lapsed, it is made clear that this would not amount to giving title to the petitioner or perfecting the petitioner’s title inasmuch as Mr Jain has taken the plea in the counter-affidavit filed on behalf of the respondent No.2 that the Gaon Sabha has been shown as the recorded owner. This fact is disputed by the learned counsel for the petitioner. But, we are not entering into the controversy of title which may be sorted out elsewhere. Insofar as the acquisition is concerned, the same has lapsed because neither physical possession was taken over nor compensation was paid.

6. A copy of this order be sent to the standing counsel for the Government of NCT of Delhi so that the appropriate Gaon Sabha, through the BDO (South-West), can be informed accordingly and, if any necessary steps are to be taken, the same can be taken.”

7. Reliance is also placed on a decision rendered by another Division Bench of this Court in the case of **Ajit Singh Mann v. Union of India, W.P.(C) 7871/2014**. Para 9 of which reads as under:

“9. So far as the respondent’s objections with respect to the petitioner’s entitlement in W.P.(C) No.7871/2014 is concerned, the Court notices that the revenue document relied upon i.e. Khatauni for the period 1984-85 clearly records that the petitioner’s vendor, was the owner of the property. The

petitioner acquired the property through registered sale deed on 28.06.1988. Upon these facts, the Court is unable to sustain the respondent's objection that the property had vested in the Gaon Sabha since the award determined the compensation in its favour. For the sake of proper appreciation of the facts, the Gaon Sabha was impleaded as a party i.e. the fifth respondent. The Block Development Officer representing the Gaon Sabha has filed an affidavit. The affidavit does not disclose the date of vesting of the land – after it is assumed to be on the basis that the conditions of grant violated the statutory requirement of ejectment proceedings under Section 81, had to be initiated, within the period of limitation. There is silence on these aspects in the BDO's affidavit. Consequently, it has to be held that the petitioner's claim cannot be defeated on this ground."

8. Having regard to the fact that neither possession has been taken over nor compensation paid and keeping in view the observations made by the Supreme Court in the case of ***Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors.*** reported in (2014) 3 SCC 183, in Paras 14 to 20, which are reproduced as under, we are of the view that the present petition is liable to be allowed:

"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.*

9. 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.***

10. In the case in hand the award having been announced more than five years prior to the commencement of the New Act, neither the possession has been taken nor compensation paid, the petitioner is entitled to declaration that the acquisition proceedings initiated under the 1894 Act, in respect of the

subject land deemed to have lapsed. As far as the objection raised by the counsel for the respondents with respect to the ownership of the land is concerned, it is made clear that this would not amount to giving title to the petitioner or perfecting the petitioner's title. The question of title is kept open to be decided in appropriate proceedings. Ordered accordingly.

11. The writ petition is allowed. There shall be no order as to costs.

CM. No. 17955/2016

Interim order dated 13th May, 2016 stands confirmed.

The application stands disposed of.

G.S.SISTANI, J

V. KAMESWAR RAO, J

NOVEMBER 08, 2017/jg