

\$~14

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

% *Date of Judgment: 16th November, 2017*

+ W.P.(C) 3158/2015 & C.M.5624/2015

DHANNU

..... Petitioner

Through: Mr.R.K.Saini and Mr.Anshuman
Sood, Advocates.

versus

LT. GOVERNOR, GOVT OF NCT & ORS..... Respondents

Through: Mr.Siddharth Panda, Adv. for
LAC/L&B Deptt.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V.KAMESWAR RAO

G.S.SISTANI, J. (ORAL)

1. This is a petition filed under Article 226 of the Constitution of India by the petitioner. The petitioner claims to be in possession of land measuring 9 Biswas (wrongly typed as 9 Bighas in prayer clause as admitted by Mr.R.K.Saini, counsel appearing on behalf of the petitioner), a built up structure comprised in Khasra no.335/80, situated in the revenue estate of Village Chilla Saroda, Bangar, Shahdara, Delhi (hereinafter referred to as the 'subject land').
2. It is the case of the petitioner that a notification under Section 4 of the Land Acquisition Act, 1894 was issued on 13.11.1959. A notification under Section 6 of the Land Acquisition Act, 1894 was issued in the year 1966. Thereafter, an Award was made in the year 1977.
3. Mr.Saini contends that grandfather of the petitioner had constructed a house over the subject land in the year 1965 and since then the petitioner has been in actual physical possession over the land in

question. While relying on the counter affidavit filed by the LAC Mr.Saini contends that the possession of the subject land could not be taken on account of the area being built up. Attention of this court is drawn to para 7 of the counter affidavit filed by the LAC, which reads as under:

“7. That in the present case, the possession of 17 bigha and 17 biswa out of total 18-06 of Khasra no.335/80 was taken over and handed over to the beneficiary department on 11.05.1977, however, remaining 0-9 biswa of land could not be taken over due to built up. The compensation with respect to the above said land was sent to the court of ADJ under section 30-31 of Land Acquisition Act, 1894, on 17.05.1978. Further, it is pertinent to mention here that the Petitioner have no right or title over the land in question in as much as the land in question belongs to “Gaon Sabha”. The petitioner has not placed on record any document evidencing that the land was ever allotted/given to him by Gaon Sabha.”

4. Mr.Saini also contends that he does not dispute that the land belongs to Gaon Sabha and he submits that question of ownership may be kept open to be decided in appropriate proceedings. He submits that an identical issue had arisen before another Division Bench of this Court in the case of ***Sanjeev Solanki Vs. Delhi Development Authority and Ors, W.P. (C) 1999/2015***, decided on 24.01.2017. Counsel submits that a similar view has also been expressed by this Court in the case of ***Parshotam Joshi vs. Govt. of NCT of Delhi & Ors., W.P. (C) 4255/2016***, decided on 08.11.2017.
5. Mr.Siddharth Panda, learned counsel for the LAC has opposed this petition on the ground that the petitioner is not a rightful owner. He is an illegal occupant over the land in question and thus no relief should

be granted to him. As far as possession is concerned, Mr.Panda relies on para 7 of the counter affidavit wherein categorical assertion has been made that the possession over the subject land measuring 9 biswas could not be taken out to the area being built up.

6. We have heard learned counsel for the parties.
7. Having regard to the fact that admittedly possession of the subject land could not be taken, the case of the petitioner would be covered with the decision rendered by the Apex court in the case of ***Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors.***, reported at (2014) 3 SCC 183, more particularly, paragraphs 14 to 20 of the judgment 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.”

8. As far as the objection raised by Mr. Panda that no relief can be granted to the petitioner as the land belongs to the Gaon Sabha is concerned, an identical issue had arisen before another Division Bench of this Court in the case of **Sanjeev Solanki** (*supra*), paragraph 5 of which reads 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 o 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.”

9. The Division Bench had held that by passing the order declaring the proceedings of the subject land to have lapsed, the Court was not deciding the question of title which was kept open to be decided in the appropriate court of jurisdiction. We see no reason to take a different view while we declare the acquisition proceedings having lapsed. The question of title is kept open to be decided in appropriate court of jurisdiction.
10. The writ petition stands disposed.

C.M.5624/2015 (stay)

11. The interim order dated 27.03.2015 stands confirmed.
12. The application stands disposed of.

G.S.SISTANI, J.

V.KAMESWAR RAO, J.

NOVEMBER 16, 2017

rb

