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

% *Date of Judgment: 1st December, 2017*

\+ **W.P. (C.) No.6351/2014**

SATISH KUMAR ..... Petitioner

Through Mr. Dhruv Sharma, Advocate

versus

THE HONOURABLE LT. GOVERNOR RAJ BHAWAN, DELHI & ORS. ..... Respondents

Through Ms. Deepika, Advocate for L&B/LAC.
Mr. M.P. Bhargava, Advocate for Mr. Arjun Pant, Advocate for DDA.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE VINOD GOEL

G.S.SISTANI, J. ***(ORAL)***

1. This is a petition filed under Article 226 of the Constitution of India by the petitioner. The petitioner seeks a writ, order or direction to declare the acquisition proceedings with respect to the land of the petitioner comprised in Khasra no.2920/157 having 1/3rd share measuring 8 biswa; Khasra no.1294 having 1/3rd share measuring 1 bigha 5 biswa; Khasra no.156 having 131/1245th share measuring 1 bigha 9 biswa; Khasra no.158 having 1/3rd share measuring 2 bigha 5 biswa; and Khasra no.193 having 1/3rd share measuring 17 biswa, situated in the revenue estate of village Mehrauli, New Delhi

(hereinafter referred to as the 'subject land') is deemed to have lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013(New Act).

2. Learned counsel for the petitioner submits that the compensation has not been paid. Counsel for the petitioner submits that the petitioner would seek compensation as per New Act as it is the stand of the DDA that the possession has been taken and the land is handed over to the Horticulture Department for the SFS Scheme.

3. Necessary facts which are required to be noticed for disposal of the present writ petition are that a Section 4 notification of the Land Acquisition Act, 1894(hereinafter referred to as the 'Act') was issued on 23.01.1965, a Section 6 notification of the Act was issued on 07.12.1966 and an Award bearing no.80-E/70-71(supp.) was passed on 09.01.1981. The petitioner claims that the petitioner's predecessor in interest, *i.e.,* his father Hari Singh S/o Ramji Lal was the recorded owner/bhoomidar of the subject land.

4. The counsel for the DDA while relying on the counter affidavit submits that the possession of the subject land was taken and handed over to the Horticulture Department. Counsel for the LAC relies on para 5 of the counter affidavit, wherein it has been stated that the compensation with respect to the shares of Hari Singh S/o Ramji Lal are unpaid and deposited in the RD.

5. We have heard the learned counsel for the parties. Para (k) of the counter affidavit filed by the DDA reads as under:

> "k. I say that the possession has been taken over in accordance with the law and the acquisition proceedings are

complete qua such land as set out and as such the land vests in the Government free from encumbrance, which includes any right of the recorded owners of the land, or anyone who is an alleged possession or encroacher thereafter. It is submitted that no other person except the Government has any right, title or interest in the land.

It is submitted that the land in question i.e. Khasra Nos.2920/157(0-8), 156(1-9), 158(2-05), 193(0-17), 1294(1-05) situated in village Mehrauli was acquired vide award no.80E/70-71/Supp. The physical possession of the above land was handed over to the DDA by the Land Acquisition Collector, L&B Department on 23.09.1981. The land bearing Khasra no.2920/157, 156, 158, 193 further transferred to the Horticulture Department on 23.09.1981, and SFS Scheme on 24.07.1984. The notification under section 22(i) no.F9/(20)78/ L&B/ Vol-II was issued on 19.11.1981."

6. It would also be useful to reproduce para 5 of the counter affidavit filed by the LAC, which reads as under:

"That the correct facts are that the land in question i.e. khasra no.2920/157, 1294, 156, 158 and 193 Vill-Mehrauli in which there are shares of the petitioner was notified under section 4 of LA Act on 23 January 1965 followed by declaration under section 6 on 07.12.1966 was published for planned development of Delhi. In pursuance of the said notification, notices under section 9 and 10 as provided under the Act were issued to the interested person inviting the claims and claims were also filed by the interested person. The Land Acquisition Collector passed Award No.80E/70-71(Supp.) dated 09.01.1981 u/s 11 of the Act. The possession of the land was taken on 23.09.1981. The compensation with respect to 74/249 shares of Khasra No.156(1-09) has been paid and compensation with respect to 175/249 shares of Khasra no.156 are unpaid. One third share of khasra no.2920/157(0-08), 158(2-05), 193(0-17) have been paid and two third shares of Hari Singh S/o Ramji Lal who was the recorded owner are unpaid."

7. Reading of the counter affidavits filed by the DDA and LAC make it clear that the possession of the land has been taken over and put to use. Further, reading of the counter affidavit of the LAC would show that 175/249 shares of Hari Singh S/o Ramji Jal in respect of Khasra no.156 and two third shares of Hari Singh S/o Ramji Jal in respect of Khasra no.2920/157(0-08), 158(2-05), 193(0-17) remained unpaid.

8. The case of the petitioner is fully covered by the decision rendered by the Supreme Court of India in the case of ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.,*** reported at (2014) 3 SCC 183. Paras 14 to 20 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.
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> 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. Having regard to the facts noted hereinabove and the stand taken by the LAC and the DDA in their counter affidavits, 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. Accordingly, in our view, acquisition proceedings qua the land of the petitioner stand lapsed. However, as prayed, the petitioner would be

entitled to compensation under the New Act, which would be paid within a period of one year from today.

11. The writ petition stands disposed of.

G.S.SISTANI, J.

VINOD GOEL, J.

DECEMBER 01, 2017
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