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

% *Date of Judgment: 14th December, 2017*

\+ W.P.(C) 6886/2016

PURNIMA JAIN ..... Petitioner

Through: Mr.S.K.Rout and Mr.Aman Mehrotra, Advocates

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr.Yeeshu Jain and Ms.Jyoti Tyagi, Advts. for L&B/LAC.
Mr.Sunil Goel, Ms.Supreet Bimbro and Mr.Mayank Goel, Advts. for R-3.

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 under Article 226 of the Constitution of India. The petitioner seeks a declaration that the acquisition proceedings with respect to the built up property admeasuring 55.5 sq. yds. out of Khasra no. 1185/20/2/1, property bearing no.346, Gali no.1, Friends Colony Industrial Area, G.T.Road, Shahdara, Delhi (hereinafter referred to as 'the subject land') are deemed to have lapsed in view of the fact that compensation has not been tendered to the petitioner.

2. The necessary facts to be noticed for disposal of this writ petition are that a Section 4 notification of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 14.10.2005. Section 6 declaration was made on 05.10.2006. Thereafter an Award bearing no.1/2008-09 was passed by Land Acquisition Collector on 22.07.2008. It is the case of the petitioner that the compensation with

respect to subject land has not been tendered even though the land has been put to use.

3. The counsel for the petitioners submits that since the compensation has not been tendered, the petitioner would be entitled to a declaration and compensation under Section 24 (2) of the Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the New Act"). Learned counsel for the petitioners submits that the case of the petitioner would be fully covered by the decision rendered by the Apex Court in ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.,*** reported at (2014) 3 SCC 183. Mr. Rout, counsel for the petitioner submits that in the circumstances of the present case, he only prays for grant of compensation in terms of the New Act. Mr.Jain, counsel appearing for LAC has drawn the attention of the Court to para 5 of the counter affidavit wherein it has been averred that the physical possession of the land was taken on 20.02.2010 but the compensation stands deposited in Reference Court under Section 30-31 of the Act on 22.03.2016.

4. We have heard learned counsel for the parties.

5. In this case it is not in dispute that the possession of the subject land has been taken and put to use. It is also not in dispute that on the date of coming into force of the New Act, the acquisition proceedings with respect to the subject land would stand lapsed as no compensation was tendered by the said date.

6. Having regard to the fact that admittedly compensation has not been paid to the petitioner, we are of the view that the case of the petitioner

would be covered by the decision rendered by the Supreme Court of India in the case of ***Pune Municipal Corporation & Anr.*** (supra). 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.

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. 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.

8. In view of the discussion above, it is declared that the acquisition proceedings qua the subject land of the petitioners stand lapsed. However, as the possession has been taken over, petitioners would only be entitled to compensation as per the New Act. Compensation be released within one year from today.

9. The writ petition stands disposed of in the above terms.

G.S.SISTANI, J

V. KAMESWAR RAO, J

DECEMBER 14, 2017
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