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

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

\+ W.P.(C) 4192/2015

SARLA GUPTA ..... Petitioner

Through: Ms. Geeta Verma, Adv. and Ms. Lafa, Adv.

versus

GOVT OF NCT OF DELHI & ORS. ..... Respondents

Through: Mr. Siddharth Panda, Adv. for R1 and R2/L&B/LAC
Ms. Shobhna Takiar, Adv. with Mr. Arjun Pant, Adv. for DDA

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE V. KAMESWAR RAO

G.S.SISTANI, J. (ORAL)

1. This is a writ petition under Article 226 of the Constitution of India. Learned counsel for the petitioner submits that the petitioner is owner of the land bearing Khasra No.61 admeasuring 8 bighas 5 Biswas situated at village Behlolpur Khadar, Delhi.

2. It is contended that the land was purchased from the erstwhile owner i.e. Madhu Nair and Satyendra Gupta in the year 1993 through various documents. It is also contended that the name of the petitioner has been entered in form No.11 Khasra Girdwari of village Behlolpur Khadar, Delhi. It is also contended that the petitioner had also filed an affidavit in SLP (Civil)

No.3127/2006. Petitioner claims that physical possession of the land has not been taken and further no compensation has been paid. He submits that the acquisition proceedings would stand lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

3. In this case, the Section 4 notification was issued on 23rd June, 1989, a declaration under Section 6 was made on 22nd June, 1990 and the Award was passed on 17th October, 1992.

4. Counsel for the petitioner submits that the case of the petitioner is fully covered by the decision of the Supreme Court in the case of ***Pune Municipal Corporation & Anr. V. Harak Chand Misirimal Solanki & Ors(2014) 3 SCC 183.***

5. Counsel for the petitioner relies upon the decision of the Supreme Court in the case of ***Government of NCT of Delhi vs. Manav Dharam Trust & Ors., 2017 6 SCC 751,*** to answer the objection raised by the LAC with regard to the maintainability of the writ petition.

6. Counsel for the petitioner has also drawn attention of the Court to para 7 of the counter-affidavit in support of her submission that the LAC has admitted that the compensation has not been tendered. Para 7 reads as under:

> *"7. That it is submitted that possession of the khasra no.61(17-01) was taken over and handed over to the beneficiary department on 27.12.1990 and 21.04.2006. However, as per Naksha*

Mutazameen compensation could not be paid due to dispute with regard to shares. Further, it is pertinent to mention here that the present petitioner having full knowledge about the status of the land in question and without taking permission from the competent authority as required under Delhi Land (Restriction of Transfer) Act, 1972 have purchased the lands. Such sale/purchase is void and does not bind the Government in any manner. Since, the petitioner is subsequent purchaser, he do not have any right to seek release of the land in question. In the present writ petition the petitioner is challenging the acquisition proceeding. Which was taken in pursuance to the above mentioned notification and award, which was never challenged neither by the petitioner nor by the predecessor of the petitioner. Thus the petitioner has no locus to file the present writ petition and seek any relief with respect to the above said khasra numbers. This issue has been settled by the Hon'ble Supreme Court of India in Meera Sahni & Ors. vs. Lt. Governor of Delhi reported in 2008 (9) SCC 177, wherein the Hon'ble Apex Court categorically held that the petitioners being subsequent purchasers of the land in question do not derive any title to the land and cannot challenge the acquisition proceedings."

7. Mr. Siddharth Panda, learned counsel appearing for the LAC submits that admittedly the compensation could not be tendered. However, he has raised the objection with regard to maintainability of the writ petition as the petitioner is not the owner.

8. We have heard learned counsel for the parties.

9. 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.*
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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.*
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> *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, 33and 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."*

10. Having regard to the fact neither possession has been taken nor compensation tendered, the acquisition proceedings stand lapsed. As far as objection with regard to the maintainability is concerned, we also note a Coordinate Bench of this Court in the case of ***Sanjeev Solanki vs. Delhi Development Authority and Ors.*** *in* ***W.P.(C) No.1999/2015,*** decided on 24th January, 2017 with regard to issue of title has held 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. Jhain 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."*

11. Having regard to the facts of this case, we make it clear that while we declare that the acquisition proceedings would

stand lapsed, this would not amount to rendering a decision with regard to title.

12. The writ petition is allowed, acquisition proceedings lapsed.

CM No. 7588/2015

Interim order dated 28th April, 2015 stands confirmed.

The application stands disposed of.

G.S.SISTANI, J

V. KAMESWAR RAO, J

NOVEMBER 13, 2017/*aky*