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

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Date of Judgment: 21st November, 2017

+ **W.P. (C.) No.4469/2015**

JAI KISHAN GUPTA

..... Petitioner

Through

Mr. Ajay Kumar and Mr. Badal
Dayal, Advocates

versus

GOVT OF NCT OF DELHI & ORS.

..... Respondents

Through

Ms. Jyoti Tyagi, Advocate for Mr.
Yeeshu Jain, Standing Counsel for
L&B/LAC.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V.KAMESWAR RAO

G.S.SISTANI, J. (ORAL)

1. The present petition has been filed under Article 226 of the Constitution of India. The petitioner seeks a writ, order or direction in the nature of *mandamus* to issue a declaration to the effect that the Award no.2/DC(W)/2008-09 with respect to the land of the petitioner comprised in Khasra no.1006 measuring 1 bigha 8 biswa, falling in the extended Lal Dora of village Mundka, 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) as no compensation has been paid to the petitioner.
2. Necessary facts which are required to be noticed for disposal of the writ petition are that a Section 4 notification of the Land Acquisition

Act, 1894(hereinafter referred to as the 'Act') was issued on 07.06.2007 for the purpose of construction of Depot, Staff Quarters and TSS of Inderlok-Mundka Corridor of Delhi MRTS Project-II. A Section 6 notification of the Act was issued on 23.10.2007 and an Award was passed on 01.08.2009. It is the case of the petitioner that a request was made for release of the compensation on 28.06.2011. However, despite repeated requests and reminders, no compensation was released.

3. Learned counsel for the petitioner has drawn the attention of this Court to an order dated 12.05.2011 passed by a Division Bench of this Court in WP(C).5480/2008 directing the release of the amount deposited in Court by the respondents. The operative portion of the order dated 12.05.2011, reads as under:

“The amount towards 80 per cent of the amount quantified in terms of the award deposited in this Court be released by the Registry to the petitioners after due verification along with interest accrued thereon, if any. The balance 20 per cent is also agreed to be paid to the petitioners by the LAC within one month from today on execution of relevant documents.

The writ petitions stand disposed of in the aforesaid terms.”

4. On the last date of hearing, learned counsel for the petitioner had made a categorical assertion that no amount has been released in favour of the petitioner even pursuant to the directions contained in the order dated 12.05.2011 passed in WP(C).5480/2008. We had adjourned the matter to enable the learned counsel for the LAC to seek instructions in the matter. Ms. Tyagi, learned counsel for the LAC submits that instructions have been received by her in terms of a letter addressed to

Mr. Yeeshu Jain, Standing Counsel dated 16.11.2017. The concluding para of the letter dated 16.11.2017, which has been brought to our notice, reads that “Now, as per report of Account Clerk “Statement-A of Award No.2/DCW/2008-09 Village Mundka at S.No. 47 in respect of Jai Kishan S/o Chhote Lal, payment has not been deposited in the Hon’ble High Court”.

5. Based on the communication and the instructions received, learned counsel for the petitioner submits that the case of the petitioner would be covered by the decision rendered in the case of ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.***, reported at (2014) 3 SCC 183 as one of the two conditions have not been fulfilled, although possession has been taken and land has been put to use, but the compensation has not been paid. Counsel for the petitioner prays that he restricts his claim only to payment of compensation in terms of New Act.
6. We have heard the learned counsel for the parties. We note that in spite of the directions passed in WP(C).5480/2008 on 12.05.2011 and also as per the record of the LAC, no payment of compensation has been made to the petitioner.
7. In the case of ***Pune Municipal Corporation & Anr.***(supra), 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.

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. 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.

9. In view of the discussion above, the petitioner is entitled to a declaration that the said acquisition proceedings initiated under the Land Acquisition Act, 1894 with regard to the subject land are deemed to have lapsed, however since the land has been put to use and, as prayed, the petitioner would only be entitled to compensation as per the Act of 2013. Compensation be paid within a period of not later than one year from today.
10. The writ petition stands disposed of.

G.S.SISTANI, J.

V.KAMESWAR RAO, J.

NOVEMBER 21, 2017

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