$~14

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

% *Date of Judgment: 30th October, 2017*

\+ **W.P. (C.) No.4603/2015**

JAGBIR SINGH & ORS ..... Petitioners
Through Mr. Anuroop P.S., Advocate

versus

UNION OF INDIA THROUGH LAC & ANR. ..... Respondents
Through Mr. Yeeshu Jain, Standing Counsel with Ms. Jyoti Tyagi, Advocate for L&B/LAC.
Mr. Arjun Pant, Advocate for DDA.

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 by the petitioners seeking a declaration that the proceedings in respect of land comprised in Khasra no.1911/882(1-4), 1915/924-925(3-8), 4065/1659(10-0), 2021/956 (7-4) and 979(3-18) situated in the revenue estate of Village Tughlaqabad, New Delhi (hereinafter referred to as the 'subject land') acquired vide Award no.50/A/Supp/1969-70 dated 04.11.1981 having lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013(hereinafter referred to as the 'New Act').

2. It is submitted by the learned counsel for the petitioners that the predecessors of the petitioners, i.e. Jaswant Singh, Shri Partap Singh

and Shri Mahipal Singh, including the petitioners were co-sharers with respect to their land situated in Village Tughlaqabad, New Delhi. The above-said three persons have since expired and the petitioners are the legal heirs of the said persons, including petitioners no.3 and 4 as well.

3. It is not disputed that a Notification under Section 4 of the Land Acquisition Act, 1894 was issued vide Notification no.F.4(2)/65/L&B dated 23.01.1965 with respect to the land comprised in Khasra no. 1911/882(1-4), 1915/924-925(3-8), 4065/1659(10-0), 2021/956 (7-4) and 979(3-18) situated in the revenue estate of Village Tughlaqabad, New Delhi. A declaration under Section 6 of the Land Acquisition Act, 1894 was issued on 13.01.1969 and an Award no.50/A/Supp/1969-70 was pronounced on 04.11.1981. It is the case of the petitioners that although the Award was announced way back in the year 1981, however, the possession of the subject land was not taken, nor compensation tendered, nor paid to the petitioners. It is also the case of the petitioners that the amount was not deposited in the referral court pursuant to the Award. Reliance is placed on Section 24(2) of the New Act, which reads as under:

> *"24 (2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:*

Provided that where an award has been made and compensation in respect of a majority of land holding has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

4. Notice was issued in the matter. Counter affidavits have been filed by the LAC as also the DDA. Counsel for the LAC submits that the possession of the subject land was taken and was handed over to the DDA, copy of the possession has been filed on record.

5. Counsel for the petitioners relies on para 8 of the counter affidavit filed by the LAC, to show that the compensation has not been paid to the petitioners.

6. We have heard the learned counsel for the parties. Para 8 of the counter affidavit filed by the LAC reads as under:

> "8. That it is submitted that the possession of the land bearing khasra no. 1911/882(1-4), 1915/924-925(3-8), 4065/1659(10-0), 2021/956 (7-4) and 979(3-18) of village Tuglakabad, was acquired vide award no. no.50/A/Supp/1969-70 and out of which possession of khasra no.979(3-18) and 2021/956(7-4) on 24.02.2004 and possession of khasra no.1911/882(1-4) and Kh. No.1915/1659(10-0) on 16.03.2004 and possession of Kh. No.4065/1659(10-) on 23.11.1981 and all aforesaid acquired land was handed over to DDA immediately at the time of taking possession and as per Naksha Mutzamin compensation not paid and statement "A" is not available. A circular dt.02.09.2015 is issued to relocate the same."

7. It has been contended before us by the counsel for the petitioners that since the compensation with respect to the subject land has not been

tendered to the petitioners, the case of the petitioners is liable to be allowed.

8. 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.*
>
> *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. 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. Sshiv 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) **Giri Chhabra v. Lt. Governor of Delhi and Ors; W.P.(C).2759/2014 decided on 12.09.2014 by this Court.**

10. In view of the discussion above, the petitioners are 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. It is so declared.

CM.APPL8327/2015(stay)

11. The application stands disposed of in view of the orders passed in the writ petition.

G.S.SISTANI, J.

V.KAMESWAR RAO, J.

OCTOBER 30, 2017
pst