

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

% *Date of decision: 8th November, 2017*

+ **W.P.(C) 4938/2015**

AJIT KUMAR CHAWLA

..... Petitioner

Through: Ms. Sweta Rani, Adv.

versus

DELHI DEVELOPMENT AUTHORITY AND ORS.

..... Respondent

Through: Mr. Yeeshu Jain, Standing
Counsel with Ms. Jyoti Tyagi,
Adv. for L&B/LAC
Mr. Rahul Bakshi, Adv. for DDA

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V. KAMESWAR RAO

G.S.SISTANI, J (ORAL)

CM No. 38387/2017

This is an application for early hearing filed by the petitioner. For the reasons stated in the application, the same is allowed. With the consent of the parties the writ petition is taken up for hearing.

W.P.(C) 4938/2015

1. The petitioner seeks a direction that the acquisition proceedings with respect to Plot No.124 measuring 96 sq. yds. Bearing Khasra No.28, Killa No. 18 situated in the area of Village Shakurpur, Abadi Raja Park, Delhi stands lapsed as neither physical possession of the land has been taken nor compensation paid.

2. In this case notification under Section 4 of the Land Acquisition Act was issued on October 24, 1966, notification under Section 6 was issued on

December 06, 1966 and the award was thereafter made on May 28, 1984 being Award No.6/84-85 by which a total area of 12 Bighas 06 Biswas was acquired.

3. Learned counsel for the petitioner has drawn the attention of the Court to Para 5 of the counter-affidavit which has been filed by the Land Acquisition Collector. Counsel submits that it is admitted that neither possession has been taken nor compensation paid. This position is not disputed before us even today.

4. Counsel for the petitioner relies on a decision rendered by the Supreme Court of India in the case of ***Pune Municipal Corporation & Anr. V. Harak Chand Misirimal Solanki & Ors(2014) 3 SCC 183*** and other decisions as detailed below to submit that the acquisition proceedings would lapse:

(1) Union of India and Ors v. Sshiv Raj and Ors., reported at (2014) 6 SCC 564;

(2) Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors, Civil Appeal no.8700/2013 decided on 10.09.2014;

(3) Surender Singh v. Union of India & Others, W.P.(C).2294/2014 decided on 12.09.2014 by this Court; and

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

5. Heard counsel for the parties.

6. 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.

7. Para 5 of the counter-affidavit which reads as under:

“5. That it is submitted that the lands of village Shakurpur were notified vide Notification under section 4 of the Land Acquisition Act, 1894 dated 24.10.1961 which was followed by the Notification under section 6 of the Act dated 6.12.1966. The award was also passed vide Award No.6/84-85 dated 28.5.1984 whereby land under reference i.e. khasra number 28//18/1(3-00) and 28//18/2(1-16) were also awarded. The petitioner is claiming 96 square yards out of the khasra number 28//18, however, the petitioner has not made it clear as to in which khasra number, stated supra, he has been claiming relief of said 96 square yards. However, the possession of the above-said khasra number could not be taken nor the compensation has been paid.”

8. In the case in hand the award having been announced more than five years prior to the commencement of the Act 2013, neither the possession has been taken or compensation paid, the petitioners are entitled to declaration that the acquisition proceedings initiated under the 1894 Act, in respect of the subject land deemed to have lapsed. Ordered accordingly.

9. Accordingly, the writ petition is allowed.

CM No. 8932/2015

Interim order dated 19th May, 2015 stands confirmed.

CM disposed of.

G.S.SISTANI, J

V. KAMESWAR RAO, J

NOVEMBER 08, 2017/aky