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

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

\+ **W.P. (C.) No.8324/2014**

RAJESH SAINI ..... Petitioner

Through Mr. P.S. Bindra with Mr. Savi Abbot, Ms. Seema Saini and Mr. Prince Saini, Advocates

versus

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI & ORS. ..... Respondents

Through Mr. Siddharth Panda, Advocate for respondents no.1 and 2.
Mr. Sanjeev Sabharwal, Standing Counsel with Mr. Hem Kumar, Advocates for DDA.
Ms. Mini Pushkarna, Standing Counsel for respondent no.2/SDMC.

\+ **W.P. (C.) No.8591/2015**

AMIT KAUSHIK & ANR ..... Petitioners

Through Mr. Keshav V. Hedge, Advocate

versus

UNION OF INDIA & ANR. ..... Respondents

Through Mr. Siddharth Panda, Advocate for respondents no.1 and 2.
Mr. Arun Birbal with Mr. Rohan Mehra and Mr. Sanjay Singh, Advocates 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 two petitions have been filed under Article 226 of the Constitution of India.

2. The petitioner Rajesh Saini in W.P.(C).8324/2014 claims to be the owner of the land measuring 4 bigha 13 vishwas of Khasra no.96(4-3) and Khasra no.97/2 (0-10)situated in the revenue estate of Village Sarai Kale Khan, New Delhi(hereinafter referred to as the 'subject land'). The petitioner also claims that in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013(New Act), the acquisition stands lapsed as neither possession has been taken over nor compensation has been paid.

3. Mr. Bindra, learned counsel for the petitioner submits that Section 4 Notification was issued as far as back as on 13.11.1959, Section 6 Notification was issued on 07.12.1966 and thereafter an Award was made on 19.09.1986. He submits that in view of the construction activities being carried out over the area in question by the petitioners, the property was booked by the MCD on 13.11.2014 and part demolition was carried out on 19.11.2014. Mr. Bindra further submits that the present case is fully covered by the decision rendered in the case of ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors., reported at 2014 3 SCC 183.*** Mr. Bindra very fairly admits that there is some *inter se* disputes between the petitioner Rajesh Saini in W.P.(C).8324/2014 and the one Sh. Amit Kaushik and Sh. Yagya Dutt Kaushik, petitioners in W.P.(C).8591/2015, however, he submits that the said *inter se* disputes would be adjudicated in appropriate proceedings. Mr. Bindra has also drawn the attention of the Court to the counter affidavit filed by respondents no.1 and 2 where it is admitted that the payment of

compensation could not be paid to the recorded owners as per *Naksha Mutzamin.*

4. Mr.Bindra relies upon the decision in ***Habeeb Khan & Ors. Vs. Govt. of NCT of Delhi and Ors.***, W.P.(C) 7353/2014, particularly para 4, which reads as under:

> *"4. There is, however, one more point which needs to be considered. An objection has been raised on behalf of the respondents that all the co-owners have not been made parties to the present petition. The learned counsel for the petitioners submits that each of the petitioners has an undivided share in the entire subject land. As a result, the petition is maintainable by the petitioners on behalf of themselves as also on behalf of the other co-owners. The petition cannot be thrown out on the ground that some of the co-owners have not been made parties to this proceeding. We agree with the submission made by the learned counsel for the petitioners that since the petitioners only have an undivided share in the subject land, this petition shall enure to their benefit and also to the benefit of the other co-owners who are not before this court. We are not called upon to decide the issue of the apportionment of their shares or the inter-se claims between the co-owners. In fact we are not deciding the issue of title at all."*

5. Mr. Hedge, learned counsel for the petitioners Sh. Amit Kaushik and Sh. Yagya Dutt Kaushik in W.P.(C).8591/2015 claims that the names of the petitioners find mentioned in the Revenue records. However, it is the case of the petitioner Rajesh Saini in W.P.(C).8324/2014 that he is in possession as he has Bhumidari rights and is shown as cultivator of the land and thus, is a person interested within the definition of

Section 3 (x) of the New Act. Learned counsels for both the writ petitioners submit that barring the *inter se* dispute they have no objection if the writ petitions are decided based on the fact that no compensation has been paid to either of them.

6. Mr. Panda, learned counsel appearing for the LAC submits that he does not dispute the basic facts with regard to Section 4 and Section 6 Notification and the Award which was rendered in the matter. Learned counsel points out that in this case after passing of the Award no.154/86-87 dated 19.09.1986, the possession of the land was taken over by the beneficiary department DDA on 22.09.1986. However, as per para 5 of the counter affidavit filed by LAC, the payment of compensation was not paid.

7. We have heard the learned counsels for the parties. Para 5 of the counter affidavit filed by LAC reads as under:

> "5. That the land in question i.e., Khasra No.96 and 97/2 admeasuring 4 bighas and 123 biswas, situated at the revenue estate of village Sarai Kale Khan, New Delhi was notified under Section 4 of Land Acquisition Act on 04.041964 followed by declaration under section 6 of Land Acquisition Act on 07.12.1966 for Planned Development of Delhi. In pursuance of said notification, notices under section 9 & 10 as provided under the Act, were issued to the interested persons, inviting the claims from all the interested persons and claims were also filed by the interested persons. The then Land Acquisition Collector passed Award No.154/86-87 dated 19.09.1986 after considering the claims of the claimants. Further, possession of the land in question was taken over by the beneficiary department on 22.09.1986. The payment of compensation with respect to the above said land could not be paid to the recorded owners as per Naksha Mutzamin.''

8. 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.*
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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, 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. It is not in dispute that no compensation has been paid to any of the co-owners. Having regard to the fact that the compensation was not paid to the petitioners, the prayer made by the petitioner Rajesh Saini in W.P.(C).8324/2014, who is the owner of the land, is allowed.

10. The acquisition pertaining to the land measuring 4 bigha 13 vishwas of Khasra no.96(4-3) and Khasra no.97/2 (0-10) situated in the revenue estate of Village Sarai Kale Khan, New Delhi is deemed to have lapsed.

11. In view of the orders passed in W.P.(C).8324/2014, counsel for the petitioners in W.P.(C).8591/2015 submits that the *inter se* disputes between the parties would be adjudicated in appropriate court of jurisdiction and does not press this petition.

12. The W.P.(C).8591/2015 is dismissed as not pressed.

13. CM.APPLs 18640-18641/2015 and 6179/2016 also stand dismissed as not pressed.

G.S.SISTANI, J.

V.KAMESWAR RAO, J.

OCTOBER 30, 2017
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