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

% *Date of Judgment: 20th November, 2017*

+ W.P. (C.) No.9133/2014

ZILE SINGH

..... Petitioner

Through Mr. Vishal Maan, Advocate

versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

Through Mr. Siddharth Panda, Advocate for
respondents no.1 and 2/L&B/LAC.
Ms. Mrinalini Sen Gupta, Advocate
and Ms. Sarita Panda, 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 petitioner seeking a declaration that the acquisition proceedings in respect of the land of the petitioner measuring 6 bigha 4 biswas comprised in Khasra no.973/min situated in the revenue estate of village Mehrauli, New Delhi acquired under the Land Acquisition Act, 1894 has 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. Mr. Maan, learned counsel for the petitioner submits that a Section 4 Notification was issued in the year 1971 bearing no.F.9(57)/70-L&B(IV). Notification bearing no. F.9(57)/70-L&B(VI) was issued

under Section 6 and 17 of the Land Acquisition Act, 1894 on 08.09.1971. An Award bearing no.17/1972-73 was made on 28.06.1972.

3. The petitioner has taken a categorical stand in the writ petition that despite the Award having been made, the compensation amount was never offered/tendered or paid to the predecessors in interest of the petitioner and the other co-owners of the land in question. Though, it is fairly admitted that the physical possession was taken by the respondents authorities in the year 1972 itself. Counter affidavit has been filed. As per the stand taken by the DDA, the possession was taken over by the L&B Department and handed over to the DDA and the DDA in turn transferred the said land to the Horticulture Department on 20.03.1982.
4. Mr. Panda, learned counsel for the LAC contends that no relief can be granted to the petitioner in view of the fact that the amount of compensation to be paid stands deposited in the court of the ADJ, i.e., the reference court on 01.08.1972 and, thus possession having been taken, amount having been tendered, the writ petition is liable to be dismissed.
5. Along with the rejoinder, the petitioner has filed a photocopy and typed copy of the extract of the payment register obtained from the court of Nazir of the ADJ to show that an amount of Rs.18908.76 was deposited in the court of ADJ. Mr. Maan submits that this amount was returned by the Court to the LAC with interest amounting to Rs.25840.82 on 06.06.1978.

6. It may be noted that the matter was heard in part on 31st October, 2017 and thereafter it remained on board to enable the counsel for the LAC to obtain instructions more particularly with respect to the photocopy and typed copy of the extract of the payment register obtained by the petitioner from the Court of Nazir of the ADJ to show that an amount of Rs.18908.76 was deposited in the Court of the ADJ by the LAC and an entry to show that the aforesaid amount with interest amounting to Rs.25840.82 was returned on 6th June, 1978. Mr. Panda has further submitted that position is no different today as no further information could be gathered in this context.
7. Mr. Maan, learned counsel for the petitioner contends that the counter-affidavit has been filed by the DDA in para 2 of the preliminary submissions, it has been stated that the possession of the subject land was taken and handed over to the Horticulture Department. It is thus, the case of the DDA after taking possession the land has been put to use. As per the stand of the LAC the compensation with respect to the land was sent to the Court of ADJ on 1st August, 1972.
8. We have heard learned counsel for the parties and considered their rival submissions.
9. It is the contention of Mr. Maan, learned counsel for the petitioner that since compensation has not been paid to the owners, 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. In the alternate Mr. Maan has submitted that in case the land has been put to use by the beneficiary department as claimed by them the petitioner would be

entitled to compensation under the New Act. He submits that in the absence compensation having been tendered to the petitioner, no benefit can accrue to the LAC to show that the compensation was sent to the Court of the ADJ.

10. Reliance is also placed on the decision of the Supreme Court in the case of ***Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors.*** reported in (2014) 3 SCC 183, in Paras 14 to 20, which are reproduced as under, we are of the view that the present petition is liable to be allowed:

“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.”

11. We are unable to accept the submission made by counsel for the LAC that merely because the compensation amount was sent to the Court of the ADJ, it would absolve the LAC of its liability to pay the compensation.
12. Having regard to the stand taken by the respondents, we are of the view that since the land has been put to use, the acquisition proceedings would not lapsed but the petitioner would be entitled to compensation under the New Act.
13. Accordingly, the writ petition is allowed in above terms.

G.S.SISTANI, J.

V.KAMESWAR RAO, J.

NOVEMBER 20, 2017/aky