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

% *Date of Judgment: 01st November, 2017*

+ **W.P. (C.) No.9319/2014**

PURHPA SUD

..... Petitioner

Through Mr. Gaurav Gupta and Mr. Omar
Hoda, Advocates

versus

THE GOVT. OF NCT & ORS

..... Respondents

Through Ms. Jyoti Tyagi, Advocate for
Mr. Yeeshu Jain, Standing Counsel,
for L&B/LAC.
Mr. Sanjeev Sabharwal, Standing
Counsel with Mr. Hem Kumar,
Advocate for DDA.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V.KAMESWAR RAO

G.S.SISTANI, J. (ORAL)

CM.APPL 1970/2017(delay)

1. This is an application filed by the petitioner seeking condonation of 121 days delay in filing the rejoinder.
2. Notice. Counsels for the respondents accepts. The prayer made in this application is not opposed.
3. Accordingly, the delay in filing the rejoinder is condoned.
4. The application stands disposed of.

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5. Rule DB.

6. With the consent of the parties, the present writ petition is set down for final hearing and disposal.
7. The petitioner has filed the present writ petition under Article 226 of the Constitution of India seeking a declaration that the acquisition proceedings with respect to the land of the petitioner comprised in Khasra no.1715/1 (1-2), 1714/2(4-7) measuring 5 bigha 9 biswas situated in the revenue estate of village Chattarpur, Tehsil Hauz Khas, New Delhi 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'), as neither compensation has been tendered, nor possession of the said land has been taken over.
8. Counsel for the petitioner submits that the case of the petitioner 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.***
9. Counter affidavit has been filed by the LAC wherein it has been fairly admitted in paragraph 7 "that as per revenue record the possession of the land bearing Khasra No.1715/1(1-2) and 1714/2(4-7) has not been taken". As far as the payment of compensation is concerned, para 8 of the counter affidavit states that "the compensation amount of Rs.2,14,292.38/- in the name of Sh. Arvind Malhotra was sent to the ADJ Court vide cheque No.456956 dated 27.12.2013". Thus, the petitioner would not be entitled to any relief.
10. Today in Court, learned counsel for the LAC clarifies that, in fact, the amount was deposited pursuant to directions passed by the Delhi High

Court on filing of CM(M).1411/2013. It is also clarified by learned counsel for the LAC that on account of intervening holidays, the amount could not be deposited in the referral court and the Vacation Judge of the Delhi High Court allowed deposit of compensation on the same day.

11. Section 24(2) of the New Act 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.”

12. It is no longer *res integra* that in case either of the two conditions as per Section 24(2) of the New Act are not met the acquisition proceedings are liable to lapse. In the present case, the respondents have admitted that possession of the subject land has not been taken. In our view, on this ground alone, the writ petition is liable to be allowed. However, the objection raised with regard to deposit of the compensation in the referral court, in our view, cannot be accepted.

13. An identical question had come up for consideration before a Division Bench of this Court in the case of ***Gyanender Singh & Ors. v. Union of India & Ors.*** in W.P.(C).1393/2014 decided on 23.09.2014, paragraphs 5 and 6 read as under:

“5. In Pune Municipal Corporation (supra), the Supreme Court clearly set out the circumstances under which compensation could be regarded as having been paid. The relevant paragraphs of the said decision are 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.

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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 the 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."

It is absolutely clear from the above extracts that unless and until the compensation is tendered to the persons interested, mere depositing of the compensation in the court would not be sufficient. To be clear, compensation cannot be regarded as having been paid merely on the deposit of the same in court

unless and until it has first been offered to the person interested and he has refused to accept the same. In the present case, it is an admitted position that the compensation amount was tendered in this court without first being offered to the persons interested (petitioners). Therefore, in view of the clear dictum of the Supreme Court in *Pune Municipal Corporation* (supra), such deposit of compensation in court cannot be regarded as a payment of compensation as contemplated under the provisions of Section 24(2) of the 2013 Act. The Supreme Court has categorically held 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 a reference under Section 18 can be made on the happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act. The contention of Mr Poddar, the learned senior counsel, appearing in this matter, that compensation has first to be offered to the interest person is not a mandatory requirement is without any substance and is in clear contradiction to the ruling of the Supreme Court which has construed the expression of compensation having been paid in the context of Section 24(2) of the 2013 Act.

6. In view of the foregoing as compensation has not been paid to the petitioners and the award has been made more than five years prior to the commencement of the 2013 Act, the subject acquisition as per award No. 15/87-88 dated 05.06.1987 and award No. 24/87-88 dated 09.07.1987 in respect of the Khasra Nos. 347, 350, 918/1, 918/2, 922, 923, 929, 930, 932/1 and 941 of Village Chatterpur totaling 28 bighas and 14 biswas shall be deemed to have lapsed. It is declared as such.”

14. In our view, the present case is fully covered by the decision rendered by the Division Bench of this Court in the case of *Gyanender Singh & Ors.* (supra). The compensation deposited in the referral court without tendering the same at the first instance to the owners as held does not amount to compensation having been tendered. Since neither

possession of the land in question was taken nor compensation tendered, acquisition proceedings with respect to the land of the petitioner comprised in Khasra no.1715/1 (1-2), 1714/2(4-7) measuring 5 bigha 9 biswas situated in the revenue estate of village Chattarpur, Tehsil Hauz Khas, New Delhi stand lapsed.

15. Resultantly, the petitioner must succeed. The petitioner is thus, entitled to declaration that the acquisition proceedings with respect to the subject land initiated under the Land Acquisition Act, 1894 are deemed to have lapsed. Ordered accordingly. Rule is made absolute.
16. The writ petition stands disposed of. No orders as to costs.

CM.APPL 21110/2014(stay)

17. Interim order dated 24.12.2014 is confirmed.
18. The application stands disposed of.

G.S.SISTANI, J.

V.KAMESWAR RAO, J.

NOVEMBER 01, 2017

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