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

% *Date of decision: 21st November, 2017*

\+ W.P.(C) 11469/2016

GAURAV ..... Petitioner

Through: Ms. Anukriti Pareek, Adv.

Versus

UNION OF INDIA & ORS ..... Respondents

Through: Mr.Sanjay Kumar Pathak, Mr. Sunil Kumar Jha and Mr. Kushal Raj Tater, Advs. for LAC/L&B/GNCTD.
Mr. Kush Sharma and Mr. Lalit Sharma, Advs. for R2.
Mr. S.K. Sethi and Ms. Dolly Sharma, Advs. for R3.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE V. KAMESWAR RAO

G.S.SISTANI, J (ORAL)

1. With the consent of the parties, the writ petition is set out for final hearing and disposal.

2. Petitioner seeks a declaration that the acquisition proceedings with respect to a land comprised in Khasra No. 629/2, total admeasuring 5 Bigha 11 Biswas situated in the revenue estate of village Roshanpura, Delhi to the extent of share owned by the petitioner (hereinafter referred to as subject land) is deemed to have lapsed as neither compensation has been paid nor possession has been taken. Notification under Section 4 of the Land Acquisition Act, 1894 was issued on 7th April, 2006 followed by Declaration

under Section 6 on 4th April, 2007 and Award bearing no. 08/2008-09/SW was passed in the year 2008. Counsel for the petitioner placed reliance on the judgment of the Supreme Court of India in the case of ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors., 2014 3 SCC 183*** and other matters.

3. Counsel for the respondent has opposed this petition on the ground that the petitioner has no *locus standi* to file the present petition as the subject land vests in the Gaon Sabha. It is, however submitted that possession of the subject land could not be taken as the area was built up and the compensation has also not been paid.

4. We have heard the counsel for the parties.

5. We deem it appropriate to reproduce the stand taken by the respondent / LAC in their counter-affidavit. Para 12 of the counter-affidavit reads as under:

> *"That as regards possession and compensation it is humbly submitted that as per possession proceeding report, possession of the subject land comprised in Khasra No. 629/2 (5-11) was not taken due to built up. So far as compensation amount is concerned, it is humbly submitted that as per Statement 'A' compensation not paid because Gaurav is not recorded owner. The land is vested in Gram Sabha."*

6. Having regard to the averments made in the counter-affidavit by respondent / LAC, we are of the view that the case of the petitioner is covered by the decision rendered by the Supreme Court of India in the case ***Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors, (2014) 3 SCC 183,*** paras 14 to 21 of which reads 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, 33and 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 underSection 24(2) of the 2013 Act.

21. The argument on behalf of the Corporation that the subject land acquisition proceedings have been concluded in all respects under the 1894 Act and that they are not affected at all in view of Section 114(2) of the 2013 Act, has no merit at all, and is noted to be rejected. Section 114(1) of the 2013 Act repeals 1894 Act. Sub-section (2) of Section 114, however, makes Section 6 of the General Clauses Act, 1897 applicable with regard to the effect of repeal but this is subject to the provisions in the 2013 Act. Under Section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of 2013 Act and possession of the land is not taken or compensation has not been paid. The legal fiction under Section 24(2) comes into operation as soon as conditions stated therein are satisfied. The applicability of Section 6 of the General Clauses Act being subject to Section 24(2), there is no merit in the contention of the Corporation."

7. The aforesaid position has been reiterated by Supreme Court of India and this Court in the following cases as well:-

(1) Union of India and Ors v. Shiv 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) Girish Chhabra v. Lt. Governor of Delhi and Ors; W.P.(C).2759/2014 decided on 12.09.2014 by this Court.

8. As far as the objection raised by the counsel for the respondent with regard to the maintainability on the ground that the land vests in Gaon Sabha, counsel for the petitioner submits that despite a Decree having been passed under Section 81 of the Delhi Land Reforms Act, the same has not been executed. Thus, the petitioner would continue to remain as the owner. Moreover the possession of the land also continues to remain with the petitioner which was never been taken by the Gaon Sabha. An identical question has come up before the Coordinate Bench of this Court in the case of ***Sanjeev Solanki v. Delhi Development Authority and Ors. W.P.(C) 1999/2015,*** wherein in Para 5, this court held as under:

> *"5. While we have declared that the subject acquisition has lapsed, it is made clear that this would not amount to giving title to the petitioner or perfecting the petitioner's title inasmuch as Mr. Jain has taken the plea in the counter-affidavit filed on behalf of the respondent No.2 that the Gaon Sabha has been shown as the recorded owner. This fact is disputed by the learned counsel for the petitioner. But, we are not entering into the controversy of title which may be sorted out elsewhere. Insofar as the acquisition is concerned, the same has lapsed because neither physical possession was taken over nor compensation was paid."*

9. Similar view has been taken by another Coordinate Bench of this Court in the case of ***Ajit Singh Mann v. Union of India, W.P.(C) 7871/2014.*** Para 9 of which reads as under:

> *"9. So far as the respondent's objections with respect to the petitioner's entitlement in W.P.(C) No.7871/2014 is concerned, the Court notices that the revenue document relied upon i.e. Khatauni for the period 1984-85 clearly records that the petitioner's vendor, was the owner of the property. The petitioner acquired the property through registered sale deed on 28.06.1988. Upon these facts, the Court is unable to sustain the respondent's objection that the property had vested in the Gaon Sabha since the award determined the compensation in its favour. For the sake of proper appreciation of the facts, the Gaon Sabha was impleaded as a party i.e. the fifth respondent. The Block Development Officer representing the Gaon Sabha has filed an affidavit. The affidavit does not disclose the date of vesting of the land – after it is assumed to be on the basis that the conditions of grant violated the statutory requirement of ejectment proceedings under Section 81, had to be initiated, within the period of limitation. There is silence on these aspects in the BDO's affidavit. Consequently, it has to be held that the petitioner's claim cannot be defeated on this ground."*

10. Similar view has also been taken by this Court in the case of ***Parshottam Joshi v. Govt. of NCT of Delhi and Ors. W.P.(C) 4255/2016*** decided on 8th November, 2017.

11. In view of above discussion, the petitioner is entitled to declaration that the acquisition proceedings initiated under the 1894 Act, in respect of the subject land deemed to have lapsed. As far as the objection raised by the counsel for the respondent with respect to the ownership of the land is concerned, it is made clear that this would not amount to giving title to the petitioner or perfecting the petitioner's title. The question of title is kept

open to be decided in the appropriate court of jurisdiction. The writ petition is allowed in above terms.

G.S.SISTANI, J

V. KAMESWAR RAO, J

NOVEMBER 21, 2017/*jg*