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

% *Date of Judgment: 29th November, 2017*

+ W.P.(C) 6350/2015

NUTAN GUPTA AND ORS. Petitioners

Through: Mr.Manoj C. Mishra, Adv.

versus

UNION OF INDIA & ORS. Respondents

Through: Ms.Jyoti Tyagi, Adv. for LAC/L&B
Mr.Arjun Pant, Adv. 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 petitioners. The petitioners seek a declaration that the acquisition proceedings with respect to 1/3rd share of the petitioners in the land measuring 30 bighas 18 biswas (5 bigha 3 biswas) comprised in Khasra Nos.1372/2 (1-4), 1376/3 (1-5), 1377 (5-12), 1378 (0-10), 1379 (4-1), 1380 (4-16), 1381/1 (2-16), 1522 (4-16), 1523/1 (3-14) & 1732/1 (2-4) situated in the revenue estate of Village Malikpur Kohi @ Rangpuri, Tehsil Mehrauli, New Delhi (hereinafter referred to as the “subject land”) 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 (hereinafter referred to as “the New Act”) as the compensation with respect to the share of the petitioners in respect of the subject land has not been paid.

2. Necessary facts which are required to be noticed for disposal of the present writ petition are that a Section 4 notification of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') was issued on 23.01.1965. A Section 6 notification of the Act was issued on 26.12.1968 and an Award pertaining to the subject land was made on 30.03.1981.
3. As per the averments made in the writ petition, the father of the petitioners Mr. Bhagwat Swarup expired on 01.05.2006 and the subject land has been inherited by the petitioners being his Class-I legal heirs.
4. The counsel for LAC relies on the counter affidavit which has been filed, more particularly, paragraphs 4 and 5 in support of her contention that possession of the subject land has already been taken. However, there is no denial that compensation could not be paid and has been sent to RD. Paragraphs 4 and 5 of the counter affidavit are reproduced as under:

“4. That the present writ petition is liable to be dismissed as the petitioners have not disclosed that the answering respondent has already taken the possession of the subject land falling in village Malikpur Kohi @ Rangpuri on 31.03.1981 whereas the compensation could not be paid and sent to RD.

5. That it is submitted that the lands of village Malikpur Kohi @ Rangpuri bearing Kh. Nos. 1372/2 (1-04), 1376/3 (1-05), 1377 (5-12), 1378 (0-10), 1379 (4-01), 1380 (4-16), 1381/1 (2-16), 1522 (4-16), 1523 (3-14) & 1732/1 (2-04), were notified vide Notification under section 4 of the Land Acquisition Act, 1894 dated 23.01.1965 which was followed by the Notification under section 6 of the Act dated 26.12.1968. The Award was also passed vide Award No. 146/80-81 dated

30.03.1981 and the physical possession of the subject land was duly taken on the spot on 31.03.1981 and handed over to the DDA.”

5. The counsel for the Delhi Development Authority (DDA) has also relied on paragraphs 3(k) & 3(l) of their counter affidavit and additional affidavit filed by them in support of his plea that the possession of the subject land has been taken and has been put to use.
6. We have heard the learned counsel for the parties.
7. Having regard to the fact that admittedly compensation of the subject land has not been tendered to the petitioners, the case of the petitioners would be covered by the decision rendered by the Supreme Court of India in the case of *Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.*, reported at (2014) 3 SCC 183.

Paras 14 to 20 read 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.”

8. The counsel for the petitioners submits that since the possession of the land has been taken over, the petitioners would only seek compensation under Section 24 (2) of the New Act.
9. Having regard to the submissions made and the stand taken by the respondents in their counter affidavits, we are of the considered view that the necessary ingredients for the application of Section 24(2) of the New Act as has been interpreted by the Supreme Court of India and this Court in the following cases stand satisfied:

- (1) ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.***, reported at (2014) 3 SCC 183;
- (2) ***Union of India and Ors v. Shiv Raj and Ors.***, reported at (2014) 6 SCC 564;
- (3) ***Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors***, Civil Appeal no.8700/2013 decided on 10.09.2014;
- (4) ***Surender Singh v. Union of India & Others***, W.P.(C).2294/2014 decided on 12.09.2014 by this Court; and

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

10. In view of the discussion above, the petitioners are entitled to a declaration that the acquisition proceedings initiated under the Land Acquisition Act, 1894 with regard to the subject land are deemed to have lapsed, it is so declared.
11. The writ petition stands disposed of. No orders as to costs.

C.M.No.11552/2015 (stay)

12. The interim order dated 07.07.2015 is confirmed.
13. The application stands disposed of.

G.S.SISTANI, J.

V.KAMESWAR RAO, J.

NOVEMBER 29, 2017

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