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

% *Date of Judgment: 13th December, 2017*

\+ **W.P. (C.)11476/2016**

EMINENT MARKETING PVT. LTD. ..... Petitioner
Through Mr. Sudhir Nandrajog, Senior Advocate with Mohammad Shariq, Advocate

versus

UNION OF INDIA & ORS. ..... Respondents
Through Mr. Sanjay Kumar Pathak, Ms. Kou7mudi Kiran Pathak and Mr. Kushal Raj Tater, Advocates for L&B/LAC.
Ms. Mrinalini Sen and Mr. Shatrajit Banerji, Advocates for DDA.

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 down for final hearing and disposal.

2. This is a petition under Article 226 of the Constitution of India filed by the petitioner. The petitioner seeks a declaration that the acquisition proceedings with respect to the land of the petitioner comprised in Khasra no.22//14/1min(2-8), 15//1/1(0-4),16/2(3-18) and

17(4-12) measuring 62 bighas 08 biswas, situated in the revenue estate of village Dhoolsiras, New Delhi (hereinafter referred to as the 'subject land') is deemed to have lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013(New Act), as the neither the compensation has been paid to the petitioner nor the possession has been taken.

3. The necessary facts to be noticed for disposal of this writ petition are that a notification under Section 4 of the Land Acquisition Act, 1894(hereinafter referred to as the 'Act') was issued on 07.04.2006, a Section 6 notification of the Act was issued on 04.04.2007 and thereafter, an Award bearing no.09/2008-09 was pronounced on 26.12.2008. The possession of the land was, however, taken on 27.09.2012.

4. Mr. Nandrajog, learned Senior Counsel for the petitioner submits that the fact that the compensation has not been paid, the case of the petitioner stands fully 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. Learned Senior Counsel further submits that the objection raised that the land is vested with the Gaon Sabha is factually incorrect and is not borne out from the revenue record. Reliance is placed on the Khatoni of the year 2002-2003, copy of which has been placed on record which shows the name of the petitioner. Reliance is also placed on the notice under Section 9 and 10 of the Act, a copy whereof has also been placed on record, which shows that the same has been

addressed to the petitioner herein. Learned Senior Counsel submits that though a decision was taken on 27.09.2012 to take over the land of the petitioner, but the petitioner continues to remain in actual physical possession of the land.

5. Learned counsel for the LAC has drawn the attention of the Court to paragraphs 7 and 8 of the counter affidavit filed by the LAC to show that the possession of the land has been taken.

6. We have heard the learned counsels for the parties. Paragraphs 7 and 8 of the counter affidavit filed by LAC read as under:

> "7. That vast tract of the land including the subject land comprised in khasra Nos.22//17(4-12), 16/2 (3-18), 15/2/1(0-4), 14/1(2-8) total admeasuring 11 bigha 2 biswas situated in the revenue estate of village Dhoolsiras, New Delhi was notified for acquisition for public purpose vide notification dated 07.04.2006 issued under Section 4 of the Old Act followed by declaration issued under section 6 dated 04.04.2007 and Award No.09/2008-09 dated 26.12.2008 in respect of the land of the petitioners and other acquired land.
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> 8. That as regards possession and compensation it is humbly submitted that as per possession proceeding report, possession of the subject land comprised in khasra Nos.22//17(4-12), 16/2 (3-18), 15/2/1(0-4), 14/1(2-8) total admeasuring 11 bigha 2 biswas was taken on 27.09.2012. It is humbly submitted that petitioner is not the recorded owner. The land vests in Gaon Sabha. Gaon Sabha should be impleaded as a party."

7. A reading of the counter affidavit would show that there is no averment with regard to the payment of compensation having been

paid to the petitioner herein, although an assertion has been made that the land vests with the Gaon Sabha. However, the counter affidavit does not deal with the Khatoni, copy whereof has been annexed to the writ petition and it does not deal with the fact that a Section 9 and 10 notice of the Act was issued to the petitioner. No counter has been filed by the DDA, although counsel submits that comments have been received that the possession has been taken over, but there is no instructions whether the land has been put to use or not.

8. Having regard to the fact that neither in the counter affidavit nor during the course of hearing it has been contended that the compensation has been paid to the petitioner, in our opinion, the case of the petitioner is fully covered by the decision rendered by the Apex Court in the case of ***Pune Municipal Corporation & Anr.*** (supra). 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.
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> 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. Having regard to the facts noted hereinabove and the stand taken by the LAC in the counter affidavit, 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 petitioner is 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 petition stands disposed of.

G.S.SISTANI, J.

V. KAMESWAR RAO, J.

DECEMBER 13, 2017
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