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

% *Date of Judgment: 05th December, 2017*

+ W.P.(C) 11423/2016

MOHD ABUL FAZAL FAROOQI Petitioner

Through: Mr. S.K. Rout, Adv.

versus

UNION OF INDIA AND ORS Respondents

Through: Mr. Yeeshu Jain, Standing Counsel
for LAC/ L&B with Ms. Jyoti Tyagi,
Adv.

Mr. Dhanesh Relan and Ms. Gauri
Chaturvedi, Advs. for DDA

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V.KAMESWAR RAO

G.S.SISTANI, J. (ORAL)

1. Counter affidavit has been handed over in Court by Mr. Jain, learned Standing Counsel for LAC. The same is taken on record. Copy is supplied to Mr. Rout.
2. With the consent of the learned counsel for parties, the petition is set down for final hearing and disposal.
3. This is a petition under Article 226 of Constitution of India filed by the petitioner seeking a declaration that the acquisition proceedings with respect to the land measuring 5 bighas 18 biswa bearing Khasra No. 235 (05-18), Village Okhla, District South-East, New Delhi (hereinafter referred to as 'subject land') is deemed to have been 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 'New Act'), as neither possession of the land has been taken over nor compensation has been paid. Counsel for the petitioner submits that the land acquisition collector has also stated in Para 6 of the counter-affidavit that the possession has not been taken and compensation has not been paid as Statement 'A' and *Naksha Muntazamin* is not traceable.

4. Mr. Jain, learned counsel for the LAC relies on Para 6 of the counter-affidavit. Additionally, he submits that the petitioner is only a cultivator and is not entitled to the relief so claimed by him.
5. We have heard the learned counsel for the parties. In this case, a notification under Section 4 of the Land Acquisition Act, 1894 was issued on 23.06.1989, Sections 6 and 17 notification was issued on 22.06.1990. An award was announced on 19.6.1992 being Award No. 17/1992-93.
6. The stand of the LAC is reflected in Para 6 of the counter affidavit, which reads as under:-

‘That it is submitted that the physical possession of the lands under reference could not be taken as details of khasra no. 235 not mentioned in kabza karyawahi as the original Award file is not traceable in the office of answering respondent however the possession proceedings dated 11.1.2012 and 31.12.2013 does not find mention of subject khasra number. The status of compensation could not be informed as statement 'A' and *Naksha Muntazamin* is not traceable in the office of answering respondent and present information is

furnished on basis of photocopies of available record/ documents.’

7. In response to the objection raised by Mr. Jain with regard to the ownership of the land, Mr. Rout contends that the petitioner is lawful owner and would fall within the definition of an ‘interested person’ as per the ‘New Act’. Mr. Rout has further drawn attention of the Court to Pages 31, 32 and 33 of the paper book in support of the submissions that the petitioner is the lawful owner based on a judgment and decree passed by Sub-Judge, Delhi in suit No. 74/83 dated 21.04.1984, wherein Khasra No. 235 has been mentioned. He further submits that based on this decree which has attained finality, the land stands mutated in his name. He submits that the case of the petitioner would be covered by the decision rendered by the Supreme Court of India in the case of *Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors.*, (2014) 3 SCC 183, more particularly, paragraphs 14 to 20 of the judgment, 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, 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. Taking into consideration the submissions made and the stand taken by the LAC, we are of the view that the case of the petitioner is fully covered by the decision rendered in the case of ***Pune Municipal Corporation & Anr. (Supra)***, as neither possession of the land has been taken nor compensation has been paid. We find no force in the submissions made by the Mr. Jain with regard to the ownership of the land in view of the decree passed by the Civil Court and the fact that the name of the petitioner stands mutated in the revenue record. Accordingly, the present petition is allowed. We declare that the acquisition proceedings with respect to the subject land stands lapsed.
9. This petition is disposed of.

G.S.SISTANI, J

V. KAMESWAR RAO, J

DECEMBER 04, 2017/P