

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

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Date of decision: 14th November, 2017

+ W.P.(C) 11490/2016

SUNIL KUMAR AND ORS

..... Petitioners

Through: Mr. Ashish Virmani, Adv. with
Ms. Paridhi Dixit, Adv.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Sanjay Kumar Pathak, Adv.,
Mr. Sunil Kumar Jha and
Mr. Kushal Raj Tater, Adv. for
L&B/LAC/GNCTD
Mr. Sanjeev Sabharwal, Standing Counsel for DDA
with Mr. Hem Kumar, Adv

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V. KAMESWAR RAO

G.S.SISTANI, J. (ORAL)

1. Counsel for the petitioners submits that the acquisition proceedings with respect to the land subject matter of the writ petition being 400 sq. meters of land comprised in Khasra Nos.49/5/1 measuring 2 bigha and 14 biswas, Village Palam, Delhi (hereinafter 'subject land'), is deemed to have lapsed as neither possession has been taken nor compensation paid.

2. Counsel for the petitioners submit that the case of the petitioners would be covered by the decision of the Supreme Court of India in the case of ***Pune Municipal Corporation & Anr. V. Harak Chand Misirimal Solanki & Ors(2014) 3 SCC 183.***

3. Learned counsel has also drawn attention of the Court to para 8 and 9 of the counter-affidavit, wherein it has been admitted that the amount was not tendered it was deposited in revenue deposit vide RD No. 76444 on 4th March, 1987. Para 8 and 9 of the counter-affidavit reads as under:

“8. That the subject land comprised in Khasra No. 49//5/1(2-14) situated in revenue estate of village Palam New Delhi was notified vide notification dated 27.01.1984 issued under Section 4 of the Old Act which was followed by declaration issued under Section 6 issued on 26.09.1984 and Award No.157/1986-87 was also made on 19.09.1986 with respect to the acquired land including the subject land. Possession was taken on 14.10.1986.

9. That as regards status of possession and compensation, it is humbly submitted that, as stated above, the possession of the land in question i.e. khasra no.49//5/1(2-14) was taken on 13.10.1986. The fact that the possession of the subject land has been taken is also evident from Annexure P-8 and Annexure P-9. So far as compensation amount is concerned it is humbly submitted that as per statement “A” the compensation amount was not paid to owner however it was deposited in revenue deposit vide RD No.76444 on 04.03.1987.”

4. In the case of ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors., reported at 2014 3 SCC 183***, the Supreme Court of India in paras 14 to 20 held 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."

5. We have heard learned counsel for the parties.

6. Taking into consideration, para 8 and 9 of the counter-affidavit and having regard to the fact that the compensation has not been tendered to the petitioners, the present writ petition is allowed. The acquisition proceedings with respect to the subject land are declared to have lapsed.

G.S.SISTANI, J

V. KAMESWAR RAO, J

NOVEMBER 14, 2017/aky