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

% *Date of Judgment: 02nd November, 2017*

\+ W.P.(C) 6872/2015

SURESH KUMAR ..... Petitioner

Through: Mr.Vishal Maan, Advocate

versus

GOVT. OF NCT OF DELHI AND ORS. ..... Respondents

Through: Mr.Yeeshu Jain, Standing Counsel for L&B/LAC with Ms.Jyoti Tyagi, adv. Mr.Arun Birbal, Mr.Sanjay Singh and Mr.Rohan Mehra, Advocates for DDA.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V. KAMESWAR RAO

G.S.SISTANI, J. ***(ORAL)***

1. The petitioner seeks a direction to declare the entire acquisition proceedings in respect of land of the petitioner admeasuring 1 bigha 9 biswas comprised in Khasra No.1148 (2-18), New Khasra Nos.395 and 114, situated in revenue estate of village Mehrauli, New Delhi (hereinafter referred to as subject land') under the Land Acquisition Act,1894 to have lapsed in view Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013 (hereinafter referred to as 'New Act'). The petitioner claims to be one of the co-owners in the land in question. It is also claimed that the land is undivided till date and thus, the petitioner has an undivided interest in the entire and every parcel of the

land in question along with the other co-owners and he does not have any adverse interest against the co-owners or their shares. It has also been claimed that this writ petition has been filed for the benefit of the co-owners of the land in question.

2. Learned counsel submits that in this case notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 were issued on 23.01.1965 & 07.12.1966 respectively. A supplementary award bearing no.80E/1970-71 was made. It is also the case of the petitioner that despite the award having been made neither the petitioner nor his predecessor-in-interest have been paid compensation although all the parts of the land falling in Khasra no.395 was taken but was not put to any use. Counsel for the petitioner further submits that even as per the stand taken by the LAC in their counter affidavit, the compensation was not tendered to the recorded owners and the same was sent to the Revenue Deposit (RD). Mr.Maan submits that case of the petitioner is covered by the decision rendered in ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.,*** 2014 3 SCC 183. He also relies on decision in (i) ***Union of India and Ors v. Shiv Raj and Ors.,*** (2014) 6 SCC 564, (ii) ***Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors,*** Civil Appeal no.8700/2013 decided on 10.09.2014**;** (iii) ***Surender Singh v. Union of India & Others,*** W.P.(C).2294/2014 decided on 12.09.2014 by this Court; and (iv) ***Giri Chhabra v. Lt. Governor of Delhi and Ors*****;** W.P.(C).2759/2014 decided on 12.09.2014 by this Court.

3. Mr. Birbal appearing for DDA submits that physical possession of the land was handed over to the DDA by the LAC department on

23.09.1981. Another submission has been made by Mr.Birbal with regard to the maintainability of this writ petition on the ground that the writ petition has not been filed by all the co-owners.

4. We have heard the learned counsels for the parties. Having regard to the fact that the compensation with regard to the subject land was not tendered, the case of the petitioner would be fully covered by the decision rendered by the Apex Court 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.*
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> *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. As far as the objection raised by the learned counsel for the respondent with regard to maintainability of the writ petition on account of all the co-owners not being impleaded as parties is concerned, a similar question had arisen for consideration in the case of ***Habib Khan & Ors. v. Govt. of NCT of Delhi & Ors.*** W.P.(C) 7353/2014, para 4 of which reads as under:

> *"4. There is, however, one more point which needs to be considered. An objection has been raised on behalf of the respondents that all the co-owners have not been made parties to the present petition. The learned counsel for the petitioners submits that each of the petitioners has an undivided share in the entire subject land. As a result, the petition is maintainable by the petitioners on behalf of themselves as also on behalf of the other co-owners. The petition cannot be thrown out on the ground that some of the co-owners have not been made parties to this proceeding. We agree with the submission made by the learned counsel for the petitioners that since the petitioners only have an undivided share in the subject land, this petition shall enure to their benefit and also to the benefit of the other co-owners who are not before this court. We are not called upon to decide the issue of the apportionment of their shares or the inter-se claims between the co-owners. In fact we are not deciding the issue of title at all."*

6. In view of the observation made in the case of ***Habib Khan****(supra)*, we find that the objection raised by Mr. Birbal is unacceptable.

7. 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.**

8. In view of the discussion above, the petitioner is entitled to a declaration that the said acquisition proceedings initiated under the Land Acquisition Act, 1894 with regard to the subject land are deemed to have lapsed. It is so declared.

9. The petition stands disposed of. No order as to costs.

G.S.SISTANI, J

V. KAMESWAR RAO, J

NOVEMBER 02, 2017
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