

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

% *Date of decision: 15th December, 2017*

+ W.P.(C) 7152/2015

RATTAN SINGH & ORS

..... Petitioners

Through: Mr. Aagney Sail, Adv.

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi, Adv. for
L&B/LAC
Ms. Renuka Arora and Ms. Nikita
Salwan, Advs. for DSIIDC

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V. KAMESWAR RAO

G.S.SISTANI, J. (ORAL)

1. This is a petition filed by the petitioners under Article 226 of the Constitution of India seeking a declaration that the acquisition proceedings with respect to the agricultural land of the petitioners comprised in Rectangle No. 14 in Khasra Nos. 18(4-16), 19(6-11), 22(4-07), 23(4-16); Rectangle No. 33 in Khasra No. 12/1(1-09) and Rectangle No. 14- Khasra No.24/2(0-16), situated in the revenue estate of village Karala, Delhi (hereinafter referred to as “the subject

land”) 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”) stands lapsed, as neither physical possession has been taken nor compensation paid.

2. The necessary facts to be noticed for disposal of the writ petition are that a notification under Section 4 of the Land Acquisition Act, 1894 was issued on 25th August, 2005. Section 6 declaration was made on 10th July, 2006 and thereafter an Award was pronounced on 26th May, 2008. The petitioners claim to be the owners and in actual physical possession of agricultural land in Village Karala in Rectangle No. 14 in Khasra Nos. 18(4-16), 19(6-11), 22(4-07), 23(4-16); Rectangle No. 33 in Khasra No. 12/1(1-09) and Rectangle No. 14 in Khasra No.24/2(0-16).

3. Counsel for the Land Acquisition Collector relies on para 5 of the counter-affidavit in support of her submission that the possession of the land has been taken and handed over to the DSIIDC and compensation has been paid to the petitioner Nos.1 to 4. However, compensation would be paid to petitioner Nos. 5 and 6. Counsel for the LAC also relies on a decision rendered in the case of **Bhagwan Singh vs. Government of NCT of Delhi & Ors.** in W.P.(C) 7151/2015 decided on 3rd August, 2017. She submits that this writ petition pertains to the same award and a Co-ordinate Bench of this Court had rejected the relief to the said petitioners as the petitioners had accepted the Special Rehabilitation Package (SRP) which is an additional benefit given to the land owners

covered by the acquisition. Relying on the aforesaid decision and the terms of Special Rehabilitation Package, Ms. Tyagi submits that the petitioner Nos. 1 to 4 cannot claim that they are in physical possession of the subject land and have share in the subject land. Mr. Arora also support the submission so made by Ms. Tyagi in this respect.

4. Learned counsel for the petitioners contends that as far as petitioner Nos. 5 and 6 are concerned, they have not received any compensation nor they had accepted any Special Rehabilitation Package and that they are in actual physical possession of the subject land and thus, the acquisition proceedings qua their share in the land is liable to lapse. He relies upon the decisions of this Court in the case of ***Vikram Mathur & Ors. vs. Government of NCT of Delhi & Ors.*** in W.P.(C) 7159/2015 and ***Tika Ram & Ors. vs. Govt. of NCT of Delhi & Ors.*** in W.P.(C) 7148/2015, wherein in almost identical facts, it has been held that the acquisition proceedings qua the land of the petitioners therein would lapse.

5. We have heard learned counsel for the parties and considered their rival submissions.

6. Para 5 of the counter-affidavit filed by the LAC reads as under:

“5. That the present writ petition is also liable to be dismissed as the physical possession of the land under reference was duly taken on 29.07.2008 on the spot by preparing possession proceeding and was handed over to the DSIIDC on the spot as the purpose of the notification was ‘Development of Industrial Plots’. It is submitted that the recorded owner of the subject land i.e., Kh. No. no.

14//19 min (1-06), 33//12/1 (1-09), total (2-15) and kh. No. 14//24/2 (0-16) are acquired vide award no. 3/08-09, village Karala. The possession of these kh. No. taken on 29/07/08. Ownership lies with Rattan Singh & Rajender Singh S/o Mahabir Singh (1/4 share each) at item no. 162/1-2 & 163/1-2 for (02-15) land and 1/6 share each at item no. 288/1 and 288/2 for (0-16) land respectively. The awarded compensation to the tune of Rs.3,66,704/- each has been paid vide cheque no. 733783-784 dated 30/03/2009 for 1/4 share of (2-15) land and Rs.71,118/- each vide cheque no. 734276-277 dated 12/06/2009 for 1/6 share of (0-16) land. Further, even Special Rehabilitation Package (SRP), as announced by the GNCT of Delhi as enhanced compensations to the tune of Rs.3,19,991/- each has been paid vide cheque no. 295323 dated 30/03/2009 & Ch. No. 929292 dated 29/11/2011 for 1/4 share of (2-15) land and 62,058/- each vide cheque no. 929610-611 dated 20/12/2011 for 1/6 share of (0-16) land.

The kh. No. 14//18 (4-16), 19 (6-11), 22 (4-07), 23 (4-16), 33//12/1 (1-09), total (21-19) are required vide award no. 3/08-09, village Karala. The possession of these kh. No. taken on 29/07/08. Ownership lies with Naresh Kumar, Krishan Kumar & Satyanarain s/o Maha Singh (1/8 share each) at item no. 164, 166 & 167 respectively. The awarded compensation to the tune of Rs.14,64,807/- each vide cheque no. 260212-213 dated 07/07/2011 has been paid for item no. 164 & 166. The awarded payment of item no. 167 in respect of Satya Narain has not been received.

Further, even Special Rehabilitation (SRP), as announced by the GNCT of Delhi as enhanced compensations to the tune of Rs.12,77,051/- each vide cheque no. 935219-220 dated 14/09/2012 has been paid for item no. 164 & 166. The SRP payment of item no. 167 in respect of Satya Narain has not been received.

Thus the contention of the petitioner today that actual physical possession of the land was not taken holds no truth in it as it was only pursuant to the taking of actual physical possession of the land under reference, the

petitioner applied for release of compensation and also availed the benefits of enhanced compensation under special rehabilitation package.

Needles to say that the petitioner is making fool of the system and also the judicial process by first resorting to accept the compensation and thereafter the enhanced compensation and thereafter portraying as innocent villager who does not know as to for which reasons, he approached the Government and requested for release of compensation and also enhanced compensation.”

7. As far as the petitioner Nos. 1 to 4 are concerned, we are of the view that no relief can be granted to them as not only compensation has been paid to the petitioner Nos. 1 to 4 but also they have derived benefit of the Special Rehabilitation Package. We have also examined the undertaking submitted by the petitioner Nos.1 to 4 at the time of accepting the Special Rehabilitation Package. Clause 10 of the Undertaking, reads as under:

“10. That on my above, undertaking and acceptance of compensation including special rehabilitation package, all my rights qua the acquired land shall cease. Hence no cause of action shall arise for agitating the matter in any court of law, or authority of authorities. I may, therefore, be disbursed the rehabilitation package towards full and final settlement in respect of my acquired.”

8. While accepting the Special Rehabilitation Package, the petitioner Nos. 1 to 4 have given up all their rights qua the acquired land and given an undertaking that no cause of action shall arise for agitating the matter in any court of law. Having regard to the fact that the petitioner Nos.1 to 4 have not only received compensation but have also received the Special Rehabilitation Package, the

submissions that they are still in the actual physical possession of the subject land is not acceptable.

9. However, as far as the petitioner Nos. 5 and 6 are concerned, admittedly they have not received the compensation neither any Special Rehabilitation Package nor any undertaking has been given by them. Resultantly, the case of petitioners no.5 and 6 would be fully covered in the decision rendered by the Supreme Court of India in the case of ***Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal 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."

10. The writ petition is allowed. The acquisition proceedings qua the subject land of the petitioner Nos. 5 and 6 alone would stand lapsed.

G.S.SISTANI, J

V. KAMESWAR RAO, J

DECEMBER 15, 2017/aky

