

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

% Date of decision: 9th November, 2017

+ W.P.(C) 8406/2015

M/S NATURE TECH BUILDERS LTD.

..... Petitioner

Through: Mr. N.S. Vasisht, Adv., Mr. Vishal Singh and
Ms. Jyoti K. Bajaj, Advs.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Yeeshu Jain, Standing Counsel with Ms. Jyoti
Tyagi, Adv. for L&B/LAC
Mr. Dev P. Bhardwaj CGSC for UOI
Mr. Arjun Garg, Adv. for Mr. Sushil Dutt Salwan,
Adv. 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 prays that the acquisition proceedings with respect to 4 Bigha of land measuring 200 sq. yards comprised in Khasra No.1462 described as Plot No.26, Janak Park, Hari Nagar, New Delhi stands lapsed as admittedly possession of 16 Biswas could not be taken on account of the area being built up.

2. Counsel for the petitioner submits that the Section 4 notification was issued on July 06, 1966 and Section 6 notification was issued on December 05, 1966 and Award No.2177 (supplementary) was also made on March 10, 1970. The petitioner claims to be the owner by virtue of sale deed executed in his favour on October 30, 2012.

3. The present petition is opposed by the learned counsel appearing for the LAC on the ground that the petitioner is not the original owner of the land in question and further there is no indication in the sale deed that the area in question was a subject matter of acquisition proceedings.

4. Mr. Vasisht submits that the case of the petitioner is fully covered by the decision of the Supreme Court in the case of ***Pune Municipal Corporation & Anr. V. Harak Chand Misirimal Solanki & Ors***(2014) 3 SCC 183 and other decisions as detailed below to submit that the acquisition proceedings would lapse:

(1) ***Union of India and Ors v. Sshiv Raj and Ors., reported at (2014) 6 SCC 564;***

(2) ***Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors, Civil Appeal no.8700/2013 decided on 10.09.2014;***

(3) ***Surender Singh v. Union of India & Others, W.P.(C).2294/2014 decided on 12.09.2014 by this Court; and***

(4) ***Girish Chhabra v. Lt. Governor of Delhi and Ors; W.P.(C).2759/2014 decided on 12.09.2014 by this Court.***

5. 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.”

6. As far as the submission made by Mr. N.S. Vasisht that possession of the entire land could not be taken being built up is not disputed and in fact this is reflected in Para 7 of the counter-affidavit filed by the counsel for the LAC. The same is reproduced as under:

“7. That it is submitted that the lands of village Tihar were notified vide Notification under section 4 and 6 of the Land Acquisition Act, 1894. The Award was also passed vide Award No.2177 (Supp.) 6 and the actual vacant physical possession of the land falling in khasra number 1462 (4-00) was duly taken on the spot on 28.03.1973 and handed over to the DDA on the spot by prepariang possession proceeding on the spot. The remaining land measuring 16 biswa however could not be taken being built up. The total compensation of Rs. 38,640/- was granted out of

which Rs.27,015.80 were paid to Raj Kumari, Rs. 1610/- were paid to Jagdish Chander Kochar and Rs. 10014.20 were sent to Sh. F.S. Gill, ADJ vide cheque number 172533 dated 16.12.1970.”

7. The objection with respect to the ownership of the land raised by Mr. Jain is misplaced in view of the observations of the Supreme Court in the case of ***Government of NCT of Delhi vs. Manav Dharam Trust & Ors., 2017 6 SCC 751***, wherein in para 28 Supreme Court has held as under:

“28. Thus, the subsequent purchaser, the assignee, the successor in interest, the power of attorney, etc., are all persons who are interested in compensation/land owners/affected persons in terms of the 2013 Act and such persons are entitled to file a case for a declaration that the land acquisition proceedings have lapsed by virtue of operation of Section 24(2) of the 2013 Act. It is a declaration qua the land wherein indisputably they have an interest and they are affected by such acquisition. For such a declaration, it cannot be said that the respondents/writ petitioners do not have any locus standi.”

8. Having regard to the submissions made and the categorical admission on the part of the Land Acquisition Collector in the counter affidavit that the possession of 16 Biswas could not be taken as having built up and the petitioner is in possession of 200 sq. yard falling in Khasra No.1462 (4-00), described as Plot No.26, Janak Park, Hari Nagar, New Delhi, the acquisition proceeding qua this land would stand lapsed.

9. The writ petition is disposed of in above terms.

CM No. 17945/2015

Interim order dated 4th September, 2015 stands confirmed.

The application stands disposed of.

G.S.SISTANI, J

V. KAMESWAR RAO, J

NOVEMBER 09, 2017/aky