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

% *Date of Judgment: 10th November, 2017*

\+ W.P.(C) 9189/2015

PURAN CHANDRA MATHPAL ..... Petitioner

Through: Mr.S.K.Rout and Mr.Aman Mehrotra, Advts.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr.Siddharth Panda, Adv. for R-1 and R-2.
Mr.Dhanesh Relan, Ms.Gauri Chaturvedi and Ms.Kajri Gutpa, 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 claims to be the owner of the land measuring 200 square yards bearing Khasra no.272, House no.151, Village Jasola, District South, New Delhi. It is the case of the petitioner that the compensation of the land acquired has not been paid though possession of the land in question has been taken and also put to use. Learned counsel for the petitioner, in view of this, prays for compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013.

2. In this case, a notification under Section 4 of the Land Acquisition Act, 1894 was issued on 06.04.1964. A declaration under Section 6 of the Land Acquisition Act, 1894 was issued on 07.12.1966. An award

in respect of land of village Jasola was made by the Land Acquisition Collector vide award no.4/97-98 (suppl.) on 05.12.1997. Learned counsel for the petitioner has also brought to the notice of the Court that on 24.11.1998 the petitioner challenged the said award by filing a Writ Petition (Civil) No.4044/1998 for acquiring and setting aside the award and for restraining the respondent authorities from dispossessing the petitioner from the property in question and from carrying out demolition. A copy of the order dated 26.11.2002 has been placed on record wherein it has been held that the acquisition proceedings qua award no.04/97-98 are *non est* and non-operative qua the property of the petitioner. The petitioner filed a subsequent Writ Petition (Civil) No.13766/2009 praying that the DDA be restrained from interfering with his peaceful possession of land measuring 200 square yards falling in Khasra no.272, House no.151, Village Jasola, Delhi. A contempt petition was also filed. In the meanwhile, a Review Petition bearing no.180/2011 was filed by the DDA. The review petition was allowed vide an order dated 03.05.2012. The order passed in the review petition was challenged by the petitioner herein before the Supreme Court of India. The SLP was, however, dismissed. Learned counsel for the petitioner submits that during the hearing of the writ petition, contempt petition and review petition before the Supreme Court, at no stage any objection was raised with regard to the *locus standi* of the petitioner which is now being raised by counsel for the respondents. Counsel submits that even otherwise the case of the petitioner is fully covered by the decision of the Supreme Court of India in ***Govt. of NCT of Delhi Vs. Manav Dharma***

Trust and another, 2017 (6) SCC 751. Para 28 of this judgment reads as under :-

> *"28. Thus, the subsequent purchaser, the assignee, the successor in interest, the power-of-attorney holder, etc., are all persons who are interested in compensation/landowners/ 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 respondent-writ petitioners do not have any locus standi."*

3. Besides raising an objection with regard to the *locus standi*, counsel for Land Acquisition Collector relies on para 7 of the counter affidavit and submits that the petitioner would only be entitled to compensation. Relevant portion of para 7 of the counter affidavit reads as under:

> *"7. That in the present case, possession of 1 bigha and 9 biswa was taken over and handed over to the beneficiary department on 06.08.2009 and subsequently on 23.11.2012 for 4 biswa of land in khasra no.272 and as per Naksha Mutzamin compensation has not been paid to the recorded owners. It is further submitted that the petitioner is neither the recorded owner nor has placed on record any document to that the land has been purchased from the recorded owner. Moreover, the petitioner is a subsequent purchaser. In view of the settled position of law the subsequent purchasers are not entitled to seek a declaration of a right which may have enured to their benefit by virtue of the operation of Section 24(2) of the Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation Act, 2013. The subsequent purchasers cannot challenge the acquisition proceedings as they do not have right to seek*

release of the land in question, they are only entitled to compensation, if any payable……"

4. We have heard learned counsel for the parties.

5. Having regard to the fact that admittedly compensation has not been paid to the petitioner, we are of the view that the case of the petitioner would be covered by the judgment in ***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 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, 33and 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. Having regard to the observation made in the case of ***Manav Dharma Trust*** (*supra*), we are of the view that the objection raised by the counsel for the LAC with regard to maintainability of the writ petition is also misconceived. We also find force in the submission made by the counsel for the petitioner that in the entire proceedings filed by the petitioner, no objection was raised by the respondents with regard to the *locus standi* of the petitioner.

7. Resultantly, the writ petition is allowed. The petitioner would be entitled to compensation within a period of one year from today as per provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013.

8. The writ petition stands disposed of. No costs.

G.S.SISTANI, J.

V.KAMESWAR RAO, J.

NOVEMBER 10, 2017
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