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

% *Date of Judgment: 30th October, 2017*

\+ W.P.(C) 9210/2015

SUNIL KUMAR DHANKAR ..... Petitioner
Through: Mr. B.S. Maan with Mr. Vishal Maan, Advs.

versus

GOVT. OF NCT OF DELHI & ORS. ..... Respondents
Through: Mr. Siddharth Panda, Adv. for Respondents no.1 and 2.
Mr.Preet Oberoi and Mr.Devansh Jain, Advocates for Mr.Vaibhav Agnihotri, Advocate for DDA.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE V. KAMESWAR RAO

G.S.SISTANI, J. (ORAL)

1. Petitioner contends that the acquisition proceedings in respect of the land of the petitioner measuring 1008 square yards comprised in Khasra No. 316/274 (1-0) total measuring 1 Bigha situated in Revenue Estate of Village Said-ul-Jab, Tehsil Saket, New Delhi stands lapsed in view of Section 24 (2) of Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'New Act') in view of the fact that the compensation with respect to the subject land was not tendered. Mr. B.S. Maan, learned counsel for the petitioner has

drawn the attention of the Court to Section 24 (2) of the New Act, which reads as under:

> *"24 (2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:*
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> *Provided that where an award has been made and compensation in respect of a majority of land holding has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."*

2. Mr. Maan submits that in the present case, the compensation was never tendered to the petitioner and thus the acquisition would stand lapsed. Some necessary facts which are required to be noticed for disposal of the writ petition are that in the present case, a Notification under Section 4 of the Land Acquisition Act, 1894 was issued on 5th November, 1980 bearing No.F-9 (16)/80/L&B. A subsequent Notification No. F.9 (18) /85/L&B was issued under Section 6 of the Land Acquisition Act on 21st May, 1985. An award was thereafter made bearing no. 13/1987-1988 in the year 1987. However, it is claimed by the petitioner that compensation was neither paid to the petitioner nor deposited with the Court as mandated under Section 31 of the old Land Acquisition Act of 1894. It is also the case of the petitioner

that on 14th July, 1992 the recorded owner Sh. Biku son of Sh. Dhan Singh Jat sold and transferred the land measuring 1 Bigha, i.e. 1008 square yards out of the total land measuring 2 Bigha and 13 Biswas to Sh. Sunil Kumar Dhankar vide Registered Sale Deed dated 14th July, 1992. Possession was also handed over by the erstwhile owner to Sh. Sunil Kumar Dhankar. Subsequently, the name of Sh. Sunil Kumar Dhankar was mutated in the revenue records. Sh. Sunil Kumar Dhankar thereafter executed a Registered GPA in favour of Akhilesh Chandra in respect of 1 Bigha of the land.

3. Mr.Maan further submits that the present writ petition has been instituted by the owner of the land, through his Power of Attorney Holder. Mr.Maan has also drawn the attention of the Court to para 8 of the counter affidavit filed by the LAC in support of his submission that the compensation with respect to the land in question has not been tendered to the petitioner. Learned counsel for the LAC has opposed the present petition. It is contended by the learned counsel for the respondent LAC that firstly the petitioner is not the owner of the land in question. He is a subsequent purchaser and cannot derive benefit of 24 (2) of the New Act.

4. The second ground on which the present petition is opposed is that the compensation stands duly deposited and, thus, no benefit can be approved in favour of the petitioner in terms of Section 24 (2) of the New Act. Mr.Panda contends that on 30th December, 2013 in C.M.(Main) No.1392/2013, the answering respondent had made an application in the High Court. Leave was sought to deposit the amounts in the High Court on account of intervening holidays and the referral court was not functioning. He further submits that leave was granted and pursuance to the leave granted the

amounts were deposited. Thus, there has been a legal discharge by the answering respondent.

5. Learned counsel for the LAC has relied upon the decision rendered by the Coordinate Bench of this Court in the cases of ***M/s Orchid Realtors (P) Ltd. Vs. Union of India and Ors.***, W.P.(C) 3392/2017 and ***M/s Cosmos Realtors Pvt. Ltd. Vs. Union of India & Ors***., W.P.(C) 3393/2017, wherein the relevant portion reads as under:

> *"This Court is mindful of the declaration of law in Manav (supra). At the same time, the application of that rule has to be on case-to-case basis. In the present case, the acquisition was completed long ago, about 30 years ago. As to whether the land owners in fact got compensation is unclear. What is, however, clear is that none of the documents relied upon by the petitioners, i.e. the agreement to sell, general power of attorney or so-called registered Will which form part of testamentary documents meant to operate upon the death of its maker recite that the owners had not received compensation. On the other hand, they proceed on the assumption that the lands were never subject to acquisition. Furthermore, the right to receive compensation was not even assigned to the petitioners. In these circumstances, the petitioners cannot be considered as "person interested" under the 1894 and 2013 Act to be entitled to the relief sought. The writ petitions are accordingly dismissed."*

6. In rejoinder Mr.Maan submits that the objections raised by the respondents are baseless and unfounded. He submits that the present petition has been filed by the owner through his General Power of Attorney holder and thus, the judgment sought to be relied upon by the respondent would not be applicable to the facts of the present case. Additionally, Mr.Maan submits that in the case of ***M/s Orchid Realtors (P) Ltd.*** (*supra*) it was unclear as to whether the original owners who had sold the land 30

years ago received the compensation or not and while in the present case admittedly no compensation was legally tendered. Mr. Maan submits that deposit of the amount after seeking leave in the C.M.(Main) No.1392/2013 by the LAC cannot be treated as a valid tender for the reason that moneys can be deposited in a referral court under Section 31 of the Old Act and in case there is a dispute between the owners and after the amount is tendered and refused. In the present case no amount was tendered. There is nothing on record to show that there was dispute between the owners and there was no occasion to deposit the amount in the referral court. It is, thus, contended in the absence of compensation having been tendered to the petitioner the acquisition proceedings are liable to lapse in view of Section 24 (2) of the New Act.

7. We have heard learned counsels for the parties and given the thoughtful consideration to the matter.

8. Issuance of a notification under Section 4, 6 and publishing of an award with regarding to subject land is not in dispute. The first question which arises for our consideration is as to whether compensation was tendered to the petitioner or not. The stand taken by the LAC in their counter affidavit with regard to the deposit of the compensation in the High Court on 30.12.2013 is based on orders passed on the same date by a Single Judge of this court. An identical question had come up for consideration in the case of ***Gyanender Singh & Ors. vs. Union of India & Ors.*** W.P.(C) 1393/2014 dated 23.09.2014. The relevant paragraphs 2 and 4 read as under:

> *"2. The learned counsel for the respondents contend that possession of the subject lands were taken on 05.07.2013*

and 17.07.2013 and this fact was informed to this court in W.P.(C) No. 7057/2005 (Court On Its Own Motion). Insofar as compensation is concerned, it was contended on behalf of the respondents that the amount of compensation was deposited in this court in CM Main Nos. 1403/2013 and 1411/2013 on 30.12.2013. It was contended that as the District Courts were closed for the vacation, the same could not be deposited there and, therefore, the cheques representing the amount of compensation were deposited in this court in the above CM Main Nos. 1403/2013 and 1411/2013. Therefore, according to the respondents, the compensation had been paid to the petitioners prior to the commencement of the 2013 Act. Consequently, it was submitted that the acquisition had been completed under the Land Acquisition Act, 1894 as possession had been taken and compensation had also been paid.

4. We are informed that after the passing of the said order dated 30.12.2013, the cheques have been sent to the concerned Additional District Judges as directed by the learned Vacation Judge on 30.12.2013. It is pertinent to note that in paragraph 6 of the said order dated 30.12.2013 itself, the learned Vacation Judge took care in noting that while the petitions were disposed of, they were without prejudice of the rights and contentions of the land owners. The learned Judge also noted that the cheques tendered in the above mentioned CM Main Nos. 1403/2013 and 1411/2013 and other similar petitions would be treated as a tender to the court of the learned Additional District Judge, Delhi as on 30.12.2013."

9. In our view, the present case is fully covered by the decision rendered in the case of ***Gyanender Singh*** (*supra*) and we see no reason to differ with the view taken in the aforesaid matter. Nothing has been produced before us to show that there was an inter se dispute and the respondents were prevented from tendering the amount to the original owners. There is nothing on record to show that the amount was tendered and refused. The

deposit of the amount based on the orders passed in the C.M.(Main) No.1392/2013, in our view, is not tendered and Section 31 (2) will not be attracted as respondents have not been able to show that they were prevented from tendering the amount to the petitioner herein. The learned counsel for the respondent has relied upon a decision of ***M/s Orchid Realtors (P) Ltd.*** (*supra*). In our view, this decision would also not apply in the aforesaid matter. It was unclear as to whether the compensation was received by the original owner or not. Such a situation does not arise in the present case.

10. The objection with regard to the land having been sold, Mr.Maan has relied on the observations of the Supreme Court in the case of ***Govt. of NCT of Delhi vs. Manav Dharam Trust and Another (2017) 6 SCC 751***, para 26 of which judgment reads as under:

> *"26. The main purpose of the 2013 Act is clearly stated in the preamble which reads as follows :-*
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> > *"The Act to ensure, in consultation with institutions of local self- government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post*

acquisition social and economic status and for matters connected therewith or incidental thereto."

There is a clear indication that the Act proposes to protect the interest of those persons, among others who are affected by the acquisition. The subsequent purchasers/successors, etc., in the cases before us, are all people affected by the acquisition, and therefore, also they are entitled to seek a declaration on lapse under the 2013 Act."

11. In view of the observations of the Supreme Court of India in the case of ***Manav Dharam Trust and Anr. (supra)***, the argument of learned counsel for the respondent is liable to be rejected.

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

13. 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.

14. In the light of the above discussion, the present petition is allowed.

CM. NO. 21055/2015

Interim order dated 28^{th} September, 2015 stands confirmed.

CM disposed of.

G.S.SISTANI, J

V. KAMESWAR RAO, J

OCTOBER 30, 2017/*jg/rb*