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

% *Date of Judgment: 01st December, 2017*

+ W.P.(C) 10342/2017

M/S S.B.ELECTRIC MART (P) LTD. Petitioner

Through: Mr.B.S.Maan, Advocate

versus

GOVT.OF NCT OF DELHI & ORS Respondents

Through: Mr.Yeeshu Jain and Ms.Jyoti Tyagi,
advocates for L&B/LAC.

Ms.Shobhana Takiar, Adv. for DDA.

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 under Article 226 of the Constitution of India, the petitioner seeks a declaration that the acquisition proceedings in respect of the land of the petitioner comprise in khasra No. 1504/2 (Old)/948 (New) (1-10) and Khasra No. 1555 (Old)/1011 (New) (9-08) total measuring 10 Bighas and 18 biswas in Khewat no. 64, situated in the revenue estate of village Mehrauli, New Delhi (hereinafter referred to as 'subject land') is deemed to have lapsed in view of the fact that neither possession of the land has been taken nor compensation has been paid.
2. Mr. Maan submits that the petitioner had filed W.P. (C) 7807/2011 prior to coming into effect the Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

(hereinafter referred to as “the New Act”) for quashing of the acquisition proceedings. He submits that post coming into force the new Act, the petitioner has chosen to file a second writ petition (the present writ petition) and the earlier writ petition has been withdrawn by a separate order passed by this Court. Today along with this petition Mr. Maan placed on record the counter affidavit filed by the LAC and the counter affidavit filed by the DDA where the issue of acquisition proceeding having lapsed in view of Section 24 (2) of the New Act have been addressed by said respondents.

3. Mr. Maan submits that the LAC has very fairly stated in the counter affidavit that the compensation was not tendered to the petitioner but deposited with the RD. As for as possession is concerned, Mr. Maan submits that the possession is with the petitioner and interim order was granted in W.P. (C) 7807/2011 and the land is still lying vacant which is also evident from the reading of the counter affidavit filed by the DDA and placed on record in this petition. Mr. Maan submits that the case of the petitioner stands covered by the decision rendered in ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.***, reported at (2014) 3 SCC 183.
4. The learned counsel appearing for the DDA relies on paragraph 5 of the counter affidavit in support of her submission that the possession of the land has been taken over and handed over to the Horticulture Department of the DDA for maintaining it as green belt.
5. We have heard the learned counsels for the parties.
6. In this case a Section 4 notification was issued on 13.11.1959. A Section 6 notification was issued in the year 1966-1969. Two separate

Awards were made in the year 1983. The petitioner claims to be the owner of the land in question having purchased to same on 11.08.1960. Counsel further submits that the claim of the petitioner finds mentioned in the Award although he clarifies that after purchasing the land he had transferred the same in the name of a company in which he is the Director. There is no dispute that the compensation has not been tendered to the petitioner. Paras 2-4 of the counter affidavit read as under.

“2-4 That the contents of paras No. 2 to 4 of the application are matter of record, therefore, needs no reply. Other contents relates to the provisions of Section 24 of New Land Acquisition Act.

The details with regrard to Khasra No., award No., date of possession as well as details of compensation are given here as under:-

Khasra no.		Award No.	Date of possession	Name	Amount	Remarks
Old	New					
1504/2	948 (1-10)	83/82-83	25.03.83	S. B. Electric Pvt. Ltd.	Rs. 8560.38	Sent to RD
1555	1011 (9-08)	60/82-83	14.02.83	S. B. Electric Pvt. Ltd.	Rs. 48492.62	Sent to RD

7. As far as possession relating to the subject land is concerned, we deem it appropriate to reproduce para 5 of the counter affidavit filed by the DDA, which is reproduced as under:

“.....Since then the land is in possession of the Horticulture Department of the DDA for maintaining it

as green. So as to protect the vacant land from the encroachment. The authority has been constructing a boundary wall around the said land. Therefore, the DDA is the rightful owner and in possession of the land. It is the petitioner who has been trying to mislead the Hon'ble Court. The petitioner herein being the subsequent purchaser is not entitled to challenge the acquisition proceedings further as regard the quashing of the acquisition proceeding in Civil WP No. 889/83 & 2529/88 it is submitted that those judgments are judgments in personam & the benefit of the same can be availed by the petitioners there in only and the present petitioner cannot claim the benefit of the same.”

8. As per the averment made in the counter affidavit of the DDA, the possession of the land was handed over to the Horticulture Department for maintaining it as green belt so as to protect the land from encroachment. Reading of the aforesaid paragraph shows that the land has not been put to use.
9. The case of the petitioner is fully covered by the decision rendered by the Supreme Court of India in the case of ***Pune Municipal Corporation*** (supra). 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 counsel for the petitioner submits that since the compensation has not been tendered nor possession of the land has been taken over, the petitioner would be entitled to a declaration and compensation under Section 24 (2) of the New Act.
11. 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.

12. In view of the discussion above, the petitioner is entitled to a declaration that the acquisition proceedings initiated under the Land Acquisition Act, 1894 with regard to the subject land are deemed to have lapsed. It is so declared.
13. The writ petition stands disposed of. No orders as to costs.

G.S.SISTANI, J

V. KAMESWAR RAO, J

DECEMBER 01, 2017

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