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

% *Date of Judgment: 18th December, 2017*

+ **W.P. (C.)10858/2015**

J.N. CHAMBER AND ANR. Petitioners
Through Ms.Deepika V. Marwaha and Mr.
V.K. Shailendra, Advocates

versus

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI AND ORS Respondents
Through Mr. Yeeshu Jain, Standing with Ms.
Jyoti Tyagi, Advocate for L&B/LAC.
Mr. Dhanesh Relan and Ms. Gauri
Chaturvedi, Advocate 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 filed by the petitioners. The petitioners seek a declaration that the acquisition proceedings with respect to the land of the petitioners comprised in Khasra no.1291 min measuring 2 bigha 8 biswa, situated in the revenue estate of village Malikpur Kohi @ Rangpuri, New Delhi (hereinafter referred to as the 'subject land') is deemed to have lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013(New Act), as neither the possession has been taken nor the compensation has been paid to the petitioners.

2. The necessary facts to be noticed for disposal of this writ petition are that the petitioners, who are father and son, claim to have become owners of the subject land by virtue of two Sale Deeds both dated 19.09.1986. It is claimed that the subject land was mutated in the name of petitioner no.1 and Smt. Chanan Kaur, grand-mother of petitioner no.2 on 30.03.1987 in the revenue records of Tehsil Mehrauli, now Tehsil Vasant Vihar, New Delhi. On 03.05.1997, Smt. Chanan Kaur executed a Will dated 03.05.1997 in favour of petitioner no.2 in respect of her share in Khasra no.1291 min, which was duly registered with the Sub-Registrar-I at Lucknow.
3. It is the case of the petitioners that a Section 4 notification of the Land Acquisition Act, 1894(hereinafter referred to as the 'Act') was issued on 27.06.1996, a declaration under Section 6 was made on 10.01.1997 and thereafter, an Award was rendered on 07.01.1999. Upon the death of Smt. Chanan Kaur on 20.12.2009, the name of petitioner no.2 was mutated in the revenue records of Tehsil Mehrauli, now Tehsil Vasant Vihar, New Delhi in respect of her share in land on 12.07.2010. It is the case of the petitioners that neither the compensation has been paid nor the possession has been taken over, hence the case of the petitioners would be fully covered by the decision rendered by the Supreme Court in the case of *Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.*, reported at (2014) 3 SCC 183.
4. Ms. Marwaha, learned counsel for the petitioners has drawn the attention of this Court to the counter affidavit filed by the DDA, as per which the physical possession of the subject land has not been handed over to the DDA. Attention of this Court is also drawn to the counter

affidavit filed by the LAC, as per which neither compensation has been paid nor the possession has been taken over.

5. Mr. Jain, learned Standing Counsel for the LAC has drawn the attention of the Court to para 10 of the counter affidavit to submit that no compensation has been paid, however, possession of the land in question in respect of Khasra no.1291 min 4 bigha 16 biswa could not be taken on account of stay order granted by the Court. Mr. Jain also submits that the present Khasra number does not form part of Section 6 declaration issued with respect to village Rangpuri, New Delhi.
6. We have heard the learned counsel for the parties and also perused the counter affidavits, which have been placed on record.
7. Para 10 of the counter affidavit filed by the LAC, reads as under:

“10. That as regards possession, it is humbly submitted that the possession of the land in question except khasra number 1291 min 04 bigha 16 biswa could not be taken due to stay from this Hon’ble High Court. So far as compensation is concerned the compensation amount has not been received from requisitioning authority. Thus, the compensation amount could not be paid to the interested persons.”

8. Para 6 of the counter affidavit filed by the DDA, reads as under:

“6. In the present Writ Petition, Petitioners have alleged themselves to be owners and in possession of land falling in Khasra No.1291(2-08) of Village Malikpur Kohi @ Rangpuri under the Land Acquisition Act. As per record, land of the above Khasra number of Village Malikpur Kohi @ Rangpuri part of which is claimed by the petitioner has duly, validly and legally been notified u/s 4, 6, 17(i) No.F9/(12)/95/L&B/LA/9743 dated

27.06.1996 and F9(12)/95/L&B/LA/1046 dated 10.01.1997 of the Land Acquisition Act, 1894. After Notifications land acquired vide Award No.2/98-99 dated 07.01.1999. This land has duly, validly and legally been acquired for the planned Development of Delhi, namely, Vasaant Kunj, Phase IV. The physical possession of the above said land of Khasra No.1291(2-08) has not been handed over to the DDA.”

9. We are of the view that the case of the petitioners would be fully covered by the decision rendered by the Apex Court in the case of ***Pune Municipal Corporation & Anr.***(supra). Paragraphs 14 to 21, 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. Having regard to the facts noted hereinabove and the stand taken by the LAC and DDA in their counter affidavits, 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.

11. In view of the discussion above, the petitioners are entitled to a declaration that the acquisition proceedings initiated under the Land Acquisition Act, 1894 with respect to the subject land are deemed to have lapsed. It is so declared.

12. The petition stands disposed of.

CM.APPL 27954/2015 (stay)

13. The interim order dated 24.11.2015 is confirmed.
14. The application stands disposed of.

G.S.SISTANI, J.

V. KAMESWAR RAO, J.

DECEMBER 18, 2017

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