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

% *Date of Judgment: 13th December, 2017*

+ W.P.(C) 11727/2015

SUNIL KUMAR AND ORS. Petitioners

Through: Mr.Amrit Pal S.Gambhir and
Ms.Monica Saini, Advocates

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr.Vijay Joshi, Sr.Panel Counsel for
UOI/R-1.
Mr.Sanjay Kumar Pathak,
Ms.K.Kaomudi Kiran Pathak,
Mr.Sunil Kumar Jha and Mr.Kushal
Raj Tater, Advocates for GNCTD and
LAC.
Mr.Sachin Nawani, Adv. for R-2.

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 petitioners seek a declaration that the acquisition proceedings in respect of the land comprising in Khasra No.2039/1800/169 (0-07), 2036/166/1-2 (0-08), 1725/167 (0-04), 1726/167 (0-08), 2033/166/1-2 (0-08), 2034/166/1-2 (0-08), 2533/1796/167 (0-11) and 2039/1800/169 (0-08), situated in the revenue estate of village Karkardooma, Delhi (hereinafter referred to as 'the subject land') are deemed to have lapsed in view of the fact that compensation has not been paid.

2. The necessary facts to be noticed for disposal of this writ petition are that the ownership of the land in question is claimed on the basis that the petitioner no. 1 is the owner-in-possession of Khasra Nos. 2039/1800/169(0-07) and 2036/166/1-2(0-08) of village Karkardooma, Delhi vide registered General Power of Attorney (GPA), Agreement to Sell and Receipt dated 17.05.1999 executed by Sh. Harish Chand in favour of the petitioner No. 1. Sh. Abdus Sattar, Mohd. Nabi and Sh. Mohd. Ahmad S/o Baksh Ila, transferred their ownership title of land bearing Khasra No. 2039/1800/149 (007) and 2034/144 and 2533/1794/147 in favour of Sh. Gouri Shanker through a deed dated 05.05.1946, whereas Sh. Gouri Shanker transferred his right of ownership in favour of Sh. Lalit Kumar (petitioner No.4) and Sh. Harish Chand through a registered GPA, Agreement to Sell and Receipt all dated 11.04.1985. Thereafter Sh. Harish Chand transferred his share of ownership in favour of Sh. Sunil Kumar (petitioner No.1) through registered GPA, Agreement to Sell and Receipt dated 17.05.1999.
3. The petitioner No.2 is the owner-in-possession of Khasra Nos. 1725/167 (0-04), 1726/167 (0-08) of village Karkardooma, Delhi vide GPA, Agreement of Sell, Will and Receipt all dated 11.07.1999 executed by Smt. Anokhi Devi W/o Sh. Nowat Ram in favour of the Petitioner No.2. Sh. Sunder Lal and Shekhar Chand transferred their ownership title of land bearing Khasra Nos. 2033/166/12(0-08), 2034/166 (0-08), 1725/167 (0-04), 1726/167 (0-08), 2039/1800/169 (0-08) in the name of Smt. Anokhi Devi through a *mukhtarnama* dated 27.11.1967. Thereafter, Smt. Anokhi Devi transferred her right of

ownership in favour of Sh.Ramesh Chand (petitioner no.2), Sh. Sandeep Saini (petitioner no.3) and Sh. Bimla Devi (petitioner no.5).

4. The petitioner no.3 is the owner-in-possession of Khasra Nos. 2033/166/1-2 (0-08) and 2034/166/1-2 (0-08) of village Karkardooma, Delhi vide GPA, Agreement to Sell, Will and Receipt all dated 13.05.1999 executed by Smt. Anokhi Devi W/o Sh. Nowat Ram in favour of petitioner no.2.
5. The petitioner no.4 is the owner-in-possession of Khasra No. 2533/1796/167 (0-11) of village Karkardooma, Delhi vide GPA, Agreement to Sell and Receipt all dated 11.04.1985 executed by Sh. Gouri Shanker S/o Sh. Molar Mal in favour of petitioner no.4.
6. The petitioner no.5 is the owner-in-possession of Khasra No. 2039/1800/169 (0-08) of village Karkardooma, Delhi vide GPA, Agreement to Sell, Will and Receipt all dated 16.09.2002 executed by Smt. Anokhi Devi W/o Sh. Nowat Ram in favour of petitioner no.5.
7. A Section 4 notification of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 13.11.1959. Section 6 declaration was made on 02.01.1969. Thereafter an Award bearing No.53/1981-82 and Award No.53A/1981-82 were made. It is the case of the petitioner that the compensation with respect to the subject land has not been paid.
8. The counsel for the petitioners submits that since the compensation has not been tendered, the petitioner would be entitled to a declaration and compensation under Section 24 (2) of the Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement

Act, 2013 (hereinafter referred to as “the New Act”). Learned counsel for the petitioner submits that the case of the petitioner would be fully covered by the decision rendered by the Apex Court in ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.***, reported at (2014) 3 SCC 183. The counsel, in support of his contention that the petitioner would fall within the definition of ‘an interested person’, relies on the decision rendered by the Supreme Court in ***Govt. of NCT of Delhi Vs. Manav Dharma Trust and another, 2017 (6) SCC 751***. More particularly, 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.”

9. Learned counsel for LAC has drawn the attention of the Court to paragraphs 8, 10 and 11 of the counter affidavit in support of his contention that the petitioners do not have any *locus standi* to file the present writ petition. As far as payment of compensation is concerned, it is submitted that as per the Naksha Muntazmin, there is no mention as to whether compensation was paid or not. Counsel submits that the petitioners would only be entitled to compensation.

10. We have heard learned counsel for the parties. Paragraphs 8, 10 and 11 of the counter affidavit filed by the LAC, read as under:

“8. That the petitioners claim that they or their predecessor in interest have been recorded owner of the subject land but they failed to produce any document which can show that they are the recorded owner of the subject land. As per averments made in Para 8 of the writ petition, petitioner No.1 has purchased the land vide GPA and Agreement to sell dated 17.05.1999 from Sh. Harish Chand who had purchased the land from Sh. Gauri Shankar vide GPA and Agreement to sell dated 11.04.1985 and Sh. Gauri Shankar had purchased the land from Sh. Abdul Sattar. Petitioner No.2 purchased Khasra Nos. 1725/167 (0-04), 1726/167 (0-08) vide GPA, Agreement to Sell, Will and Receipt all dated 11.07.1999 executed by Smt. Anokhi Devi in favour of the Petitioner No.2. The Petitioner No.3 purchased Khasra Nos. 2033/166/1-2 (0-08) & 2034/166/1-2 (0-08) vide GPA, Agreement to Sell, Will and Receipt all dated 13.05.1999 executed by Smt. Anokhi Devi of the Petitioner No.3. The Petitioner No.4 purchased Khasra No. 2533/1796/167 (0-11) vide GPA, Agreement to Sell and Receipt all dated 11.04.1985 executed by Sh. Gauri Shankar in favour of the petitioner No.4. And the Petitioner No.5 purchased Khasra No. 2039/1800/169 (0-08) vide GPA, Agreement to Sell, Will and Receipt all dated 16.09.2002 executed by Smt. Anokhi Devi in favour of the petitioner No.5. Thus it is admitted fact that none of the petitioners are recorded owner at the time of the notification under Section 4 and 6 of the Land Acquisition Act, all are the subsequent purchaser, even the person from whom they purchased the land are subsequent purchaser. Thus, the petitioners are the subsequent purchaser of the land and hence they have no right to challenge the acquisition proceedings. Reference can be made to Meera Sahni Vs. Lt. Governor of Delhi & Ors. (2008) 9 SCC 177.

10. That as regards possession and compensation it is humbly submitted that as per possession proceeding report possession of Khasra No. 2039/1800/169 (0-15) has been taken on 04.03.1982. As per LAC records, Abdul Sattar S/o Bakhs Illahi (1/3) share in Khasra No. 2039/1800/169 (0-07), Harbhagwan Das S/o Lal Chand (2039/1800/169 (0-04) and Sekhar Chand S/o Maya Das (2039/1800/169 (0-04) are owners. With respect to compensation, it is submitted that in Naksha Muntzamin for Abdul Sattar Rs. 1597.82, for Har Bhagwan Das Rs. 2739.12 and for Sekhar Chand Rs. 2739.13 has been mentioned as compensation amount and in remarks column disputed has been written. There is no remark as to whether compensation has been paid.
11. That as regards possession of remaining land it is humbly submitted that possession of Khasra Nos. 1725/167 (0-04), 1726/167 (0-04), 2033/166 (0-12), 2034/166 (0-16), 2036/166 (0-12), 2533/1796/167 (0-11), was taken on 22.09.1986. As per Naksha Muntzamin owner of Khasra No. 2033/166/1-2 (0-08) is Chunni Lal S/o Mathura Das, owner of Khasra No. 2034/166/1-2 (0-08), is Sunder Lal S/o Shankar Lal, owner of Khasra No. 2036/166/1-2/ (0-08) is Buta Mal S/o Radha Kishan, owner of Khasra No. 2533/1796/167 (0-11) is Majaharuddin S/o Ilmuddin, owner of Khasra No. 1725/167 (0-04) is Sekhar Chand S/o Maya Das, and owner of Khasra No. 1726/167 (0-04) is Ganga Ram S/o Laxman Das and owner of Khasra No. 2033/166/3 (0-4) is Central Government. So far as compensation amount is concerned it is humbly submitted that in Naksha Muntzamin, there is no mention as to whether compensation was paid.

11. Having regard to the fact that admittedly compensation has not been paid to the petitioners, we are of the view that the case of the petitioners would be covered by the decision rendered by the Supreme

Court of India in the case of *Pune Municipal Corporation & Anr.* (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.”

12. Keeping in view the stand taken by the LAC that the compensation has not been paid, it is declared that the acquisition proceedings qua the subject land of the petitioners stands lapsed. However, as the possession has been taken over, petitioners would only be entitled to compensation as per the New Act. As far as objection with regard to ownership is concerned, the case of the petitioner would be covered by the observations of the Supreme Court in the case of *Manav Dharma Trust and another* (*supra*).

13. Resultantly, the writ petition is allowed. The petitioner would be entitled to compensation as per provisions of the New Act.
14. We make it clear that we have not rendered any opinion as far as the ownership of title is concerned.
15. The writ petition stands disposed of. No costs.

G.S.SISTANI, J

V. KAMESWAR RAO, J

DECEMBER 13, 2017/rb

