

\$~R67

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

% *Date of decision: 29th November, 2017*

+ W.P.(C) 12142/2015

SH. GAJRAJ

..... Petitioner

Through: Mr. Lalit K. Rawal and
Mr. Sunil K. Goel, Advs.

Versus

GOVT. OF NCT OF DELHI AND ORS.

..... Respondents

Through: Mr. Yeeshu Jain, Standing
Counsel with Ms. Jyoti
Tyagi, Adv. for L&B/LAC.
Mr. Dhanesh Relan and
Ms. Akshita Manocha, Advs.
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 filed under Article 226 of the Constitution of India filed by the petitioner. The petitioner seeks a declaration that the acquisition proceedings with respect to the land of the petitioner comprised in Khasra No.47 (15-5), 48 (01-00) and 49(12-19) total area measuring 29 Bighas and 4 biswas having 1/12th share measuring 02 bigha and 09 biswas situated in the revenue estate of village Ghonda Gujaran Khadar, Shahdara, Delhi (hereinafter referred to as '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 the compensation has not been tendered to the petitioner.

2. Necessary facts to be noticed for disposal of this writ petition are that the father of the petitioner late Sh. Braham Singh was the son of late Sh. Harkesh who was the recorded owner of the agricultural land forming part of Khasra No. 47 (15-5), 48 (01-00) and 49(12-19) total area measuring 29 Bighas and 4 biswas having 1/12th share measuring 02 bigha and 09 biswas situated in the revenue estate of village Ghonda Gujaran Khadar, Shahdara, Delhi. A copy of the Khasra Girdawari wherein name of Sh. Harkesh has been mentioned has been placed on record. A Section 4 notification of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') was issued on 23.06.1989, a Section 6 notification of the Act was issued on 20.06.1990 and an award bearing no. 8/92-93 was passed on 19.06.1992.

3. Although, it is the case of the petitioner that physical possession of the land has not been taken, during the course of hearing learned counsel for the petitioner submits that the petitioner would only seek compensation in terms of Section 24 (2) of the New Act in view of the stand taken by the DDA and LAC, that physical possession of the land has been taken. Learned counsel for the petitioner while relying on the decision rendered in the case of ***Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors.***, reported at (2014) 3 SCC 183, submits that the petitioner is entitled to a declaration qua 1/12th share of the subject land that the acquisition proceedings with respect to the land of the petitioner stand lapsed.

4. Learned counsel for the respondent / LAC has drawn the attention of the Court to Paragraphs 4, 5 and 6 of the counter-affidavit. Counsel submits

that the petitioner is not entitled to compensation as the land stands vested with the Gaon Sabha. Counsel however admits that the compensation has not been tendered. Counsel for the DDA submits that the possession of the land has been taken and handed over to the Forest Department to be used for Green Belt, agriculture and water body as the land falls in 'O' Zone.

5. We have heard learned counsel for the parties. Para 4, 5 and 6 of the counter-affidavit filed by the respondent / LAC reads as under:

"4. That the present writ petition is further liable to be dismissed as the petitioner is claiming to be one of the successors of Late Sh. Harkesh however no Surviving Membership Certificate and / or death certificates have been filed along with the writ petition.

5. That the present writ petition is liable to be dismissed as the recorded owner of the subject land is Gaon Sabha which has not been made as a necessary party in the present writ petition.

6. That it is submitted that for the purpose of planned development of Delhi, the answering respondent issued a Notification under Section 4 of the Land Acquisition Act, 1894 on 23.6.1989 which was followed by Notification under Section 6 of the said Act dated 20.06.1990 for planned development of Delhi for the acquisition of the lands falling in village Ghonda Gujran Khadar. That an Award bearing No. 8/92-93 dated 19.6.1992 was also passed and the actual vacant physical possession of the subject land falling in Khasra No. 47 (15-05), 48 (01-00) and 49(12-19) was taken on 21.03.2007, out of which the petitioner has been claiming 1/12th share, on the spot and handed over to the DDA after preparing possession proceeding on the spot. The possession report is already on record as petitioner himself has filed the same. The recorded owner /s never came forward to receive any compensation hence the same is lying unpaid."

6. The basic facts are not in dispute that notification under Section 4 of the Land Acquisition Act, 1894 was issued on 23.06.1989, Section 6 Notification was issued on 20.06.1990 and an award was made on 19.06.1992. Two objections have been raised by the counsel for the LAC; firstly, with regard to the maintainability of the writ petition and secondly, since the possession has been taken, petitioner would not be entitled to a declaration through the strength of Section 24(2) of the New Act.

7. As far as the question relating to compensation is concerned, counsel for the petitioner submits that he would accept the same. As far as the objection regarding ownership/title is concerned, counsel for the petitioner has relied on the Khasra Girdawari to show that grandfather of the petitioner has been shown as the recorded owner. Further counsel submits that the present petition may be allowed, however the question with regard to the title may be kept open as per the view expressed by this Court in the case of ***Parshotam Joshi vs. Govt. of NCT of Delhi & Ors.***, W.P. (C) 4255/2016 decided on 8th November, 2017, wherein a decision of the Coordinate Bench of this Court in the case of ***Sanjeev Solanki v. Delhi Development Authority and Ors.*** W.P.(C) 1999/2015 decided on 24th January, 2017 so also a subsequent decision of this Bench in the case of ***Dhannu v. Lt. Governor, Govt. of NCT of Delhi and Ors.*** W.P.(C) 3158/2015 decided on 16th November, 2017 were followed.

8. The plea of the LAC would show that compensation pertaining to the above land was not tendered. 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 & 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."

9. Having regard to the facts noted hereinabove and the stand taken by the LAC in the counter-affidavit, 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.

10. Since the parties agreed that the question of title may be kept open in terms of the decision in the case of *Sanjeev Solanki (supra)*, we allow the writ petition declaring the acquisition proceedings with respect to the 1/12th share of the petitioner of the subject land to have lapsed.

11. We have not expressed any opinion on the title of the parties. The question of title of the subject land is left open to be decided in the appropriate court of jurisdiction. Compensation shall be paid under the new Act. The compensation would be paid within one year.

12. The writ petition stands disposed of.

G.S.SISTANI, J

V. KAMESWAR RAO, J

NOVEMBER 29, 2017/jg