

\$~R-38

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

Date of Judgment : 5th January, 2018

+ W.P.(C) 140/2016

GYAN CHAND & ORS

..... Petitioners

Through Mr.Arun Kumar Kaushik, Advocate

versus

UNION OF INDIA & ORS

..... Respondents

Through Mr.Bhagvan Swarup Shukla with
Mr.Mr.Kamaldeep, Advs. for UOI.
Ms.Jyoti Tyagi, Advocate for
Mr.Yeeshu Jain, Standing Counsel for
L&B/LAC.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. This writ petition was admitted on 21.11.2016.
2. This is a petition under Article 226 of the Constitution of India filed by the petitioners seeking a declaration that the acquisition proceedings with respect to their land comprising in Khasra no.1354/2 (02-15), 2851/810-826 (02-01), 2852/826/827(02-07), 1910/869-870(02-11), 4086/901(0-19), 907/1(0-13) 907/2 (0-13), 1940/1282-1283 (5-09), 2008/1295-1296 (0-09), 1877/1311-1312 (06-08), 1353 (0-16), 1993/742 (0-08), 1993/742(0-11) total measuring 26 bihas and 10 biswas situated in the revenue estate of village, Tughlakabad, Delhi (hereinafter referred to as the 'subject land') are 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 (hereinafter referred to as '2013 Act'), as neither possession has been taken nor compensation has been paid.

3. The necessary facts to be noticed for disposal of this writ petition are that a notification under section 4 of Land Acquisition Act, 1894 was issued on 25.01.1965, a declaration under section 6 was made on 13.02.1969 and an award bearing no.50-A/1969-70 was made on 04.11.1981.
4. Counter affidavit has been filed by LAC. The relevant paragraphs read as under :-

“5. That it is submitted that some of the acquisition affected persons filed writ petition bearing no.7554/02 before the Hon'ble Court which was disposed of vide judgment dated 5.12.2002 with the direction to the answering respondents to take the physical possession of the lands within three months, if already not taken.

5A. That pursuant to the passing of the Award, stated supra, the answering respondent has duly taken the actual, vacant and physical possession of the subject land falling in khasra number 2851/810/826(2-01), 2852/826/827(2-07), 1910/869/870(2-11), 4086/901(0-19), 907/1(0-13), 907/2 (0-13), 1940/1282/1283 (5-09), 2008/1295/1296 (0-09), 1877/1311/1312 (6-08), 1353 (0-16), 1354/2 (2-15) and 1993/742 (0-19) were taken actual vacant physical possession on 23.11.1981 on the spot and handed over the same to the DDA by preparing possession proceedings on the spot. It is submitted that the compensation except khasra number 1993/742 (0-19) could not be ascertained as there is no entry in the Naksha Muntazamin regarding its payment and Statement 'A' is untraceable whereas the compensation for the above said khasra number was sent to the Court of ADJ on 9.5.1983."

5. Ms.Tyagi, learned counsel appearing for LAC submits that as far as payment of compensation is concerned, except for Khasra no.1993/742(0-19), no compensation has been tendered. She further submits that as far Khasra no.1993/742(0-19) is concerned, the payment was sent to the Court of ADJ on 09.05.1983. Original record has been produced in support of her submission.
6. Counsel for the petitioners fairly submits that in view of the record produced, he would seek relief with respect to Khasra no.1993/742(0-19) and not to other Khasras. Counsel further submits that the case of the petitioners is fully covered by a decision rendered in the case of ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.***, reported at (2014) 3 SCC 183. Paras 14 to 20 of ***Pune Municipal Corporation & Anr.***(*supra*) 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.”

7. We have heard learned counsel for the parties and considered their rival submissions. Taking into consideration the submissions made and the stand taken by LAC in para 5A of its counter affidavit, which we have extracted in foregoing para 4 that the payment has not been tendered. The award having been announced more than five years prior to the commencement of 2013 Act, we are of the considered view that the necessary ingredients of section 24(2) of 2013 Act as interpreted by the Supreme Court of India stands satisfied. Accordingly, the present writ petition is allowed. The acquisition proceedings with respect to land except Khasra no.1993/742(0-19) would stand lapsed. It is so declared accordingly.
8. The writ petition is disposed of.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

JANUARY 05, 2018/ck