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

% *Date of Judgment: 19<sup>th</sup> January, 2018*

+ W.P.(C) 668/2016

SHILPA JAIN

..... Petitioner

Through: Mr.B.S.Maan and Mr.Vishal Maan,  
Advocates.

versus

GOVT OF NCT OF DELHI AND ORS

..... Respondents

Through: Ms.Ruchika Rathi, Advocate for  
respondent/LAC/L&B.  
Mr.Dhanesh Relan, Standing Counsel  
for respondent/DDA.  
Mr.Kamal Sharma, Advocate for  
respondent.

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

**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 total land measuring 3 bighas and 6 biswas i.e. property bearing no.553 measuring 2 bighas and 6 biswas in Khasra Nos.18/12/2/2/2 (1-5) and 19/2/2/2 (1-1) and property bearing no.553-B measuring 1 bigha in Khasra no.18/12/2/2/1 (0-12) and 19/2/2/1 (0-8) situated in the revenue estate of village Najafgarh, New 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 the physical possession has been taken nor compensation has been paid to the petitioner.

2. As per the writ petition, one Shri Bindra Ban was the recorded owner and in possession of the land measuring 1 bigha comprised in Khasra No.18/12/2/2/1 (0-12) and 19/2/2/1 (0-8) situated in Village-Najafgarh, New Delhi and was also the recorded owner and in possession of land comprised in Khasra No.18/12/2/2/2 (2-7) and 19/2/2/2 (1-5) measuring 3 bighas and 12 biswas, total admeasuring 4 bighas and 12 biswas situated in Village-Najafgarh, New Delhi. Shri Bindra Ban executed a lease deed dated 18.10.1969 for a period commencing from 18.10.1969 to 17.10.2068 in favour of Smt.Sudesh Kumari Jain in respect of 1 bigha land comprised in Khasra No.18/12/2/2/1(0-12) and Khasra no.19/2/2/1(0-8) situated in Village-Najafgarh, New Delhi. In pursuance of the above lease deed, actual physical possession of the said land was handed over to Smt.Sudesh Kumari Jain who became the owner and she is in occupation of the said land and her name was also mutated in the revenue record. It is the case of the petitioner that Smt.Sudesh Kumari Jain constructed residential houses over the said parcel of the land. It is also the case of the petitioner that one Jyoti Charitable Trust with the consent and approval of Shri Bindra Ban came into the actual physical possession of the land for the purpose of running Charitable Dispensary and

thereafter name of Jyoti Charitable Trust was also entered in the revenue records.

3. The writ petition further reveals that Jyoti Charitable Trust through its trustee entered into an agreement settlement dated 13.07.1989 with Smt.Sudesh Kumari Jain only in respect of land measuring 2 bighas and 6 biswas out of the total land measuring 3 bighas and 12 biswas. The possession was handed over to Smt.Sudesh Kumari Jain for purpose of constructing a suitable building for a charitable, social or religious purpose including orphanage, women welfare, school etc. Copy of revenue records have been placed on record. It is also claimed that the petitioner is daughter-in-law of Smt.Sudesh Kumari Jain.
4. The necessary facts to be noticed for disposal of this petition are that a Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 16.09.1965 and a Notification under Section 6 of the Act was issued on 15.01.1969 and an Award bearing No.25/1983-84 was rendered in the year 1983. Counsel for the petitioner submits that the case of the petitioner is fully covered by a decision rendered by the Apex Court in the case of ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.***, reported at (2014) 3 SCC 183, as neither possession has been taken nor compensation has been paid to the petitioner. Counsel for petitioner further contends that entire area has been built up and orphanage and other buildings have been constructed and the area is in occupation and use.

5. Counsel for the LAC submits that the petitioner has no *locus standi* to file the present petition. Although it is admitted that compensation was deposited in RD on 03.09.1983. In support of her submissions, she relies on paragraph 6 & 7 of the counter affidavit, which read as under:

“6. That the Land Acquisition Collector passed an Award bearing No.25/1983-84 dated 27.05.1983 and it is submitted that the physical possession of the land bearing Khasra Nos.18//12/2 min(1-2), 18//19/2 min(1-3) situated in Village Najafgarh were taken on 25.05.1999 and Khasra Nos.18//12/2 min(1-12) and 18//19/2 could not be taken due to built up area.

7. That it is submitted that as per the Revenue Record/Khatoni available before the answering Respondent No.2, Shri Bindraban is the recorded owner of Khasra No.18//12/2 min(2-14), 19/2 (2-01) comprising of 4 bighas 15 biswas in the Village Najafgarh when the notification under Section 4 was notified. That the petitioner is not the recorded owner in the above mentioned khasra numbers. Hence, the compensation could not be paid and had been deposited in the Revenue Department vide cheque no.578439 on 03.09.1983”.

6. In response to the objections raised by the counsel for LAC, Mr.Maan, counsel for petitioner submits that the petitioner shall fall in the definition of ‘interested person’. He submits that an identical issue had arisen before another Division Bench of this Court in the case of ***Sanjeev Solanki Vs. Delhi Development Authority and Ors, W.P. (C) 1999/2015***, decided on 24.01.2017. Counsel further submits that a similar view has also been expressed by this Court in the case of ***Parshotam Joshi vs. Govt. of NCT of Delhi & Ors., W.P. (C) 4255/2016***, decided on 08.11.2017. Counsel also submits that the objection raised by counsel for LAC, as far as title of the land is concerned, be kept open to be decided in appropriate proceedings.
7. We have heard the counsels for the parties and considered the rival submissions. Taking into consideration the fact that neither the

compensation has been paid nor possession has been taken over, the case of the petitioner would be covered with the decision rendered by the Apex court in the case of *Pune Municipal Corporation & Anr.* (*supra*), more particularly, paragraphs 14 to 20 of the judgment, which 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.”

8. Having regard to the submissions made 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 2013

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.

9. Since, the award having been announced more than five years prior to the commencement of the 2013 Act and also compensation having not been paid, the petitioner is entitled to declaration that the acquisition proceedings in respect of the subject land are deemed to have lapsed. It is ordered accordingly.
10. We make it clear that 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.
11. The writ petition stands disposed of, in above terms.

**G.S.SISTANI, J.**

**SANGITA DHINGRA SEHGAL, J**

**JANUARY 19, 2018**

**ssc**