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

% *Date of Judgment : 29th January, 2018*

+ W.P.(C) 669/2016

K. B. HANDA

..... Petitioner

Through: Mr. Worthing Kajar and Mr. Vinay K.
Shailendra, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Karan Sharma, Advocate for DDA.
Mr. Sanjay Kumar Pathak, Mrs. Koumudi
Kiran Pathak and Mr. Sunil Kumar Jha
Advocates for LAC/L&B.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J. (ORAL)

1. This is a petition under Article 226 of Constitution of India filed by the petitioner seeking a declaration that the acquisition proceedings with respect to the land of the petitioner comprised in Khasra No. 554, 1306, 1424/1 admeasuring 1 Bigha 1 Biswa, situated in the revenue estate of Village Malikpur Kohi @ Rangpuri, New Delhi-110070 (hereinafter referred to as '**Subject Land**'), has 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 compensation has been tendered nor the physical possession has been taken.

2. Learned counsel for the petitioner submits that initially, the land was vested in the name of one K. B. Hada, who in turn sold the same to Ashok Behl, who further sold it to Arun Tiwari and Arun Tiwari sold the same land to one Nirmal Singh.
3. Learned counsel for the petitioner has placed reliance on the copy of Power of Attorney executed by Arun Tiwari in favour of Nirmal Singh and a copy of the Sale Deed dated 26.03.1984 executed by Badle Singh and Saau Narian in favour of K. B. Hada
4. In this case, a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '**the Act**') was issued on 27.06.1996. A Section 6 declaration of the Act was made on 10.01.1997 and thereafter an Award bearing No. 2/1998-99 was passed on 07.01.1999.
5. Learned counsel for the petitioner further submits that the case of the petitioner is fully covered by the decision rendered by the Apex Court in ***Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors.***, reported in ***(2014) 3 SCC 183*** as neither the compensation has been paid nor the physical possession of the subject land was taken.
6. Learned counsel for LAC has raised an objection with regard to maintainability of the present writ petition as the petitioner is not a recorded owner of the subject land.
7. Learned counsel for the petitioner submits that as far as objection with regard to the ownership is concerned, the case would be covered by the decision rendered by the Supreme Court in ***Govt. of NCT of Delhi Vs. Manav Dharma Trust and another***, reported in ***2017 (6) SCC 751***.

8. We have heard learned counsels for the parties.
9. Having regard to the observation made by the Apex Court in ***Manav Dharma Trust (Supra)***, in our view the objection raised by learned counsel for LAC/L&B is misplaced. However, we make it clear that this order would not confirm the title of the petitioner. In the case of ***Manav Dharma Trust (supra)***, the Apex Court has held 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.”

10. Learned counsel appearing for LAC has drawn the attention of this Court to para 14 of the counter affidavit, which reads as under :

“14. That as regards possession, it is humbly submitted that the possession of the land in question could not be taken. 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.”

11. Reading of the counter affidavit filed by the LAC makes it abundantly clear that neither the possession has been taken nor the compensation was tendered to the recorded owner or to the interested person. In view thereof, the case of the petitioner is fully covered by the decision rendered by the Apex Court in the case of ***Pune Municipal***

Corporation & Anr.(supra) wherein it has been held in paras 14 to 20 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. Taking into consideration the submissions made and the stand taken by LAC that neither physical possession of the subject land was taken

nor the compensation has been paid to the interested persons, we are of the considered view that the necessary ingredients of Section 24 (2) of 2013 Act stand satisfied. Since the award having been announced more than five years prior to the commencement of the 2013 Act and, having regard to the fact that the compensation has not been tendered, the petitioner is entitled to a declaration that the acquisition proceedings initiated under the Land Acquisition Act, 1894 with regard to the subject land are deemed to have lapsed. It is ordered accordingly.

13. 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.

14. The writ petition stands disposed of.

CM APPL. No. 2765/2016

The application stands disposed of in view of the order passed in the writ petition.

SANGITA DHINGRA SEHGAL, J

G. S. SISTANI, J

JANUARY 29, 2018

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