

\$~30

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

% *Date of Judgment: 10th January, 2018*

+ **W.P.(C) 1393/2017**

SHIVSHANKAR SHIVHARE & ORS. Petitioners

Through: **Mr.M. Amanullah, Mr. B.B. Tariq,
Mr. Shioaib Haider and Mr. Anas
Zaidi, Advocates**

versus

GOVT OF NCT OF DELHI & ORS. Respondents

Through: **Mr.Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi, Advocate for
L&B/ LAC.
Mr.Dhanesh Relan, Standing Counsel
with Ms. Akshita Manocha, Advocate
for DDA.**

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 filed by the petitioners. The petitioners seek a declaration that the acquisition proceedings initiated in respect of the land of petitioners comprised in Khasra no.446, measuring 1790 sq. yds, situated in the revenue estate of village Jasola, New Delhi (hereinafter referred to as 'the 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 (hereinafter referred to as the '2013 Act'), as neither possession has been taken nor compensation has been paid.

2. The necessary facts to be noticed for disposal of this writ petition are that a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 23.06.1989. A declaration under Section 6 was made on 22.06.1990 and an Award bearing no.21/92-93 was rendered on 18.06.1992. It is not in dispute that the actual physical possession of part of the land was taken over by Delhi Metro Rail Corporation(DMRC). The petitioners claim that the remaining portion of land out of 1790 sq. yds is with the petitioners.
3. Learned counsel for the petitioners, relies on the decision rendered by the Supreme Court in the case of ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.***, reported at (2014) 3 SCC 183, in support of his submission that since the compensation has not been tendered, the petitioners are entitled to declaration so prayed.
4. Counter affidavit has been filed by the LAC. A preliminary objection has been raised with regard to the maintainability of this writ petition on the ground that the petitioners have filed this writ petition based on an Assignment Deed and as per the Assignment Deed, no right has been conferred upon the petitioners and only a right to contest legal proceedings has been given by the assignors. On the merits of the matter, it is submitted by the counsel for the LAC that since none had turned up to receive the claim and Statement 'A' is not available, the compensation could not be paid to the rightful owner.
5. Counsel for the petitioners submits that in the case of ***Bal Kishan v. Govt. of NCT of Delhi & Ors.***, [W.P.(C).1295/2017] decided on 16.08.2017 filed by the son of co-owner, a declaration has been

granted with respect to the same Khasra number. Counsel appearing for the DDA submits that the land was acquired for the purpose of 'Yamuna River Channelization' and as per the comments received by him, the possession of the land was handed over to the DDA on 19.01.2006, but it is unclear whether it has been put to use actually or not.

6. We have heard the learned counsel for the parties. Paragraph 6 of the counter affidavit filed by the LAC, reads as under:

“6. That it is submitted that the lands of village Jasola were notified vide Notification under section 4 of the Land Acquisition Act dated 23.6.1989 which was followed by Notification under section 6 of the said Act vide Notification dated 22.6.1990. That the then Land Acquisition Collector passed an Award No.21/92-93 dated 18.6.92 and the possession of the subject land falling in khasra number 446 measuring (3-07) was taken on 19.01.2006 besides other lands after preparing Possession Proceeding on the spot, the same was handed over to the beneficiary department i.e. DDA immediately. The compensation of the land under reference however could not be paid to the recorded owner as per NM as the recorded owner who never turned up to claim the same primarily due to the reasons that he executed Assignment Deed in favour of the petitioner and collected money from the petitioner. The Statement 'A' is not available.”

7. We may notice that an identical objection with regard to the maintainability was raised in the case of **Bal Kishan**(supra), which was dealt with in the following manner:

“8. Learned counsel for the respondents urged that the petitioner has no locus to file the instant petition as he is not the recorded owner in the revenue record. The submission is devoid of any force. Registered assignment deed dated

03.10.2005 (Annexure 'P1', page 35) is on record. It has been executed in favour of the petitioner and his brother – Rajinder Singh by Shiv Lal, Bhagwat and Mool Chand sons of late Sh.Siri Ram @ Bholu. Revenue record reveals that the petitioner is son of Bhagwat Swarup – co-owner of the suit land. Apparently, the assignment deed is among the family members. It specifically records about the acquisition of the suit land by award No.21/92-93. It further provides right to the petitioner to claim compensation for the acquisition of the land. Needless to say that the petitioner is a 'person interested' to claim compensation. It is not the respondents' case that the compensation for the suit land was paid or tendered either to the petitioner or his predecessor-in-interest."

8. In our view, the facts of the present case are no different from the judgment in the case of **Bal Kishan**(supra). Additionally, we may note that the compensation admittedly has not been paid to the petitioners. The case of the petitioners would be covered by the decision rendered by the Apex Court in the case of **Pune Municipal Corporation & Anr.**(supra). In paras 14 to 20, it has been held 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. Taking into consideration 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, stand satisfied.
10. Since the award having been announced more than five years prior to the commencement of the 2013 Act and, having regard to the stand taken by the LAC in the foregoing paragraph 4 and the fact that the compensation has not been tendered to the petitioners, the petitioners are 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.
11. The petition stands disposed.

CM.APPL 6413/2017(stay)

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

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

JANUARY 10, 2018

pst



नित्यमेव जयते