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

% *Date of Judgment: 30th January, 2018*

- + **W.P.(C) 1371/2017**
KAMLESH Petitioner
versus
GOVT OF NCT OF DELHI AND ORS Respondents
- + **W.P.(C) 1390/2017**
JITENDER Petitioner
versus
GOVT OF NCT OF DELHI AND ORS Respondents
- + **W.P.(C) 1391/2017**
CHAMAN SINGH Petitioner
versus
GOVT OF NCT OF DELHI & ORS. Respondents
- + **W.P.(C) 1448/2017**
CHARAN SINGH Petitioner
versus
GOVT OF NCT OF DELHI & ORS. Respondents
- + **W.P.(C) 1457/2017**
SATBIR Petitioner
versus
GOVT OF NCT OF DELHI AND ORS. Respondents

Present: Mr.Sunil K.Goel and Mr.Lalit Kumar Rawal, Advocate for the petitioners in all the matters.
Mr.Yeeshu Jain and Ms.Jyoti Tyagi, Advocates for the LAC/L&B deptt. in all the matters.
Mr.Arun Birbal and Mr.Sanjay Singh, Advocates for the DDA in W.P.(C) 1371/2017 & W.P.(C) 1448/2017.
Mr.Sanjeev Sabharwal, standing counsel with Mr.Hem Kumar and Ms.Simmee Kumari, Advts. for the DDA in W.P.(C) 1390/2017 & W.P.(C) 1457/2017.
Mr.Arjun Pant, Advocate for the DDA in W.P.(C) 1391/2017.
Ms.Shobhana Takiar & Mr.Udayan Khandelwal, Advocates for the DTTDC in all the matters.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. Although these writ petitions have been heard separately, but for the sake of convenience a common judgment is being rendered.
2. The petitioners in these writ petitions seek benefit 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') which came into effect on 01.01.2014.
3. 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 of Act was made on 22.06.1990. Thereafter, the Land Acquisition Collector passed an Award bearing no.11/1992-93 on 19.06.1992. The petitioners claim that the acquisition proceedings qua the lands of the petitioners stand lapsed as neither possession has been taken nor compensation has been paid. The details of the land of each of the petitioners is extracted below:

Sl. No.	W.P.(C) No.	Name of the petitioner	Details of the subject land	
1.	1371/2017	Kamlesh	1/12 th share i.e. (0-7)	All situated in Khasra No.80 (04-02) in the revenue estate of Village Khajuri Khas, Shahdara, Delhi.
2.	1390/2017	Jitender	1/12 th share i.e. (0-7)	
3.	1391/2017	Chaman Singh	1/12 th share i.e. (0-7)	
4.	1448/2017	Charan Singh	1/12 th share i.e. (0-7)	
5.	1457/2017	Satbir	1/30 th share i.e. (0-3)	

4. Learned counsel for the petitioners submits that since compensation has not been tendered to the petitioners, the case of the petitioners would be fully covered by 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.
5. We may note that during the course of hearing of these writ petitions it had transpired that a flyover has been constructed by the Delhi Tourism and Transportation Development Corporation (DTTDC). Resultantly, DTTDC was impleaded as a party. On 09.01.2018, Ms.Shobhna Takiar, advocate appeared and sought time to take instructions in the matter. We are informed by Ms.Takiar that the subject land has been put to use and a flyover has been constructed.
6. Counter affidavit filed by the LAC in W.P.(C) Nos.1391/2017 & 1448/2017 have been adopted by the LAC in all the matters wherein a stand has been taken that the possession has been taken but compensation has not been tendered.
7. At this stage, Mr.Rawal submits that the petitioners would be satisfied in case compensation is tendered to the petitioners having regard to the fact that the possession has been taken and the subject land has been put to use and a flyover has been constructed.
8. We have heard the learned counsel for the parties. Para 8 of the counter affidavit filed by the LAC in W.P.(C) 1391/2017 reads as under:

“8. That it is submitted that for the purposes of planned development of Delhi, the answering respondent issued a Notification u/s 4 of the Land Acquisition Act, 1894 on 23.6.1989 which was followed by Notification u/s 6 of the said Act dated 20.06.1990 for the acquisition of the lands falling in

village Khajuri Khas. That an Award No.11/92-93 dated 19.06.1992 was passed and the actual vacant physical possession of the subject land falling in khasra number 80 (4-02) was taken on 17.09.2008 on the spot and handed over the DDA after preparing possession proceeding on the spot. The recorded owner/s appears to have never came forward to claim any compensation nor any such application or grievance appears to have been made regarding non-payment of compensation hence the same appears to have been lying unpaid as per report in Naksha Muntazamin.”

9. 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.”

10. Taking into consideration the fact that compensation has not been tendered and 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. The petitioners would be entitled to a declaration that the acquisition proceedings with respect to the subject land stand lapsed, it is so declared. The petitioners would only be entitled to compensation under the 2013 Act, which would be paid within a period of one year from today.
11. The petitions stand disposed of.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

JANUARY 30, 2018

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