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

Date of Judgment : 6th February, 2018

+ W.P.(C) 3734/2016

VEER WATI & ORS

..... Petitioners

Through Mr. Bhagwat Prasad, Advocate.

versus

THE LAND ACQUISITION COLLECTOR Respondents

Through Mr. Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi, Advocate 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 is a petition under Article 226 of Constitution of India filed by the petitioners seeking a declaration that the acquisition proceedings with respect to land measuring 03 bighas 09 biswas pertaining to Khasra no.138 and land measuring 01 bigha pertaining to Khasra no.139 min., situated in the revenue estate of village Kotla, Delhi (hereinafter referred to as the 'subject land') stand lapsed in view of section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as '2013 Act') as neither compensation has tendered to the petitioners nor possession has been taken.
2. In this case, a notification under section 4 of Land Acquisition Act, 1894 ('the Act' in short) was issued on 13.11.1959 and a declaration

under sections 6 of the Act was made on 20.06.1966. Thereafter, an award bearing no.19/1976-77 was passed on 05.01.1977.

3. It is the case of the petitioners that the since the area in question was built up, possession could not be taken. Reliance is placed on the possession report dated 25.04.1977. Counsel for the petitioners has further placed reliance upon a decision rendered by Apex Court in ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.***, reported at (2014) 3 SCC 183, in support of his plea that since the compensation has not been tendered, the case of the petitioners would be covered by the aforesaid decision.
4. Mr. Jain, counsel for LAC placing reliance on paras 4 and 5 of his counter affidavit submits that with respect to part of the subject land, possession has been taken and compensation has been sent to reference court under section 30-31 of the Act on 23.02.1979. However, counsel does not dispute that with respect to land of the petitioners, neither compensation has been tendered nor possession has been taken. Paras 4 and 5 of counter affidavit filed by LAC read as under :-

“4. That the present writ petition is further liable to be dismissed as the petitioners have not placed on record any document showing their entitlement over the subject land as they are/were apparently not the recorded owners of the subject land falling in khasra number 138 (3-09) and 139 (6-03) because the physical part possession of these khasra numbers was duly taken on the spot and the compensation was sent before Reference Court u/s 30-31 of Land Acquisition Act, 1894. The petitioners have however sought relief of only the land which could not be taken possession by the Government but since for rest of the part

land, the title was not clear and the compensation was sent u/s 30-31 of the Act, 1894.

5. That it is submitted that for purposes of planned development of Delhi, the answering respondent issued a Notification u/s 4 of the Land Acquisition Act, 1894 on 13.11.1959 which was followed by Notification u/s 6 of the said Act dated 20.6.1966 for the acquisition of the lands falling in the khasra numbers under reference in village Kotla. That an Award bearing no.19/76-77 dated 5.1.1977 also came to be passed and the actual physical possession of land falling in khasra number 139 (5-03) was taken on 25.4.1977 however the possession of remaining land falling in khasra number 139 (1-01) and 138 (3-09) could not be taken. It is further submitted that having an apportionment dispute, the compensation for various khasra numbers including the khasra under reference which was taken possession of by the Government was sent to the Reference Court u/s 30-31 of Land Acquisition Act, 1894 on 23.2.1979.”

5. We have heard learned counsel for the parties. Taking into consideration the submissions made, 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, stand satisfied. The case of the petitioners would be fully covered by the decision rendered in ***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.”

6. Since the award having been announced more than five years prior to the commencement of the 2013 Act and neither compensation has been tendered to the petitioners nor possession has been taken, the acquisition proceedings with respect to the subject land would deem to have lapsed. Consequently, the writ petition is allowed. It is ordered accordingly.
7. The writ petition is disposed of.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

FEBRUARY 06, 2018/ck/