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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment : 23rd January, 2018

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W.P.(C) 5802/2016

SHRI VINOD KUMAR SACHDEVA & ORS. Petitioners

Through: Mr. S K. Rout, Advocate.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Yeeshu Jain, Standing Counsel for
LAC/L&B with Ms. Jyoti Tyagi,
Advocate.

Mr. Sanjeev Sabharwal, Standing
Counsel for DDA with Mr. Hem Kumar,
Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

1. By the present writ petition filed under Article 226 of the Constitution of India, the petitioners seek a declaration that the acquisition proceedings with respect to the land admeasuring 01 Bigha out of Khasra Nos. 2610/728-729 situated in the revenue estate of Village Tuglakabad, Delhi (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 paid nor the physical possession has been taken.

2. In this case, a notification under Section 4 of the Land Acquisition Act, 1894 was issued on 10.11.1960. A declaration under Section 6 of the said Act was made on 04.01.1969 and thereafter an award bearing No. 66/86-87 was made on 19.09.1986. Petitioners No. 1 to 5 claim to be recorded owners of built up property in the subject land whereas petitioner No. 6 claims to have complete ownership rights in the subject land by virtue of an oral family settlement between the petitioners No. 1 to 5 and petitioner No. 6 and annexed No Objection Certificate on behalf of the petitioners No. 1 to 5, along with the present writ petition.
3. Learned counsel for the petitioner 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 compensation has been paid nor possession has been taken.
4. Learned counsel appearing for the LAC does not dispute that the compensation has not been tendered to the recorded owners and the same was lying deposited in RD, however, he submits that petitioner No. 6 is neither the son of Girdhari Lal nor the owner of the subject. The petitioner is claiming relief on the basis of an oral partition but no supporting document has been annexed with the writ petition.
5. Learned counsel for the petitioner submits that as far as objection with regard to the ownership of petitioner No. 6 is concerned, he has placed reliance on copies of Khasra Gidwari, which has been

placed on record and also affidavits/No Objection in favour of petitioner No. 6 executed by family members including Vinod Kumar Sachdeva, Parmod Kumar Sachdeva, Rajesh Kumar Sachdeva all S/o Late Shri Girdhari Lal, Ms. Shashi Sibal and Ms. Saraishtha Saluja, both D/o Late Shri Girdhari Lal.

6. We have heard learned counsel for the parties and considered their rival contentions.
7. Learned counsel for the petitioners has drawn the attention of the Court to various revenue records to show that the name of the petitioner No. 6 finds mentioned copies of which have been annexed with the writ petition.
8. Counter affidavit has been filed by the LAC. Para 4 of the counter affidavit reads as under:

“4. That the present writ petition is liable to be dismissed as petitioner No. 6 is neither the son of Girdhari Lal nor the owner of the subject land falling in khasra number 2610/728-729(1-00), the possession of which was taken on 22.9.86, however, the compensation was sent to Revenue Deposit. The petitioner No. 6 is claiming relief on basis of some oral partition however how he is concerned with the land is unknown and undisclosed in the writ petition.”

9. Reading of the counter affidavit filed by the LAC makes it is abundantly clear that compensation was not tendered to the recorded owner or to the interested person but lying deposited in RD. 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.”

10. Taking into consideration the submissions made and the stand taken by LAC that compensation has not been tendered, 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. We make it clear that we have not expressed any opinion on the merits of the matter.
11. The writ petition stands disposed of.

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

JANUARY 23, 2018

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