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

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

\+ W.P.(C) 7405/2016

ARUN DAYAL ..... Petitioner

Through: Mr.S.K.Rout, Mr.Pawan Kumar and Mr.Aman Mehrothra, Advts.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr.Akhil Mittal, Adv. for respondents no.1 and 2.
Mr.Dhanesh Relan, standing counsel for DDA with Ms.Kajri Gupta, Adv.

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 petitioner. The petitioner seeks a declaration that the acquisition proceedings initiated in respect of the land of the petitioner measuring 1 bigha comprised in Khasra no.417/2/1, Village Chandrawali @ Shahdara, Delhi (hereinafter referred to as 'the subject land') stand 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 compensation has not been tendered although the possession has been taken over.

2. Learned counsel for the petitioner submits that as per the counter affidavit compensation stands deposited in the Court of Additional District Judge (ADJ) vide cheque bearing no.797555 dated

28.12.2013. Counsel for the petitioner submits that no benefit would accrue in favour of the respondent as the LAC did not tender the compensation to the petitioner and depositing the amount in the Court of the ADJ would not absolve the respondent of their responsibility. Counsel for the petitioner further submits that the petitioner is praying for compensation under the 2013 Act as the subject land has been put to use by the Public Works Department (PWD) for construction of a road. Counsel 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 compensation has not been tendered, hence, the petitioner is entitled to compensation and a declaration, so prayed.

3. 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 22.03.2006. A Section 6 declaration was made on 20.02.2007 and an Award bearing No.1/2008-09 was rendered on 30.04.2008.

4. We may note that an identical question had come up for consideration in W.P.(C) 467/2015 titled as ***S. Daya Singh & Sons Vs.Union Of India & Ors.***, wherein this Court had observed a decision rendered in ***Gyanender Singh & Ors. vs. Union of India & Ors.*** W.P.(C) 1393/2014 dated 23.09.2014, more particularly, paragraphs 2 and 4, read as under:

> *"2. The learned counsel for the respondents contend that possession of the subject lands were taken on 05.07.2013 and 17.07.2013 and this fact was informed to this court in W.P.(C) No. 7057/2005 (Court On Its Own Motion). Insofar as compensation is concerned, it was contended on behalf of*

the respondents that the amount of compensation was deposited in this court in CM Main Nos. 1403/2013 and 1411/2013 on 30.12.2013. It was contended that as the District Courts were closed for the vacation, the same could not be deposited there and, therefore, the cheques representing the amount of compensation were deposited in this court in the above CM Main Nos. 1403/2013 and 1411/2013. Therefore, according to the respondents, the compensation had been paid to the petitioners prior to the commencement of the 2013 Act. Consequently, it was submitted that the acquisition had been completed under the Land Acquisition Act, 1894 as possession had been taken and compensation had also been paid.

4. We are informed that after the passing of the said order dated 30.12.2013, the cheques have been sent to the concerned Additional District Judges as directed by the learned Vacation Judge on 30.12.2013. It is pertinent to note that in paragraph 6 of the said order dated 30.12.2013 itself, the learned Vacation Judge took care in noting that while the petitions were disposed of, they were without prejudice of the rights and contentions of the land owners. The learned Judge also noted that the cheques tendered in the above mentioned CM Main Nos. 1403/2013 and 1411/2013 and other similar petitions would be treated as a tender to the court of the learned Additional District Judge, Delhi as on 30.12.2013."

5. In our view, the present case is fully covered by the decision rendered in the case of ***Gyanender Singh*** (*supra*) and we see no reason to differ with the view taken in the aforesaid matter. Nothing has been produced before us to show that there was an inter se dispute and the respondents were prevented from tendering the amount to the original owners. There is nothing on record to show that the amount was tendered and refused.

6. Since the petitioner was not offered compensation nor it was tendered, in our view, the case of the petitioners would be fully covered by the decision rendered by the Supreme Court 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.
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> 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.
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> 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."

7. 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.

8. Resultantly, applying the law laid down to the facts of the present case, since the award having been announced more than five years prior to the commencement of the 2013 Act and the fact that the compensation has not been tendered to the petitioner, 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. The petitioner would be entitled to compensation under the 2013 Act, which would be paid within a period of one year from today.

9. The petition stands disposed of.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

JANUARY 30, 2018
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