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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment : 22nd January, 2018

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W.P.(C) 6745/2016

B. D. JOSHI

..... Petitioner

Through: Mr. Pankaj Vivek, Ms. Anupriya Singh
and Mr. Atul Tripathi, Advocates.

versus

LAND ACQUISITION COLLECTOR/A.D.M. & ORS.

.....Respondents

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

Mr. Tarunvir Singh Khehar,
Mr. Abhimanyu Gupta and Mrs. Guneet
Khehar, Advocates for DDA.

Mr. Arun Birbal, Advocate for DDA.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

1. Present writ petition has been filed under Article 226 of the Constitution of India seeking a declaration that the acquisition proceedings with respect to the land of the petitioner i.e. Plot No. 34 (New Plot No. 44) admeasuring 100 Sq. Yards comprised in Khasra No. 635 (4-16) situated in the revenue estate of Village Roshanpura, 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 07.04.2006. A declaration under Section 6 of the said Act was made on 04.04.2007 and thereafter an award bearing No. 08/2008-09/SW was made on 14.11.2008. The petitioner claims to have purchased the land admeasuring 100 Sq. Yards out of Khasra No. 635 situated in the revenue estate of Village Roshanpura, abadi known as Shyam Vihar, Delhi, based on General Power of Attorney dated 09.12.1997, Agreement to Sell, affidavit, receipt and Will dated 09.12.1997, copies of which have been placed on record.
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 neither the possession has been taken over nor the compensation has been paid., however, he submits that the petitioner is claiming relief based on General Power of Attorney, Will, receipt etc. which cannot confer title of the petitioner.
5. Learned counsel for the petitioner submits that as far as objection with regard to the ownership is concerned, the case would be

covered by the decision rendered by the Supreme Court in ***Govt. of NCT of Delhi Vs. Manav Dharma Trust and another***, reported in ***2017 (6) SCC 751***.

6. We have heard learned counsels for the parties.
7. Having regard to the observation made by the Apex Court in ***Manav Dharma Trust (Supra)***, in our view the objection raised by Mr. Jain, learned Standing Counsel for LAC/L&B is misplaced. However, we make it clear that this order would not confirm any title of the petitioner. In the case of ***Manav Dharma Trust (supra)***, the Apex Court has held as under :

“28. Thus, the subsequent purchaser, the assignee, the successor in interest, the power-of-attorney holder, etc., are all persons who are interested in compensation/landowners/ affected persons in terms of the 2013 Act and such persons are entitled to file a case for a declaration that the land acquisition proceedings have lapsed by virtue of operation of Section 24(2) of the 2013 Act. It is a declaration qua the land wherein indisputably they have an interest and they are affected by such acquisition. For such a declaration, it cannot be said that the respondent-writ petitioners do not have any locus standi.”

8. Counter affidavit has been filed by the LAC. Paras 4 and 4A of the counter affidavit reads as under:

“4. That the present writ petition is liable to be dismissed as the subject lad belonged to Gaon Sabha and it is not clear as to what title one Yogender Pal Singh derived who executed GPA/Agreement to Sell/Will/Affidavit etc. in favour of the petitioner herein.

4A. *That it is submitted that the lands of village Roshanpura were notified vide Notification under Section 4 of the Land Acquisition Act 1894 dated 7.4.2006 which was followed by Notification under Section 6 of the said Act vide Notification dated 4.4.2007 and the Award No. 08/08-09 dated 14.11.2008 was also passed as per the law. It is submitted that the possession of the subject land falling in Khasra number 635 (4-16) could not be taken nor the compensation has been paid. It is however pertinent to mention here that the petitioner is claiming 100 Sq. Yards out of the said Khasra.”*

9. Reading of the counter affidavit filed by the LAC makes it abundantly clear that neither the possession has been taken over nor the compensation was tendered to the recorded owner or to the interested person. 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.

11. The writ petition stands disposed of.

CM APPL. No. 27692/2016

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

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

JANUARY 22, 2018

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