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

% *Date of Judgment : 31st January, 2018*

\+ W.P.(C) 7646/2016

MD. ILYAS ..... Petitioner

Through: Mr. Rajmangal Kumar, Advocate with petitioner in person.

versus

UNION OF INDIA AND ORS. .....Respondents

Through: Mr. Siddharth Panda, Advocate for LAC/L&B.
Ms. Mrinalini Sen Gupta, Mr. Shatrajit Banerji and Mr. Tanmay Yadav, Advocates for DDA.
Mr. Faisal Zafar and Mr. Iqra Meraj and Mr. Farhan, Advocates for applicant in CM APPLN. 3661/2018.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

CM APPLN. No. 3661/2018 (Under order I Rule 10 CPC)

This is an application under Order I Rule 10 CPC which has been filed by applicant Mohd. Meraj, who claims himself to be real brother of the petitioner.

Learned counsel for the applicant submits that the applicant is a proper and necessary party and he has 1/4th share in the land which is the subject matter of the present writ petition.

Learned counsel for the petitioner on instructions submits that he would have no objection if the applicant is impleaded as a party subject to the condition that the applicant should share the cost of litigation with the applicant.

Learned counsel for the applicant submits that applicant would pay reasonable court fees and litigation charges.

In view of the above, the present application is allowed and the applicant is impleaded as respondent No. 5 to the present writ petition.

Application stands disposed of.

W. P. (C) 7646/2016

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. 1 Bigha comprised in Khasra No. 56, situated in the revenue estate of Village Behlopur Khadar, Tehsil Mehrauli, New 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 tendered nor the physical possession has been taken.

2. In this case, 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 the said Act was made on 22.06.1990 and thereafter an Award No. 15/1992-93 was passed on 19.06.1992 by the Land Acquisition Collector.

3. Learned counsel for the petitioner submits that the petitioner and respondent No. 5 would be entitled to a declaration that acquisition proceedings pertaining to their land (their respective share i.e. 3/4th share of petitioner and 1/4th share of respondent No. 5) are liable to lapse. He further 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 submits that compensation has not been tendered to the recorded owners but the physical possession of the subject land was taken and handed over to the beneficiary department on 14.06.2006.

5. We have heard learned counsels for the parties.

6. Counter affidavit has been filed by the LAC. Para 7 of the counter affidavit reads as under:

> *"7 That it is submitted that under the above said award 20 Bighas 05 Biswa of Khasra No. 56 min was acquired out of which possession of 13 bighas and 04 biswas was taken on 27.12.1990, 4 Bighas of land was taken on 06.09.2006 and possession of 2 Bighas was taken and handed over to the beneficiary department on 14.06.2006. The possession of remaining land was not taken over as in 16 biswa of land there exit an unauthorized Masjid and remaining 5 biswas of land was excluded from the award. However, compensation could not be paid as there was dispute."*

7. In the case of ***Pune Municipal Corporation (Supra),*** it has been held in 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."

8. Having regard to the submissions made and the stand taken by the LAC in the counter affidavit that the compensation has not been tendered to the petitioner, 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 by this Court, stand satisfied

9. 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, having regard to the fact that the compensation has not been tendered, the petitioner and respondent No. 5 are entitled to a declaration that the acquisition proceedings initiated under the Land Acquisition Act, 1894 pertains to the land of their respective shares are deemed to have lapsed. It is ordered accordingly.

10. The writ petition stands disposed of.

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

JANUARY 31, 2018
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