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

Date of Judgment: 05th February, 2018

+ W.P.(C) 7294/2016

MAHARAJ SINGH

..... Petitioner

Through: Ms.Richa Oberoi, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Bhagvan Swarup Shukla, CGSC
with Mr.Kamaldeep, Advt. for UOI.
Ms.Ruchika Rathi, Adv. for LAC/
L&B.

Mr.Azhar Qayum, Adv. for DDA.

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 petitioner seeking a declaration that the acquisition proceedings with respect to land of the petitioner falling in Khasra no.253 measuring 1 bigha and 1 biswa, situated in the revenue estate of village Saidulajab, New 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 possession has been taken nor compensation has been paid to the petitioner. Learned counsel for the petitioner submits that the case of the petitioner would be fully covered by the decision rendered by

the Apex Court in *Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.*, reported at (2014) 3 SCC 183.

2. In this case, a notification under section 4 of Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 05.11.1980. A declaration under section 6 of the Act was made on 25.05.1985. Thereafter, an award bearing no.13/1987-88 was rendered on 20.05.1987.
3. It is the case of the petitioner that no compensation was tendered to him. In response to the objection raised in the counter affidavit filed by the LAC that the compensation has already been deposited in the court of Additional District Judge (ADJ), counsel for the petitioner submits that prior to deposit no tender was made despite the fact that the petitioner has been shown to be the recorded owner in terms of Khatauni for the year 1998-99, a copy whereof has been placed on record. Additionally, counsel submits that prior to coming into force of the 2013 Act, a C.M.(Main) was filed and post seeking orders compensation was deposited. The counsel, in support of her contention that the petitioner would fall within the definition of 'an interested person', relies on the decision rendered by the Supreme Court in *Govt. of NCT of Delhi Vs. Manav Dharma Trust and another, 2017 (6) SCC 751*.
4. Learned counsel for the LAC has drawn the attention of the Court to paras 2 & 7 of the counter affidavit in support of his submissions.
5. We have heard learned counsels of the parties.
6. Primarily, two objections have been raised in the counter affidavit filed by the LAC. Firstly, that the amount stands deposited in the

court of ADJ. This objection is without any force in view of the judgment rendered in **Gyanender Singh & Ors. vs. Union of India & Ors.** W.P.(C) 1393/2014 dated 23.09.2014. 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 noticed the 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. ”

7. As far as second objection is concerned, we find the petitioner to be the recorded owner. Even otherwise, the case of the petitioner would be covered by the decision rendered in the case of **Manav Dharma Trust** (supra) wherein definition of ‘interested person’ has been given. More particularly, para 28 of this judgment reads 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. Para 6 & 7 of the counter affidavit filed by LAC read as under :-

“6. That as per the record, the total land in Khasra No.253 (11 bigha- 09 biswas) situated at the revenue estate of village Said-Ul-Ajaib, New Delhi, was notified under section 4 of the Land Acquisition Act on 05.11.1980 followed by declaration under section 6 of Land Acquisition Act on 21.05.1985 for Planned Development of Delhi. In pursuance of said notification, notices under Section 9 & 10 as provided under the Act, were issued to the interested persons, inviting the claims from all the interested persons and claims were also filed by the interested persons. The Then Land Acquisition

Collector passed Award No.13/87-88 dated 20.05.1987 after considering the claims of the claimants.

7. That in the present case, the possession of the above mentioned land was taken over and handed over to the beneficiary department on 17.07.1987. However, as per Statement 'A' payments of compensation for entire land were made as under:-

S.No.	Name	Award No.	Amount	Remarks
1	Kuldeep Singh	13/87-88	56013.96	Sent to ADJ Delhi vide Ch.No.456945 dated 20-12-2013
2	Rajender Singh	13/87-88	56013.96	
3	Balbir Singh	13/87-88	112027.92	
4	Chunni Lal	13/87-88	134962.76	
5	Smt.Chander Wati	13/87-88	134962.76	

”

9. 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.
10. Since the possession has not been taken and the petitioner was not offered compensation nor it was tendered, in our view, the case of the petitioner 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.

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.”

11. 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.
12. 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

neither possession has been taken nor compensation has 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.

13. The petition stands disposed of.

C.M.29989/2016 (stay)

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

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

FEBRUARY 05, 2018

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