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

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Date of Judgment: 31st January, 2018

+ W.P.(C) 5428/2015

SOHAN LAL & ORS

..... Petitioners

Through: Mr.Rajat Sehgal, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr.Harish Kumar Garg and Ms.Puran Kumari, Advocates for respondent no.1/UOI.

Mr.Sanjeev Sabharwal, Standing Counsel for DDA with Mr.Hem Kumar and Ms.Simmee Kumari, Advocates.

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

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 petitioners seeking a declaration that the acquisition proceedings pertaining to 1/3rd share of land comprised in Khasra Nos.581(3-17), 915/583(2-18) measuring 06 bighas and 15 biswas, situated in the revenue estate of Village-Maidan Garhi, NCT of Delhi (hereinafter referred to as 'the subject land') stands 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 physical possession has been taken nor compensation has been tendered to the petitioners.

2. The necessary facts to be noticed for disposal of this petition are that a Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 25.11.1980, a Notification under Section 6 of the Act was issued on 07.06.1985 and an Award bearing No.23/1987-88 was passed on 26.05.1987. Counsel for the petitioners submits that the case of the petitioner is fully covered by a decision rendered by the Apex Court in the case of ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.***, reported at (2014) 3 SCC 183, as neither possession has been taken nor compensation has been paid to the petitioner.
3. Mr.Jain, counsel for the LAC submits that the physical possession of the land was taken on 16.07.1987 and the subject land vests in Gaon Sabha, thus, the petitioner would not be entitled to claim any compensation. He further submits that the compensation of 2/3rd of land was duly paid to the recorded owners and remaining 1/3rd could not be paid as it stands deposited in RD. In support of his submissions, Mr.Jain relies on paragraph 4 of the counter affidavit, which reads as under:

“4. That it is submitted that the lands of Village Maidan Garhi were notified vide Notification under Section 4 of the Land Acquisition Act, 1894 dated 25.11.1980 which was followed by the Notification under Section 6 of the Act dated 07.06.1985. The Award was also passed vide Award No.23/87-88 dated 26.05.87 and the physical possession of the land was taken on 16.07.1987 and handed over to requisition agency on the spot as also the compensation of 2/3rd of the

land was duly paid to its recorded owners and remaining 1/3rd could not be paid as lying deposited in RD”.

4. Counter affidavit and additional affidavit have also been filed by the DDA, as per which the possession has been taken over by them. Reading of the additional affidavit and the documents placed on record would show that 2/3rd compensation stands paid to the recorded owners. The compensation has been tendered to some of the owners as details in Annexure-P-1, namely, Puran Singh, Parma Nand, Hardwari Lal and Mansha s/o Udmi.
5. Per contra, counsel for the petitioners submits that based on the documents filed alongwith additional affidavit read together with stand taken by the LAC in their counter affidavit would show that the petitioners were not paid any compensation as their names are not reflected in Annexure A-1 filed by the DDA alongwith affidavit.
6. The basic facts of this case are not in dispute that a Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as ‘the Act’) was issued on 25.11.1980, a Notification under Section 6 of the Act was issued on 07.06.1985 and an Award bearing No.23/1987-88 was passed on 26.05.1987.
7. Two objections have been raised by counsel for LAC, firstly that the land vests in Gram Sabha, counsel for petitioner submits that that an identical issue had arisen before another Division Bench of this Court in the case of ***Sanjeev Solanki Vs. Delhi Development Authority and Ors, W.P. (C) 1999/2015***, decided on 24.01.2017. Counsel submits that a similar view has also been expressed by this Court in the case of ***Parshotam Joshi vs. Govt. of NCT of Delhi & Ors., W.P. (C) 4255/2016***, decided on 08.11.2017, to the extent of question of title be

kept open to be decided in appropriate proceedings. As far as, the second objection with regard to compensation having been tendered to some of the owners, we find that 2/3rd compensation has been tendered. A reading of the additional affidavit filed by the DDA alongwith Annexure A-1 clarifies the persons to whom the compensation has been tendered. The names of the present petitioners are not reflected in the aforesaid documents i.e. Annexure A-1 and more over the counter affidavit of the LAC shows that the compensation pertaining to 1/3rd of the land has not been tendered.

8. We have heard the counsel for the parties.
9. Taking into consideration the fact that possession has been taken over on 16.07.1987, however the compensation has been paid, the case of the petitioner would be fully covered with the decision rendered by the Apex court in the case of ***Pune Municipal Corporation & Anr.*** (*supra*), more particularly, paragraphs 14 to 20 of the judgment, which read 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. As far as the objection raised by the counsel for the LAC with regard to the land being vested in the Gaon Sabha is concerned, we deem it appropriate to follow a decision rendered by the Division Bench of this Court in the case of **Sanjeev Solanki** (*supra*), paragraph 5 of which reads as under:-

“5. While we have declared that the subject acquisition has lapsed, it is made clear that this would not amount to giving title to the petitioner or perfecting the petitioner’s title inasmuch as Mr.Jain has taken the plea in the counter-affidavit filed on behalf of the respondent no.2 that the Gaon Sabha has been shown as the recorded owner. This fact is disputed by the learned counsel for the petitioner. But, we are not entering into the controversy of title which may be sorted out elsewhere. Insofar as the acquisition is concerned, the same has lapsed because neither physical possession was taken over nor compensation was paid.”

11. Having regard to the submissions made while relying on Annexure A-1, copy of which has been placed on record by DDA in the additional 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 in the following cases stand satisfied:

- (1) ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.***, reported at (2014) 3 SCC 183;
 - (2) **Union of India and Ors v. Shiv Raj and Ors.**, reported at (2014) 6 SCC 564;
 - (3) **Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors**, Civil Appeal no.8700/2013 decided on 10.09.2014;
 - (4) **Surender Singh v. Union of India & Others**, W.P.(C).2294/2014 decided on 12.09.2014 by this Court; and
 - (5) **Girish Chhabra v. Lt. Governor of Delhi and Ors**; W.P.(C).2759/2014 decided on 12.09.2014 by this Court.
12. Since, the award having been announced more than five years prior to the commencement of the 2013 Act and compensation having not been tendered, the petitioners are entitled to a declaration that the acquisition proceedings in respect of the subject land are deemed to have lapsed. It is ordered accordingly. However, we have not expressed any opinion on the title of the parties. The question of title of the subject land is left open to be decided in the appropriate court of jurisdiction.
13. The writ petition stands disposed of in above terms.

CM No.9771/2015 (stay)

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

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

JANUARY 31, 2018/ssc