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

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

+ **W.P.(C) 5706/2017**

NARESH CHANDRA RASTOGI AND ORS. Petitioners
Through: **Mr. Anuj Aggarwal, Advocate.**

versus

GOVT. OF NCT OF DELHI AND ANR. Respondents
Through: **Mr. Sunil Goel, Ms. Supreet Bindra and**
Mr. Mayank Goel, Advocates for UOI.
Mr. Sanjay Kumar Pathak, Mrs. K.
Kaumudi Kiran Pathak, Mr. Sunil Kumar
Jha and Mr. Kushal Raj Tater, Advocates
for LAC/L&B.
Ms. Abha Malhotra and Mr. Tanuj
Chopra, Advocates 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 comprised in Khasra No. 315/2 (2 Bighas 19 Biswas) and 331 min (2 Bighas 14 Biswas), situated in the revenue estate of Village Khanupr, 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 paid 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 05.11.1980. A declaration under Section 6 of the Act was made on 06.06.1985 and thereafter an Award bearing No. 17/1987-88 was passed by the Land Acquisition Collector on 16.07.1987.
3. Mr. Aggarwal, learned counsel for the petitioners submits that counter affidavit filed by the Land Acquisition Collector supports the case of the petitioners and reliance has been placed on para 9 of the counter affidavit to show that case is disputed.
4. Mr. Aggarwal, 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.
5. Mr. Pathak, learned counsel for LAC submits that as per the counter affidavit, the possession of the subject land was taken but as per Statement 'A', there is dispute between the parties but there is no mention as to whether any payment has been made to them or not. He further submits that there is also no clarity as to whether the compensation amount was deposited with Additional District Judge or not. He also submits that in view of the interim order passed, the acquisition proceedings could not be completed before

31.12.2013.

6. We have heard learned counsels for the parties.
7. Counter affidavit has been filed by the LAC. Para 9 of the counter affidavit reads as under:

“9. That the status of the possession and payment of compensation in respect of Khasra No. 315/2 (2-19) and 331 min. (2-14) is/was as per statement ‘A’ is provided below:

<i>Owners’ Name</i>	<i>Compensation</i>	<i>Remarks</i>
<i>Nisha Rastogi</i>	<i>52,506.69</i>	<i>Disputed: There is no mention as to whether payment has been made to them or not.</i>
<i>Mala Rastogi</i>	<i>52,506.69</i>	
<i>Rajesh Chandra Rastogi</i>	<i>52,506.70</i>	
<i>Naresh Chandra Rastogi</i>	<i>52,506.70</i>	

8. Reading of the counter affidavit filed by the LAC makes it is abundantly clear that the compensation was not tendered to the recorded owner or to the interested persons. 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.”

9. Having regard to the submissions made by learned counsel for

LAC and in view of the fact that the LAC failed to satisfy this Court as to whether the compensation has been paid to the petitioners or deposited in the Court of Additional District Judge, 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.

10. The writ petition stands disposed of.

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

JANUARY 30, 2018

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