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

% *Date of Judgment: 29th January, 2018*

\+ W.P.(C) 10209/2016

HARISH CHAND ..... Petitioner

Through: Mr. Shitiz Agnihotri, Advocate.

versus

GOVT OF NCT OF DELHI AND ORS. ..... Respondents

Through: Mr. Siddharth Panda, Advocate for LAC/L&B.

Mr. Pawan Mathur, Advocate for DDA.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. ***(ORAL)***

W. P. (C) 10209/2016

1. This is a petition under Article 226 of the Constitution of India filed by the petitioner.
2. The petitioner seeks a declaration that the acquisition proceedings with respect of the land of petitioner i.e. 02 Bighas and 03 Biswas comprised in Old Khasra No. 1256 [New Khasra No. 630] (2-03), situated in the revenue estate of Village Mehrauli, New Delhi (hereinafter referred to as **'Subject Land'**) are deemed to have 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 **'New Act'**), as compensation has not been tendered to the petitioner.

3. The necessary facts to be noticed for disposal of this writ petition are that the predecessor in interest of the petitioner i.e. his father – Late Shri Roopa S/o Late Shri Kanhaya Lal having 1/4th share in the subject land was the recorded owner of the subject land. Shri Roopa died on 25.02.1985 leaving behind the right, title and interest of the subject land upon the petitioner,.

4. In this case, a notification under Section 4 under the Land Acquisition Act, 1894 (hereinafter referred to as **'the Act'**) was issued on 23.01.1965, notification under Section 6 of the Act was issued on 07.12.1966 and in pursuance to aforesaid notifications, an Award bearing No. 80-E/1970-71 was passed by the Land Acquisition Collector.

5. 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 the compensation has not been paid to the petitioner. Learned counsel has drawn the attention of the Court to the counter affidavit filed by LAC wherein it has been categorically stated that the compensation amount has been sent to RD.

6. Learned counsel for LAC preliminary raised an objection with regard to the undivided interest of the petitioner. It is submitted that without disclosing the extent of his share in respect of the subject land, the petitioner can not be granted the relief so prayed. The counter affidavit filed by the LAC shows that the possession of the subject land was taken over on 23.09.1981 and handed over to the beneficiary

department and the compensation amount was not tendered to the owners but was sent to the RD. Para 7 of the counter affidavit filed by LAC reads as under:

> *"8. That in the present case, the possession of land falling in Khasra No. 1256 (old) New No. 630 (2-03) was taken over on dated 23.09.1981. Compensation with respect to the abovesaid land was sent in RD due to dispute as per table given below:*

NAME	*AWARD NO.*	*AMOUNT*	*REMARKS*
Bansi	*80 E / 70-71*	*3299.6*	*Disputed Sent in RD*
Roopa	*80 E / 70-71*	*3299.6*	
Bhim Singh	*80 E / 70-71*	*3299.6*	
Sri Chand	*80 E / 70-71*	*3299.6*	

7. We have heard learned counsels for the parties and considered their rival contentions.

8. Taking into consideration the submissions made and the stand taken by the LAC in the counter affidavit that the compensation amount was sent to RD, we are of the considered view that 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). Paras 14 to 20 of 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."*

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 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. Learned counsel for the petitioner, at this stage, submits that the petitioners would be satisfied if the compensation is paid to them as per 2013 Act as the possession of the subject land has already been taken over by the respondents. As prayed, it is directed the petitioners be paid the compensation as per the New Act to be paid within one year from today.

11. The petition stands disposed of.

G. S. SISTANI, J.

SANGITA DHINGRA SEHGAL, J

JANUARY 29, 2018
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