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

% *Date of Judgment: 11th January, 2018*

+ W.P.(C) 48/2015

ARUN MEHRA

..... Petitioner

Through: Mr.Nitin Mishra, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Saroj Bidawah, Advocate for R-1/ UOI.
Mr.Siddharth Panda, Mr.Yeeshu Jain and
Ms.Jyoti Tyagi Advocates for L&B/LAC.

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 petitioner.
2. The petitioner seeks a declaration that the acquisition proceedings initiated in respect of the land of petitioner forming part of Khasra No.607 (4-3), 609 (2-11), 610 (4-4) and 611 (2-3), total measuring 13 Bighas 01 biswas situated in the revenue estate of village Satbari, Tehsil Hauz Khas, New Delhi (hereinafter referred to as 'the 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 neither the physical possession has been taken nor compensation has been paid to the petitioner.

3. In the instant case, a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 25.11.1980 followed by a declaration under Section 6 of the Act made on 27.05.1985. Thereafter, an Award bearing no.14/87-88 was made on 26.05.1987. It is the case of the petitioner that neither compensation has been paid to the petitioner nor physical possession has been taken.
4. The counter affidavit filed by the LAC shows that the possession of the subject land was taken and compensation was not tendered to the owners but was sent to the RD. Para 8 of the counter affidavit filed by LAC reads as under:

“8. That in the present case, the possession of the land of the petitioner was taken over and handed to the beneficiary department 30.09.1987 and compensation was sent in RD. It is further submitted that the present petitioner has not filed any document on record to show that he is the owner of the lands in question.....”
5. Counter affidavit has also been filed by DDA as per which possession of the subject land was handed over to the DDA.
6. Mr.Jain, learned counsel appearing for LAC submits that the petitioner is not entitled to any relief for the reason that the petitioner has failed to establish his title and failed to accept the compensation.
7. Mr. Mishra, learned for the petitioner submits that the petitioner is in possession of the subject land and with respect to his title, he has filed documents in form of General Power of Attorney in favour of Mr. Rajiv Gupta in respect of lands bearing Khasra Nos. 607, 609, 610 and 611 along with copies of sale deed in favour of the petitioner in respect of lands bearing Khasra Nos. 607 (4-3), 609 (2-11), 610 (4-4)

ad 611 (2-3). Learned counsel further submits that the case of the petitioner stands fully covered by the decision rendered by the Supreme Court of India in the case of ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.***, reported at (2014) 3 SCC 183. Counsel submits that as far as objection with regard to the ownership is concerned, the case would be covered by the decision rendered by the Supreme Court in ***Govt. of NCT of Delhi Vs. Manav Dharma Trust and another***, reported in 2017 (6) SCC 751.

8. We have heard learned counsels for the parties.
9. Taking into consideration the submissions made and the stand taken by the LAC in the counter affidavit that the compensation was sent to RD and not tendered to the petitioner, 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.”

10. As far as objection raised by the counsel for the LAC with regard to the ownership is concerned, we find the objection to be misplaced on account of decision rendered in the case of *Manav Dharma Trust* (*supra*). 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.”

11. Taking into consideration the submissions made, the fact that compensation has not been paid to the petitioner and the stand taken by the DDA and LAC in the counter affidavits, we are of the considered view that the necessary ingredients for the application of

Section 24(2) of the New 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. 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.
13. The petition stands disposed of.

G. S. SISTANI, J.

SANGITA DHINGRA SEHGAL, J

JANUARY 11, 2018
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