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

Date of Judgment :9th January, 2018

+ W.P.(C) 7465/2017

BRAHAM PRAKASH YADAV AND ORS. Petitioners

Through Mr.B.P. Agarwal, Advocate.

versus

UNION OF INDIA AND ORS. Respondents

Through Mr.Sarfaraz Ahmed, Adv. for R-1.
Mr.Arjun Mitra, Adv. for R-2 & 3.
Mr.Yeeshu Jain, Standing Counsel
with Ms.Jyoti Tyagi, Adv. for
L&B/LAC.
Mr.Pawan Mathur, Adv. for DDA.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. Mr.Jain, learned counsel for the LAC has handed over the counter affidavit in Court today, which has been taken on record.
2. With consent of the counsel for the parties, writ petition is set down for final hearing and disposal.
3. This is a petition under Article 226 of Constitution of India filed by the petitioners seeking declaration that the acquisition proceedings with respect to the land admeasuring 1 bigha 6 biswas in Khasra no.92, situated in village Haiderpur, New Delhi (hereinafter referred to as the 'subject land') stands 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 petitioners.

4. In this case, a notification vide no.F-15(245)/60-LSC/L&H under section 4 of Land Acquisition Act, 1894 was issued on 24.10.1961 and a declaration vide notification nno.F-4(5)/63-L&H under section 6 was made on 06.12.1966. Thereafter, an award bearing no.50/80-81 was passed on 18.07.1980.
5. Counsel for the petitioner has placed reliance upon ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.***, reported at (2014) 3 SCC 183, in support of his plea that since the compensation has not been tendered, the case of the petitioners would be covered by the aforesaid decision, 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.”

6. We have examined the counter affidavit filed by LAC, paras 8 and 9 of which, read as under :-

“8. That the Land Acquisition Collector passed an Award No.50/80-81 dated 18.07.1980 and it is submitted that the physical possession of the lands bearing Khasra Nos.92(4-00) out of which Khasra 92(2-18) had been taken on 19.07.1980 and rest khasra No.92(1-02) could not be taken. It is further submitted that the Khasra No.92(4-00) are in the ownership rights of different owners. The subject matter of the present writ petition i.e. khasra No.92min(1-06) lies with Shri Vijay Pal s/o Murari Lal and Shri Braham Prakash s/o Murari Lal having ½ share each at item nos.169-170 respectively in the Revenue Records available before the answering Respondent. A copy of the Revenue Record is annexed herewith and marked as **Annexure R/1.**

9. That the compensation could not be paid to the land owners pertaining to Khasra No., subject matter to the present writ petition.”

7. Having regard to the submissions made and the stand taken by LAC in its counter affidavit that no compensation has been tendered to the petitioners and the award having been announced more than five years prior to the commencement of 2013 Act, we are of the considered view that the necessary ingredients of section 24(2) of 2013 Act as interpreted by the Supreme Court of India stand satisfied. The

petitioners would be entitled to a declaration that the acquisition proceedings with respect to the subject land stand lapsed, it is so declared.

8. The writ petition is disposed of.

C.M. APPL 30779/2017

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

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

JANUARY 03, 2018/ck



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