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

Date of Judgment : 11th January, 2018

+ W.P.(C) 7156/2015

MAHABIR & ORS.

..... Petitioners

Through Mr.Aagney Sail, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through Mr.Yeeshu Jain, Standing Counsel
with Ms.Jyoti Tyagi, Adv. for
L&B/LAC.
Ms.Renuka Arora with Nikita Salwan,
Advocates for DSIIDC.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. With consent of the counsel for the parties, writ petition is set down for final hearing and disposal.
2. This is a petition under Article 226 of Constitution of India filed by the petitioners seeking a declaration that the acquisition proceedings with respect to the land in Rectangle no.39 – Khasra no.15(6-12), rectangle no.40, Khasra no.11(4-12), 19(4-04)(B), 20(4-12), 21/1(2-12), 22(4-12); Rectangle no.61-Khasra no.2(3-05)(B), situated in village Karala (prayer restricted to Khasra nos.40//22 Min.(0-10) and 61//2 (3-05)) stand 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.

3. In this case, a notification under section 4 of Land Acquisition Act, 1894 was issued on 25.08.2005 and a declaration under section 6 was made on 10.07.2006. Thereafter, an award was passed on 26.05.2008.
4. During course of hearing, learned counsel for the petitioners fairly admits that compensation with respect to Khasra numbers as detailed above except Khasra nos.40//22 Min.(0-10) and 61//2 (3-05) has been paid and possession of Khasra nos.40//22 Min.(0-10) and 61//2 (3-05) has not been taken. Learned counsel in these circumstances restricts his prayer only with respect to the aforesaid two Khasras i.e. Khasra nos.40//22 Min.(0-10) and 61//2 (3-05). Counsel has placed reliance upon ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.***, reported at (2014) 3 SCC 183.
5. Mr.Jain and Ms.Arora, learned counsel for LAC and DSIIDC respectively submits that as far as compensation is concerned, compensation under the Special Rehabilitation Package stands paid with respect to all Khasra numbers except Khasra no.40//22 Min.(0-10) and 61//2 (3-05). The same submission is with regard to the possession. Learned counsel for LAC relies on paras 8 and 9 of its additional affidavit, which are reproduced below :-

“8. That in para 6 of the writ petition (at page no.4) petitioners have already admitted that they have received the Awarded compensation as well as Special Rehabilitation Package (SRP).

9. That the Khasra No.39//15(6-12), 40//11(4-12), 20(4-12), 21/1 (2-12), 22(4-12), 19(4-04), 61//2(3-05) in total admeasuring (30-09) mentioned at item no.401 in village

Karala have been acquired vide award no.3/08-09. That the possession of 39//15(6-12), 40//11(4-12), 19(4-04), 20(4-12), 21/1 (2-12), 22 min(4-02) has been taken over by the answering respondent on 29.07.08. That the possession of remaining Khasra Nos.40//22 min(0-10), 61//2(3-05) has not been taken and the ownership of these khasra nos. is with Sardar Singh S/o Kanhaiya (full share).”

6. Having heard learned counsel for the parties, we are of the view that the case of the petitioners would be 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.”

7. In view of the stand taken by the petitioners, which is also supported in the additional affidavit filed by the LAC, 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 Khasra nos.40//22 Min.(0-10) and 61//2 (3-05) stand lapsed, it is so declared.
8. The writ petition is disposed of.

C.M. APPL 13121/2015

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

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

JANUARY 11, 2018/ck/