$~R-28

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

Date of Judgment :3rd January, 2018

\+ W.P.(C) 7040/2015

GANPATI ROLLINGS (P) LTD. ..... Petitioner

Through Mr.Anuroop P.S. with Mr.Manish Rai, Advocates.

versus

LAND ACQUISITION COLLECTOR (NORTH-EAST) ..... Respondent

Through Mr.Yeeshu Jain, Standing Counsel with Ms.Jyoti Tyagi, Advocate 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 writ petition was admitted on 25.10.2016.

2. The necessary facts to be noticed for disposal of this writ petition are that the petitioner is the owner of land comprised in Khasra no.379/303-299/1 and 378/303-299/1 measuring 16 biswas, situated in the revenue estate of village Jhilmil Tahirpur, Shahdara, Delhi (hereinafter referred to as the 'subject land').

3. As per writ petition, ownership of the land was in the name of Gopi Sons (P) Ltd. but w.e.f. 14.03.1990, the name of Gopi Sons (P) Ltd. has been changed to Ganpati Rollings (P) Ltd. A fresh certificate of incorporation issued by Registrar of Companies and thereafter all the affairs of the company are being run in the name and style of Ganpati

Rollings (P) Ltd. A copy of the certificate issued by the Registrar of Companies with respect to the change of name has been filed alongwith the writ petition. It is also the case of petitioner that post the change of name of the company, the name of petitioner i.e. Ganpati Rollings (P) Ltd. was recorded in the concerned department in respect of aforesaid land.

4. In this case, a notification under section 4 of Land Acquisition Act, 1894 (hereinafter referred to as 'Old Act') was issued on 09.02.2005, a declaration under section 6 was made on 27.05.2005 and an award bearing no.1/2006-07 was made on 28.02.2007. The land was acquired for construction of Grade Separator-cum-Road over bridge at G.T. Road, Shahdara, Delhi.

5. Counsel for the petitioner submits that although the possession of the subject land was taken but compensation was not paid. Counsel relies on ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.,*** reported at (2014) 3 SCC 183 and claims compensation in terms of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as '2013 Act'). Paras 14 to 20 of ***Pune Municipal Corporation & Anr.*** *(supra)* 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."

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 its title and failed to accept the compensation, which was offered as is evident from reading of communication dated 04.01.2010. Counsel for LAC further submits that the petitioner was informed that petitioner should produce original documents of title and compensation would be paid. Counsel contends that in the absence of petitioner providing the necessary documents, no compensation could be paid.

7. Learned counsel for the petitioner has clarified that in response to the letter dated 04.01.2010, petitioner vide letter dated 10.02.2010 had provided all supporting documents but compensation was not tendered. It is also contended by counsel for the petitioner that respondents cannot be absolved of the liability to pay compensation as

the amount has to be tendered to the original owner and in case of any dispute regarding apportionment and otherwise, it was incumbent upon the respondents to deposit the amount by making a reference in the Court of ADJ, which has not been done.

8. We have heard learned counsel for the parties and considered their rival submissions. The first question which arises for our consideration is as to whether the petitioner is an interested party within the definition of section 3(x) of the 2013 Act. The petitioner has filed copies of sale deeds along with the rejoinder to show how it has acquired the land in question. In response to the letter dated 04.01.2010, petitioner had made the following reply vide letter dated 10.02.2010.

> "……..Sir,
>
> In compliance of your instruction, supporting documents for the payment of compensation are hereby submitted.
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> 1. Photocopy of PAN Card.
> 2. Photocopy of the Bank Statements.
> 3. Photocopy of Mutations Khasra No.378/379.
> 4. Photocopy of Notice FJT pu/LacBr./2009/550 dated 19-03-2009.
> 5. Photocopy of Land Map.
> 6. Land acquired out of Khasra No.378 is 8 BISWA and Khasra No.379 is 8 BISWA, Total Land acquired is 16 BISWA.
>
> You are very kindly requested to make the payment of our land having acquired by you."

9. A reading of the communication dated 10.02.2010 would show that the petitioner had not only supplied copy of the PAN card but also photocopies of the mutation of Khasra no.378 and 379. In the case of

Govt. of NCT of Delhi Vs. Manav Dharma Trust and another, reported in ***2017 (6) SCC 751***, it was held 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."*

10. Having regard to the observations made by the Apex Court in ***Manav Dharma Trust*** (*supra*), we find the objection raised by learned counsel for LAC to be misplaced. In case LAC was dissatisfied with the explanation rendered in the communication dated 10.02.2010 and the documents supplied, the proper course available was to make a reference and deposit the amount with the reference Court under sections 13 and 31 of Old Act, which has not been done. Counsel for the petitioner submits that since the land has already been put to use, petitioner would only seek relief for grant of compensation under section 24(2) of 2013 Act. Para-6 of counter affidavit filed by LAC reads as under :-

> "6. That it is submitted that since the petitioner failed to furnish any title document as to show that it actually purchased the land under reference. It is submitted that for the land falling in khasra number 380, the compensation was claimed by one Sh. Ram Dhari Goyal and compensation of Rs.786925/- was paid to M/s Mahalaxmi Steels on 25.3.2010 vide cheque number

610011 after corrigendum. The khasra number 378 is shown in the name of M/s Gopi Sons Pvt. Ltd. and 379 is shown in the name of one Surinder Kumar Chawla. The petitioner has since claimed compensation for both the khasra numbers without submitting any title documents, the then LAC wrote letters to the petitioner through its Director Sushil Kumar Jain to furnish the documents so as to enable the LAC to release the compensation, since the documents were not provided, the compensation could not be released to the rightful owner and/or to the petitioner herein."

11. Having regard to the fact that compensation was not tendered 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 stands satisfied. The petitioner would be entitled to a declaration that the acquisition proceedings with respect to the subject land stand lapsed, it is so declared. The petitioner would only be entitled to compensation under the 2013 Act, which would be paid within a period of one year from today.

12. The writ petition is disposed of.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

JANUARY 03, 2018/ck