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

% *Date of Judgment: 18th January, 2018*

+ W.P.(C) 7392/2017

KELA DEVI & ORS. ..... Petitioners

Through: Mr. Arun Kumar Kaushik, Advocate.

versus

UNION OF INDIA AND ORS ..... Respondents

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

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 the India filed by fourteen petitioners seeking a declaration that the acquisition proceedings in respect of the petitioners' land i.e. 1/8th share in the land comprise in Khasra No. 202/2 (01-00), 207 Min. (00-15), 208/2 (00-16, 209 (03-15) and 210 (02-08) total measuring 8 Bigha 14 Biswas situated in the revenue estate of village Kotla Mahigram, Tehsil Mehrauli, Delhi (hereinafter referred to as 'Subject Land') stand 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 '2013 Act'), as the compensation has been tendered to the petitioners.

2. Petitioners claim to be legal heirs of Late Lakhmi Chand. They also claim 1/8th share in the land comprise in Khasra No. 202/2 (01-00), 207 Min. (00-15), 208/2 (00-16, 209 (03-15) and 210 (02-08) total

measuring 8 Bigha 14 Biswas situated in the revenue estate of village Kotla Mahigram, Tehsil Mehrauli, Delhi.

3. Learned counsel for the petitioners submits that a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 06.04.1964 followed by a declaration under Section 6 of the Act on 07.12.1966 and an award No. 205/86-87 was made on 19.09.1986. While referring to the counter affidavit filed by the Land Acquisition Collector, learned counsel for the petitioner submits that the acquisition proceedings qua the 1/8th share of the land of the petitioner would lapse as compensation has not been paid to the petitioners.

4. Learned counsel for the respondent submits that petitioners have nowhere stated in the writ petition that they are the legal heirs of Lakhmi Chand.

5. Learned counsel for the petitioner contends that since the compensation has not been paid, the case of the petitioner the case of the petitioners is fully covered by a decision rendered by the Apex Court in the case of ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.,*** reported at ***(2014) 3 SCC 183***.

6. We have heard learned counsel for the parties.

7. As far as objection with regard to the ownership is concerned, learned counsel for the petitioner has clarified in the rejoinder that Lakhmi Chand died leaving behind five legal heirs being Harpal (son), Karan (son)Membati (daughter), Kinno (daughter) and Shyam Singh (son). It is further clarified that Karan, Harpal and Shyam Singh expired on 08.05.1998, 30.05.1999 and 30.07.2017 respectively. Copies of their

death certificates have been annexed along with the rejoinder. It is further clarified that petitioners No. 1 to 4 are legal heirs of Late Shri Harpal, petitioners No. 5 to 8 are legal heirs of Late Shri Karan and petitioners No. 9 to 10 are daughters of Late Shri Lakhmi Chand and petitioners No. 11 to 14 are legal heirs of Late Shri Shyam Singh.

8. Counter affidavit has been filed by LAC. Para 7 of the counter affidavit reads as under:

> *"7. That the possession of the above mentioned land were taken over on 04.12.86, 17.07.87, 12.12.96 and 05.03.97 and handed over to the beneficiary department. As per statement 'A' compensation amount was paid to the recorded owners namely, Sunpat S/o Data Ram (Chander S/o Sunpat for Rs.5187/- Cheque No. 771555 on 16.09.2010), Chandgi S/o Khacheru for Rs.20648.25 on 19.01.2009 and Rs.26034 vide Cheque No. 724219 dated 21.01.2009, Gyan Singh S/o Shri Shiv Lal for Rs.3441.80 on 12.10.1990 and Rs.8229/- vide cheque No. 724221 dated 21.01.2009, Fakira S/o Shiv Lal for Rs.3441.80 ib 13.10.1990 and Rs.8229/- vide Cheque No. 724221 dated 21.01.2009, Sant Ram S/o Bahal for Rs.6882.79 on 16.10.1990, Rumalo mother of Jagram for Rs.5162.06 and 1720.69 on 19.01.1990 and 22.10.1990 respectively, Khazan S/o Mangal for Rs.10324.69 on 19.11.1990. **However, compensation to Lakhmi Chand was not paid as there was dispute.**"*

9. Reading of para 7 of the counter affidavit filed by the LAC would show that compensation has not been paid to the Lakhmi Chand. The petitioners are legal heirs of Lakhmi Chand.

10. In our view, the case of the petitioners 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 aforesaid decision 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.*
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> *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.*
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> *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.”*

11. Having regard to the submissions made, stand taken by the LAC in its counter affidavit and the fact that the compensation has not been tendered to the recorded owner, we are of the considered view that the necessary ingredients for the application of Section 24(2) of the 2013 Act as has been interpreted by the Supreme Court of India stand satisfied.

12. Since, the award having been announced more than five years prior to the commencement of the 2013 Act, the petitioners are entitled to declaration that the acquisition proceedings in respect of the subject land are deemed to have lapsed. It is ordered accordingly.

13. The writ petition stands disposed of.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

JANUARY 18, 2018
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