

\$~9 & 10

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

Date of Judgment :16th January, 2018

+ W.P.(C) 8136/2015

SURAJ PRAKASH JAIN & ORS Petitioners

Through Ms.Manpreet Kaur, Advocate.

versus

LAND ACQUISITION COLLECTOR & ANR Respondents

Through Mr.Yeeshu Jain, Standing Counsel
with Ms.Jyoti Tyagi, Adv. for
L&B/LAC.
Mr.Siddharth Dutta, Adv. for R-2.

+ W.P.(C) 9527/2016

KASTURI LAL JAIN & ORS Petitioners

Through Mr. Mayank Mishra, Advocate

versus

LAND ACQUISITION COLLECTOR & ANR Respondents

Through Mr.Yeeshu Jain, Standing Counsel
with Ms.Jyoti Tyagi, Adv. 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. Although these writ petitions have been heard separately, but for the sake of convenience a common judgment is being passed.

2. Mr.Jain, learned counsel appearing on behalf of LAC submits that he adopts the counter affidavit filed in W.P. (C) 8136/2015 in W.P. (C) 9527/2016 as well.
3. Present petitions have been filed under Article 226 of Constitution of India. The petitioners seek a declaration that the acquisition proceedings with respect to 73.5% undivided share of petitioner in W.P. (C) 8136/2015 and 26.5% undivided share of petitioner in W.P. (C) 9527/2016, in land admeasuring 16.5 biswa falling in Khasra no.1184/20/2/1 out of total land admeasuring 5 bighas 14 biswas (after acquisition by DMRC) falling in Khasra no.1184/20, situated at village Jhilmil Tahirpur, Shahdara, Delhi, (hereinafter referred to as the '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 compensation has not been tendered to the petitioners although the possession has been taken and lands have been put to use.
4. Counsels for petitioners have placed reliance on ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.***, reported at (2014) 3 SCC 183.
5. Mr.Jain, learned counsel for LAC has drawn attention of the Court to paras 4 and 5 of its counter affidavit, which read as under :-

“4. That the present writ petition is liable to be dismissed for non-joinder of necessary parties as for the subject land falling in the khasra number 1184/20/2/1 (16 biswa 5 biswansi), the 7 petitioners herein and one M/s Tirupati Enterprises through its partner Raj Jain have filed objections claiming ownership over the subject land and against the release of compensation. The petitioners

have not impleaded the said Tirupati Enterprises as a necessary party in the present writ petition.

5. That it is submitted that for purposes of planned development of Delhi (construction of road under bridge on road No.58 & 64 at GT Road, Shahdara), the answering respondent issued a Notification u/s 4 of the Land Acquisition Act, 1894 on 14.10.2005 which was followed by Notification u/s 6 of the said Act dated 5.10.2006 for the acquisition of the lands falling in the above-said Act dated 05.10.2006 for the acquisition of the lands falling in the above-said khasra numbers in revenue village Jhilmil Tahirpur. That an Award bearing No.1/08-09 dated 22.7.2008 was also passed and the actual vacant physical possession of the land falling in above-said khasra number was taken on 09.09.2009 and handed over to the DDA on the spot by preparing possession proceedings. The petitioner has otherwise admitted to have taken possession by the government in the writ petition as the land would have been utilized by the Government for the construction of the road under bridge, stated supra. It is submitted that since the petitioners and Tirupati Enterprises filed objections with the LAC, the compensation of Rs.19,95,997/- so determined under the Award, could not be released for the subject land and the same was deposited with the Reference Court vide letter dated 28.7.2015.”

6. Counsel for LAC submits that the compensation stands deposited to the Court of ADJ under sections 30 & 31 of Land Acquisition Act, 1894 (hereinafter referred to as ‘Act’) on account of the fact that there is a inter-se dispute with regard to ownership of the land. However, learned counsels do not dispute the fact that this amount stands deposited after coming into force the 2013 Act. Counsel further submits that in view of the dispute, this Court may clarify that this Court is not rendering any opinion as to the ownership and title of the

land. However, since the amount has been deposited post coming into force the 2013 Act, the acquisition proceedings stand lapsed.

7. In W.P. (C) 8136/2015, a notification under section 4 of the Act was issued on 14.10.2005 and a declaration under section 6 of the Act was made on 05.10.2006. Thereafter, an Award bearing no.1/08-09 was passed on 22.07.2008.
8. In W.P. (C) 9527/2016, a notification under section 4 of the Act was issued on 12.04.2006 and a declaration under section 6 of the Act was made on 22.05.2006. Thereafter, an Award bearing no.1/2008-09/North-East was passed on 22.07.2008.
9. 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.”

10. Having regard to the stand taken by LAC in its counter affidavit, we make it clear that we have not rendered any opinion as far as ownership and title of the land is concerned to which counsel for petitioner has no objection as a reference under sections 30 & 31 of the Act is pending. Counsel submits that she has already approached the Court of ADJ and filed objection and supporting documents in support of her ownership in the year 2015 itself.
11. Taking into consideration the observations made in the case of ***Pune Municipal Corporation & Anr (supra)***, and having regard to the fact that neither compensation was tendered nor referred to the Court of ADJ under sections 30 & 31 prior to the coming of 2013 Act, the acquisition proceedings would stand lapsed. It is ordered accordingly.
12. We make it clear that we have not made any observation with regard to ownership and title of the land. It is also made clear that since the land has been put to use, the rightful owners would only be entitled for compensation under the 2013 Act.
13. The writ petitions stand disposed of.

C.M. APPL 16911/2015 in W.P. (C) 8136/2015 & C.M. APPL 38115/2016 in W.P. (C) 9527/2016

Both the applications stand disposed of in view of the order passed in the writ petitions.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

JANUARY 16, 2018/ck/

