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

Date of Judgment :6th February, 2018

\+ W.P.(C) 8179/2017

GAJENDRA SINGH & ORS ..... Petitioners

Through Mr. Rajiv Kumar Ghawana, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS ..... Respondents

Through Mr. Siddharth Panda, Advocate for L&B/LAC.
Mr. Rahul Dubey & Ms. Shahana Farah, Advocates for DDA.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. ***(ORAL)***

1. Mr. Panda has handed over the counter affidavit in Court, which is taken on record. Copy of the same has been supplied to counsel for the petitioners.

2. With consent of both the parties, the present 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 a declaration that the acquisition proceedings in respect of the petitioners land to the extent of 2 bighas 14 biswas comprised in Khasra no.461 (64-12), situated in the revenue estate of village Jasola, Delhi (hereinafter referred to as the 'subject land')

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') compensation has not been tendered to the petitioners.

4. At the outset, counsel for the petitioners submits that since the possession of the subject land has already been taken, he restricts his claim only to compensation in terms of 2013 Act.

5. In this case, a notification under section 4 of Land Acquisition Act, 1894 ('the Act' in short) was issued on 23.06.1989 and a declaration under sections 6 of the Act was made on 22.06.1990. Thereafter, an award bearing no.21/92-93 was passed on 18.06.1992.

6. Mr. Ghawana, counsel for the petitioners submits that the counter affidavit which has been handed over in Court today, would also make it clear that as per Naksha Mutzamin, compensation has not been paid to the recorded owners. Counsel has placed reliance upon a decision rendered by Apex Court in ***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.

7. Mr. Panda, counsel for LAC has relied on para 7 of his counter affidavit, which is reproduced below :-

> "7. That in the present case, possession of the above said land was taken and handed over to beneficiary department on 19.01.2006. The payment of compensation could not be ascertained as the Statement 'A' is not avaible in the branch, however, as per Naksha Mutzamin compensation is not paid to the recorded owners."

8. We have heard learned counsel for the parties. Taking into consideration the submissions made and the stand taken in the counter affidavit that the compensation has not been tendered to the petitioners, 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. The case of the petitioners would be fully covered by the decision rendered in ***Pune Municipal Corporation & Anr.*** *(supra)*, 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.
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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.

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."

9. Since the award having been announced more than five years prior to the commencement of the 2013 Act and compensation having not been tendered to the petitioners, the acquisition proceedings with respect to the subject land would deem to have lapsed. Consequently, the writ petition is allowed. It is ordered accordingly. However, as prayed, the petitioners would only be entitled to compensation as per 2013 Act, which would be paid within a period of one year from today.

10. The writ petition is disposed of.

<u>CM APPL 33602/2017 (stay)</u>

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

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

FEBRUARY 06, 2018/ck/