

\$~52

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Judgment : 23rd January, 2018

+

W.P.(C) 8151/2017

KANIKA GANDOTRA

..... Petitioner

Through: Ms. Deepika V. Marwaha and
Ms. Worthing Kajar, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Dhanesh Relan, Standing Counsel for
DDA with Ms. Gauri Chaturvedi,
Advocate.
Mr. Sanjay Kumar Pathak, Mrs. Koumudi
Kiran Pathak, Mr. Sunil Kumar Jha and
Mr. Kushal Raj Tater, Advocates for
LAC/L&B.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

CM APPL. No. 33505/2017

Exemption allowed, subject to just exceptions.

Application stands disposed of.

W. P. (C) 8151/2017

1. This is a petition under Article 226 of Constitution of India filed by the petitioner seeking a declaration that the acquisition proceedings with respect to the land of the petitioner comprised in Khasra No. 1099 Min admeasuring 1 Bigha, situated in the revenue estate of Village Malikpur Kohi @ Rangpuri, New Delhi-110070 (hereinafter referred to as '**Subject Land**'), has 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 neither the compensation has been paid nor the physical possession has been taken.

2. It is pointed out that a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '**the Act**') was issued on 27.06.1996. A Section 6 declaration of the Act was made on 10.01.1997 and thereafter an Award bearing No. 2/1998-99 was passed on 07.01.1999.
3. Ms. Marwaha, learned counsel for the petitioner submits that having regard to the fact that neither the possession of the subject land was taken nor the compensation has been paid, the acquisition proceedings with respect to the land of the petitioner stands lapsed. Reliance has been placed on the decision rendered by the Apex Court in *Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors.*, reported in (2014) 3 SCC 183. Ms. Marwaha further contends that the objection raised by Land Acquisition Collector that no relief can be granted to the petitioner on account of stay order granted by this Court in W. P. (C) 7802/2012 titled as *Ruchi Vihar Housing Welfare Society (Regd.) Vs. Govt. of NCT of Delhi & Ors.*, has no force as the same objection was raised and rejected by the predecessor Bench of this Court.
4. Learned counsel for the petitioner has placed reliance on the decision rendered by this Court in W. P. (C) 6577/2014 titled as

Vikram Sarin Vs. Govt. of NCT of Delhi & Ors. on 24.03.2015, more particularly para 4. Reliance has also been placed on W. P.(C) 1609/2016 titled as ***Alep Kaur Vs. Govt. of NCT of Delhi & Ors.***, on 24.04.2017, more particularly para 12, which reads as under:

“12. Since, the petitioner is the recorded owner of the subject land and shown as the claimant in the award and since the respondents plead that they could not take the possession of the subject land due to a stay from this Court, the question as to if the period during which the proceeding was stayed could be excluded from the period so stipulated under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, is still pending before the Supreme Court in a larger Bench in Yogesh Neema vs. State of MP & Ors SLP (C) No.10742/2008 vide order dated 12.01.2016. However, in Sree Balaji Nagar Residential Association vs. State of Tamil Nadu (2015) 3 SCC 353, the Supreme Court has held that if the possession could not be taken by the State for any reason including stay by court etc, the provisions of the Section 24(2) the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, would apply.”

5. Additionally, learned counsel for the petitioner submits that in the instant case, the Award was rendered as far as back as in the year 1999. She placed reliance on observation made by the Apex Court in ***Delhi Development Authority Vs. Sukhbir Singh & Ors.*** reported in ***AIR 2016 Supreme Court 4275***, wherein the Apex Court analysed Section 24 (2) of 2013 Act. Para 14 of the said judgment reads as under:

“14. The picture that therefore emerges on a reading of Section 24(2) is that the State has no business to expropriate from a citizen his property if an award has been made and the necessary steps to complete acquisition have not been taken for a period of five years or more. These steps include the taking of physical possession of land and payment of compensation. What the legislature is in effect telling the executive is that they ought to have put their house in order and completed the acquisition proceedings within a reasonable time after pronouncement of award. Not having done so even after a leeway of five years is given, would cross the limits of legislative tolerance, after which the whole proceeding would be deemed to have lapsed. It is important to notice that the Section gets attracted if the acquisition proceeding is not completed within five years after pronouncement of the award. This may happen either because physical possession of the land has not been taken or because compensation has not been paid, within the said period of five years. A faint submission to the effect that ‘or’ should be read as ‘and’ must be turned down for two reasons. The plain natural meaning of the sub-section does not lead to any absurdity for us to replace language advisedly used by the Legislature. Secondly, the object of the Act, and Section 24 in particular, is that in case an award has been made for five years or more, possession ought to have been taken within this period, or else it is statutorily presumed that the balance between the citizen’s right to retain his own property and the right of the State to expropriate it for a public purpose gets so disturbed as to make the acquisition proceedings lapse. Alternatively, if compensation has not been paid within this period, it is also statutorily presumed that the aforesaid balance gets disturbed so as to free such property from acquisition.

6. Learned counsel for the petitioner further submits that the stay order was granted as late in the year 2012 but no steps were taken by the respondents between the year 1999 and 2012 and during this period and even today, the petitioner remains in actual physical

possession of the subject land and compensation has also not been tendered to the petitioner. Learned counsel for the petitioner contends that the relief so prayed, may be granted.

7. Mr. Pathak, learned counsel appearing for LAC has drawn the attention of this Court to para 9 of the counter affidavit, which reads as under :

“9. That it is submitted that many of the land owners filed various writ petitions including the lead case being Civil Writ Petition No. 1953/1997 titled as Vasant Kunj Enclave Housing Welfare Society Vs. Union of India & Ors. before this Hon’ble Court for quashing of the Notifications dated 27.06.1996 issued by the Government of NCT of Delhi under Section 4 read with Section 17 (1) & (4) dispensing with Section 5-A and Notifications dated 10.01.1997 issued under Section 6 of the Land Acquisition Act. In the said writ petitions, interim stay/status quo orders were passed in favour of the petitioners therein as early as on 16.12.1996. The said writ petitions lead case being WP (C) 1983/1997 were disposed on 04.05.2012 whereby Section 6 and 17 was quashed quo the petitioners therein. Thereafter, the public notice issued by the answering respondent on 21.11.2012 inviting objections from interested persons under Section 5A of the Old Act were challenged in two writ petitions being W (C) 7795/2012 and WP(C) 7802/2012 and the same was stayed vide interim orders dated 19.12.2012 and further, in WP (C) 7802/2012 vide 11.10.2013 the parties were directed to maintain status quo. Aforesaid writ petitions i.e. W.P. (C) 7795/2012 and W.P. (C) 7802/2012 were dismissed as withdrawn on 05.11.2014 and 12.10.2015 with liberty to seek remedy individually by land losers. It is submitted that the petitioners land i.e. Khasra Nos. 1099 was also subject matter of W.P. (C) No. 7802/2012. Petitioners name appears at page 1595 (Annexure P-53) of the writ petition No. 7802/2012. Thus, interim order/stay with respect to the subject Khasra No. remained in force till 12.10.2015. Thus, acquisition

proceedings again remained interdicted by interim orders of this Hon'ble Court."

8. Learned counsel for LAC also placed reliance on the decision rendered by the Apex Court in Civil Appeal No. 19356/2017 arising out of SLP (C) 25568/2016 titled as Delhi Metro Rail Corporation Ltd. Vs. Tarun Pal Singh & Ors., dated 15.11.2017 and submits that the petitioner is only entitled for compensation as the majority of the land owners have not been paid the compensation.
9. We find the submissions made by the learned counsel for LAC to be completely misplaced for the reason that according to Mr.Pathak, learned counsel for LAC, the award pertaining to entire village and substantial majority of the persons of the village have not been paid compensation.
10. Learned counsel for the petitioners submits that the petitioner is nowhere concerned with the majority of the land owners and the case of the petitioner is to be decided as it is the petitioner who has approached the Court.
11. As far as the plea with regard to the payment of compensation and possession are concerned, para 10 of the counter affidavit reads as under:

"10. That as regards possession and compensation, it is humbly submitted that as per possession proceeding report, possession of the subject Khasra No. 1099 (1-00) has not been taken. So far as compensation amount is concerned, it is humbly submitted that compensation amount has not been received from requisitioning authority and therefore not paid to the recorded owner. As

per Naksha Muntazamin the petitioner is recorded owner of this Khasra number mentioned in Naksha Muntazamin at Item No. 574.

12. We have heard learned counsel for the parties.
13. We have extracted in aforesaid going paragraphs, the observations made in the case of *Alep Kaur (Supra)*. In case *Vikram Sarin (Supra)* and *Alep Kaur (Supra)* wherein identical objections were raised and rejected by a reasoned order. We see no reason to take a different view, the view taken by the Division Bench in *Vikram Sarin (Supra)* and *Alep Kaur (Supra)*.
14. Reading of the counter affidavit filed by the LAC makes it abundantly clear that neither the possession has been taken over nor the compensation was tendered to the recorded owner or to the interested person. In view thereof, the case of the petitioner is fully covered by the decision rendered by the Apex Court in the case of *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.

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.”

15. Taking into consideration the submissions made and the stand taken by LAC that compensation has not been tendered, we are of the considered view that the necessary ingredients of Section 24 (2) of 2013 Act stand satisfied. Since the award having been announced more than five years prior to the commencement of the 2013 Act and, having regard to the fact that the compensation has not been tendered, the petitioner is entitled to a declaration that the acquisition proceedings initiated under the Land Acquisition Act, 1894 with regard to the subject land are deemed to have lapsed. It is ordered accordingly.
16. The writ petition stands disposed of.

CM APPL. No. 33504/2017

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

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

JANUARY 23, 2018

gr