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

% *Date of Judgment 03rd January, 2018*

+ W.P.(C) 8861/2015

RAM KANWAR & ORS. Petitioners

Through: Mr. Anuroop P. S., Advocate.

versus

UNION OF INDIA & ANR. Respondents

Through: Mr. Yeeshu Jain and Ms. Jyoti Tyagi,
Advocates for L&B / LAC
Ms. Mrinalini Sen and Mr. Shatrajit
Banerji, Advocates for DDA.

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 28.03.2017.
2. The petitioner seeks a declaration that the acquisition proceedings with respect to the land of the petitioners comprises in Khasra No. 358 (6-0) and 359/2 (18-0) situated in the revenue estate of Village Bahapur, New Delhi stand lapsed and have become inoperative in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as neither the possession of the lands of the petitioners has been taken nor compensation has been paid.
3. In this case, the notification under Section 4 of the Land Acquisition Act, 1894 was issued on 13.11.1959. A declaration

under Section 6 of the Act was issued on 19.11.1968 and an award bearing No. 231/86-87 was pronounced on 19.09.1986.

4. Learned counsel for the petitioners submits that no compensation has been tendered which is also evident on reading of the contents of the counter affidavit filed by LAC and as far as possession is concerned, learned counsel for the petitioners submits that the petitioners are in actual physical possession of the subject land. He relies upon the Malkan Kabza filed on record to show that possession was with the petitioners even during the period of 20.01.2006 to 23.01.2007 when according to the respondent possession was taken. Learned counsel further submits that entire arrears is built up and a Flour Mill commonly known as Modi Flour Mill is functional.
5. Learned counsel for LAC has drawn the attention of the Court to the para 4 of the counter affidavit as per which actual physical possession was handed over to the DDA, however, compensation could not be paid owing to *interse* dispute between the parties.
6. We have heard the counsel for the parties.
7. We deem it appropriate to reproduce the para 4 of the counter affidavit filed on behalf of the LAC, which reads as under:

“4. That it is submitted that the lands of village Bahapur were notified vide Notification under Section 4 of the Land Acquisition Act dated 13.11.1959 which was followed by Notification under Section 6 of the said Act vide Notification dated 19.11.1968. That the then Land Acquisition Collector passed an Award bearing No. 231/86-87

dated 19.09.1986 and the actual physical possession of the subject land falling in Khasra number 358 (6-00) and 359/2 (18-00) was duly taken on 22.09.1986 on the spot by preparing Possession Proceeding on the spot and was handed over to the beneficiary department i.e. DDA immediately. The compensation of the same however, could not be paid to the recorded owners namely Panna Lal and Shiv Shankar Dass having half share each owing to the dispute.”

8. Having regard to the fact that the compensation of the land in question has not been tendered to the petitioners, the present case fully covers by 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, wherein it was held that :

“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.

9. Having regard to the submissions made by the parties and the stand taken by the counsel for the LAC in the counter affidavit that the compensation has not been tendered and the award having been announced more than five years prior to the commence 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

stands satisfied. Accordingly, the acquisition proceedings qua the land of the petitioners stand lapsed.

10. The petition is allowed.

CM APPLN. No. 19850/2015

In view of the order passed in the writ petition, the present application stands disposed of.

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

JANUARY 03, 2018

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