

\$~5

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

% *Date of Judgment: 6th February, 2018*

+ W.P.(C) 9428/2017

SUNIL KUMAR Petitioner

Through: Ms. Rachna Agrawal, Advocate

versus

UNION OF INDIA AND ANR Respondents

Through: Mr. Bhagwan Swarup Shukla, CGSC
with Mr. Kamaldeep, Advocate for
UOI.

Mr. Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi, Advocate for
L&B/ LAC.

Mr. Arun Birbal, Mr. Sanjay Singh
and Mr. Ajay Birbal, Advocates for
DDA.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. Counter affidavit has been handed over in Court by the counsel for the LAC, copy supplied to the counsel for the petitioner. Counter affidavit be taken on record.
2. With the consent of the parties, the writ petition is set down for final hearing and disposal.
3. The petitioner has filed the present writ petition under Article 226 of the Constitution of India. The petitioner seeks a declaration that the acquisition proceedings initiated with respect to the land of petitioner comprised of agricultural land measuring 4 acres 2 bighas bearing

Khasra No.1530/1-2(4-16), 1532(4-16), 1533/1-2-3(4-16), 1470(4-16), 1527/1(2-00), situated in the revenue estate of Village Chattarpur, Tehsil Hauz Khas, New Delhi (hereinafter referred to as 'the subject land') is deemed to have 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 the '2013 Act'), as neither the physical possession of the subject land has been taken nor the compensation has been paid.

4. In this case, a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 25.11.1980, a declaration under Section 6 was made on 07.06.1985 and an Award bearing no.15/87-88 was rendered on 05.06.1987. It is the case of the petitioner that the physical possession of the land remained with the recorded owner and after 06.11.2015 till date, the petitioner is in physical possession. It is the case of the petitioner that the respondents have not paid the compensation either to the recorded owner or to the petitioner or deposited the same in court in terms of Section 31 of the Act. Learned counsel for the petitioner has drawn the attention of the Court to para 4 of the counter affidavit filed by the LAC, as per which the compensation has not been tendered. Learned counsel for the petitioner, thus submits that the case of the petitioners would be fully covered by the decision rendered by the Supreme Court in the case of ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.***, reported at (2014) 3 SCC 183.
5. We have heard the learned counsel for the parties. Paragraph 7 of the counter affidavit filed by the LAC reads as under:

“7. That the present writ petition is liable to be dismissed as the petitioner is not the recorded owner of subject land whereas the lands of village Chatterpur were notified vide Notification under section 4 of the Land Acquisition Act, 1894 dated 25.11.1980 which was followed by the Notification under section 6 of the Act. The Award was also passed vide Award No.15/87-88 dated 5.6.87 however possession of the land falling in subject khasra numbers could not be taken due to stay from dispossession in CWP No.2055/85 and 2056/85 and the compensation was sent in RD as per the table below:

NAME	KHASRA NO.	AMOUNT
Mahender Singh	1530/1-2(4-16), 1533/1-3	338540.71
Vijender Singh, Mahender Singh, Vishandas, Hardeen	1532(4-16)	169270.35
Ramesh Bhardwaj	1527/1(2-0)	225673.80
Chander Singh	1470(4-16)	871345.60

6. As per the counter affidavit, the possession of the land could not be taken on account of interim order granted in WP(C) Nos.2055/1985 and 2056/1985. The counter affidavit also reveals that the compensation was not tendered to the petitioner but sent to the RD. The counter affidavit filed by the LAC does not disclose the reason as to why the amount of compensation was sent to the RD. The counter affidavit is also silent as to whether the compensation was offered to the petitioner or not. Thus, the case of the petitioner would be fully covered by the decision rendered by the Supreme Court of India in the case of **Pune Municipal Corporation & Anr.**(supra). Paragraphs 14 to 20 of the decision rendered in **Pune Municipal Corporation & Anr.**(supra), 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.”

7. Taking into consideration the submissions made and the stand taken by the LAC in the counter affidavit, 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.

8. Since the award having been announced more than five years prior to the commencement of the 2013 Act and, having regard to the stand taken by the LAC and the fact that the compensation has not been tendered to the petitioner, 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.

9. The petition stands disposed.

CM.APPL 38353/2017(stay)

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

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

FEBRUARY 06, 2018

pst/