

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

% **Date of decision: 1st October, 2018**

+ **LA.APP. 344/2017**

GYAN PRAKASH (NOW DECEASED) THR LRS..... Appellant

Through: Mr. Dhruv Madan, Adv.

Versus

UNION OF INDIA

..... Respondent

Through: Mr. Yeeshu Jain & Ms. Jyoti Tyagi,
Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This appeal under Section 54 of the Land Acquisition Act, 1894 impugns the order [dated 16th August, 2016 in LAC No.37/12 (81/16) of the Court of Additional District Judge (ADJ)-02 (South)] on a Reference under Section 30-31 of the Act as well as the order [dated 5th September, 2017 in LAC No.8946/2016 also of the Court of ADJ-02 (South)] of dismissal of an application filed by the appellant for review of the order dated 16th August, 2016.

2. This appeal came up first before this Court on 13th November, 2017 when record of the Reference Court was ordered to be requisitioned. Upon the record being received, vide order dated 5th April, 2018, notice of the appeal was issued to the sole respondent Union of India (UOI). The counsel for the appellant and the counsel for the respondent UOI have been heard.

3. The subject land, being Khasra No.227 (7-18) and 67(1-4) of village Saidulajab, was acquired and an Award No.13/87-88 dated 20th May, 1987 made with respect thereto. The Land Acquisition Collector (LAC) (South),

on 7th August, 2012, made a Reference, under Section 30-31 of the Act, reasoning that “the interested persons have not approached for compensation despite passing of more than 24 years of Award and notices sent to them for receiving of compensation” and naming (i) Gyan Prakash, son of Sh. Chuttan, (ii) Shiv Narayan, son of Sh. Gareeb, (iii) Prem Raj, son of Sh. Jeeta, (iv) Saroop Singh, son of Sh. Gareeb, and, (iv) Shri Ram, son of Sh. Govind as the interested persons.

4. The requisitioned record received in this Court is only of the application for review which was dismissed vide order dated 5th September, 2017 and the record of the original Reference has not been received. The counsel for the appellant has however handed over in the Court a certified copy of the order sheets of the Reference Court and which are taken on record.

5. A perusal of the said order sheets of Reference Court shows, (i) that the Reference was taken up by the ADJ to whom it was assigned, on 14th August, 2012; (ii) on 9th October, 2012, the Reference Court ordered the cheque for Rs.3,21,087.90 paise on record to be encashed and money thereunder to be kept in interest bearing deposit and notice to be issued to ‘interested persons’; (iii) on 19th November, 2013, the appellant appeared before the Reference Court; (iv) though the interested persons shown in the Reference were five as aforesaid, but only the appellant and Saroop Singh appeared and none appeared for the remaining interested persons viz. Shiv Narayan, Prem Raj and Shri Ram, who were proceeded against *ex parte*; (v) the appellant died during the pendency of the Reference and was substituted by his heirs who have filed the present appeal.

6. The appellant, in the present appeal has not impleaded any of the other interested persons, not even Saroop Singh who was appearing before the Reference Court.

7. The appellant filed objections dated 21st April, 2015 to the Reference *inter alia* pleading, that (i) upon coming into force of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Right to Fair Compensation Act), a fresh cause of action had accrued to the appellant; (ii) the Notification dated 5th November, 1980 under Section 4 and the subsequent Notification under Section 6 of the Land Acquisition Act and in respect of which Award No.13/87-88 was passed, had lapsed by operation and effect of Section 24 of the Right to Fair Compensation Act; (iii) the physical possession of the land had not been taken and continued to be with the appellant; (iv) the compensation assessed vide the Award aforesaid was never tendered or paid to the appellant or the other owners of the land as per the requirement of Section 31 of the Land Acquisition Act; (v) the appellant had learnt from information sought under the Right to Information Act, 2005, that till 6th January, 2014, no notice had been issued to the land owners to receive compensation; (vi) that though compensation has been deposited in the Reference Court but such deposit would not meet the requirement of law as compensation can only be deposited in a Reference, under Section 31(2) of the Land Acquisition Act, when the owner refuses to accept compensation or there is no person competent to alienate the land or when there is a dispute as to the title to receive compensation or as to apportionment thereof and which was not the case; and, (vii) even if the compensation has

been deposited in the Court, the same would be of no avail to the respondent UOI since the amount was never tendered. Reliance was placed on *Pune Municipal Corporation Vs. Harakchand Misirimal Solanki* (2014) 3 SCC 183.

8. The respondent UOI filed a reply to the aforesaid objections, pleading (a) that the Reference Court has limited jurisdiction and there is no provision in law for filing any objection in the Reference Court to the making of the Reference and the only remedy against the Reference was to prefer a writ petition and which had not been done; (b) under Section 63 of the Right to Fair Compensation Act, the jurisdiction of the Civil Court, as the Reference Court was / is, to decide the subject objection was/is barred; (c) the possession of the land had already been taken and handed over to the Delhi Development Authority (DDA) for public purpose development, as far back as on 17th April, 1997 (the counsel for the respondent UOI states that the correct date is 17th July, 1987); and, (d) the compensation had already been deposited in the Reference Court on 19th August, 2012 and the appellant was not entitled to take the shelter of Section 24(1) of the Right to Fair Compensation Act.

9. The Reference Court, in the impugned order dated 16th August, 2016, has found/observed/reasoned, that (a) reference was made to the Court, since the interested persons were not coming forward to collect the compensation; (b) reference for the said reason is permitted under Section 31(2) of the Land Acquisition Act; (c) copies of notices / reminders on record corroborate the plea in the Reference that “the interested persons have not applied for compensation despite passing of more than 24 years of

Award and notices sent to them for receiving compensation”; (d) the deposit made by the Collector in the Reference Court was/is covered by Section 31 of the Land Acquisition Act and the deposit had been validly made; (e) the object of such deposit, when there is refusal to accept or receive or consent to receive compensation, is to prevent unnecessary prolongation of the proceedings and accumulation of Collector’s liability for interest; and, (f) the deposit by the Collector in the present case was thus deposit within Section 31(2) of the Act. Accordingly, the objections were disposed of and the payment tendered treated under Section 31 and the Reference disposed of.

10. The appellant sought review of the order dated 16th August, 2016 aforesaid, pleading that (i) the notices which had been relied upon and which formed the basis of the order are forged, fabricated and manipulated and could not have been issued at the relevant time; (ii) even if it were to be believed that the said notices were issued, even then, as per the LAC also the said notices were never served upon the appellant and thus the question of the appellant coming forward to take the compensation never arises; (iii) Supreme Court in ***Pune Municipal Corporation Vs. Harakchand Misrimal Solanki*** AIR 2014 SC 982 has held that the Land Acquisition Act being an expropriatory legislation, has to be strictly followed; thus deposit under Section 31(2) of the Land Acquisition Act could have been made only after tender of compensation as provided in Section 31(1) of the Act; (iv) Supreme Court in ***Ivo Agnelo Santimano Fernandes Vs. State of Goa*** (2011) 11 SCC 506 has held that deposit of amount of compensation in the State’s revenue account is of no avail and the liability of LAC to pay

interest subsists till the amount has not been deposited in the Court; and, (v) the compensation deposited in the Reference Court would be of no avail to the appellant since was previously never tendered to the appellant.

11. The Review Petition was dismissed vide order dated 5th September, 2017, reasoning that (a) the appellant was building up a case for seeking setting aside of the acquisition proceedings; (b) the Reference Court has a limited mandate; (c) while Section 30 of the Land Acquisition Act falls in Part-IV thereof, Section 31 thereof falls in Part-V thereof; Section 31 is not controlled by Section 30; while under Section 30, the compensation awarded is deposited / forwarded to the Court to be apportioned amongst true claimants, under Section 31 the compensation amount is forwarded in situations where the compensation amount cannot be handed over to the claimants; (d) if the appellant was aggrieved by the action of the LAC of forwarding the Reference, the proper forum to challenge the improper exercise of power by LAC was the Writ Court; and, (e) no ground for review was made out and it was beyond the jurisdiction of the Reference Court to touch upon Section 24(2) of the Right to Fair Compensation Act.

12. The counsel for the appellant has argued, (i) that the precursor to a deposit under Section 31(2) of the Land Acquisition Act is ‘tender’ of compensation under Section 31(1) of the Act; (ii) the Reference Court in this regard has relied on notice produced by the respondent and copy of which is at page 89 of the paper book; (iii) the said notice does not bear any acknowledgment in receipt / delivery thereof by / on the appellant and only contains a report of the official of the LAC, of not finding the appellant at the address given and the whereabouts of the appellant having been not

learnt and the appellant being reported to be out of Delhi; (iv) the same does not amount to tender within the meaning of Section 31(1) of the Land Acquisition Act; and, (v) if there was no tender, there could be no deposit under Section 31(2) and the Reference Court ought to have returned the Reference reasoning so and erred in disposing of the Reference as has been done; the Reference ought to have been returned.

13. The counsel for the respondent UOI has argued that, (i) if the appellant was not refusing the compensation, the appellant should have, when first appeared in the Reference, received the compensation which was also a form of tender and having not done so, cannot urge that there was no proper Reference; (ii) the Reference Court was not entitled to decide the question, whether the acquisition had lapsed under the Right to Fair Compensation Act; (iii) in any case, since the compensation had been deposited in the Reference Court prior to the coming into force on 1st January, 2014 of the Right to Fair Compensation Act, the question of applicability of Section 24(2) thereof did not arise; (iv) when the appellant appeared first in the Reference, the Right to Fair Compensation Act was nowhere in picture; and, (v) the appellant, in the review application admitted that the appellant was aware of the making of the award; it was the duty of the appellant to collect the compensation.

14. The counsel for the appellant in rejoinder arguments confirms that the appellant, throughout was aware of the making of the award and rather states that it was pleaded by the appellant in the objections also that the appellant was aware of the making of the award. It is however the contention of the counsel for the appellant that it is the duty of the Collector

to tender the compensation to the appellant and the Collector having not done that, rights under the Right to Fair Compensation Act have accrued to the appellant.

15. The counsel for the respondent UOI emphasises that once the appellant admits being aware of the making of the award, there was no obligation on the LAC to issue separate notice intimating passing of the award.

16. I have considered the rival contentions. The questions which arise for consideration are (i) whether the Collector, under Section 31(1) of the Land Acquisition Act, is required to tender compensation to the persons interested therein or entitled thereto in any particular mode; (ii) If the persons interested in and entitled to compensation have participated in determination of compensation by the Collector resulting in the making of the award and are aware of making of the Award, whether the Collector is still required to tender compensation to them also in any particular mode or on their failure to collect compensation, the Collector is entitled to deposit the same in Court, under Section 31 of the Act; (iii) whether the Court, to which Reference under Section 31 of the Land Acquisition Act is made, is entitled to return the Reference or to adjudicate the validity of the Reference; (iv) whether an order disposing of a Reference under Section 31 of the Act, holding that the LAC was prevented by some one or any of the contingencies mentioned in Section 31(2) from paying the compensation, is appealable under Section 54 of the Land Acquisition Act; and, (v) whether the High Court, in exercise of powers under Section 54, can hold the Reference under Section 31 to be invalid.

17. I will first take up the answer to questions (iii), (iv) and (v) above which are found to be not *res integra*. A Division Bench of the High Court of Jammu & Kashmir, as far back as in ***Swami Sukhanand Vs. Samaj Sudhar Samiti*** AIR 1962 J&K 59, after noticing a plethora of earlier judgments held that there was an abundance of authority for holding that a land acquisition court is entitled to go behind a reference made to it by a Collector, to determine whether the reference fell within the scope and ambit of the jurisdiction conferred upon him by the statutory provision under which the reference was purported to be made and that if the Court comes to the conclusion that the reference was *ultra vires*, the Court will have no jurisdiction to proceed further with the reference and is bound to reject it *in limine*. Supreme Court also in ***Mohammed Hasnuddin Vs. State of Maharashtra*** (1979) 2 SCC 572, though in the context of reference under Section 18 of the Land Acquisition Act, held that (i) while the Collector in making an Award under Section 11 acts as an agent of the Government, in making a reference to the Court under Section 18(1), acts as a statutory authority exercising his own powers under Section; (ii) the Collector has to act subject to the conditions prescribed in Section 18; (iii) accordingly, the making of an application for reference within the time prescribed by proviso to Section 18 (2) is *sine qua non* for the making of a valid reference by him; (iv) the Court, being a Tribunal of special jurisdiction, has the duty and power to see that the reference made to it by the Collector under Section 18 complies with the conditions laid down therein so as to give the court jurisdiction to hear the reference; (v) in doing so, the Court is certainly not acting as a court of appeal; it is only

confirming if a valid and proper reference has been made. Again, in ***P.K. Sreekantan Vs. P. Sreekumaran Nair*** (2006) 13 SCC 574 it was held in the context of reference under Section 30 of the Land Acquisition Act, that (i) every tribunal of limited jurisdiction is not only entitled but bound to determine whether the matter in which it is asked to exercise its jurisdiction comes within the limits of its special jurisdiction and whether the jurisdiction of such tribunal is dependent on the existence of certain facts or circumstances; (ii) it's obvious duty is to see that these facts and circumstances exist, to invest it with jurisdiction, and where a tribunal derives its jurisdiction from the statute that creates it and that statute also defines the conditions under which the tribunal can function, before that tribunal assumes jurisdiction in a matter, it must be satisfied that the conditions requisite for its acquiring *seisin* of that matter have in fact arisen; (iii) there is no time limit for seeking reference under Section 30 of the Act, though it should always be done within a reasonable time; the reasonableness of time flows from the need for a finality to judicial proceedings; (iv) the Reference Court derives its jurisdiction from the reference made; references under Section 18 and Section 30 are conceptually different from each other; the jurisdiction of the court under the Land Acquisition Act is a special one and strictly limited to the terms of Sections 18, 20 and 21; it only arises when a specific objection has been taken to the Collector's Award and it is confined to a consideration of that objection; (v) therefore, it is certain that when the only objection taken is to the amount of compensation, that alone is the matter referred and the Court has no jurisdiction to determine or consider anything beyond it; and, (v)

Reference Court has no power to convert the reference under Section 30 into one in Section 18 of the Act at the instance of those who did not apply for reference earlier.

18. There is no reason to not apply what has been held qua reference under Section 18 and 30, to a reference under Section 31 of the Act. Thus there can be no iota of doubt that the Court, to which reference under Section 31 of the Land Acquisition Act is made, is entitled to return/reject the reference and to adjudicate the validity of the reference. Once that is so, Section 54 of the Land Acquisition Act, whereunder this Court has been approached, permits appeals to this Court from an Award. An order on reference under Section 31 of the Act on the ground of the persons interested or entitled to, not consenting to receive the compensation, constitutes an Award. The Full Bench of this Court in *Daryodh Singh Vs. Union of India* 1965 SCC OnLine P&H 89, in the context of court fees, held that an appeal under Section 54 of the Act lies against an order on a Reference under Sections 30-31 of the Act. I have followed the said dicta recently in *Sarkar Daulat Madar Makbuja Vs. Union of India* 2018 SCC OnLine Del 11540. Thus an appeal under Section 54 of the Land Acquisition Act lies against the order disposing of the reference under Section 31 on such grounds and this Court, in exercise of its powers under Section 54, can re-consider the decision of the Reference Court of entertaining and allowing the reference.

19. To find answers to the questions (i) & (ii) framed in para 16 above, it is necessary to understand the Scheme of the Land Acquisition Act in the context of the present controversy. The same is as under:

- (a) The Act, as per its Preamble, was enacted to amend the law for acquisition of land needed for public purpose and for determining the amount of compensation to be made on account of such acquisition. The word used is “made” and “not paid”.
- (b) Section 3(b) defines “person interested” as including all persons claiming an interest in compensation ‘to be made’ on account of acquisition of the land and further provides that a person shall be deemed to be interested in land if he is interested in an easement affecting the land.
- (c) The process of acquisition begins with the publication in the Official Gazette and two daily newspapers circulating in the locality and by affixation at convenient places in the locality, of a public notice under Section 4 of the Act, of the land in such locality being likely to be needed for any public purposes. After such public notice, the officers of the appropriate government are entitled to enter upon and survey the land and carry out other works thereon for determining the need of the land for public purpose.
- (d) Section 5A of the Act permits the persons interested in the land qua which public notice aforesaid has been issued, to object to the acquisition of the land and requires the Collector to give such objectors an opportunity of being heard and to make a report to the appropriate government containing his recommendations on the said objections.

- (e) If the appropriate government, after considering the reports submitted under Section 5A is satisfied that the land is needed for public purpose, a declaration under Section 6 is required to be made to the said effect, by publication in Official Gazette and in two daily newspapers circulating in the locality and affixation at convenient places in the locality.
- (f) Thereafter the appropriate Government, under Section 7 is required to direct the Collector to take order for acquisition of the land and Section 8 requires the Collector to cause the land to be measured and demarcated.
- (g) Section 9 requires the Collector to cause public notice to be given at convenient places on or near the land, stating that the Government intends to take possession of the land and that claims for compensation for all interest in such land may be made to him; only if the person interested resides elsewhere, does Section 9(4) require notice to be sent to him by post at the last known place of residence.
- (h) Section 11 requires the Collector to thereafter enquire into objections if any which the person interested has made pursuant to notice under Section 9, and to make an Award of compensation determined with respect to the said land.
- (i) Section 12(2) requires the Collector to give notice of the making of the Award only to such of the persons interested as are not present personally or by their representatives when the Award is made.

(j) Section 31 is as under:-

“31. Payment of compensation or deposit of same in Court. - (1) On making an award under, Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-Section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under Section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under Section 18:

Provided also that nothing therein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this Section, the Collector may with the sanction of the appropriate Government, instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may

be equitable having regard to the interest of the parties concerned.

(4) Nothing in the last foregoing sub-Section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.”

20. As would immediately become evident from the aforesaid scheme of the Act, it is not as if the proceedings for acquisition of land and determination of compensation with respect thereto is behind the back and without the involvement of the interested persons. They, from stage one till the last stage, are involved in the process and have several opportunities to object, to the acquisition, to the measurements, and to determination of compensation by the Collector before making of the Award as well as after the making of the Award. It is in this light that, in my opinion, we have to adjudicate the question, whether in the present case the Collector, within the meaning of Section 31(1) supra tendered payment of compensation awarded by him to the appellant and whether the appellant did not consent to receive it, all within the meaning of Section 31 supra.

21. Another factor which has to be kept in mind in deciding the aforesaid question is, that acquisition for public purpose, generally is of large tracts of land in which large number of persons have interest; such persons, being tillers of the land, are generally present at the land and not only from the initial notification under Section 4, subsequent notification under Section 6 and publication of the Award, but also from the activities carried on with respect to the land viz. of measurements, survey etc. under Section 4, demarcation after notification under Section 6 and by word of mouth as

well, are aware of the acquisition proceedings. Notification/s for acquisition of land is a sensational event in the life of tillers of the land and there is much public debate about the same; considering the large number of persons involved and difficulties in knowing their addresses, inasmuch as the Revenue Records maintained with respect to the land are generally not found to contain the addresses and also there is no system prevalent, as in urban areas, of colonization and numbering of houses, service of individual notices on each of the said large number of persons is not practical and is a challenge.

22. In the present case, the appellant as well as heirs no. 1,2,3&5 of the appellant, even in the memorandum of this appeal, have given their address as that of village Saidulajab, agricultural land whereof was acquired vide the subject notification. Only the address of heir no.4, who is a married daughter of the appellant, is of the colony of Janak Puri, New Delhi. The appellant and his heirs were thus very much resident of the village, land whereof was acquired. As aforesaid, the deceased appellant was only one of the interested persons named in the reference. Though initially, besides the appellant another one of them appeared in the reference, but it is only the appellant/his heirs who are pursuing the same. The other interested persons did not come forward to the Court and state that they were not tendered the compensation.

23. The appellant also admits being aware of the making of the Award. The appellant has not pleaded that he was not aware of the notification under Section 4 or of the notification under Section 6. It is not the case of the appellant that though he desired to challenge the acquisition but was

prevented from doing so owing to lack of knowledge. The appellant thus acquiesced in acquisition of the land and determination of compensation with respect thereto and did not challenge the same.

24. The question which arises is, whether in these circumstances it can be said that the appellant was not tendered compensation of his share.

25. In my opinion, the appellant was tendered compensation within the meaning of Section 31(1).

26. Once the appellant admits knowledge of the making of the Award, compensation is deemed to have been tendered to him.

27. In ***Raja Harish Chandra Raj Singh Vs. Deputy Land Acquisition Officer*** 1961 SC 1500, Supreme Court though concerned with the question of limitation for seeking reference under Section 18 of the Act, held (i) that in dealing with this question it is relevant to bear in mind the legal character of the award made by the Collector under Section 12; (ii) in a sense it is a decision of the Collector reached by him after holding an enquiry as prescribed by the Act; (iii) it is a decision, *inter alia*, in respect of the amount of compensation which should be paid to the person interested in the property acquired; (iv) but legally the award cannot be treated as a decision; it is in law an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition; (v) if the owner accepts the offer, no further proceeding is required to be taken; the amount is paid and compensation proceedings are concluded; (vi) it is however essential that the said decision should be communicated to the persons interested in the land; (vii) knowledge of the party affected by such a decision, either actual or constructive, is a essential element which must

be satisfied before the decision can be brought into force; (viii) thus considered, the making of the Award is complete only when it is communicated to the person interested in the land, either actually or constructively; (ix) if the Award is pronounced in the presence of the party whose rights are affected by it, it can be said that it has been made when pronounced; and, (x) knowledge of the party affected by the Award, either actual or constructive being essential, the date of Award means the date when the Award is communicated.

28. In ***Bhagwan Das Vs. State of Uttar Pradesh*** (2010) 3 SCC 545 it was reiterated that the Award of the Collector is an offer/tender and that if the Award is made in the presence of the person interested, he has to make the applications seeking reference from the date of making of the Award and only if the person interested, is not present at the time of making of the Award, is a notice under Section 12(2) of the Land Acquisition Act required.

29. In ***Rajasthan Housing Board Vs. New Pink City Nirman Sahkari Samiti Limited*** (2015) 7 SCC 601 it was held that if the persons interested in the land were aware of land acquisition process and determination of compensation, constructive knowledge of making of the Award is attributable to them.

30. As far back as in ***M/s. Vishnu Agencies (Pvt.) Ltd. Vs. Commercial Tax Officer*** (1978) 1 SCC 520, though not in the context of Land Acquisition Act but as a principle of Contract Law (and which would apply once the Award is an offer) also, it was held that offer and acceptance need not be always in an elementary form, nor indeed does the law of

contract or of sale of goods require that consent to a contract must express. It was further held that offer and acceptance can be spelt out from the conduct of the parties which covers not only their acts but omissions as well.

31. If the Award of the Collector is tender, then once the appellant admitted knowledge of Award it has but to be held that compensation was tendered to the appellant and the appellant refused to accept the same and therefore Section 31(2) became applicable. In this context it may also be stated that Section 31(1) does not provide any mode of tender of compensation.

32. The refusal of the appellant to receive the compensation is also evident from the appellant, inspite of reference having been made on 7th August, 2012 i.e. well before coming into force on 1st January, 2014 of the Right to Fair Compensation Act, having not collected the compensation from the Reference Court either.

33. In ***Pune Municipal Corporation*** supra relied on by the counsel for the appellant, the Pune Municipal Corporation had approached the Supreme Court in the year 2008 against the judgment of the High Court quashing the acquisition proceedings in writ petitions filed by the land owners; however by the time the matter was heard in the Supreme Court, the Right to Fair Compensation Act had come into force. It was thus the contention of the respondents land owners that the acquisition proceedings had lapsed. It was in the said context that Section 24(2) of the Right to Fair Compensation Act was for interpretation therein and while interpreting the same, the question arose, whether compensation had been tendered under Section 31(i) of the

Land Acquisition Act and it was held; (i) simply put, Section 31 makes the provision for payment of compensation or for deposit of the same in the Court; (ii) this provision requires the Collector to tender payment of compensation; (iii) 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 Court; (iv) the mandatory nature of the provision in Section 31(2) with regard to deposit of compensation in the Court is further fortified by the provisions contained in Sections 32, 33 & 34; Section 33 gives power to the Court, on an application by the person interested or claiming a interest in such money, to pass an order to invest the amount so deposited in an interest bearing security so that the parties interested may have the benefit thereof; (iv) for the purposes of Section 24(2) of the Right to Fair Compensation Act, compensation shall be recorded as paid if the compensation has been offered to the persons interested and such compensation has been deposited in the Court; in other words, the compensation may be said to have been paid within the meaning of Section 24(2) of the Right to Fair Compensation Act when the Collector has discharged his obligation and deposited the amount of compensation in the Court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33; (v) the Land Acquisition Act being an expropriatory legislation has to be strictly followed; (vi) the Collector, with regard to payment of compensation, can only act in the manner so provided; (vii) in the facts of that case, Award was made on 31st January, 2008 and notices issued to the land owners to receive the compensation and since they did not receive the compensation the amount

was deposited in the Government Treasury; (viii) the deposit of the amount of compensation in the Government Treasury is not equivalent to the amount of compensation paid to the owners/persons interested; and, (ix) deposit of the amount of compensation in the States Revenue Account is of no avail and the liability of the State to pay interest subsists till the amount has not been deposited in the Court. Thus, even in the said judgment, deposit in the Court was held to be tender of compensation to the interested persons. This Court also in ***Life Insurance Corporation of India Vs. Union of India*** 1998 (47) DRJ 659 treated deposit of compensation in Court as tender of compensation.

34. In ***Delhi Development Authority Vs. Sukhbir Singh*** (2016) 16 SCC 258, pertaining to acquisition of land in the State of Delhi, Supreme Court noticed Standing Order No.28 of 1909 which applied to Delhi and Clause 71 whereof as under:-

“71. Payment of compensation when made – As soon as the award has been announced the acquiring officer will proceed to pay the compensation awarded to those persons who are present and who accept the award. Sufficient notice should be given to enable all payees to assemble at the place where they will receive their dues but no time should be wasted on useless endeavours to secure the attendance of absentees. A note shall be made of the names of those persons who refused to accept the amount awarded or who accept it under protest. Much trouble will be avoided if the principle that payment of compensation should be made at the time of award, is strictly observed. Most of the persons interested will then be present and immediate payment will save them the necessity of making frequent journeys to the tehsil. It will usually be found of advantage to draw in advance a sum

sufficient to cover the probable amount of the award and to make payments against this especially when the award is announced at a place distant from the headquarters.”

A perusal of the aforesaid also shows that there is no need for tender of payment by service of any notice.

35. The appellant in the present case, inspite of knowledge of acquisition proceedings and of the Award, did not come forward to collect the compensation and the Collector had no other option but to deposit the same in the Court under Section 31 of the Act.

36. Before parting, I may add that in ***Indore Development Authority Vs. Shailendra*** (2018) 3 SCC 412, ***Pune Municipal Corporation*** supra was held to be per incurium and it was further held i) once there is tender of compensation, then in case of refusal to accept the same, the obligation to pay under Section 31(1) is complete by tender and that is tantamount to making payment; ii) Section 31(2) only contemplates certain exigencies, in such cases, compensation has to be deposited in court; it is only when reference is sought that Reference Court comes into picture; it is only when court comes into play, then deposit in Reference Court is required; iii) deposit in treasury is not invalid; and, iv) by conduct also, there can be non acceptance of compensation. Vide subsequent order reported in ***Indore Development Authority Vs. Shyam Verma*** (2018) 3 SCC 405, the matter was referred to Constitution Bench.

37. I therefore hold that if the land owner/person interested in the land is aware of the acquisition proceedings and of the making of the Award, the making of the Award constitutes tender of compensation within the

meaning of Section 31 of the Act and if the land owner or the person interested in the land does not come forward to accept the said compensation, the Collector, under Section 31(2), is entitled to make a reference to the Court and to deposit the compensation in the Court. It cannot be lost sight of that under Section 34 of the Act the compensation incurs interest at a rate of 9% per annum from for the first year and at a rate of 15% per annum thereafter if not paid or deposited. It is to prevent the appropriate Government from being subjected to liability for such interest that provision for deposit has been made under Section 31(2).

38. There is thus no merit in this appeal.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

OCTOBER 01, 2018

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