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

Date of Judgment :31st January, 2018

\+ W.P.(C) 9358/2015

JAGVATI DEVI & ORS ..... Petitioners

Through Mr.Anuj Kumar Garg, Advocate.

versus

UNION OF INDIA & ORS ..... Respondents

Through Mr. Dev P. Bhardwaj, CGSC with Mr. Satya Prakash Singh, Adv. for UOI. Mr. Satyakam with Mr.Shashwat Parihar, Advocates for GNCTD. Mr. Siddharth Panda, Advocate for L&B/LAC. Mr.Pawan Mathur, Adv. for DDA.

CORAM:

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

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

1. This is a petition under Article 226 of Constitution of India filed by the petitioners seeking a declaration that the acquisition proceedings with respect to half share of land of the petitioners falling in Khasra no.305 min (1-0) and Khasra no.306(1-14), total land measuring area (02-07), situated in the revenue estate of village Pul Prahladpur, New 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') as neither physical possession has been taken nor compensation has been paid to the petitioners.

2. In this case, a notification under section 4 of Land Acquisition Act, 1894 ('the Act' in short) was issued on 23.01.1965 and a declaration under section 6 was made on 13.01.1969. Thereafter, an award bearing no.63/82-83 was passed.

3. Learned counsel for the petitioners has placed reliance upon a decision rendered by the 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 to the petitioners, the case of the petitioners would be covered by the aforesaid decision,

4. Learned counsel for LAC, while relying on the amended counter affidavit filed by it, contends that the petitioners are not the recorded owner of the subject land and hence they have no locus standi to file the present writ petition. Counsel further contends that as per the record, the possession of the subject land has been taken which is also the stand of Mr. Mathur, learned counsel for DDA. Para 7 of amended counter affidavit filed by LAC reads as under :-

> "7. That as per the records, possession of (01-06) out of the total extent of (4-16) of Khasra No.305 and (02-04) out of the total land of (05-10) of khasra no.306 was taken over and handed over to the beneficiary department on 12.07.2004. However, compensation with respect to the above said land was not paid to the recorded owners. Further, the recorded owner is Hamdard Dawakhana, Hakim Abdul Hameed S/o Abdul Majid. It is pertinent to mention here that the present petitioners having full knowledge about the status of the land in question and without taking permission from the competent authority

> as required under Delhi Land (Restriction of Transfer) Act, 1972 have purchased the lands. Such sale/purchase is void and does not bind the Government in any manner. Since, the petitioners are subsequent purchasers, they don't have any right to seek release of the land in question. In the present writ petition the petitioners are challenging the acquisition proceeding, which was taken in pursuance to the above mentioned notifications and award, which was already upheld by the Hon'ble Supreme Court of India. Thus the petitioners have no locus to file the present writ petition and seek any relief with respect to the above said khasra numbers. This issue has been settled by the Hon'ble Supreme Court of India in Meera Sahni & Ors. Vs. Lt. Governor of Delhi reported in 2008 (9) SCC 177, wherein the Hon'ble Apex Court categorically held that the petitioners being subsequent purchasers of the land in question do not derive any title to the land and cannot challenge the acquisition proceedings."

5. Per contra, learned counsel for the petitioners relies on copies of Khasra/Girdawaris placed on record to show that the name of the petitioners is found mentioned as cultivator and thus, petitioners would fall under the definition of 'interested persons'. In support of his submission, counsel has placed reliance upon a decision rendered by Apex Court in ***Govt. of NCT of Delhi Vs. Manav Dharma Trust and another,*** reported in ***2017 (6) SCC 751***.

6. We have heard learned counsel for the parties. As far as the objection with regard to locus standi of the petitioners is concerned, we make it clear that we are not expressing any opinion with regard to ownership of the petitioners. In the case of ***Dharma Trust and another*** *(supra)*, it was held as under:-

"28. Thus, the subsequent purchaser, the assignee, the successor in interest, the power-of-attorney holder, etc., are all persons who are interested in compensation/landowners/ affected persons in terms of the 2013 Act and such persons are entitled to file a case for a declaration that the land acquisition proceedings have lapsed by virtue of operation of Section 24(2) of the 2013 Act. It is a declaration qua the land wherein indisputably they have an interest and they are affected by such acquisition. For such a declaration, it cannot be said that the respondent-writ petitioners do not have any locus standi."

7. Having regard to the submission made, we are of the view that the case of the petitioners is fully covered by the aforesaid 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.

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."

8. In view of the stand taken by LAC in its counter affidavit that no compensation has been tendered to the recorded owners of the subject land and the award having been announced more than five years prior to the commencement 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 of India stand satisfied. The petitioners would be entitled to a declaration that the acquisition proceedings with respect to the subject land stand lapsed, it is so declared.

9. We make it clear that we have not expressed any opinion with regard to ownership of the subject land.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

JANUARY 31, 2018/ck/