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

% *Date of Judgment: 02nd January, 2018*

\+ W.P.(C) 9451/2015

PANKAJ SETHI ..... Petitioner

Through: Ms. Richa Oberoi, Mr.Prateek Kohli and Mr.Ankit Banati, Advocates

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr.Bhagvan Swarup Shukla, CGSC for UOI with Mr.Kamaldeep, Adv.
Mr.Sachin Nawani for Mr.Siddharth Panda, Adv. for LAC/L&B department.
Mr.Arjun Pant, Adv. for 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 the Constitution of India filed by the petitioner. This writ petition was admitted on 21.11.2016.

2. The petitioner seeks a declaration that the acquisition proceedings initiated in respect of the land of petitioner forming part of Khasra No.1385/2 min (2-17) and 1388 min (2-17) total measuring 5 bighas 14 biswas situated in the revenue estate of village Chhattarpur, New Delhi (hereinafter referred to as 'the subject land') are 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 'New Act'), as neither the physical possession has been taken nor compensation has been paid to the petitioner.

3. As per the writ petition, the subject land along with other land was originally owned by Ved Prakash as per the revenue records. A copy of the Khasra Kirdawari has been placed on record. It is further averred in the writ petition that the subject land was sold by Ved Prakash to Seema Sethi and her husband, Dinesh Chand Sethi by means of three registered sale deeds, all dated 05.01.1996. Dinesh Chand Sethi expired leaving behind his wife Seema Sethi and son Gaurav Sethi. Seema Sethi and Gaurav Sethi sold the subject land to Puneet Sabharwal, Sumeet Sabharwal and R.C.Sabharwal vide GPA and Agreement to Sell dated 02.09.2009. The subject land was further sold by Puneet Sabharwal, Sumeet Sabharwal and R.C.Sabharwal vide GPA and Agreement to Sell dated 02.02.2013 to the petitioner herein. The chain of documents have also been filed along with the writ petition. A notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 25.11.1980. A Section 6 declaration was made on 07.06.1985. Thereafter, an Award bearing no.15/86-87 was made on 05.06.1987. It is the case of the petitioner that neither compensation has been paid to the petitioner nor physical possession has been taken. In fact, reliance is placed on the photographs to show that the entire area is a built up area.

4. Counter affidavits have been filed by the LAC as also by the DDA. In the counter affidavit filed by the DDA it has been stated in para (d), as under:

> "d)….. It is stated that the physical possession of the acquired land falling in Khasra No.1385 (4-16) and 1388 (4-16) of Village Chattarpur has not been handed over by the Land Acquisition Collector (south), the Land and Building Department, Govt. of National Capital Territory of Delhi to the Delhi Development Authority."

5. The counter affidavit filed by the LAC shows that the possession of the subject land was not taken and compensation was not tendered to the owners but was sent to the RD. Para 8 of the counter affidavit filed by LAC reads as under:

> "8. That in the present case, the possession of the land in question was not taken, however, the compensation with respect to the above said land was sent in RD. It is also pertinent to mention here that the present petitioner 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 petitioner is subsequent purchaser, thus don't have any right to seek release of the land in question. In the present writ petition the petitioner is challenging the acquisition proceeding, which was taken in pursuance to the above mentioned notifications and award. Thus the petitioner 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. Vrs. 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."

6. Counsel for the petitioner submits that the case of the petitioner stands fully covered by the decision rendered by the Supreme Court of India

in the case of ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.,*** reported at (2014) 3 SCC 183. Counsel submits that as far as objection with regard to the ownership is concerned, the case would be covered by the decision rendered by the Supreme Court in ***Govt. of NCT of Delhi Vs. Manav Dharma Trust and another,*** reported in ***2017 (6) SCC 751.***

7. We have heard learned counsels for the parties. We have also extracted the relevant paragraphs of the counter affidavits filed by the DDA and the LAC, as per which neither compensation has been tendered to the petitioner nor possession has been taken. Resultantly, 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). Paras 14 to 20 of which 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."

8. As far as objection raised by the counsel for the LAC with regard to the ownership is concerned, we find the objection to be misplaced on account of decision rendered in the case of ***Manav Dharma Trust*** (*supra*). Para 28 of this judgment reads 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."*

9. Taking into consideration the submissions made, the fact that compensation has not been paid to the petitioner and the stand taken by the DDA and LAC in the counter affidavits, we are of the considered view that the necessary ingredients for the application of Section 24(2) of the New Act as has been interpreted by the Supreme Court of India and this Court in the following cases stand satisfied:

(1) ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.,*** reported at (2014) 3 SCC 183;
(2) **Union of India and Ors v. Shiv Raj and Ors.,** reported at (2014) 6 SCC 564;
(3) **Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors,** Civil Appeal no.8700/2013 decided on 10.09.2014;
(4) **Surender Singh v. Union of India & Others,** W.P.(C).2294/2014 decided on 12.09.2014 by this Court; and
(5) **Girish Chhabra v. Lt. Governor of Delhi and Ors;** W.P.(C).2759/2014 decided on 12.09.2014 by this Court.

10. In view of what has been discussed above, the writ petition is allowed. The acquisition proceedings qua the land of the petitioner stand lapsed as neither physical possession has been taken nor compensation has been tendered.

11. The petition stands disposed of.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

JANUARY 02, 2018
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