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

% *Date of Judgment 3rd January, 2018*

\+ W.P.(C) 9981/2015

CHATTAR SINGH & ORS. ..... Petitioners

Through: Mr. Nishant Prateek, Advocate.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Sanjeev Sabharwal, Standing Counsel for DDA.
Mr. Yeeshu Jain and Ms. Jyoti Tyagi, Advocates for L&B/LAC.

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

G. S. SISTANI, J. (ORAL)

1. With the consent of the parties, the present writ petition is set down for final hearing and disposal.

2. The petitioner claims to be the owner of the land bearing Khasra No. 36 (01-10), 37 (02-14), 138 (03-09) and 139 (01-00), measuring 8 Bighas and 13 Biswas falling in Village Kotla, Shahdara, Delhi-110091. It is the case of the petitioner that the acquisition proceeding with respect to the land stands lapsed as neither the compensation has been paid nor possession has been taken. Learned counsel for the petitioner relying upon the Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and the decision rendered by the Apex Court in ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.,***

reported at 2014 3 SCC 183, submits that the acquisition would stand lapsed.

3. Counter affidavit has been filed on behalf of LAC and copy of the same has been handed over to learned counsel for the petitioner. Mr.Jain, learned counsel for the LAC submits that on account of an apportionment dispute, the compensation for various khasra numbers was sent to the Reference Court under Section 30-31 of Land Acquisition Act, 1894. He further submits that the possession of the subject land however, could not be taken as per the record.

4. Counter affidavit has also been filed by the DDA as per which possession of the land has not been handed over to them.

5. We have heard the learned counsel for the parties.

6. In this case, a notification under Section 4 of the Land Acquisition Act, 1894 was issued on 13.11.1959 followed by another notification under Section 6 of the said Act and thereafter an award bearing No. 19/76-77 was pronounced on 05.01.1977.

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 for purposes of planned development of Delhi, the answering respondent issued a Notification u/s 4 of the Land Acquisition Act, 1894 on 13.11.1959 which was followed by Notification u/s. 6 of the said Act dated 20.06.1966 for the acquisition of the lands falling in the Khasra numbers under reference in village Kotla. That an Award bearing No. 19/76-77 dated 05.01.1977 however the possession of subject land falling in various khasra numbers could not be taken as per*

record. It is further submitted that having an apportionment dispute, the compensation for various khasra numbers including the khasra under reference was sent to the Reference Court u/s 30-31 of Land Acquisition Act, 1894 on 23.02.1979.

In ***Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors.*** reported in ***(2014) 3 SCC 183, ,*** the Apex Court 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, 33and 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.

Taking into consideration the submissions made and stand taken by the learned counsel for the LAC in the counter affidavit, we allow the present writ petition and declare that the acquisition proceeding qua the land of the petitioner stand lapsed.

The petition is allowed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JANUARY 03, 2018
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