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

Date of Judgment :22nd January, 2018

\+ W.P.(C) 11183/2015

NATHI SINGH ..... Petitioner

Through Mr.Arun Kumar Kaushik, Advocate.

versus

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

Through Mr.Rakesh Kumar, CGSC with Mr.Santosh Prasad Chaurasiya, G.P. for R-1/UOI.
Mr.Yeeshu Jain, Standing Counsel with Ms.Jyoti Tyagi, Adv. 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 petitioner seeking a declaration that the acquisition proceedings with respect to ½ share in Khasra nos.267/1 (0-13), 266/2(1-6), 306/8 (1-7) total measuring 3 bighas 6 biswas, ¼ share in Khasra nos.274(5-3), 254(1-5), 257(0-19), 258(4-2), 226(7-3), 292 (9-2), 227 (0-8) total measuring 28 bighas 2 biswas, situated in the revenue estate of village Khizrabad, Tehsil Mehrauli, 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 compensation has not been paid to the petitioner.

2. In this case, a notification under section 4 of Land Acquisition Act, 1894 (hereinafter referred to as 'Act') was issued on 05.07.1973 and a declaration under section 6 was made on 31.01.1976. Thereafter, an award bearing no.75/1986-87 was passed.

3. Counsel for the petitioner has drawn attention of the Court to the counter affidavit filed by LAC in support of his submission that the compensation has not been tendered. It is contended that as per para 4 of counter affidavit filed by LAC, the compensation was sent to RD. Counsel further submits that since the compensation has not been tendered to the petitioner, the case of the petitioner would be fully covered by ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.,*** reported at (2014) 3 SCC 183.

4. Counsel for LAC submits that nobody turned up to claim compensation. As such, the compensation was sent to RD.

5. Mr.Mathur, learned counsel for DDA submits that part of the land has been transferred to horticulture department and part has been transferred to PWD.

6. We have heard learned counsel for the parties. Para 4 of the counter affidavit filed by LAC reads as under :-

> "4. That it is submitted that the lands of village Khirzrabad were notified vide Notification under section 4 of the Land Acquisition Act dated 5.7.1973 which was followed by Notification under section 6 of the said Act vide Notification dated 31.1.1976. That the then Land Acquisition Collector passed an Awarad No.75/86-87 and the physical possession of the subject land falling in khasra number was duly taken on the spot on 22.9.1986

> by preparing Possession Proceeding on the spot and was handed over to the beneficiary department i.e. DDA immediately. The compensation was sent to Revenue Deposit as nobody turned up to claim compensation. The petitioner is claiming half share in the subject land."

7. Reading of the counter affidavit filed by LAC would show that the compensation was sent to RD. As the amount of compensation was not tendered to the petitioner, in our view, the case of the petitioner, is fully covered by the decision rendered by the Apex Court in the case of ***Pune Municipal Corporation & another*** (*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.
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> 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. 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 in ***Pune Municipal Corporation & another*** (*supra*), stand satisfied.

9. Since the award having been announced more than five years prior to the commencement of the 2013 Act and 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.

10. The writ petition is disposed of.

C.M. APPL 29098/2015

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

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

JANUARY 22, 2018/ck