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

Date of Judgment :2nd February, 2018

\+ W.P.(C) 1032/2016

INDER PAL ..... Petitioner

Through Mr. S.K. Rout with Mr. Aman Mehrotra, Advocates.

versus

UNION OF INDIA & ORS ..... Respondents

Through Mr. Yeeshu Jain, Standing Counsel with Ms. Jyoti Tyagi, Advocate for L&B/LAC.
Mr. Paritosh Anil, Advocate for DDA.
Mr. Sanat Kumar, Sr. Adv. with Ms.Shriya, Adv. for R-4 & R-5.

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

<u>G.S.SISTANI</u>, J. ***(ORAL)***

<u>CM APPL 6587/2017 (impleadment)</u>

This is an application filed by the applicants under Order 1 Rule 10 read with section 151 CPC for impleadment.

By way of this application, applicants claim 1/4th share each in the land in question. Prayer made in this application is not opposed.

Mr. Rout, counsel for the petitioner submits that applicants should share the cost of litigations. Counsel for the applicants agrees to share reasonable and actual cost incurred in pursuing the matter.

Having regard to the fact that the prayer made in this application is not opposed, the application is allowed.

Let the applicants be impleaded as respondents no.4 and 5 to the present writ petition.

Amended memo of parties be filed.

W.P.(C) 1032/2016

1. Counter affidavit has not been filed by LAC. Mr.Jain, learned counsel for LAC has handed over the counter affidavit in Court, which is taken on record. Copy of the same has also been supplied to the counsels.

2. This is a petition under Article 226 of Constitution of India. The petitioner as well as respondents no.4 and 5 seek a declaration that the acquisition proceedings with respect to land of the petitioner and respondents no.4 and 5 admeasuring 3961 sq. yds. out of Khasra no.731, 732 & 734, situated in the revenue estate of village Tuglakabad, Delhi, 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 possession has been taken nor compensation has been paid to the petitioner and respondents no.4 and 5.

3. In this case, a notification under section 4 of Land Acquisition Act, 1894 ('the Act' in short) was issued on 10.11.1960 and a declaration under sections 6 of the Act was made on 04.01.1969. Thereafter, an award bearing no.66/86-87 was passed on 19.09.1986.

4. Counsels for the petitioner and respondents no.4 and 5 have placed reliance upon a decision rendered by Apex Court in ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.,*** reported at (2014) 3 SCC 183, in support of their plea that since the

compensation has not been tendered, the case of the petitioner and respondents no.4 and 5 would be covered by the aforesaid decision.

5. Attention of the Court is drawn to para 5 of the counter affidavit filed by LAC wherein it has been stated that the compensation has been sent to RD on 19.03.1987. Reading of counter affidavit filed by LAC would show that as per Land Revenue Register, Khasra no.734 was notified vide a notification under section 4 of the Act on 10.11.1960 followed by another notification under section 6 of the Act issued on 04.01.1969 but the land was not acquired. Paras 4 & 5 of counter affidavit filed by LAC read as under :-

> "4. That the present writ petition is liable to be dismissed as the petitioner is seeking relief of 3961 sq. yards falling in khasra number 731, 732 and 734 without furnishing any bifurcation of land in individual khasra number. Possession not taken of Khasra No.731 (08-09), 732 (02-03) due to stay on dispossession. As per LR, Register Khasra No.734 was notified vide Notification 4 F15(243)/60/LSG dated 10/11/60 and Notification 6 F1(23)/61/L&H dated 04/01/69 but not acquired. As per naksha Mutzamin owners are :-
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> (1) Shumar No.9 Sh. Darshan Singh s/o Puran Singh, share 90/41.
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> (2) Shumar No.10 S. Inderpal Singh s/o Harprashad, Share 51/141 in Khasra No.732(02-03), 733(01-18)
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> (3) Shumar No.13 Inderpal Singh s/o Harprashad, Share 39/169 in Khasra No.731 (08-09).
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> 5. That it is submitted that the lands of village Tughlakabad were notified vide Notification under section 4 of the Land Acquisition Act 1894 dated 10.11.1960 which was followed by Notification under section 6 of the said Act vide Notification dated 4.1.1969 and Award No.66/86-87 also came to be passed in accordance with the law. It is

> submitted that as per Statement-A, the compensation being disputed, sent to RD on 19.3.1987."

6. In response, learned counsels for the petitioner as well as respondents no.4 & 5 restrict their claim with respect to the land measuring 3525 sq. yds. falling in Khasra no.731 (08-09) and Khasra no.732 (02-03), situated in the revenue estate of village Tuglakabad, Delhi.

7. We have heard learned counsel for the parties. Taking into consideration the submissions made and the stand taken by LAC in its counter affidavit, more particularly para 5 of the counter affidavit, which we have reproduced in foregoing para 10, it is clear that land comprised in Khasra no.734 was not acquired and as far as remaining two Khasra numbers are concerned, as per statement-A, the compensation being disputed was sent to RD on 19.03.1987. Resultantly, the case of the petitioner as well as respondents no.4 and 5 would be fully covered by the 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. Since the compensation has been sent to RD post coming into force of the 2013 Act and award having been announced more than five years prior to the commencement of 2013 Act, the acquisition proceedings with respect to land of the petitioner as well as respondents no.4 and 5 measuring 3525 sq. yds. falling in Khasra no.731 (08-09) and Khasra no.732 (02-03), situated in the revenue estate of village Tuglakabad, Delhi, would deem to have lapsed. Consequently, the writ petition is allowed. It is ordered accordingly.

9. The writ petition is disposed of.

CM APPL 4504/2016 (stay)

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

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

FEBRUARY 02, 2018/ck/