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

% *Date of Judgment: 05th February, 2018*

+ **W.P.(C) 999/2016**

JOGINDER KAUR & ORS

..... Petitioners

Through: Mr.S.K.Rout, Mr.U.D.Bhargava and
Mr.Aman Mehrotra, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr.Yeeshu Jain, Standing Counsel
with Ms.Jyoti Tyagi, Advocate for
respondent/LAC-L&B.
Mr.Shubhendu Bhattacharya,
Advocate for Mr.Kunal Sharma,
Advocate for respondent no.3/DDA.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. Counter affidavit has been handed over in court; the same is taken on record.
2. This is a petition under Article 226 of the Constitution of India filed by the petitioners seeking a declaration that the acquisition proceedings in respect of the land of the petitioners admeasuring 1 bigha comprised in Khasra No.731, situated in the revenue estate of village Tuglakabad, Delhi (hereinafter referred to as 'the subject land')

stand 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 '2013 Act'), as neither the physical possession has been taken nor compensation has been paid to the petitioner.

3. In this case, a Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 10.11.1960, a declaration under Section 6 of the Act was issued on 04.01.1969. As per the writ petition, Mr.Trilochan Singh, father of the petitioners was the owner of built up property admeasuring 1 bigha comprised in Khasra No.731, situated in Village-Tuglakabad, Delhi and after his death the suit land was inherited by the petitioners. The father of the petitioners died on 27.01.1986. Thereafter, on 19.09.1986 an Award bearing No.66/86-87 was passed by the Land Acquisition Collector. On 05.10.2015, one of the villagers filed a Writ Petition (Civil) No.1422/2015 challenging the acquisition proceedings and the said writ petition was allowed. The petitioners claim to be the legal heirs of Mr.Trilochan Singh. Counsel for the petitioners submits that possession has not been taken over due to stay of dispossession and the compensation being disputed has been sent to RD on 19.03.1987 which fact is borne out from paras 4 and 5 of the counter affidavit which has been handed over by counsel for LAC in the Court today. He further submits that the case of the petitioner is fully covered by a decision rendered by the Apex Court in the case of ***Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.***, reported at (2014) 3 SCC 183.

4. Mr.Jain submits that from the reading of the petition, it is unclear as to which Khasra number the land of the petitioners falls but it is not denied that neither the physical possession has been taken nor the compensation has been tendered. Paras 4 and 5 of the counter affidavit filed by LAC reads as under:

“4. That the petitioner is seeking relief of 1 Bigha i.e. 1008 sq. yards falling in khasra number 731. It is submitted that possession could not be taken of Khasra No.731(08-09) due to stay on dispossession.

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 19.03.1987”.

5. Mr.Rout submits that the land of the petitioners falls in Khasra No.731 and they are in actual physical possession of the land.
6. We have heard the counsel for the parties.
7. In the case of ***Pune Municipal Corporation & Anr.(supra)***. Paras 14 to 20 of aforesaid decision 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. Having regard to the submissions made, stand taken by the LAC in the counter affidavit and the fact that since neither compensation has been paid nor possession has been taken over, 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 and this Court stand satisfied.
9. Since, the award having been announced more than five years prior to the commencement of the 2013 Act, the petitioners are entitled to declaration that the acquisition proceedings in respect of the subject land are deemed to have lapsed. It is ordered accordingly.
10. The writ petition stands disposed of.

CM No.4352/2016 (stay)

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

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

FEBRUARY 05, 2018

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