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

Date of Judgment :2nd February, 2018

\+ W.P.(C) 10840/2015

AYUSH LOHIA AND ANR ..... Petitioners

Through Mr. N.S. Dalal with Mr. Amit Dhankar, Advocates.

versus

LAND ACQUISITION COLLECTOR (SOUTH) AND ANR ..... Respondents

Through Mr. Yeeshu Jain, Standing Counsel with Ms. Jyoti Tyagi, Advocate for L&B/LAC.
Mr. Anuj Chaturvedi, Adv. for DDA.

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

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

1. This is a petition under Article 226 of Constitution of India filed by the petitioners seeking a declaration that the acquisition proceedings with respect to land of the petitioner comprised in Khasra no.840/2 (4-3), 843/1 (1-12) and 843/2 (3-4), total land measuring 8 bighas 19 biswas, to the extent of 1/5th share out of the same, situated in the revenue estate of village Satbari, New 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 neither possession has been taken nor compensation has been paid to the petitioners.

2. In this case, a notification under section 4 of Land Acquisition Act, 1894 ('the Act' in short) was issued on 25.11.1980 followed by a declaration under sections 6 of the Act issued on 27.05.1985. Thereafter, an award bearing no.14/1987-88 was passed on 26.05.1987.

3. Counsel for the petitioners has 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 his plea that since the compensation has not been tendered, the case of the petitioners would be covered by the aforesaid decision.

4. Attention of the Court is drawn to para 6 of the counter affidavit filed by LAC, which reads as under :-

> "6. That it is submitted that the lands of village Satbari were notified vide Notification under section 4 of the Land Acquisition Act 1894 dated 25.11.1980 which was followed by the Notification under section 6 of the Act. The Award was also passed vide Award No.14/87-88 dated 26.5.87 however possession of the land under reference could be taken. The compensation was sent to RD. A letter dated 14.07.2017 has been sent to PAO-6 to verify if any payment is done from PAO-6 to the recorded owner. Till a reply is received from the PAO-6, it is requested not to decide the case against the interest of the Govt."

5. Learned counsel for LAC has raised objection with regard to maintainability of the writ petition on the ground that the petitioners are not the recorded owner of the subject land and their claim to be interested persons is based on the General Power of Attorney.

6. In response, learned counsel for the petitioner submits that this question is no longer res-integra. In support of his submission, counsel

has placed reliance upon a decision rendered by Apex Court in ***Govt. of NCT of Delhi Vs. Manav Dharma Trust and another,*** reported in *2017 (6) SCC 751*.

7. We have heard learned counsel for the parties. Taking into consideration the submissions made, in our view, the case of the petitioners 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.
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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. As far as objection with regard to maintainability of the writ petition is concerned, we find the same to be misplaced in view of a decision passed in ***Dharma Trust and another*** *(supra)*, wherein it was held 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. Having regard to the fact that possession of the subject land could not be taken and compensation was sent to RD and also the award having been passed more than five years prior to the commencement of 2013 Act, the petitioners are entitled to a declaration that the acquisition proceedings qua the subject land are deemed to have lapsed. Consequently, the writ petition is allowed. It is ordered accordingly.

10. We make it clear that we have not expressed any opinion with regard to ownership of the subject land.

11. The writ petition is disposed of.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

FEBRUARY 02, 2018/ck/