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

% *Date of Judgment 07th February, 2018*

+ W.P.(C) 10959/2015

RAMA SHANKAR KHEMKA

..... Petitioner

Through: Ms. Deepika V. Marwaha and
Ms. Worthing Kasar, Advocates.

versus

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI AND ORS.

..... Respondents

Through: Mr. Dhanesh Relan, Ms. Gauri
Chaturvedi and Ms. Kajri Gupta,
Advocates for DDA.
Mr. Yeeshu Jain, Standing Counsel for
LAC/L&B.

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. 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 the land of the petitioner comprised in Khasra No. 1283 Min admeasuring 1 Bigha, situated in the revenue estate of Village Malikpur Kohi @ Rangpuri, New Delhi-110070 (hereinafter referred to as 'Subject Land'), has 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 compensation has been paid nor the physical possession has been taken.

3. In this case, a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 27.06.1996 followed by a declaration under Section 6 of the said Act on 10.01.1997 an award in respect of the subject land was rendered vide Award No. 2/1998-99 on 07.01.1999.
4. Counter affidavit has been handed over by learned counsel for the LAC in Court today. Copy supplied to learned counsel for the petitioner. Counter affidavit is taken on record.
5. Learned counsel for the petitioner submits that since neither the possession has been taken nor the compensation has been paid, the case of the petitioner is fully covered by the decision rendered by the Apex Court in ***Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors.*** reported in (2014) 3 SCC 183.
6. Mr. Jain, learned counsel for LAC has placed reliance on para 11 of the counter affidavit and submits that in view of the pendency of the litigation before the Hon'ble High Court, the possession of the subject land could not be taken and compensation with respect to subject land was not received from the requisitioning authority. Mr. Jain, clarifies that although in para 6 of the counter affidavit it has been stated that the subject land of the petitioner was included in the fresh declaration under Section 6 of the Old Act issued on 04.07.2017 but infact the land of the petitioner is not included in the

fresh declaration under Section 6 of the Act so issued.

7. We have heard counsel for parties.
8. Paras 6 and 11 of the counter affidavit read as under:

“6. That it is humbly submitted that to complete the acquisition proceedings the answering respondent No. 10 had issued individual notices for hearing under Section 5-A of the Land Acquisition Act, 1894 to the interested persons/land losers and objections filed by them have also been heard and considered. After hearing objections from 1414 persons, declaration under Section 6 of the Old Act has been issued on 04.07.2017 and the same has been issued in respect of subject land also.

11. That as regards possession, it is humbly submitted that the possession of the land in question could not be taken due to stay from this Hon'ble Court. So far as compensation is concerned the compensation amount has not been received from requisitioning authority. Thus, the compensation amount could not be paid to the interested persons.”

9. Having regard to the fact that neither the possession of the subject land could be taken nor the compensation has not been paid to the petitioner, we are of the view that the case of the petitioners would be covered by the decision rendered by the Supreme Court of India in the case of ***Pune Municipal Corporation & Anr. (supra)***. Paras 14 to 20 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.”

10. Taking into consideration the submissions made and the stand taken by LAC that neither the possession of the subject land could be taken nor the compensation has been tendered, we are of the considered view that the necessary ingredients of Section 24 (2) of 2013 Act stand satisfied. Since, the award having been announced more than five years prior to the commencement of the 2013 Act and, having regard to the fact that the compensation has not been tendered, 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.
11. The writ petition stands disposed of in the above terms.

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

FEBRUARY 07, 2018

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