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

% *Date of Judgment: 19th January, 2018*

\+ W.P.(C) 12158/2015

RATI RAM ..... Petitioner

Through: Mr. Sunil K. Goel and Mr. Lalit K. Rawal, Advocates.

versus

GOVT OF NCT OF DELHI & ORS. ..... Respondents

Through: Mr. Yeeshu Jain, Standing Counsel for L&B/LAC with Ms.Jyoti Tyagi, Advocate.
Mr. Arun Birbal with Mr.Sanjay Singh, Advocate for DDA.

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

G.S.SISTANI, J. ***(ORAL)***

1. At the outset, learned counsel for the petitioner clarifies that the petitioner is alive and the present petition has been filed by him.
2. The petitioner has filed the present writ petition under Article 226 of the Constitution of India, the petitioner seeks a declaration that land in Khasra No. 47(15-5), 48(01-00) and 49(12-19) total area 29 bighas 4 biswa (1/12th share measuring 2 Bigha 9 Biswa) situated in the Revenue Estate of Village Ghonda Gujaran Khadar, Shahdara, Delhi stands lapsed in view of the provisions of Section 24 (2) of the Right to Fair Compensation And Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013.

3. The necessary facts to be noticed for disposal of this writ petition are that the predecessor in interest of the petitioner i.e. his father – Late Shri Ram Pal S/o late Shri Harkesh was the recorded owner of the subject land. Late Shri Harkesh died intestate on 10.11.1980. His son Ram Pal also died on 16.09.2007 and the petitioner being the son of late Shri Ram Pal inherited 1/12th share in the subject agricultural land.

4. Notification under Section 4 under the Land Acquisition Act, 1894 was issued on 23.06.1989, Notification under Section 6 was issued on 20.06.1990 and an Award No. 8/1992-93 dated 19.06.1992 was made. It is the case of the petitioner that neither the possession has been taken nor the compensation has been paid by the LAC. Learned counsel for the petitioner submits that the case of the petitioner would be covered by the decision rendered by the Supreme Court of India in the case of ***Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors., (2014) 3 SCC 183***, more particularly, paragraphs 14 to 20 of the judgment, which 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, 33and 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."

5. Reliance is also placed by the counsel for the petitioner on the Para 6 of the counter affidavit filed by the LAC to show that compensation was not tendered.

6. Mr. Jain, counsel for the LAC submits that possession of the subject land was taken on 21.03.2007 and handed over to the DDA. Counsel for the LAC also submits that the land stands vested in the Gaon Sabha. Counsel for the DDA also submits and supports the case of the LAC.

7. We have heard learned counsel for the parties and considered their rival submissions. Para 6 of the counter affidavit filed by the LAC reads as under:

"... 6. That it is submitted that for the purpose of planned development of Delhi, the answering respondent issued a Notification u/s 4 of the Land Acquisition Act, 1894 on 23.6.1989 which was followed by Notification u/s 6 of the said Act dated 20.6.1990 for planned development of Delhi for the acquisition of the lands falling in village

> Ghonda Gujran Khadar. That an Award bearing No. 8/92-93 dated 19.6.1992 was also passed and the actual vacant physical possession of the subject land falling in khasra number 47 (15-05), 48 (1-00) & 49 (12-19) was taken on 21.3.2007, out of which the petitioner has been claiming 1/12th share, on the spot and handed over to the DDA after preparing possession proceeding on the spot. The possession report is already on record as petitioner himself has filed the same. The recorded owner/s never came forward to receive any compensation hence the same is lying unpaid. ”

8. Mr. Goel, learned counsel for the petitioner submits that the question of ownership and title may be left open and he relies upon ***Gyanender Singh & Ors. v. Union of India & Ors.*** in W.P.(C).1393/2014 decided on 23.09.2014 and prays that a similar order may be passed. Paragraphs 5 and 6 of ***Gyanender Singh*** (Supra) read as under:

> “5. In Pune Municipal Corporation (supra), the Supreme Court clearly set out the circumstances under which compensation could be regarded as having been paid. The relevant paragraphs of the said decision are as under:-
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>> “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.

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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 the 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."

It is absolutely clear from the above extracts that unless and until the compensation is tendered to the persons interested, mere depositing of the compensation in the court would not be sufficient. To be clear, compensation cannot be regarded as having been paid merely on the deposit of the same in court unless and until it has first been offered to the person interested and he has refused to accept the same. In the present case, it is an admitted position that the compensation amount was tendered in this court without first being offered to the persons interested (petitioners). Therefore, in view of the clear dictum of the Supreme Court in Pune Municipal Corporation (supra), such deposit of compensation in court cannot be regarded as a payment of compensation as contemplated under the provisions of Section 24(2) of the 2013 Act. The Supreme Court has categorically held 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 a reference under Section 18 can be made on the happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act. The contention of Mr Poddar, the learned senior counsel, appearing in this matter, that compensation has first to be offered to the interest person is not a mandatory requirement is without any substance and is in clear contradiction to the ruling of the Supreme Court which has construed the expression of compensation having been paid in the context of Section 24(2) of the 2013 Act.

> 6. In view of the foregoing as compensation has not been paid to the petitioners and the award has been made more than five years prior to the commencement of the 2013 Act, the subject acquisition as per award No. 15/87-88 dated 05.06.1987 and award No. 24/87-88 dated 09.07.1987 in respect of the Khasra Nos. 347, 350, 918/1, 918/2, 922, 923, 929, 930, 932/1 and 941 of Village Chatterpur totaling 28 bighas and 14 biswas shall be deemed to have lapsed. It is declared as such."

9. Mr. Goel, counsel for the petitioner further places reliance on ***Dhannu versus Lt. Governor, Govt. of NCT of Delhi and Ors.,*** WP(C) 3158/2015 decided on 16.11.2017**.**

10. Having regard to the submissions made and the stand taken by the LAC that compensation has not been taken, we declare that the acquisition proceedings with respect to the subject land stands lapsed. As far as the question of ownership and title to the extent of the petitioner's share is considered, the same is left open to be decided in the appropriate court of jurisdiction.

11. This petition is disposed of.

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

JANUARY 19, 2018
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