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

% *Date of Judgment : 01<sup>st</sup> February, 2018*

+ W.P.(C) 3644/2017

AZAD SINGH & ORS. .... Petitioners

Through: Mr. Bhagwant Prasad Gupta, Advocate.

versus

UNION OF INDIA AND ORS. .... Respondents

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

Ms. Beenashaw N. Soni, Advocate for  
respondent No. 2.

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

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

1. Present writ petition has been filed under Article 226 of the Constitution of India seeking a declaration that the acquisition proceedings with respect to the land of the petitioner i.e. 10 Bigha and 5 Biswa comprised in Khasra 20 (4-12), 22 (3-17) and 36/1 (1-16), situated in the revenue estate of Village Behlolpur, New Delhi (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.

2. In this case, a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '**the Act**') was issued on 13.11.1959. A declaration under Section 6 of the said Act was made on 08.12.1966 and thereafter an Award bearing No. 44/1982-83 was pronounced on 20.10.1982.
3. It is the case of the petitioner that Late Shri Kundan, grand father of the petitioners had constructed a pakka house over 01 Bigha of land comprised in Khasra No. 22 (3-17), where the petitioners are also residing along with their families and rest of the land is lying vacant.
4. Learned counsel for the petitioner submits that 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, as neither compensation has been tendered nor the possession has been taken.
5. Counter affidavit has been handed over by learned counsel appearing for the LAC in Court as per which the Statement 'A' is not available and as per Naksha Muntazman, the compensation of the subject land could not be paid.
6. We have heard learned counsels for the parties.
7. Counter affidavits have been filed by the LAC and DDA in Court. The same are taken on record. Para 4 of the counter affidavit filed by the LAC reads as under:

*"4. That it is submitted that the lands of village Behlolpur Khadar were notified vide Notification*

*under Section 4 of the Land Acquisition Act 1894 dated 13.11.1959, which was followed by Notification under Section 6 of the said Act vide Notification dated 08.12.1966 and the then Land Acquisition Collector also passed an Award No. 44/82-83. The actual vacant physical possession of the land measuring 10 Bigha 5 Biswa falling in Khasra Nos. 20 (1-12), 22 (3-17), 36 (1-16) in village Behlol Pur Khadar was duly taken on the spot on 17.09.1996 and handed over to DDA on the spot by preparing possession proceedings. It is however, submitted that as per Nakhsa Muntazamin, the compensation of the subject land could not be paid whereas Statement 'A' is not available. the petitioners are not the recorded owners but are claiming through one Kundan who had 2/3<sup>rd</sup> share in the subject land as per records whereas the petitioners have been claiming the relief of entire land."*

8. Reading of the counter affidavit filed by the LAC makes it is abundantly clear that the compensation was not tendered to the recorded owner or to the interested persons. In view thereof, the case of the petitioner is fully covered by the decision rendered by the Apex Court in the case of ***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.”

9. As far as the objection raised by learned counsel for the LAC that the petitioners are not recorded owners but are claiming 1 Bigha of land, learned counsel for the petitioners has clarified that the recorded owner of the subject Land is Late Shri Kundan, who is grand father of the petitioners and this fact has not been disclosed in the writ petition. Learned counsel further clarifies that the petitioners have only 2/3<sup>rd</sup> share in the subject land.
10. Taking into consideration the submissions made and the stand taken by LAC that compensation has not 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 to the extent of 2/3<sup>rd</sup> share (1 Bigha) of the petitioners, are deemed to have lapsed. It is ordered accordingly. We make it clear that we have not expressed any opinion with respect to the title over the subject land.
11. The writ petition stands disposed of.

**G. S. SISTANI, J**

**SANGITA DHINGRA SEHGAL, J**

**FEBRUARY 01, 2018 /gr**