

\$~53

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

Date of Judgement: 5th February, 2018

+ **W.P.(C) 11516/2016**

DHRUV BHASIN & ORS.Petitioners

Through: Mr. Gaurav Puri, Advocate.

Versus

UNION OF INDIA AND ORSRespondents

Through: Mr. Yeeshu Jain, Standing Counsel with
Ms. Jyoti Tyagi Adv. for L&B/LAC.
Ms. Anjuna Gosain Adv. for R-2
Mr. R.K. Dhawan, Adv. for R-5.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (Oral)

1. 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 land bearing Khasra No. 193 min, measuring 13 Bighas and 14 Biswas, situated in the revenue estate of village Bijwasan, Tehsil Mehrauli, New Delhi, (hereinafter referred 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 no compensation has been paid to the petitioners.
2. In this case, a notification under Section 4, Section 6 and Section 17(1) of the Land Acquisition Act, 1894 (hereinafter referred to as 'Act') was issued on 18.08.1985. Thereafter, an award bearing no.25/85-86 was passed on 29.01.1986. It is the case of the

petitioners that the compensation with respect to subject land has not been tendered even though the possession of the land has been taken.

3. The counsel for the petitioners submits that since the compensation has not been tendered, the petitioners would be entitled to a declaration under Section 24 (2) of the Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the New Act'). Learned counsel for the petitioners has drawn the attention of the Court to the Counter Affidavit filed by the LAC wherein it has been categorically stated that as per Statement-A the compensation has not been paid.
4. Learned counsel for the petitioners further submits that since compensation has not been tendered to the petitioners, the case of the petitioners would be fully covered by the decision rendered by the Apex Court in *Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors.*, reported at (2014) 3 SCC 183.
5. Mr. Yeeshu Jain, learned counsel for LAC contended that the land was acquired for stationing of emergency duty of National Security Guards and the possession was taken on 06.11.1985. Para.4 & 5 of the Counter affidavit filed by the LAC, reads as under :-

"4. That the present writ petition is liable to be dismissed as the petitioners were never aggrieved with the acquisition proceeding which were issued vide Notification dated 18.8.1985 under section 4, 6 and 17(1) of Land Acquisition Act, 1894 as the public

purpose was for stationing of emergency duty of National Security guards and possession was taken immediately on 6.11.1985 on the spot and handed over to concerned department. The Award No. 25/85-86 dated 29.1.1986 also came to be passed in accordance with law.

5. That the petitioners are claiming relief of (13 Bigha-14 Biswa) and have admitted that Government has taken possession of subject land falling in khasra number 193. There is no averment by the petitioners that after the possession of subject land was taken from them, they ever approached the office of answering respondent to claim compensation or were they ever aggrieved, thus apparently and manifestly, the petitioners have given up their respective claims seeking compensation and have approached the Hon'ble Court in the year 2016 only after enactment of new Act, 2013. The records i.e. Statement-A, however reflects that the compensation is not shown as paid.."

6. Ms. Anjana Gosain, learned counsel for Respondent No.2, submits that after taking possession of the subject land, a permanent structure has been erected for training purpose and for stationing emergency duty elements for the National Security Guard. The relevant portion of the Counter Affidavit filed by Respondent No.2 reads as under:

"That on the terms of the aforementioned notification and acquisition, the impugned Award No. 25/85-86 dated 18.09.1985 was passed by Land Acquisition Collector for determination of the compensation for the land measuring 20 Bighas 01 Biswas 01 Biswas in village Bijwasan. The amount of 1,97,271 rupees was determined as the compensation amount to be paid by Respondent No.4 to the land owners of the acquired land. Bal Ram Bhasin and Sat Pal Bansal (herein

after referred as 'Petitioners') were named as one of the claimants in the impugned order. However, it is mentioned in the impugned award that no documentary proof was given of the same. The Respondent No.2 is not aware if, any or no, proceedings for compensation were initiated between respondent no.4 and the petitioner. The copy of the Award No.25/85-86 dated 18.09.1985 passed by the Land Acquisition Collector is annexed as ANNEXURE R-4. "

7. Counsel for Respondent no.5 submits that by virtue of being a legal heir of Late Sh. Satya Pal Bansal (recorded co-owner) Respondent no.5 is equally entitled to claim all the reliefs in the present petition alongwith the petitioners pertaining to the subject land. Counter Affidavit has been filed on behalf of Respondent no.5, relevant portion of which reads as under:-

"3. That I say that the deponent, who has been impleaded as Respondent No.5 being one of the legal heirs of Late Sh. Satya Pal Bansal is entitled to all the reliefs a claimed in the Writ Petition alongwith the Petitioners pertaining to the land measuring 13 bighas 14 biswas of khasra no.193 min in Village Bijwasan, New Delhi and no relief can be claimed against the Respondent no.5 and accordingly, the Respondent No.5 be transposed as one of the Petitioners, as she is entitled to claim all the reliefs being one of the legal heirs of Late Sh. Satya Pal Bansal."

8. We have heard learned counsel for the parties.
9. Taking into consideration the submissions made and the categorical assertion made in the counter affidavit filed by LAC that the possession of the subject land has been taken, however the compensation has not been paid, we are of the view that, the case

of the petitioners is fully covered by the decision rendered by the Apex Court 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 subsection (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 W.P. (C) No.866/2017 Page 5 of 6 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. Having regard to the submissions made and the stand taken by the LAC in the counter affidavit, 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 and, having regard to the stand taken by the LAC that the compensation has not been tendered to the petitioners, the petitioners are 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.
10. We are of the view that Respondent No.5 being the legal heir of Late Sh. Satya Pal Bansal, is equally entitled to claim all the reliefs as claimed by the petitioners.
11. Therefore, as the possession of the subject land has been taken over and the land has been put to use, the petitioners and the Respondent no. 5, would only be entitled to compensation as per the New Act. Compensation be released within one year from today. It is ordered accordingly.

12. The writ petition stands disposed of.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

FEBRUARY 5, 2018

