

\$~28

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

% Judgment delivered on: 14.07.2015

+ **W.P.(C) 6356/2014**

RAVENDER & ORS

.... Petitioners

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Vishal Maan

For the Respondent No. 3 : Ms Manika Tripathy Pandey with Mr Ashutosh Kaushik

For the Respondent /DDA : Mr Sanjeev Sabharwal

For the Respondent/LAC/L&B: Mr Yeeshu Jain with Ms Jyoti Tyagi.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. The learned counsel for the respondent No.1 has handed over a copy of the counter-affidavit which she has filed on 13.07.2015 through diary No. 329793. That counter-affidavit is not on record. However, we are taking this copy on record and also directing the Registry to place the original counter-affidavit on record. Although the affidavit has been filed on behalf of the respondent No. 1, Government of NCT of Delhi, the amended memo of parties shows the said respondent as respondent No. 3.

Thus, the affidavit would be taken as that on behalf of the respondent No. 3 as per the amended memo of parties.

2. The petitioners seek the benefit of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the 2013 Act') which came into effect on 01.01.2014. A declaration is sought to the effect that the acquisition proceeding initiated under the Land Acquisition Act, 1894 (hereinafter referred to as 'the 1894 Act') in respect of which Award No. 184/1986-87 was made, *inter alia*, in respect of the petitioners' land comprised in Khasra Nos. 8/2 (3-01), 9/1 (1-16), 13/1/1 (5-01) measuring 9 bighas 18 biswas in all in the revenue estate of village Dichaon Kalan, New Delhi, shall be deemed to have lapsed.

3. Though the respondents claimed that possession of the said land was taken on 26.08.2005, the petitioners dispute this and maintain that physical possession has not been taken. We may also point out that the requisitioning authority was the Irrigation and Flood Control Department, Government of NCT of Delhi. As per the affidavit of the said respondent No.3 (the requisitioning authority), land had been notified for

construction of a supplementary drain along Mugeshpur drain at the old alignment. But due to stiff resistance from the farmers, the drain could not be constructed at the old alignment. As a result, alignment was changed and the final supplementary drain was constructed in alignment of Nangloi drain by reversing its flow. Thus, it is stated in the said affidavit that the land notified, which is, *inter alia*, the subject matter of the present petition, is no longer required for the supplementary drain as the supplementary drain has already been constructed at the changed alignment. The said respondent has also stated that it is not in possession of the subject land.

4. Insofar as the issue of compensation is concerned, the petitioners' case is that compensation has neither been offered nor paid to the petitioners. The stand of the respondent is, however, that the Statement-A with regard to payment of compensation is not traceable and, therefore, the respondents are not in a position to specifically state as to whether compensation has been paid to the petitioners or not. In these circumstances the averments made by the petitioners would have to be accepted, which means that the compensation has not been paid.

5. Without going into the controversy of physical possession, this much is clear that the Award was made more than five years prior to the commencement of the 2013 Act and the compensation has also not been paid. The necessary ingredients for the application of Section 24(2) of the 2013 Act as interpreted by the Supreme Court and this Court in the following cases stand satisfied:-

- (1) **Pune Municipal Corporation and Anr v. Harakchand Misirimal Solanki and Ors: (2014) 3 SCC 183;**
- (2) **Union of India and Ors v. Shiv Raj and Ors: (2014) 6 SCC 564;**
- (3) **Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors: Civil Appeal No. 8700/2013** decided on 10.09.2014;
- (4) **Surender Singh v. Union of India & Others: WP(C) 2294/2014** decided on 12.09.2014 by this Court; and
- (5) **Girish Chhabra v. Lt. Governor of Delhi and Ors: WP(C) 2759/2014** decided on 12.09.2014 by this Court.

6. As a result, the petitioners are entitled to a declaration that the said acquisition proceedings initiated under the 1894 Act in respect of the subject land are deemed to have lapsed. It is so declared.

7. The writ petition is allowed to the aforesaid extent. There shall be no order as to costs.

BADAR DURREZ AHMED, J

JULY 14, 2015
SR

SANJEEV SACHDEVA, J

