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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 07.04.2015

W.P.(C) 8314/2014

KISHAN CHAND & ORS.

..... Petitioners

versus

UNION OF INDIA AND ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Anand Yadav
For the Respondent No.1 : Mr Abhay Prakash Sahay
For the Respondent Nos.2&3 : Mr Yeeshu Jain with Ms Jyoti Tyagi

CORAM:

**HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SANJEEV SACHDEVA**

J U D G M E N T

BADAR DURREZ AHMED, J (ORAL)

1. Mr Yeeshu Jain, the learned counsel for respondent nos. 2 & 3 has handed over the counter affidavit on their behalf. The same is taken on record. The learned counsel for the petitioners does not wish to file any rejoinder affidavit and would be relying on the averments already contained in the writ petition.

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WP(C) 8314/2014

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2. By way of this writ petition 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. The petitioners, consequently, seek a declaration that the acquisition proceeding initiated under the Land Acquisition Act, 1894 (hereinafter referred to as 'the 1894 Act') and in respect of which Award No.30/1972-73 dated 07.09.1972 was made, *inter alia*, in respect of the petitioners' land comprised in Khasra Nos. 30/2/1 (0-3) and 33/2 (0-2) measuring 5 biswas in respect of ½ share of the petitioner, village Mahipalpur, New Delhi, shall be deemed to have lapsed.

3. In paragraph 8 of the counter affidavit filed on behalf of respondent nos. 2 & 3 it is stated that possession of the land in question could not be taken due to a stay. With regard to the compensation, it is stated in the said paragraph that the payment file was not traceable.

4. However, the learned counsel for the petitioners has drawn our attention to a document at page 85 of the paper book which is a reply to an RTI query raised by the petitioners in respect of the subject land. The said RTI reply is dated 10.10.2014 and reads as under:-

"GOVERNMENT OF NCT OF DELHI
OFFICE OF THE LAND ACQUISITION COLLECTOR, DISTT. NEW
DELHI

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12/1, JAM NAGAR HOUSE, NEW DELHI-110011

F.1/ADM/LAC/ND/2014/590

Dated: 10/10/2014

To

Sh. Shri Om s/o Sardar Singh,
House No.101, Near Chaupal Chowk,
Mohalla Ko-Ko Bagri, Mahipalpur
New Delhi- 110037.

Subject; Forwarding reply of RTI/DC/ND.

On the subject cited above, the reply of required information is
given as under:

1. Award no.30/1972-73 of village Mahipalpur was announced in respect of Khasra no's 30/2/1 and 33/2.
2. Yes, acquisition has been taken place vide the above said award.
3. As per possession report available in this office, the physical possession of Khasra No's 30/2/1(0-3) and 33/2(0-2) of village Mahipalpur has not been taken .
4. The compensation of the above said khasra no's is not paid.
5. Matter pertain to Tehsildar (VV).

If you are not satisfied with the information provided, you may file appeal before the first appellate authority i.e ADM, 12/1, Jam Nagar House, New Delhi- 110011 within 30 days of the receipt of this information.

(HEMRAJ)
APIO/NT(LA),
DISTT. NEW DELHI.

COPY TO; SDM (HQ), 12/1 JAMNAGAR HOUSE, NEW DELHI-11.'

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From the above it is evident that physical possession of the subject land has not been taken nor has the compensation been paid. The vague averments made in paragraph 8 of the counter affidavit are without substance.

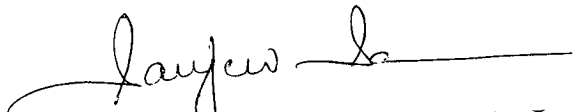
5. It is, therefore, clear that neither physical possession of the subject land has been taken by the land acquiring agency nor has any compensation been paid to the petitioners. The award was made more than five years prior to the commencement of the 2013 Act. All the ingredients of section 24(2) of the 2013 Act as interpreted by the Supreme Court and this court in the following decisions stand satisfied:

- (i) Pune Municipal Corporation and Anr v. Harakchand Misirimal Solanki and Ors: (2014) 3 SCC 183;
- (ii) Union of India and Ors v. Shiv Raj and Ors: (2014) 6 SCC 564;
- (iii) Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors: Civil Appeal No. 8700/2013 decided on 10.09.2014; and
- (iv) Surender Singh v. Union of India and Ors.: W.P.(C) 2294/2014 decided 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 lands 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


SANJEEV SACHDEVA, J

APRIL 07, 2015
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