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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 15.11.2016

W.P.(C) 858/2015 & CM 1505/2015

ANIL KUMAR JAIN

..... Petitioner

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner	: Mr Akhil Sachar
For the Respondent LAC/L&B	: Mr Siddharth Panda
For the Respondent DDA	: Mr Arjun Pant

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE JAYANT NATH

J U D G M E N T

BADAR DURREZ AHMED, J (ORAL)

1. By way of this writ petition the petitioner is seeking 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 petitioner, consequently, seeks 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.4B/2004-05 of 4/2002-03 dated 13.05.2004 was made, *inter alia*, in respect of the petitioner's land comprised in khasra No. 20//20/1 (1-04) measuring 1 bigha 4 biswas in village Pansali, Delhi, shall be deemed to have lapsed.

2. While the petitioner claims that physical possession of the subject land has not been taken by the land acquiring agency and that the petitioner continues to be in possession, the respondents and particularly the Land Acquisition Collector contends that possession of the said land was taken on 12.05.2000. However, the learned counsel for the petitioner drew our attention to the Supreme Court decision in **Velaxan Kumar v. Union of India and Others: (2015) 4 Supreme Court Cases 325** which pertains to the very same acquisition of land in village Pansali. There also it was contended on behalf of the Land Acquisition Collector that a large chunk of land measuring 1109.11 bighas falling in village Pansali was taken possession of on one day i.e. on 12.05.2000 by way of following the due process of law by giving notice etc. to the land owners. We note that in the present case also it is alleged by the respondents that the physical possession was taken on that very day i.e. 12.05.2000. With regard to the said issue of

taking over possession, the Supreme Court in **Velaxan Kumar** (*supra*)

observed as under:-

“14. We have carefully examined the application filed by the appellant seeking for the beneficial provision of Section 24(2) of the 2013 Act and the objections filed by the respondents to the same. After examining the facts and circumstances of the case, we are of the considered view that the award passed under Section 11 was passed on 3-4-2002 in respect of the disputed land of Village Pansali, therefore, it is an undisputed fact that it was passed 5 years prior to the commencement of the 2013 Act and the compensation for the acquisition of the appellant's land has not been paid to the appellant. Further, with respect to taking over of possession of the land by the respondents, it is clear from the facts and circumstances of the case that actual physical possession of the land in question has not been taken by the respondents. Even if, for the sake of argument it is accepted that possession of the land was taken by the respondents, it is clear that due procedure has not been followed by the acquisition authority by way of preparing proper “panchnama” in the presence of independent witnesses and the land-holders, and therefore it is contrary to the principles of law laid down by this Court in *Sita Ram Bhandar Society v. Govt. (NCT of Delhi)* [(2009) 10 SCC 501 : (2009) 4 SCC (Civ) 268] , wherein, this Court held that when possession of a large tract of land is to be taken then it is permissible in law to take possession by a properly executed “panchnama” attested by independent witnesses. This was further reiterated by this Court in its decisions in *Banda Development Authority [Banda Development Authority v. Moti Lal Agarwal, (2011) 5 SCC 394 : (2011) 2 SCC (Civ) 747]* , *Raghubir Singh Sehrawat [Raghubir Singh Sehrawat v. State of Haryana, (2012) 1 SCC 792 : (2012) 1 SCC (Civ) 402]* , *Patasi Devi [Patasi Devi v. State of Haryana, (2012) 9 SCC 503 : (2012) 4 SCC (Civ) 728]* referred to *supra*.”

It is therefore clear that the respondents cannot contend that physical possession has been taken by them. The award was clearly made more than five years prior to the commencement of the 2013 Act and admittedly compensation has not been paid to the petitioner.. 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.

3. As a result the petitioner is 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.

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

BADAR DURREZ AHMED, J

JAYANT NATH, J

NOVEMBER 15, 2016

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