

\$~12

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 30.08.2016

W.P.(C) 1034/2015

RAJAN SOOD & ANR

..... Petitioners

versus

GOVERNMENT OF NCT OF DELHI & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioners	: Mr Sameer Jain
For the Respondent L&B	: Mr Sanjay Kumar Pathak with Mr Sunil Kumar Jha and Mr Kushal Raj Tater
For the Respondent DDA	: Mr Arjun Pant

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE ASHUTOSH KUMAR

J U D G M E N T

BADAR DURREZ AHMED, J (ORAL)

1. 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. A declaration is sought that the acquisition proceeding initiated under the Land Acquisition Act, 1894 (hereinafter referred to as 'the 1894 Act') in respect of which Award No.107/1986-87 dated 19.09.1986 was made, *inter alia*, in respect of

the petitioners' land comprised in Khasra No. 804/24-26 (5-14) to the extent of 4 bighas 6 biswas in village Sadhora Kalan, Delhi, shall be deemed to have lapsed.

2. The petitioners have claimed that they are in physical possession of the subject land and the same was never taken by the land acquiring agency. However, the learned counsel for the respondents contend that possession was taken on 23.09.1986. In response to this, the learned counsel for the petitioners has drawn our attention to an order dated 09.11.2011 passed in the petitioners' own case in W.P.(C) 7714/2011 by a Division Bench of this court. The said order reads as under:-

“Learned counsel for the petitioner confines his grievance to only two aspects:-

(i). The application of the petitioner under section 48 of the Land Acquisition Act, 1894 (hereinafter referred to as Land Acquisition Act) be decided on merits; and

(ii). No coercive process should be initiated by the DDA contrary to the directions passed by the Appellate Tribunal, MCD.

In so far as the first aspect is concerned, we have called for the possession proceedings and the copies of the record show that in 1986 some paper work was done.

Undisputedly, the petitioner continues in physical possession since then. We thus consider it appropriate to direct that the application of the petitioner under section 48 of the said Act be

decided on merits and on the assumption of the possession being with the petitioner. No coercive orders qua the land of the petitioner will be passed till a decision on the application is taken. In case of an adverse order being passed, the same shall remain in abeyance till 15 days after the communication of the order.

In so far as second aspect is concerned, since a judicial forum is ceased of the matter, no coercive action should be taken contrary to the directions passed by the Appellate Tribunal, MCD.

The writ petition and the applications stand disposed of with the aforesaid directions.”

(underlining added)

3. From the above it is evident that the petitioners have continued to be in physical possession and therefore the plea taken by the respondents cannot be accepted.

4. We have also inquired as to whether the order dated 09.11.2011 was taken in appeal before the Supreme Court and, if so, whether order was set aside by the Supreme Court? The learned counsel for the respondents could not make a statement that the said order has been set aside. Therefore, the finding that physical possession of the subject land is with the petitioners stands.

5. Insofar as the question of compensation is concerned, the case of the petitioners is that no compensation was offered or paid to them. On the other

hand, the learned counsel for the respondents submitted that though the compensation was tendered to one Shiv Kumar, S/o Devi Chand, they are not in a position to state as to whether the compensation was paid or was not paid to anybody. In these circumstances, the statement made by the learned counsel for the petitioners in the writ petition to the effect that no compensation was paid in respect of the subject land would not to be taken as correct. We had required the respondents to produce the relevant file pertaining to the acquisition which was in the custody of the Anti Corruption Branch. That file has been produced but that also does not reveal the position as to whether compensation has been paid or not paid.

6. Mr Pathak appearing for the respondents submits that in the acquisition file it is noted that there was a dispute when the notice was sent to Shiv Kumar with regard to compensation although he cannot say as to whether the compensation was deposited in court or not. In these circumstances, as mentioned above, it would have to be taken that compensation has not been paid to the petitioners.

7. Therefore, 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.

8. 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.

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

BADAR DURREZ AHMED, J

ASHUTOSH KUMAR, J

AUGUST 30, 2016

kb