

\$~23

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 22.02.2016

W.P.(C) 3611/2015 & CM No.6438/2015

KHUBI RAM SHARMA AND ORS.

..... Petitioners

versus

LT. GOVERNOR AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Parvinder Chauhan with Mr Nishant Prateek, Advocates.

For the Respondents : Mr Yeeshu Jain with Ms Jyoti Tyagi, Advocates for LAC/L&B
Ms Saakshi Agrawal, Advocate for Mr Aditya Parolia, Advocate for
DDA.

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. The counter affidavit handed over by Mr Yeeshu Jain on behalf of respondent No.3 is taken on record. The learned counsel for the petitioners does not wish to file any rejoinder affidavit and reiterates the contents of the writ petition.

2. By way of this writ petition the petitioners are 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 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.2034/67-68 dated 24.11.1967 was made, *inter alia*, in respect of the petitioners' land comprised in Khasra Nos. 511(1-1) measuring 1 bigha 1 biswa in village Shahpur Jat, has lapsed.

3. The affidavit of the respondent No.3 (Land Acquisition Collector) (South) indicates that the award file is incomplete and the *naksha muntazamin* is also not available in the office of the said respondent. Consequently, it is stated that it could not be ascertained as to whether the possession of the said land was taken by the said respondent No.3 or not. It could also not be ascertained as to whether compensation was paid to the recorded owners or not. The learned counsel for the petitioners drew our attention to paragraph 8(III) of the affidavit filed on behalf of the respondent No.4 (Delhi Development Authority). It has been categorically stated in the said paragraph that physical possession of the land in question had not been handed over to the DDA by the Land Acquisition Collector/Land & Building Department, Government of NCT of Delhi. With regard to the compensation

amount, it has been stated in the affidavit of the DDA that the payment was sent to the Land & Building Department through revolving funds by the respondent No.4 (DDA). But, there is no evidence of either offer of the compensation or payment thereof to the recorded owners.

4. In these circumstances, the issue of physical possession would have to be decided in favour of the petitioners. This is so because the Land Acquisition Collector has no material available with it to deny the assertion of the petitioners that physical possession is with the petitioners and has not been taken over by the Land Acquisition Collector. The learned counsel for the petitioners also drew our attention to the English translation of the possession proceedings, a copy of which is at pages 51 and 52 of the paper book. It has been clearly stated in the possession proceedings that *inter alia* possession of Khasra No.511(1-1) could not be taken due to the fact that the same were built up. This fact, supported further by the statement on behalf of the DDA that physical possession was not handed over to them by the Land Acquisition Collector, makes it clear that the physical possession of the subject land is with the petitioners and has not been taken over by the Land Acquiring Agency.

5. Since no record of payment of compensation by the Land Acquisition Collector to the petitioners is available in the office of the Land Acquisition Collector, the averments made by the petitioners that no compensation has been offered or received by them would have to be accepted.

6. As a result of this discussion, it is clear that neither the physical possession of the subject land has been taken by the Land Acquiring Agency nor has any compensation been paid to the petitioners.

7. The award has also been made more than 5 years prior to the commencement of the 2013 Act. Therefore, all the necessary ingredients of Section 24(2) of the 2013 Act as interpreted by the Supreme Court and this Court in, *inter alia*, 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;
- (iv) **Surinder Singh vs. 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

SANJEEV SACHDEVA, J

FEBRUARY 22, 2016
st

