

\$~56

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

DECIDED ON : 18th JULY , 2017

+ **W.P.(C) 682/2017**

RAJESHWARI Petitioner

Through : Mr.Sunil K.Goel, Advocate.

Versus

GOVT. OF NCT OF DELHI & ORS. Respondents

Through : Mr.Yeeshu Jain, Standing Counsel for
L& B / LAC with Ms.Jyoti Tyagi, Advocate.
Mr.Pawan Mathur, Standing Counsel for DDA.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (OPEN COURT)

1. Learned counsel for the respondent No.2 /LAC seeks liberty to place on record the counter-affidavit. Liberty granted. Counter affidavit is taken on record.
2. In the instant writ petition, the petitioner claims her father-in-law to be recorded owner of the agricultural land to the extent of 1/12th share i.e. 2 bighas and 13 biswas of Khasra No.481(3-0), 488(3-9), 506(3-0), 516(2-1), 517(0-16), 535(8-2), 536(7-13) & 537(3-8) total measuring 31 bighas and 0-9 biswas in the Revenue Estate of Village Ghonda Gujran Khadar, Delhi. The petitioner's claim is that acquisition of her lands (hereinafter referred to as 'suit land') has lapsed by virtue of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the Act').
3. The necessary facts are that a notification under Section 4 of the Land Acquisition Act, 1894 (old Act) was issued on 24.10.1961; it included

the suit land. A declaration was issued under Section 6 on 02.09.1966. The award bearing No.9/1973-74 dated 05.06.1973 was made by the Land Acquisition Collector.

4. The petitioner in the writ petition avers that her father-in-law was the recorded owner of the suit land; he expired on 15.05.2006. Her husband Babu Ram has also expired on 07.03.2010. Pursuant to the award, possession of the suit land had already been taken by the respondents, however, compensation in respect thereof was never paid or tendered. Relying upon *Pune Municipal Corporation & Anr. vs. Harakchand Misirimal Solanki & Ors.*, 2014 (3) SCC 183, counsel urged that the acquisition has lapsed since five year period indicated in Section 24(2) of the Act has ended.

5. The Govt. of NCT of Delhi through LAC, in its counter-affidavit, significantly makes the following admission :

“The Award No.9/73-74 dated 5.6.1973 also came to be passed in accordance with the law and in pursuance thereof, the actual vacant physical possession of the subject land falling in khasra number 481, 488, 506, 516 and 517 was duly taken on the spot on 21.6.1973 and handed over to the DDA on the spot by preparing possession proceeding on the spot. The possession of khasra number 535, 536 and 537 however could not be taken. The compensation for khasra number 481, 488 and 506 was sent to Reference Court on 12.02.1974 being disputed u/s 30-31 of the Act, 1894 whereas the compensation for khasra number 516, 517, 535 and 537 was duly paid to the recorded owners on 13.09.1982 and 29.04.1991 as per NakshaMuntazamin/ Statement-A and the compensation for khasra number 536 was lying deposited in RD.”

6. It is evident that the possession of land in Khasra No.535, 536 and 537 has not been taken so far. The counter-affidavit does not reveal if any

compensation for acquisition of the land in Khasra No.536 was paid to the recorded owner.

7. The Supreme Court in Pune Municipal Corporation case (supra) dealt with the issue, i.e. as to whether compensation amount has to be actually paid, or deposited. That decision clarified that mere deposit of the amount in the Treasury would not fulfill requirement of Section 24(2) and that there should be a positive step to appropriate the concerned amount and make it available to the land owner, i.e. by way of payment under Section 31(2) of the old Act, or by deposit of the compensation in Court.

8. As the respondents have not denied that the possession of the land in Khasra No. 535, 536 and 537 has not been taken over, in the present case, the petitioner is entitled to the declaration sought to that extent. Accordingly, it is held that acquisition of suit land in Khasra No. 535, 536 and 537 vide award No.9/1973-74 dated 05.06.1973 is deemed to have lapsed by virtue of Section 24(2) of the Act.

9. The writ petition is allowed in the above terms.

**S.P.GARG
(JUDGE)**

**S. RAVINDRA BHAT
(JUDGE)**

JULY 18, 2017 / tr