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

% Judgement delivered on: 24th April, 2017

+ **W.P.(C) No.1609/2016 & CM No.6990-91/2016**

ALEP KAUR

..... Petitioner

Through : Ms.Deepika V. Marwaha &
Ms.Worthing Kasar, Advocates
for petitioner.

versus

GOVERNMENT OF NATIONAL CAPITAL
TERRITORY OF DELHI AND ORS.

..... Respondents

Through : Mr.Yeeshu Jain, Standing
Counsel with Ms.Jyoti Tyagi,
Advocates for L&B/LAC.
Mr.M.K.Singh, Advocate for
DDA.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE YOGESH KHANNA

S.RAVINDRA BHAT, J. (Oral)

1. Learned counsel for L&B/LAC seeks to tender the counter today in the Court. The same is hereby being taken on record.

2. The petitioner Alep Kaur (Bibi Alap Kaur) filed this petition through her constituted attorney Mr.Ajay Kumar. It is alleged that on 30.06.1982 the petitioner became the owner of the agricultural land admeasuring 1 bigha 6 biswas out of 16 bigha and 4 biswas (being

27/72 shares in 43 bigha and 4 biswas) falling in Khasra Nos.1269(4-16), 1272 (4-16), 1273(4-16), 1284(4-16), 1285(4-16), 1286 (4-16), 1287(4-16), 1288(4-16), and 1292(4-16) situated in village Malikpur Kohi @ Rangpuri, Tehsil Mehrauli, New Delhi vide registered sale deed executed by Dharam Pal on 03.07.1982. On 16.11.1983, the land was mutated in the name of the petitioner in the revenue records.

3. On 27.06.1996, notification under Section 4 of the Land Acquisition Act, 1894 was issued for acquiring 1337 bigha and 4 biswas in village Malikpur Kohi @ Rangpuri, New Delhi including the land of the petitioner for the purpose of planned development of Delhi. Consequently, the notification under Section 6 of the Act was issued; and on 07.01.1999 an award bearing No.2/1998-99 was made.

4. It is alleged that on 08.09.2003, the paper possession of land in Khasra Nos.1289(2-19), 1290 (6-15) was taken over by the respondent Nos.1 & 2, but the physical possession remained with the land owners. It is further alleged that on 31.12.2013 the possession of some more land falling in different Khasras forming part of the notification under Section 4 of the Act, was taken.

5. It is alleged by the petitioner that neither the actual and physical possession of the land was taken by the respondents nor was she paid any compensation under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The petitioner thus contended that the acquisition be declared to have elapsed. It is alleged by the petitioner

that actual and physical possession was not taken over and the name of the petitioner is shown at Sr.No.132 of the award.

6. It is the case of the petitioners that since after the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, a right has accrued in their favour since the respondents have neither taken over the physical possession of the land from them nor have they paid any compensation per award bearing No.2/1998-99.

7. The petitioner relied upon the judgment of this Court in *Susheel Kumar Khanna vs. Govt. of NCT of Delhi & Ors* WP (C) No.5495/2015 pronounced on 29.09.2015 qua the award No.2/1998-99 dated 07.01.1999 of the land comprising in Khasra No.1103 min admeasuring 1 bigha in village Malikpur Kohi @ Rangpuri, Delhi where this Court declared that the acquisition proceedings in respect of subject land as deemed to have elapsed.

8. It is also the case of the petitioner that on 05.10.2015 in Writ Petition (C) No.2051/2015 *Arvind Kumar Sharma vs. Government of NCT of Delhi & Ors* in same award bearing No.2/1998-99 dated 07.01.1999 the land comprising in Khasra No.1255/4 in village Malikpur Kohi @ Rangpuri, the Court has declared the acquisition proceedings initiated under the Act of 1894 in respect of the subject land as deemed to have elapsed and hence the relief was granted.

9. Respondent No.2 has filed the counter today in the Court and contents of para Nos.8 & 11 are relevant which reads as under:-

“8. That it is submitted that many of the land owners filed various writ petitions including the lead case Civil Writ Petition No.1953/1997 titled Vasant Kunj Enclave Housing Welfare Society Vs. Union of India & Ors before this Hon’ble Court for quashing of the Notifications dated 27.06.1996 issued by the Government of NCT of Delhi under Section 4 read with Section 17(1) and (4) dispensing with Section 5-A and Notifications dated 10.01.1997 issued under Section 6 of the Land Acquisition Act. In the said writ petitions, interim stay/status quo orders were passed in favour of the petitioners therein as early as on 16.12.1996. The said writ petitions lead case being WP(C) No.1953/1997 were disposed on 04.05.2012 whereby Section 6 & 17 was quashed qua the petitioners therein. Thereafter, the public notice issued by the answering respondent on 21.11.2012 inviting objections from interested persons under Section 5A of the Old Act were challenged in two writ petitions being WP (C) No.7795/2012 and WP (C) No.7802/2012 and the same was stayed vide interim orders dated 19.12.2012 and further, in WP (C) No.7802/2012 vide 11.10.2013 the parties were directed to maintain status quo. Aforesaid writ petitions i.e. W.P. (C) No.7795/2012 and W.P. (C) No.7802/2012 were dismissed as withdrawn on 05.11.2014 and 12.10.2015 with liberty to seek remedy individually by land losers. It is submitted that other than khasra numbers 1272 and 1273, the remaining khasra numbers which formed part of the present writ petition also formed part of W.P. (C) No.7802/2012. Thus, interim order/stay with respect to the subject khasra Nos. remained in force till 12.10.2015. Thus, acquisition proceedings against remained interdicted by interim orders of this Hon’ble Court. It is however also submitted

that the actual vacant physical possession of the land falling in khasra number 1272 (4-16) and 1273 (4-16) was duly taken on the spot on 31.12.2013 and handed over to the DDA on the spot by preparing possession proceeding on the spot however the compensation could not be paid for the said two khasra numbers as not received from requisition agency.

11. That as regards possession, it is humbly submitted that the possession of the land in question could not be taken due to stay from this Hon'ble High Court. So far as compensation is concerned the compensation amount has not been received from requisitioning authority. Thus, the compensation amount could not be paid to the interested persons."

10. Thus, as admitted by the respondents, the possession of the land could not be taken and the compensation could not be tendered in the manner envisaged by law, as is understood in compliance of provisions of Section 24 (2) the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

11. This Court is also of the opinion that in the circumstances, the relief claimed has to be granted in view of the decision in *Pune Municipal Corporation & Anr. V. Harakchand Misirimal Solanki & Ors.* (2014) 3 SCC 183 wherein the Supreme Court held as under:-

"under section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the

commencement of 2013 Act and possession of the land is not taken or compensation has not been paid. The legal fiction under section 24 (2) comes into operation as soon as conditions stated therein are satisfied, the applicability of section 6 of the General Clauses Act being subject to section 24 (2), there is no merit in the contention of the corporation (emphasis supplied)”

12. Since, the petitioner is the recorded owner of the subject land and shown as the claimant in the award and since the respondents plead that they could not take the possession of the subject land due to a stay from this Court, the question as to if the period during which the proceeding was stayed could be excluded from the period so stipulated under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, is still pending before the Supreme Court in a larger Bench in *Yogesh Neema vs. State of MP & Ors* SLP (C) No.10742/2008 vide order dated 12.01.2016. However, in *Sree Balaji Nagar Residential Association vs. State of Tamil Nadu* (2015) 3 SCC 353, the Supreme Court has held that if the possession could not be taken by the State for any reason including stay by court etc, the provisions of the Section 24(2) the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, would apply.

13. Since, admittedly the possession has not been taken over by the respondents and also the compensation has not been paid to the land owners, the decision in *Pune Municipal* (supra) would apply and the petitioner is entitled to the relief prayed for.

14. Consequently, a declaration is issued that the acquisition of the land of the petitioner in respect of aforesaid Khasra numbers has therefore lapsed in view of the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Consequently, the respondents are granted a year's time to take appropriate suitable action failing which they shall ensure that possession is restored to the recorded owner.

15. Consequently, the petition and pending miscellaneous application are allowed.

S. RAVINDRA BHAT, J

YOGESH KHANNA, J

APRIL 24, 2017

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