

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

Decided on : 21.08.2017

+ **W.P.(C) 4289/2013 & C.M. APPL.9966/2013**

SHIV CHARAN

.....Petitioner

Through: Sh. Neeraj. K. Jain, Sr. Advocate with Sh. T.N. Singh and Sh. Vikas Singh, Advocates.

Versus

UOI AND ORS.

.....Respondents

Through: Sh. Yeeshu Jain, Standing Counsel with Ms. Jyoti Tyagi, Advocate, for L&B/LAC.
Sh. Ajay Verma with Ms. Diviani Khanna, Advocates, for DDA.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P. GARG

MR. JUSTICE S. RAVINDRA BHAT

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1. The petitioner sought the quashing of acquisition proceedings initiated through the notification dated 27.10.1999 under Section 4 read with Sections 17(1) and (4) of the Land Acquisition Act, 1894 [hereafter referred to variously as “the 1894 Act” or “the old Act”]. These proceedings were filed on 29.05.2013 when the old Act was in force. With the subsequent repeal of that enactment and the bringing into force of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (“the 2013 Act” hereafter) with effect from 01.01.2014, amendments to the petition were sought and granted; the fresh claim in the amended proceedings is for a declaration that the acquisition

proceedings with respect to the land measuring 1278 square yards in Khasra No. 62/19/1 situated in the revenue estate of Village Pehladpur Bangar [hereafter referred to as “the suit property”] has lapsed.

2. The present proceedings were initiated in the name of Sh. Shiv Charan through one Sh. Ashok Kumar Sehgal, who claims to be his Power of Attorney (PoA) holder. This PoA is based upon a registered document executed on 04.03.1994 by Shiv Charan in respect of the suit lands. Shiv Charan, in turn, claims to be the purchaser of the said suit lands from the original owners – Kaptan, Parmeshwari Devi, Shyam Dutt, Sudhir, Asarfi and Sukhdei. Some of the original vendees were children of Jai Narain and some others were children of other co-sharers. The suit property was part of a larger tract of land, sought to be acquired for the public purpose of development of the Rohini Residential Scheme formulated by the Delhi Development Authority (“DDA” hereafter).

3. Claiming urgency, the hearing to land owners under Section 5-A of the 1894 Act was dispensed with by the initial notification. Dispensing with the hearing became the subject matter of writ proceedings that ultimately culminated in the order of the Supreme Court in Civil Appeal No.3813/2007 [*Ram Dhari Jindal v. UOI and Ors.*]. The petitioner had alleged that the Supreme Court’s order dated 21.03.2012, no doubt, granted liberty to issue declaration under Section 6 but contends that having regard to the facts of the case the declaration issued was beyond the time permitted.

4. It is contended by the petitioner that even though in the present case, the Award dated 08.07.2002 was published, while assessing the suit lands to compensation, the benefit of the Supreme Court judgment had to be

extended; more specifically in the amended proceedings, it is contended that the possession was never taken in accordance with law nor was compensation tendered to the original owners or the petitioner. Therefore, the petition claims that in terms of Section 24 (2) of the 2013 Act, the acquisition in respect of the suit lands lapsed.

5. Sh. Neeraj. K. Jain, learned senior counsel appearing on behalf of the petitioner drew attention of the Court to the pleadings and urged that the objection by the respondent to the maintainability of this proceedings are without merit. He relied upon the decision in *Banda Development Authority v. Moti Lal Agarwal* 2011 (5) SCC 394. He also submitted that while taking physical possession of the acquired land no proper procedure was followed by the authorities concerned by way of giving prior notice to the landowner/farmers, whose structures exist over the acquired land or in any case standing crops etc. by way of preparing proper *Panchname* in the presence of witnesses and the landholders. Such procedure is contrary to the decisions of the Supreme Court reported in *Banda Development Authority v. Moti Lal Agarwal* 2011 (5) SCC 394, *Raghubir Singh v. State of Haryana and Ors.* 2012 (1) SCC 792 and *Patasi Devi v. State of Haryana and Others* 2012 (9) SCC 503. It is submitted that the so called taking of possession is belied by the fact that actual possession still continues to be with the petitioner. It is therefore argued that consequent vesting of the land in the State is *ex-facie* erroneous in view of the fact that physical possession over the land is still with the petitioners-land-owners on the spot. It was submitted that in the decision reported in *Prahlad Singh v. UOI and Ors.* 2011 (5) SCC 386, the Supreme Court held that:

“The vesting of the land under Section 16 of the Act presupposes actual taking of possession and till that is done, legal presumption of vesting enshrined in section 16 cannot be raised in favor of the acquiring authority.”

6. Therefore, he submitted that the entire acquisition proceedings are liable to be quashed. It was submitted that in fact the so-called “possession document” relied upon by the respondents could evidence only paper possession and did not measure up to the requirement of taking physical possession which would disentitled the land owner to relief under Section 24(2) of the 2013 Act.

7. Learned counsel highlighted that the judgment of the Supreme Court in *Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & Ors.* (2014) 3 SCC 183 has categorically stated that in relation to land acquisition proceedings under the old Act, if an order is made five years or more prior to commencement of the 2013 Act and either of the contingencies is satisfied – namely, physical possession of the land is not taken or compensation has not been paid, the acquisition would lapse. Relying upon the reply dated 23.12.2015 to a query under the Right to Information Act, it was submitted that even compensation was not paid in the present case.

8. The DDA as well as the GNCTD have filed reply and counter affidavits in both original proceedings as well as to the amended petitions. It is contended broadly on their behalf that the suit property along with other acquired suit lands vested with the appropriate Government since possession was taken on 09.05.2000; a copy of the possession proceedings have been produced along with the counter affidavit. It is submitted that in accordance with the award, compensation to the original land owners or their heirs/legal

representatives was paid. In this regard, the relevant extracts of the Statement A in respect of the Award, i.e. 14/2002-03 are relied upon. These show that the heirs of Jai Narain; Asharfi, d/o Molad; Bharpai, d/o Molad; Sukhdei, widow of Kaptan; Shyam Dutt, s/o Munshi Ram; Sudho, widow of Shera; Nand Kishore and Parmeshwari Devi, both heirs of Shera were paid compensation on different dates in October and December, 2002.

9. The counter affidavit of the appropriate Government/GNCTD pertinently states as follows:

“8. That it is submitted that the lands of Village Prehlad Pur Bangar Kalan were notified vide Notification under Section 4 of the Land Acquisition Act, 1894 dated 27.10.1999 which was followed by the Notification under Section 6 of the Act dated 03.04.2000. The Award was also passed vide Award No.14/2002-03 dated 08.07.2002 and the possession of the lands falling in the Khasra Number 62/19/1 (3-16) were also taken on 09.05.2000 on the spot and handed over to the requisition agency, i.e. DDA. It is further submitted that after the possession was taken of the lands passed under the said Award from the petitioners herein, the acquisition proceedings became complete, final and binding as the recorded owners and/or the petitioners thereafter never challenged the same before any court of law. It is pertinent to mention here that the petitioner has claimed only 1278 or around 25 biswa of land out of the total land holding of the said khasra number, i.e. (3-16).

9. That it is submitted that the present challenge to the Notification which was issued in the year 1999 and the proceedings thereunder whereby not only the compensation was duly paid to the recorded owners but also the possession of the lands were taken way back in the year 2000 itself, the present petition at this belated stage is liable to be dismissed on the ground of limitation alone. It is further submitted that the

following sums were paid to the recorded owners as per their respective share in the said khasra number are as under:

- (i) Rs.26492/- paid on 29.10.2002 to Krishan Kumar S/o Jai Narain vide cheque number 540684.*
- (ii) Rs.534956/- paid on 13.02.2003 to Ved Prakash Khosla S/o H.L. Khosla vide cheque number 549919.*
- (iii) Rs.26492/- paid on 29.10.2002 to Om Prakash S/o Jai Narain vide cheque number 540686.*
- (iv) Rs.26492/- paid on 29.10.2002 to Ramesh Chander S/o Jai Narain vide cheque number 540685.*
- (v) Rs.26492/- paid on 29.10.2002 to Bijender Kumar S/o Jai Narain vide cheque number 540687.*
- (vi) Rs.26492/- paid on 29.10.2002 to Subhash Chand S/o Jai Narain vide cheque number 540688.*
- (vii) Rs.26492/- paid on 29.10.2002 to Virender Kumar S/o Jai Narain vide cheque number 546689.*
- (viii) Rs.26492/- paid on 10.10.2002 to Satvir S/o Mahender Singh vide cheque number 540400.*
- (ix) Rs.309084/- paid on 16.10.2002 to Rajender Prasad S/o Prabhu Dayal vide cheque number 540398.*
- (x) Rs.61816/- paid on 16.10.2002 to Asharfi and Bharpai both daughters of Molad vide cheque number 54038.*
- (xi) Rs.123634/- paid on 11.09.2002 to Sukhdei widow of Kaptan vide cheque number 540235.*
- (xii) Rs.185451/- paid on 23.12.2002 to Shyam Dutt S/o Munshi Ram vide cheque number 541191.*
- (xiii) Rs.185448/- paid on 25.10.2002 to Ms. Sudho widow of Shera vide cheque number 540603.*
- (xiv) cheque were also issued to Nand Kishore and Parmeshweri Devi both children of Shera.*

11. That it is submitted that since the possession of the land, stated supra was duly taken way back in the year 2000 itself, the same vests with the Government absolutely free from all encumbrances under Section 16 of the Land Acquisition Act, 1894 and the same cannot be divested to its recorded owners at the later stage for any reasons, whatsoever. It is further submitted that even as per the Section 11A of the Land Acquisition Act, 1894, the acquisition proceedings can lapse only in the condition when the Award could not be passed within two years from the date of Declaration under Section 6 of the said Act. It is further submitted that the Hon'ble Courts have also held from time to time that once the land vests with the Government under Section 16 and/or 17(1) of the Land Acquisition Act, 1894, free from all encumbrances, the land owners is not entitled to claim restoration of possession and the only entitlement of the interested persons is to claim compensation."

10. Learned counsel for the respondents also relied on possession proceedings to state that the entire stretch of land, which was notified, was in fact physically taken over. It was stated that the lands were transferred and handed over to the requiring agency, i.e DDA. Having regard to this fact and the circumstance that the landowners were paid compensation, there is no question of the present petitioners claiming to be in possession, or entitled to the declaration that the lands are free from acquisition.

11. There is and cannot be any denial about the fact that the recorded land owners, i.e Kaptan and other co-sharers, or their heirs claimed, and were actually given compensation. The pleadings on behalf of the NCT of Delhi in this regard are clear and forthright. The dates, when the compensation was paid, the cheque numbers, as well as the amounts paid to each person interested in the suit lands, has been revealed. There is no effective denial to these pleadings.

12. The other aspect is whether the petitioner is entitled to relief on the ground that physical possession is with him. In *Union of India v Prasadi & Ors* 2003(69) DRJ 751, a Division Bench of this court observed as follows:

" In such a case when the land has been acquired, award made, compensation given and thereafter physical possession of the land has been taken, it would not be permissible for the respondents herein to find fault with the process of taking possession, that too in collateral proceedings, on the alleged ground of non-completion of certain formalities. Even if we assume that there were any irregularities or non-completion of any formality, no right would vest in favor of the respondents herein. Non-compliance of any technicality would not render the factual physical possession as illegal when the respondents herein had accepted the physical possession of the DDA. In so far as legal possession is concerned, as per the mandate of Section 16 of the Land Acquisition Act once award is passed the land vests in the State free from all circumstances. In the present case the award No. 205/86-87 was passed in respect of the land in question, and therefore, the legal possession in any case, vests in the State absolutely free from all encumbrances. This is the legal position as conclusively been held by the Supreme Court in the cases of: (1) Satinder Prasad and Ors. v. State of UP, AIR 1993 SC 2517, (2) H M Kelogirao v. Government of AP, 1997(7) SCC 722, (3) UP Jal Nigam v Kalra Properties (1997) 3 SCC 124. So much so as even the symbolic possession is sufficient compliance in the eyes of law. [Refer: Brahm Sarup & Ors v The State of Haryana & Ors AIR 1975 Punjab 26, and M/s Paramount Food Corporation v Delhi Development Authority & Ors AIR 1995 Delhi 75.]"

13. In another judgment, *Dr. Rajbir Solanki v Union of India*, 148 (2008) DLT 363, it was again held that:

"it is not possible for this Court to agree with the submission of the learned Counsel that possession is not taken. Suffice it to

say that after symbolic possession is taken, if the petitioner is enjoying the possession, he is enjoying the possession as a trustee on behalf of the public at large and that by itself cannot be considered to be a ground to contend that possession is not taken. It is the duty of the person who is occupying the property to look after the property and to see that the property is not defaced or devalued by himself or by others. He cannot subsequently come to the Court to say that actual possession is not taken and therefore he should be protected and land be denotified.”

14. This court notices that the judgments relied on by the petitioner, i.e. *Banda Development Authority (supra)*, *Patisi Devi (supra)* and *Raghubir Singh (supra)*, were in the context of land owners’ pleas for de-notification, where the State’s defense usually was that in view of possession of the acquired lands having been taken over, the title vested with it. In the present case, the possession proceedings were never denied by the petitioner; all that is stated is that before that proceeding, no notice was issued. In this context, it would be useful to note that *Prahlad Singh v Union of India* (2011) 5 SCC 386, had approved the observations in *Nahar Singh v State of UP* 1996 (1) SCC 434, where it was stated that:

“(iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the concerned authority will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the concerned authority will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.”

15. In the present case, the suit lands are just 1278 square yards; it is not stated, nor has anything been shown, to establish that they were being used for agricultural purposes. Therefore, the decisions cited by counsel have no relevance. The possession proceedings are to be treated as conclusive in such cases.

16. This Court further is of the opinion that the petitioner is not entitled to the relief, because his standing is suspect. The claim is of deriving title from Sh. Shiv Charan through a registered PoA. However, the sale deed placed on record is not shown to be a registered one. Furthermore, even if the PoA document were genuine, there is nothing to show that the revenue records were altered to confer rights to the petitioner; what is established is that Kaptan and other co-sharers continued as recorded owners claimed and were granted compensation. Therefore, it is debatable whether the petitioner acquired sufficient standing to be called “person interested” in respect of the suit land.

17. For the foregoing reasons, this petition has to fail. It is consequently, dismissed, but without order on costs.

S. RAVINDRA BHAT
(JUDGE)

S.P. GARG
(JUDGE)

AUGUST 21, 2017