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

DECIDED ON : 18th JULY , 2017

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W.P.(C) 2654/2016

JITENDER KUMAR & ORS. Petitioners

Through : Mr.M.C.Verma, Advocate.

versus

UNION OF INDIA & ORS. Respondents

Through : Mr.Rajesh Kumar and Mr.Atul
Krishna, Advocates for R1.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P.GARG

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

1. In the instant writ petition, the petitioners claim themselves to be co-owners of the land falling in plot No.6 forming part of Khasra No.1138/320 admeasuring 12 biswas situated in the Revenue Estate of Village Jhilmil Tahirpur, Shahdara, Delhi (hereinafter referred to as 'suit land'). The petitioners' claim is that acquisition of 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').

2. A notification under Section 4 of the Land Acquisition Act, 1894 (old Act) was issued on 14.10.2005; it included the suit land. A declaration was issued under Section 6 on 05.10.2006. The award

bearing No. 01/2008-09 dated 22.07.2008 was made by the Land Acquisition Collector.

3. The petitioners aver that they are co-owners of the suit land. The respondents took possession of the suit land but no compensation was paid or tendered to them as mandated under Section 31 of the Act. It is further averred that they had filed W.P.(C) 8351/2014 to seek compensation. The said writ petition stood disposed of by an order dated 11.12.2014. It reads as under :

“We have heard counsel for the parties. The only prayer made in this writ petition is that a direction be issued to the respondents to release the compensation to the petitioners in terms of the Award No. 1/2008-09 (North East) dated 22.07.2008.

The petitioners are directed to submit all the necessary documents within two weeks from today to the respondent no.2. The compensation shall thereafter be paid to the petitioners, as per law, within ten weeks including the statutory interest.

The writ petition is disposed of as above.”

4. The petitioners further state that part payment of the compensation was made to them by the respondents reluctantly on 14.07.2015 by issuing four cheques in the sum of ₹5,11,075/- each. 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, states in Paras (6, 7 & 8) :

“6. That as per the records, the land bearing Khasra No. 1138/320 admeasuring 12 biswa (Property No.6) situated in village Jhilmil Tahirpur, Delhi was notified under section 4 of Land Acquisition Act 1894 on 14.10.2005 for public purpose namely for Construction of RUB on Road No.58 & 64 at G.T. Road, Shahdara and thereafter, as per law the declaration under section 6 of Land Acquisition Act was issued on 5.10.2006. In pursuance of said notification, notices under section 9 & 10 of the Act, were issued to the interested persons, inviting the claims from all the interested persons and claims were also filed by the interested persons. The than Land Acquisition Collector passed Award No. 01/2008-09 dated 22.07.2008 after considering the claims of the claimants.

7. That in the present case, the possession of the all the above mentioned land was taken over and handed over to the beneficiary department on 09.09.2009.

8. It is respectfully submitted that the compensation of Rs.5,11,075/- each, has been received by the petitioner No.1 to 4 on 16.7.2015 vide cheque No. 001723 to 001726 dated 14.07.2015 respectively as per law. It is further submitted that these facts have been duly admitted by the petitioner in his petition.”

6. It is evident that though the possession of the suit land was taken over by the respondents, however, no compensation was paid or tendered to the petitioners. The petitioners had to move this Court to get compensation by filing W.P.(C) 8351/2014 which directed the respondents to release the compensation in terms of award bearing No. 01/2008-09 dated 22.07.2008 within ten weeks. Apparently, the respondents had not paid or tendered the compensation to the petitioners though their land was acquired and taken over. The respondents have not explained in the counter-affidavit as to why the

compensation was not paid or tendered to the petitioners. The Court is of the opinion that there is no merit in the argument that the order in the previous writ petition, being *Jitender Kumar and Ors. vs. Union of India and Anr.* [W.P.(C) 8351/2014, decided on 11.12.2014] precluded a challenge under Section 24(2) of the Act by operation of principles of doctrine of *constructive res judicata*.

7. Having regard to the nature of the statutory mandate under Section 24(2) of the Act which does not spell-out any exceptions either by way of the period spent during interim orders given by the Courts or in the case of compensation paid, with or without the aid of the Court. The petitioners are entitled to the relief under that provision.

8. Therefore, a declaration is issued that the acquisition of suit land is deemed to have lapsed to that extent. The writ petition is allowed in the above terms. Pending application, if any, also stands disposed of.

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

**S. RAVINDRA BHAT
(JUDGE)**

JULY 18, 2017 / tr