

\$~26

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

DECIDED ON : 1st AUGUST, 2017

+ **W.P.(C) 2988/2016 & CM APPL. 12569/2016**

KANWAL JAIN & ANR. Petitioners

Through : Ms.Sumi Anand & Mr.Prateek Kohli,
Advocates.

Versus

UNION OF INDIA & ORS. Respondents

Through : Mr.Roshan Lal Goel & Ms.Anju
Gupta, Advocates for UOI.

Ms.Astha Tyagi, Advocate with Ms.Sujatha
Bagadhi & Ms.Urmiljeet Kaur, Advocates for
L&B/LAC.

Ms.Sneha Jhutay, Advocate for R-3.

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 Govt. of NCT of Delhi through LAC seeks liberty to place on record the counter-affidavit. Liberty granted. Counter-affidavit is taken on record.

2. The petitioners claim themselves to be recorded owners of the land bearing Khasra No.670, 673/1 & 673/2 admeasuring 1157 sq. yd. situated in the Revenue Estate of Village Neb Sarai, Tehsil Hauz Khas, New Delhi (hereinafter referred to as 'suit land') by virtue of Agreement to Sell and registered General Power of Attorney dated

09.03.2005. The petitioners' claim is that acquisition of their 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. A notification under Section 4 of the Land Acquisition Act, 1894 (old Act) was issued on 05.11.1980; it included the suit land. A declaration was issued under Section 6 on 21.05.1985. The award bearing No.12/87-88 dated 20.05.1987 was made by the Land Acquisition Collector.

4. The petitioners aver that pursuant to the award, neither physical possession of the suit land was taken over by the respondents nor any compensation in respect thereof was ever 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, states in Paras (7 & 8) :

"7. That as per the land revenue record the possession of the land bearing Khasra No.670, 673/1 & 673/2 has not been taken by the answering respondent.

8. That as per Naksha Muntzamin details of compensation is as under

<i>Sumar No.</i>	<i>Name</i>	<i>Amount</i>
276	<i>M/s Lakhmi Chand</i>	<i>Rs.1489000.99/-</i>
350	<i>M/s Lakhmi Chand</i>	<i>Rs.1466066.14/-</i>

It may kindly be noted that even though the amount of compensation has been mentioned but there is no recording in the Naksha Muntzamin whether the compensation has been paid or not. It is further submitted that Statement A of Award No. 12/87-88 of Village Neb Sarai is not available in the Account Branch and in this regard a Circular to trace out the same was issued on 02.03.2016. An NCR has also been lodged with the P.S. Neb Sarai bearing LR. No. : 0063/2017 dated 07/02/2017. It is humbly requested that the present case may not be decided against the interest of the Govt. till the above documents are traced out.”

6. It is evident that neither possession of the suit lands was taken over nor any compensation for acquisition of the suit land was tendered or paid to the recorded owner(s).

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 compensation of the suit lands has not been paid and its possession has not been taken, the petitioners are entitled to the declaration sought. Accordingly, it is held that acquisition of suit land in Khasra No.670, 673/1 & 673/2 admeasuring 1157 sq. yd. vide award No.12/87-88 dated 20.05.1987 is deemed to have lapsed by virtue of Section 24(2) of the Act.

9. The writ petition is allowed in the above terms. Pending application also stands disposed of.

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

**S. RAVINDRA BHAT
(JUDGE)**

AUGUST 01, 2017 / tr

