

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

Decided on: 11.04.2017

+ **W.P.(C) 6235/2014, C.M. APPL.15083/2014**

OM PRAKASH AND ORS.

..... Petitioners

versus

UNION OF INDIA AND ORS.

..... Respondents

+ **W.P.(C) 6295/2014**

BAL KISHAN AND ORS.

..... Petitioners

versus

UNION OF INDIA AND ORS.

..... Respondents

+ **W.P.(C) 470/2015, C.M. APPL.788/2015**

YOGENDER KUMAR AND ORS.

..... Petitioners

versus

UNION OF INDIA AND ORS.

..... Respondents

Through : Sh. Ravi Prakash Gupta, Advocate, for petitioners, in Item Nos.1, 2 and 3.

Sh. Siddharth Panda, Advocate, for L&B in Item Nos. 1, 2 and 3.

Sh. Abhishek Pundir, Advocate, for DSIIDC, in Item Nos.1, 2 & 3.

Sh. Dhanesh Relan, Standing Counsel with Ms. Isha Garg, Sh. Harshit Manaktala and Sh. Amit Mehta, Advocates, for DDA, in Item No.1

Ms. Monika Arora, CGSC with Ms. Simranjeet and Sh. Kushal Kumar, Advocates, for UOI, in Item Nos.1 & 2.

Sh. Dev. P. Bhardwaj, CGSC with Sh. Satya Prakash Singh, Advocate, for UOI, in Item No.3.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE YOGESH KHANNA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioners in all these proceedings under Article 226 of the Constitution of India, claim a declaration that the acquisition notifications issued by the respondent authorities/Land Acquisition Department (hereafter “Govt. of NCT of Delhi”) lapsed, by reason of Section 24(2) of the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* (hereinafter referred to as “the 2013 Act”).

2. In W.P.(C) 470/2014, the petitioners’ lands were acquired through a notification dated 27th January, 2003, followed by a declaration issued under Section 6 of the Land Acquisition Act, 1894 [hereafter “the old Act”], on 6th July, 2004. In W.P.(C) 6295/2014, notifications under Sections 4/17 of the old Act were issued on 1st June, 1998; the possession was taken over on 6th July, 1998 and Award was made on 24th October, 1999. Likewise, in W.P.(C) 6235/2014, the notifications under Section 6/17 were published on 11th September, 2000 and possession was taken on 5th October, 2000. All these lands are within the revenue boundaries of Village Sanoth. The petitioners contend that the respondents have not taken actual possession of the acquired lands and that consequently, the mandate of Section 24(2) of the 2013 Act applies, to result in lapse of the acquisition notification.

3. The respondents, particularly the Land Acquisition Collector of the appropriate government, urge that these proceedings are an abuse of process of court. They point out that the petitioners do not dispute that compensation was tendered and accepted, after its due determination. The respondents’ affidavits also stated that since lands were acquired for planned development of various parts of the city of Delhi, for different projects, possession was in

fact taken over. They rely on *Panchnamas*; copies of which have been annexed with the petitions. It is urged that consequently Section 24(2) is inapplicable.

4. Sh. R.P. Gupta learned counsel, argues in these petitions that the taking over “possession” of land means the taking over of actual physical possession and not constructive possession. He highlights that the *panchnama* relied on facially shows that a vast tract of 2687 Bighas and 11 *biswa* of land is supposed to have been taken over on a single day- a physical impossibility (in Village Sanoth, in W.P.(C) 470/2014). Furthermore, says counsel, the *panchnama* records that possession of over 402-18 *bighas* is supposed to have been taken over on 6th September, 2004 - again an impossibility. Similar arguments were addressed in the other two petitions; the counsel stated that likewise vast tracts were said to have been taken over; in fact, the respondents only took over “paper possession”.

5. Learned counsel relies on the ruling in *Pune Municipal Corporation v. H.M. Solanki* 2014 (3) SCC 183, which had interpreted Section 24(2) and the later judgment in *Union of India v Shiv Raj & Ors* (2014) 6 SCC 564 to say that since possession was not taken, and the five-year period prescribed has lapsed, the acquisition in fact lapsed. It is argued that consistently, the Supreme Court has interpreted the expression “possession” to mean actual physical possession and not paper possession, in *Balwant Narayan Bhagde v. M.D. Bhagwat* (1976) 1 SCC 700; *Balmokand Khatri Educational and Industrial Trust v State of Punjab* (1996) 4 SCC 212 and *P.K. Kalburqui v State of Karnataka*, (2005) 12 SCC 489. *Balwant Narayan Bhagde (supra)* was especially relied upon to say that where there is standing crop, proof of

actual physical possession is to be shown and that in the present case, there is no such material forthcoming.

6. Counsel for the respondents emphasize that in each of these cases, actual physical possession was taken over from the land owners long ago- in fact, soon after the notifications were published, because the lands were needed. In fact, the State invoked the urgency powers under Section 17 and besides taking over possession, compensation was determined in each case and tendered to the land owners, who do not deny receiving it in every case. Furthermore, it is submitted that the agency which asked for the land was handed over with it, after possession was taken from the land owners. The respondents' counsel relied on the Supreme Court decision in *Delhi Development Authority v Sukhbir Singh*, AIR 2016 SC 4275.

7. *Pune Municipal Corporation (supra)* is no doubt an authority for the proposition that under Section 24(2) land acquisition proceedings initiated under the Land Acquisition Act, 1894, by fiction, are deemed lapsed if an award has been made five years or more prior to the commencement of the 2013 Act and possession of the land is not taken or compensation has not been paid. It was held that 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, it was held, was subject to Section 24(2).

8. The decision in *Delhi Development Authority v Sukhbir Singh*, AIR 2016 SC 4275 held as follows:

“It remains to deal with one submission of Shri A.K. Sanghi. According to Shri Sanghi, physical possession has not been taken of the land in dispute. We are afraid this may not be correct. The Panchnama dated 27th January, 2000 specifically records that possession of the land above stated was recovered and handed over to the representatives of the Office of Land and Buildings. The Panchnama is also signed by all the necessary officers. This piece of land admittedly being open land is governed by the ratio of Raghbir Singh Sherawat v State of Haryana & Ors (2012) 1 SCC 792 in which it has been held:

“In Banda Development Authority v Moti Lal Agarwal [(2011) 5 SCC 394 : (2011) 2 SCC (Civ) 747] , the Court referred to the judgments in Balwant Narayan Bhagde v M.D. Bhagwat [(1976) 1 SCC 700], Balmokand Khatri Educational and Industrial Trust v State of Punjab [(1996) 4 SCC 212] P.K. Kalburqui v State of Karnataka, [(2005) 12 SCC 489], NTPC Ltd v Mahesh Dutta [(2009) 8 SCC 339 : (2009) 3 SCC (Civ) 375], Sita Ram Bhandar Society v Govt (NCT of Delhi) [(2009) 10 SCC 501 : (2009) 4 SCC (Civ) 268] and culled out the following propositions: (Banda Development Authority case [(2011) 5 SCC 394 : (2011) 2 SCC (Civ) 747] , SCC p. 411, para 37) “(i) No hard-and-fast rule can be laid down as to what act would constitute taking of possession of the acquired land.

(ii) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.

(iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned 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.

(iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

(v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the court may reasonably presume that possession of the acquired land has been taken.” [para 27]

29. As the present case will fall within sub-paragraph (ii), physical possession of the land can be said to have been taken on the facts of the present case.”

9. In the present case the material on record suggests that the possession was taken over long ago, soon after compensation was given. The *Panchnamas* are undisputed. The petitioners’ argument with respect to actual physical possession does not persuade this court to hold in their favour. As *Sukhbir Singh (supra)* explained, if a document is forthright about the question of possession, there is no scope for further debate on that aspect. In the various possession notes in each of the three cases, possession is shown to have been taken.

10. In view of the foregoing discussion, the writ petitions cannot succeed. Along with pending application they are dismissed, but without any orders as to costs.

S. RAVINDRA BHAT
(JUDGE)

APRIL 11, 2017

YOGESH KHANNA
(JUDGE)

