

\$~21

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

DECIDED ON : 14th JULY, 2017

+ **W.P.(C) 3876/2017, CM APPL.17089/2017**

BHANO DEVI & ORS.

..... Petitioners

Through : Mr.Sanjay Parikh with Mr.Aagnes Sail,
Ms.Ninni.S.Thomas and Ms.Maulshree
Pathak, Advocates.

versus

GOVT.OF NCT OF DELHI AND ORS. Respondents

Through : Mr.Yeeshu Jain, Standing Counsel with
Ms.Jyoti Tyagi, Advocates for
Respondents No.1 to 3.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P.GARG

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

1. The petitioners have prayed for the benefit of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter '2013 Act') i.e. a declaration that the land acquisition proceedings in respect of their

land be deemed to have been lapsed in view of the Provisions of Section 24 (2) of the 2013 Act. The aforesaid prayers have been made in the background of the fact that the petitioners had received compensation but have also remained in continuous physical possession of the land in question even though the award was made more than five years prior to the commencement of 2013 Act (i.e. on 1.1.2014).

2. The petitioners aver that they are the owners of the land in village Kanjhawala, in Rectangle No.24-Khasra No.5min(1-17) & Rectangle No.25-Khasra No.1(4-12). A Notification under Section 4 of the Land Acquisition Act, 1894 (hereafter referred to as 'old Act') was issued to acquire land for public purpose, namely, 'for development of new industrial area' admeasuring 1343 bighas & 03 biswas of land in village Kanjhawala, 1744 bighas & 09 biswas in village Sultanpur Dabas, 1905 bighas & 05 biswas of land in village Karala and 30 bighas & 09 biswas in village Poothkhurd on 25.08.2005. It included the suit land. A declaration under Section 6 of the Old Act was issued on 10.07.2006 and the Award No.6/2008-09/DC(N-W) dated 20.06.2008 was made.

3. It is aver that on 17.10.2009 Shri Risal Singh expired leaving behind his land in favour of his sons i.e. Petitioners No.2 to 4 and his wife petitioner No.1 and daughter-in-law i.e. Petitioner No.5. The petitioners further aver that on 17.06.2010 a sum of ₹6,93,177/- was received by Petitioners No.1 to 5 separately as compensation. On 07.12.2011, Petitioners Nos.1 to 5 separately received a sum of ₹6,03,444/- of subsequent payment as further relief. The said amount has been withdrawn by them.

4. The petitioners' contention is that despite payment of compensation, physical possession of the suit land has not been taken from them and they continue to cultivate the suit land till date.

5. Learned counsel for the respondents urged that this identical issue raised in the present petition has already been decided by the Coordinate Bench of this Court in *Bhim Singh vs. Govt. of NCT of Delhi & Anr.* [W.P.(C)9101/2014] and *Jai Kishan & Anr. Vs. Government of NCT of Delhi & Ors* [W.P.(C) 5395/2015]. Number of other connected petitions were also disposed of by the said judgments delivered on 20.12.2016 and 21.02.2017 respectively. This position has not been disputed by the petitioner.

6. On perusal of the judgments in *Bhim Singh and Jai Kishan* (supra), it reveals that the contentions raised in the present petition are identical and is covered by the said judgments. In the instant petition, the petitioner has admittedly received compensation and additional payment under the Special Rehabilitation Package. It is not in dispute that while receiving additional payment under the Special Rehabilitation Package, the petitioners had given up all his rights in respect of the said acquired lands.

7. It was noted in *Bhim Singh* (supra) case that in the meanwhile, on 01.10.2008 the Government of NCT of Delhi had issued order no. F.9(20)/80/L&B/LA/Vol.II/8226-44 in respect of a Special Rehabilitation Package for people affected by land acquisition in respect of the cases in which the land acquisition awards had not been announced till December 18, 2007. Since the award in the present case

was announced in 2008, the petitioners became eligible for the Special Rehabilitation Package. But that package was subject to certain terms.

8. It was further noted in para Nos.7,8,9 and 10 as under:

7. In paragraph 10 of the undertaking it has been clearly recorded that on the acceptance of compensation including the Special Rehabilitation Package, all the rights of the said Bhim Singh (which is also the case in all the other petitions) “qua the acquired land shall cease” and “no cause of action shall arise for agitating the matter in any court of law or authority or authorities”. This undertaking was made in 2011, much prior to the commencement of the 2013 Act which, as mentioned earlier, happened on 01.01.2014.

8. The plea of the petitioners is founded on their claim that they are still in actual physical possession of the subject lands. The respondents contend otherwise. The respondents’ contention is based on two planks. The first being the factum of possession proceedings of 11.07.2008 as per annexure R-1 to the counter affidavit of Respondent no.2 (Land & Building Department, Govt of NCT of Delhi) in the lead case (Bhim Singh – WPC 9101/2014). The second being that the petitioners, in their applications seeking compensation, have admitted that “possession” had been taken by the concerned authorities. De hors this, the respondents also contend that in this batch of matters the petitioners have willingly opted for the Special Rehabilitation Package and, while doing so, have given up all their rights in the acquired lands. This happened in 2011, much prior to the 2013 Act. Therefore, on 01.01.2014, the petitioners had no right whatsoever in respect of the subject lands.

9. Insofar as the arguments of the respondents with regard to possession are concerned, the learned

counsel for the petitioners submitted that there was a clear distinction between mere “possession” and actual “physical possession”. The learned counsel sought to place reliance on several decisions of the Supreme Court to contend that “physical possession” of the subject lands had not been taken over. The decisions were: (1) State of M.P. v. Narmada Bachao Andolan: (2011) 7 SCC 639; (2) NTPC v. Mahesh Dutta & Ors: (2009) 8 SCC 339; (3) Banda Development Authority v. Motilal Agarwal & others: (2011) 5 SCC 394; (4) Prahlad Singh & Ors v. Union of India & Ors: (2011) 5 SCC 385; (5) Raghubir Singh Sherawat v. State of Haryana: (2012) 1 SCC 792; (6) Magnum Promoters v. Union of India: (2015) 3 SCC 327; (7) Velaxan Kumar v. Union of India: (2015) 4 SCC 325. But, in our view, it would not be necessary for us to examine the issue as to whether the petitioners were or were not in actual physical possession. In fact, we need not even examine the two planks of the respondents’ counter argument qua possession.

10. The key point in this batch of matters is whether the petitioners had any right left in subject lands? As noted above, in the undertakings given by the petitioners in 2011, while opting for the Special Rehabilitation Package and receiving additional payments thereunder, they had clearly divested themselves of all their rights in respect of the subject acquired lands. Thus, at the time of commencement of the 2013 Act on 01.01.2014, the petitioners had no right, title or interest left in the subject lands. Therefore, they cannot claim any benefit under section 24(2) of the 2013 Act. On this ground alone, the writ petitions are liable to be dismissed. 11. Consequently, we dismiss the writ petitions but, with no order as to costs. Interim orders, if any, stand vacated.

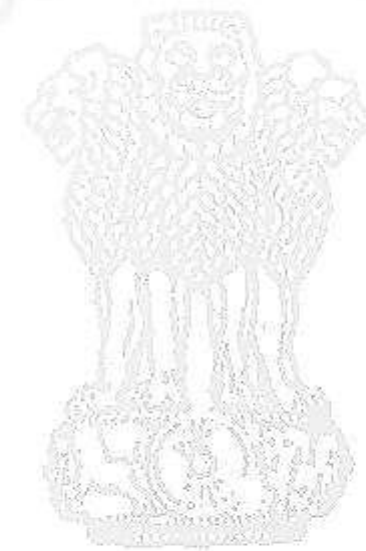
9. This Court finds no sound reasons to take different view on the issues already decided.

10. Consequently, we dismiss the Writ Petition but, with no order as to costs. All pending application(s) also stand disposed of.

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

**S. RAVINDRA BHAT
(JUDGE)**

JULY 14, 2017/sa



भारतमेव जयते