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

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Judgement delivered on: 24th April, 2017

+ **W.P.(C) No.4654/2015 & CM No.8424/2015**

OM PRAKASH & ORS

..... Petitioners

Through : Mr.Daleep Dhayani and Mr.M.P.
Bhargava, Advs.

versus

UNION OF INDIA & ORS

..... Respondents

Through : Mr.Rajesh Kumar and Ms.Santwana,
Advocate for UOI.
Mr.Yeeshu Jain, Standing Counsel
with Ms.Jyoti Tyagi, Adv. for LAC/
L&B
Mr.Dhanesh Relan, Adv. for DDA

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J. (Oral)

1. The petitioners are the legal heirs of the recorded owner - namely Chandgi Ram, who has since expired, on 31.07.1994.

2. On 23.01.1965 a notification under Section 4 of the Land Acquisition Act, 1894 ("Act") was issued by respondent No.4 notifying that khasra No.2208/151/3 (2-9) & 2490/1204 (3-3), situated in village Mehrauli, NCT of Delhi are to be acquired for the planned development of Delhi. On 07.12.1966 a notification under

Section 6 of the Act was issued and on 09.01.1981 award No.80-E/70-71 was made. Two of the legal heirs of Late Chandgi Ram, namely Bishan Singh and Ved Prakash had also expired.

3. It is the case of the petitioners that the actual physical possession of the land of the petitioners was never taken over by the Government and no compensation has ever been tendered either to the recorded owner or to the petitioners or ever deposited in the Court. The petitioners hence pray for the release of their land consisting of 5 bigha and 12 biswa comprised in khasra Nos.2208/151/3 (2-9) 2490/1204 (3-3), situated in revenue estate of Village Mehrauli, New Delhi.

4. The respondent Nos.3 and 5 have filed the counter affidavit wherein they allege that the physical possession of the land was taken over on 23.09.1981 and handed over to the requisition agency by preparing the possession proceedings at the spot. However, it is admitted that although the compensation is shown in the name of Chandgi Ram, the recorded owner, since there was a dispute, the compensation is lying deposited in the RD.

5. The possession proceedings dated 23.09.1981 are filed on record and hence the petitioner cannot say that the possession is still with them. Even otherwise, lands in khasra No. Nos.2208/151/3 (2-9) 2490/1204 (3-3) were taken over by DDA on 23.09.1981 at site and some portion of it was transferred to the SFS Residential Scheme of DDA on 24.07.1984 and the other portion to the horticulture

department on 23.09.1981. However, the appropriate Government has no answer as to whether the compensation was tendered to Late Chandgi Ram or to his legal heirs or if it was ever paid. Hence, this Court is of the opinion that in the circumstances, the relief claimed has to be granted in view of the decision in *Pune Municipal Corporation & Anr. V. Harakchand Misirimal Solanki & Ors.* (2014) 3 SCC 183 wherein the Supreme Court held as under:-

“under section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of 2013 Act and possession of the land is not taken or compensation has not been paid. 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 being subject to section 24 (2), there is no merit in the contention of the corporation (emphasis supplied)”

6. Consequently, a declaration qua the acquisition in respect of subject land khasra Nos.2208/151/3 (2-9) 2490/1204 (3-3) of village Mehrauli, New Delhi, is issued declaring that it stood lapsed. However, the Court leaves it open for the appropriate government to initiate the proceedings for acquisition afresh in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The appropriate government shall exercise its discretion within one year for the above purpose.

7. The petition and pending miscellaneous application are allowed in above terms.

YOGESH KHANNA, J

S. RAVINDRA BHAT, J

APRIL 24, 2017

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