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

DECIDED ON : 17th JULY , 2017

\+ **W.P.(C) 8641/2014 & CM APPL. 19910/2014**

RADHEY SHYAM ..... Petitioner

Through : Mr.Parvinder Chauhan, Advocate.

versus

UNION OF INDIA AND ORS ..... Respondents

Through : Mr.Vivek Goyal, CGSC for UOI.
Mr.Yeeshu Jain, Standing Counsel with Ms.Jyoti Tyagi, Adocate for L&B/LAC.
Mr.Siddharth Dutta, Advocate for R-6.

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 petitioner claims himself to be the owner and in actual peaceful physical possession of the land of Khasra No.565/1, measuring about 08 biswas situated in the Revenue Estate of Village Mundka, Delhi. The petitioner's claim is that acquisition of his lands (hereinafter referred to as '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. The necessary facts are that a notification under Sections 4, 6 & 17 of the Land Acquisition Act, 1894 (old Act) was issued on 10.01.1980; it included the suit land. The award bearing No.47/82-83

dated 22.10.1982 and supplementary award No.47-A/82-83 were made by the Land Acquisition Collector.

3. The petitioner avers that pursuant to the award, neither physical possession of the suit lands was taken 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.

4. It is further urged that the property in question was acquired under Section 17 of the old Act.

5. The respondents No.4 & 5 through LAC, in its counter-affidavit, significantly makes the following admission in Paras (7 & 13) :

> "*7. That it is submitted that the lands of village Mundka were notified vide Notification under section 4 of the Land Acquisition Act, 1894 dated 10.1.1980. The Award was also passed vide Award No. 47/82-83 dated 22.10.1982 and the possession of the lands measuring 08 biswa falling in khasra number 565/1 were also taken on 24.7.1981. It is further submitted that after the possession was taken of the lands notified under the said Award from the recorded owners/ petitioners herein, the acquisition proceedings became complete, final and binding as the petitioners thereafter never challenged the same before any Court of law.*
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> *13. That it is submitted that the Land Acquisition Act, 1894 did not provide any section which is akin to Section 101 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act,*

2013 which provides for return of unutilized land to its erstwhile owners. It is further submitted that the present acquisition proceedings are not covered under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as not only the Award has been duly made but also the possession of majority of the awarded land has been taken as also the payment of majority of compensation to the recorded owners has been made. It is further submitted that the present acquisition proceedings are covered under section 6 of General Clauses Act, 1897 and are not repealed as urged by the petitioners."

6. It is evident that the counter-affidavit does not reveal if any compensation for acquisition of the land in Khasra No.565/1 was paid to the recorded owner(s). It was petitioner's specific plea that he was not offered or tendered any compensation for the land acquired. In the counter-affidavit, the respondents have not specifically disclosed if on any particular date, compensation was offered or tendered to the petitioner or he declined to accept it. Counter-affidavit does not reveal if any notice was issued to the petitioner to receive compensation. It is conspicuously silent if any compensation amount was deposited in the Court. It was heavily upon the respondents to rebut the petitioner's claim that despite acquisition of his lands, he was provided or given any compensation. It can well be inferred that the petitioner was not given the compensation as claimed. The status regarding the payment of compensation is not clear to the respondents.

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 land in Khasra No.565/1 has not been paid, the petitioner is entitled to the declaration sought to that extent. Accordingly, it is held that acquisition of suit land in Khasra No.565/1 measuring 08 (Eight) Biswas vide award No.47/82-83 dated 22.10.1982 and supplementary award No.47-A/82-83 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)

JULY 17, 2017 / tr