

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

Date of Decision: September 18, 2017

+ **W.P.(C) 9333/2014 & C.Ms. 21130/2014 & 33201/2017**

RAM CHANDER SINGH & ORS. Petitioners
Through: Ms. Setu Niket, Ms. Esha
Mazumdar and Mr. Nishant Verma, Advocates

Versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Brajesh Kumar, Advocate for
respondent No.1-UIO
Mr. Yeeshu Jain, Standing Counsel & Ms. Jyoti
Tyagi, Advocate for respondents No.2 & 3-
L&B/LAC
Ms. Mrinalini Sen & Ms. Kritika Gupta,
Advocates for respondent No.4-DDA
Ms. Mini Pushkarna, Standing Counsel with
Ms. Anushruti & Ms. Vasundhara Nayyar,
Advocates for respondent No.5-North DMC

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SUNIL GAUR

S. RAVINDRA BHAT, J. (OPEN COURT)

1. The petitioners claim that lands measuring 3,000 sq. yards forming part of Khasra No. 165, revenue estate of village Chaukri, Mubarikabad, Delhi with abadi known as Jai Mata Market, Trinagar, Delhi-110035, should be declared free from acquisition in terms of Section 24(2) of the *Right to Fair Compensation and Transparency in Land Acquisition,*

Rehabilitation and Resettlement Act, 2013 (hereafter referred to as ‘the Act of 2013’).

2. The facts necessary to decide the case are that the suit lands were notified for acquisition under Section 4 of the then prevalent Land Acquisition Act (of 1894) on 13.11.1959. Later, a declaration under Section 6 the said old Act was issued on 26.12.1962. An Award No.1686 was made on 20.02.1964. It appears that at that time, the lands were owned by Bode Singh S/o Muni Singh and Kalu Ram, to the extent of 165 min (6-10) and 165 min (6-09) respectively. The petitioners claim to be successors in interest and descendants of one Panna Lal, and rest their right, title and entitlement on certain documents executed in the year 1991 in the form of Agreement to Sale and General Power of Attorney. It is also brought to the notice of this Court that the Award specifically recognizes that Panna Lal was a transferee of Bode Singh and claimed title through a registered Sale Deed. The first seven petitioners in these proceedings are legal representatives/heirs of Panna Lal. The subsequent purchasers/power of attorney holders are the other petitioners i.e. petitioners No.8 & 9.

3. It is contended that neither was the compensation paid to the land owners ever nor possession of the suit lands was taken over by the respondents.

4. The stand of the Delhi Development Authority (DDA), the original acquiring body, is that possession of the suit lands was in fact taken over and subsequently handed to the Municipal Corporation of Delhi, which established a school that is existing at the site today. In support of this contention, these respondents have relied upon certain documents

including the site map (filed by DDA) as well as photographs. They contend that the lands to the extent of 3,000 sq. yards which are in issue and are claimed by the petitioners, are used not only for school but the appended vacant portion, which forms part of the disputed land is in fact partially used as Municipal Dispensary and partially as office of MCD.

5. The Government of NCT of Delhi in its counter affidavit, states as follows:-

“7. That it is submitted that the lands of village Chowkri Mubarakbad were notified vide Notification under Section 4 of the Land Acquisition Act, 1894 dated 13.11.1959 which was followed by the Notification under section 6 of the Act dated 26.12.1962. The Award was also passed vide Award No.1686 dated 20.2.1964 and none of the petitioners and/or the recorded owner/s challenged the same and accepted the acquisition proceedings. In pursuance of the acquisition proceedings, the answering respondent has duly taken the actual vacant physical possession of the subject land falling in khasra number 165 (12-19) which has been bifurcated in two parts as 165 min (6-10) and 165 min (6-09) and the ownership as per the award is of Bodey S/o Munna Singh for (6-10) and for (6-09), the recorded owner has been shown as Kalu Ram S/o Hetu. It is pertinent to mention here that the petitioners have been claiming the relief for the land measuring 3000 square yards i.e. 6 bigha from the share fallen to Bodey i.e. (6-10). It is submitted that in

pursuance of the Award, stated supra, the answering respondent has duly taken the actual vacant physical possession of the subject land falling in khasra number 165 (12-19) on 1.5.1964 and handed over the requisition agency. It is further submitted that the compensation was deposited with the Reference Court vide cheque number 389384 dated 3.9.1965 however the same was returned by the court of Ld. ADJ and thereafter deposited in Treasury vide cheque number 394710 dated 10.3.1967.”

6. The mandate of Section 24 (2) of the Act of 2013 is that if the appropriate Government or the concerned land acquiring body fails to pay compensation to the land owner within five years period immediately preceding to coming into force of the Act of 2013, i.e. 01.01.2014, the acquisitions are deemed to have lapsed. The controversy in this case, as urged by the Government of NCT of Delhi, is essentially two folds. The first concerns the petitioners’ stand to claim the relief. On this aspect, this Court is satisfied that the petitioners have sufficient standing. The documents placed on record clearly demonstrate that Bode Singh was one of the original owners. His claim of compensation was assessed and awarded. Furthermore, the award also recognizes the right of Panna Lal. The first seven petitioners are none other than the legal representatives/heirs of Panna Lal, who acquired Bode Singh’s share of the lands through a registered Sale Deed. Given these facts, this Court is satisfied that the petitioners have a standing to maintain the present proceedings.

7. So far as the second issue of possession is concerned, there seems

to be merit in petitioners' contention that the suit lands that they claim are vacant. At the same time, this Court is also of the opinion that the MCD's position, DDA's stand in the additional affidavit, shows that the vacant portions in fact have boundaries. Whether such boundary wall was constructed by any of the respondents or by petitioners, as is sought to be urged, is question what cannot be gone into in these proceedings. These facts are noted only to highlight the controversy and state that this issue cannot be resolved in writ proceedings.

8. For the purpose of these proceedings, however one thing is clear that the appropriate government has admitted that the assessed compensation was never paid to the original owner - Bode Singh or his acknowledged successor in interest - Panna Lal, whose name finds express mention in the award. Instead, it appears to have been deposited sometime in the year 1965 with the Treasurer and the reasons which persuaded the Government to make such deposit are entirely unclear. But for the purpose of the present proceedings, it is sufficient to note that such deposit does not amount to "*payment*" - in terms of the Judgment of Supreme Court in *Pune Municipal Corporation and. Anr. v. Harakchand Misirimal Solanki and Ors.*, (2014) 3 SCC 183.

9. The upshot of above discussion is that petitioner is entitled to the relief claimed. At the same time, this Court is of the opinion that respondents should be given sufficient time to make a choice whether to acquire the suit land, in terms of later part of Section 24(2) of the Act of 2013 or otherwise. During the course of hearing or even in the pleadings, the petitioners did not contest the fact that in the major controversial portion of suit land, a functional school exists. In these circumstances, a

declaration is issued that the suit lands to the extent of 3,000 sq. yards forming part of Khasra No. 165, revenue estate of village Chaukri, Mubarikabad, Delhi with abadi known as Jai Mata Market, Trinagar, Delhi-110035 are free from acquisition by reason of Section 24(2) of the Act of 2013. At the same time, the petitioner shall not claim the possession of the suit lands for a period of one year to facilitate further action, if found necessary and warranted by the respondents.

10. The writ petition is allowed in above terms. The pending applications are also disposed of.

S. RAVINDRA BHAT
(JUDGE)

SUNIL GAUR
(JUDGE)

SEPTEMBER 18, 2017

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