

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

Date of Decision: September 05, 2017

+ **W.P.(C) 6478/2017 & CM APPL. 26819/2017**

RAJESH DUA & ANR. Petitioners

Through: Sh. Vishal Maan, Advocate

Versus

GOVT OF NCT OF DELHI & ORS.Respondents

Through: Mr. Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi, Advocate for respondent-
L&B/LAC

Mr. Dhanesh Relan, Ms. Isha Garg and Ms.
Gauri Chaturvedi, Advocates for respondent-
DDA

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SUNIL GAUR

S. RAVINDRA BHAT, J. (OPEN COURT)

1. Liberty is sought to place on record counter affidavit. Liberty granted. Counter affidavit is taken on record.
2. The petitioners claim declaration that the entire acquisition proceedings in respect of petitioners' plot bearing No.E ad-measuring 366 square yards in Khasra No.1403 min (0-07), situated in the Revenue Estate of Village Tehar, Rajouri Garden, New Delhi (presently known as Pratap Nagar, New Delhi-64) have lapsed. The petitioners' land was notified on 13.02.1964 under Section 4 of the *Land Acquisition Act, 1894* (hereinafter referred to as the Old Act). Subsequently, a declaration was issued and thereafter an Award was made on 12.05.1967.

3. The petitioners are the original land owners and claim that the acquisition of suit land is deemed to have lapsed by operation of Section 24(2) of *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013*. The respondents contend that the possession of the suit land was taken and that compensation was deposited in court on account of some disputes on 13th November, 1967. It is further stated that one Viranwali had raised disputes as a result of which the compensation was sent to the Revenue Deposit (R.D.) on 31st May, 1967.

4. The petitioners rely upon two previous orders of this Court i.e. in *Smt. Harbans Kaur v. Govt. of NCT of Delhi and Ors.* [W.P.(C) 5358/2014, decided on 02.02.2015] and *Manjeet Singh Anand v. Govt. of NCT of Delhi and Ors.* [W.P.(C) 7004/2015, decided on 02.05.2017]. The relevant findings and discussion in *Smt. Harbans Kaur (supra)* are as follow: -

“2. It is the case of the petitioners that physical possession of the subject land has not been taken by the land acquiring agency. On the other hand, it is the case of the respondents that physical possession of the said land was taken on 07.06.1967. The learned counsel for the petitioners has drawn our attention to various documents which have been filed along with the rejoinder affidavit at pages 114,117,123,126,129 and 131 which indicate that the physical possession of the subject land could not be taken because the same was built up. We need not refer to those documents inasmuch as the fact that the physical possession has not been taken and that only paper possession was taken has been recorded in the order of this court in W.P.(C) 6949/2012. The order was passed on 07.01.2013 where it has clearly been indicated that only paper possession

was taken and physical possession had not been taken. Therefore, we will have to hold that the physical possession of the subject land is with the petitioners and not with the land acquiring agency. Insofar as the question of compensation is concerned it is the case of the respondents that the same was deposited in the reference court on 13.11.1967 and 31.05.1967. It is the case of the petitioners that the compensation was not offered to the petitioners and therefore in view of the decision of the Supreme Court in Pune Municipal Corporation and Anr v. Harakchand Misirimal Solanki and Ors: (2014) 3 SCC 183, the same cannot be regarded as compensation having been paid to the petitioners.

3. We are not entering into the arena of controversy insofar as compensation is concerned because the position with regard to the physical possession is clear. Physical possession of the subject land has not been taken by the land acquiring agency. The award was admittedly made more than five years prior to the commencement of the 2013 Act. The second proviso to section 24(2) of the 2013 Act is also not available to the respondents inasmuch as the Supreme Court in M/s Radiance Fincap (P) & Ors. v. Union of India & Ors. decided on 12.01.2015 in Civil Appeal No.4283/2011 and Karnail Kaur & Ors v. State of Punjab & Ors, Civil Appeal No. 7424/2013 decided by the Supreme Court on 22.01.2015, has held that the said second proviso to section 24(2) of the 2013 Act has prospective operation from 31.12.2014 and does not taken away vested rights which accrued in favour of the petitioners on 01.01.2014 when the 2013 Act came into effect. Thus, all the ingredients of section 24(2) of the 2013 Act as interpreted by the Supreme Court and this Court in the following decisions stand satisfied:- (i) Pune Municipal Corporation and Anr v. Harakchand Misirimal Solanki and Ors: (2014) 3 SCC 183; (ii) Union of India and Ors v. Shiv Raj and Ors: (2014) 6

SCC 564; (iii) Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors: Civil Appeal No. 8700/2013 decided on 10.09.2014; (iv) Surinder Singh vs. Union of India and Ors.: W.P.(C) 2294/2014 decided 12.09.2014 by this Court.

4. As a result the petitioners are entitled to a declaration that the said acquisition proceedings initiated under the 1894 Act in respect of the subject lands are deemed to have lapsed. It is so declared.”

5. This Court has examined the circumstances. The facts here are identical with those of *Smt. Harbans Kaur and Manjeet Singh Anand (mentioned above)*. In these circumstances, the writ petition has to succeed. A declaration is issued that the land acquisition proceedings under the old Act in respect of petitioners’ plot bearing No. E, ad-measuring 366 sq. yards comprised in Khasra No. 1403, situated in Revenue Estate of Village Tehar, Rajouri Garden, New Delhi, (presently known as Pratap Nagar, New Delhi -110064) are deemed to have lapsed.

6. The writ petition is disposed of in above terms. The pending application also stands disposed of.

**S. RAVINDRA BHAT
(JUDGE)**

**SUNIL GAUR
(JUDGE)**

SEPTEMBER 05, 2017

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