



\$~16

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

%

Date of Decision: 21.02.2025

+ **W.P.(C) 7057/2015**

VED PAL

.....Petitioner

Through: Mr Shashindra Tripathi, Advocate.

Versus

LAND ACQUISITION COLLECTOR & ORSRespondents

Through: Mr Siddharth Panda with Mr R.K. Sharma, Advocates for LAC.

Ms Manika Tripathy, Standing Counsel with Mr Ashutosh Kaushik and Mr Gautam Yadav, Advocates for DDA.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (ORAL)

1. The petitioner has filed the present petition, *inter alia*, praying as under:

“(a) Issue a writ of certiorari and/or any other writ, order or direction of the similar nature declaring the entire acquisition with respect to the land of 7 bighas 8 biswa in which late Sh. Rameshwar S/o Govind Sahai, the father of the petitioner was having 1/3rd undivided share comprising khasra No.29/17/2 (1-12, 18(5-16) total 7 bigha 8 biswa situated in Village-Saidabad, District South-East, Delhi having left and further quashing the impugned notification No.F.4(9)/64-L&H dt.6.4.64, notification No.F.4(9)/64-L&H dt.7.12.86 issued U/s 6 of the Land Acquisition Act and the Award No.29/76-77 Supplementary Of Village-Saidabad, Delhi.”

2. The petitioner claims to be the owner of 1/3rd undivided share of the land comprising in Khasra No.29/17/2(1-12), 18(5-16) located in the Village



Saidabad, Delhi (hereafter *the subject land*). The petitioner claims that the said land belonged to his father Sh. Rameshwar, who expired on 24.02.2005. He was survived by three daughters and five sons including the petitioner. Sh. Rameshwar's wife had predeceased him on 05.05.2002. The petitioner claims that the other legal heirs of Sh. Rameshwar had relinquished their share in the subject land in his favour by a relinquishment deed dated 08.05.2008 duly registered with the Sub-Registrar, Delhi.

3. A notification under Section 4 of the Land Acquisition Act, 1894 (hereafter *LA Act*) was issued in respect of lands including the subject land on 06.04.1964. Large tracts of land in Village Saidabad were proposed to be acquired for public purpose of planned development of Delhi. The notification under Section 4 was followed by a declaration under Section 6 of the LA Act, which was published on 07.12.1966. Thereafter, an Award under Section 11 was made on 19.09.1986 (hereafter *the Award*).

4. It is the petitioner's case that he was not paid any compensation under Section 31(1) of the LA Act, and therefore, the acquisition had lapsed in view of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereafter *2013 Act*).

5. The above-captioned petition was allowed by this court by a judgment dated 09.05.2017, whereby this court – following the decision of the Supreme Court in ***Pune Municipal Corporation and Anr. v. Harakchand Misirimal Solanki and Others: (2014) 3 SCC 183*** – held that the acquisition has lapsed as the respondents had failed to establish that they had tendered any compensation due to the petitioner for acquisition of the subject land. It



is relevant to set out the said order:

“In this petition, the relief claimed is a declaration that the acquisition of land is deemed to have been elapsed under Section 24 (2) of the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013*.

The petitioner claims consequential orders in respect of 1/3rd undivided share in Khasra No. 29/17/2 (1-12), 18(5-16) totalling 7 bighas 8 biswas in the revenue estate of Village Saidabad, Delhi. The Notification under Section 4 of the Land Acquisition Act, 1894 [hereafter "the old Act"] was issued on 06.06.1964 followed up by declaration under Sections 6 of the old Act on 07.12.1966. On 19.09.1986, Award No.29/76-77 was published. The petitioner contends that even though possession was taken over on 09.01.1998, compensation was not paid. In support of his submissions, the petitioner has filed copies of the Award and revenue documents.

The counter affidavits of Respondent Nos. 1, 2 and 3 are on the record. According to their submissions, the possession was handed over on 09.01.1998.

They also rely upon the Award to say that all formalities were completed and that the land vested in the appropriate Government and that it was duly handed over to the requisitioning agency.

With the enactment of the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* (hereafter "the new Act"), the Parliamentary intention that wherever possession of acquired land was not secured within five years prior to the enactment or where compensation was not tendered to the land owners in accordance with law within that period, the acquisition is deemed to have elapsed manifest through Section 24 (3). That provision has been the subject matter of several judgments. The leading one being *Pune Municipal Corporation and Anr V. Harakchand Misirimal Solanki and Ors: (2014) 3 SCC 183*. The ruling has been followed in several Supreme Court judgments as well as decisions of this Court.

In the present case, although the respondents have provided



materials to support their contention that the land owner was dispossessed on specific date mentioned in the returns/counter affidavits, no such details are forthcoming with respect to tendering of compensation. *Pune Municipal Corporation (supra)* is categorical in that. Unless compensation is tendered to the land owners in the manner known to law, Section 24 (2) will operate to invalid or nullify the acquisition to the extent of the land in question.

Having regard to the significant omission on the part of the respondents to reveal whether compensation was tendered to the petitioner and if so on what dates, the Court is of the opinion that the claim in the present proceedings has to succeed. It is also noticed that since compensation has not been paid for major portion of the land, the acquisition is deemed to have lapsed under Section 24(2) of the new Act.

In the light of the forgoing discussions, it is hereby declared that the acquisition is deemed to have elapsed under Section 24 (2) of the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* with respect to Khasra No. 29/17/2 (1-12), 18(5-16) totalling 7bighas 8biswas in the revenue estate of Village Saidabad, Delhi for which compensation was not paid to the petitioner. Consequential direction is also issued to the respondents to take necessary steps - if they so choose – within one year to acquire the land failing which the same shall be returned to the recorded owners.

The writ petition is allowed in the above terms.”

6. The Land and Building Department had appealed the said decision before the Supreme Court by filing an SLP being SLP Diary No.15595 of 2021. The special leave was granted and the order passed by this court was set aside on the ground that the decision in the case of *Pune Municipal Corporation and Anr. v. Harakchand Misirimal Solanki and Others* (supra) stood overruled by the subsequent decision of the Supreme Court in *Indore Development Authority v. Manoharlal and Ors.: (2020) 8 SCC 129*.



7. In *Indore Development Authority v. Manoharlal and Ors.* (supra) the Supreme Court had authoritatively concluded that an acquisition under Section 24(2) of the 2013 Act would lapse only if both the conditions – that the possession of the subject land has not been taken over and compensation has not been paid, stand satisfied. As noted above, the earlier decision of the Supreme Court in *Pune Municipal Corporation and Anr. v. Harakchand Misirimal Solanki and Others* (supra) rests on the interpretation that if either of the said conditions is satisfied the provisions of Section 24(2) of the 2013 Act would be applicable.

8. In the present case, there is no cavil that the possession of the subject land had been taken over as is noted in the order dated 09.05.2017 passed by this court. As noted in the order dated 09.05.2017, it is the petitioner's case that even though the possession of the subject land was taken over on 09.01.1998, the acquisition had not lapsed as he had not been paid the compensation for the same. This court had also noted that specific details had been provided by the respondents regarding taking over of the possession of the subject land.

9. However, at this stage, the learned counsel appearing for the petitioner submits that only the share of one of the co-sharers of the subject land was taken over and not the petitioner's share of the subject land. He also submits that even as on date the petitioner is in physical possession of the subject land. He also contends that even if it is accepted that the possession proceedings were conducted, the fact that the petitioner is in physical possession of his share of the subject land and has not received compensation, would establish that the twin conditions of Section 24(2) of



the 2013 Act are satisfied.

10. We are unable to accept the aforesaid contention. The counter-affidavit filed on behalf of the LAC clearly specifies the dates on which the subject land was taken over. Paragraph 6 of the counter-affidavit is set out below:

“That the land in question i.e., Khasra No. 29/17/2 (1-12) and 18(5-16) (Petitioner is claiming 1/3rd share) situated at the revenue estate of village Saidabad, New Delhi was notified under section 4 of Land Acquisition Act on 06.04.1964 followed by declaration under section 6 of Land Acquisition Act on 07.12.1966 for Planned Development of Delhi. In pursuance of said notification, notices under section 9 & 10 as provided under the Act, were issued to the interested persons, inviting the claims from all the interested persons and claims were also filed by the interested persons. The then LAC passed an Award No. 29/76-77 Supplementary dated 19.09.1986 after considering the claims of the claimants. Possession of the Khasra No. 29/17/02 (1-12) and 29/18(5-6) was taken over on 09.01.1998 and handed over by the beneficiary department. However, as per Statement "A", the part payment of the compensation was paid to Hari Chand Bhatti S/o Chatter with respect to the above said land to the extent of his 1/3rd share. It is pertinent to mention here that the Petitioner has not furnished any title document in support of his claim, but as per the records the recorded owners are (1) Prasadi S/o. Govind Sahai having 1/4th share (2) Rameshwar S/o. Govind Sahai having 1/4th share (3) Prithvi S/o. Sunhari having 1/6th share (4) Phool Singh S/o. Shibbal having 1/3rd share. Further, the land in question is also the subject matter in WP(C) No. 10400/2015 titled as Phool Singh vs Union of India & Ors.”

11. Respondent no.3 (Delhi Development Authority) has also filed a counter-affidavit annexing therewith the possession proceedings of the subject land. The averments made in paragraph 6 of the counter-affidavit



filed by LAC have not been effectively traversed. Whilst, the petitioner has baldly denied the contents of paragraph 6 of the counter-affidavit, he has confined the specific denial to reiterating that no payment of compensation was paid to his father or his legal heirs.

12. In view of the facts as affirmed by the LAC and the copy of the possession proceedings that have been annexed by the DDA, we are unable to accept that the possession of the subject land was not taken over. In ***Indore Development Authority vs Manoharlal*** (*supra*) the Constitution bench of the Supreme court had observed as under:

“In our opinion, under the 1894 Act when possession is taken after award is passed under Section 16 or under Section 17 before the passing of the award, land absolutely vests in the State on drawing of *panchnama* of taking possession, which is the mode of taking possession. Thereafter, any re-entry in possession or retaining the possession is wholly illegal and trespasser’s possession inures for the benefit of the owner and even in the case of open land, possession is deemed to be that of the owner.”

13. The Constitution Bench had concluded that “*mode of taking possession under the 1894 Act and as contemplated under Section 24(2) is by drawing a inquest report/memorandum*”.

14. It is apparent from the above, that drawing up of possession proceedings are sufficient for taking over possession of the subject land.

15. The petitioner’s contention that even though the possession proceedings have been concluded and possession has been taken over by LAC and handed over to DDA, the fact that the petitioner remains in physical possession, the relevant condition of Section 24(2) of 2013 Act is not satisfied. It is the settled law that if possession has been taken over by



the concerned authorities, and the land owner who remains in physical possession thereafter, will be a trespasser, or an unauthorised occupant. The same would not satisfy the condition that the possession of the subject land was not taken over under Section 24(2) of the 2013 Act.

16. It is also relevant to note that an SLP filed by DDA in respect of an order passed in the case of one of the co-owners of the subject land (Phool Singh) was allowed by the decision of the Supreme Court in *Delhi Development Authority v. Tejpal: (2024) 7 SCC 433*. The Supreme Court had concluded that the case was squarely covered in favour of the DDA in terms of the decision in the case of *Indore Development Authority v. Manoharlal and Ors.* (supra). Reference to the said case falls in the List E2 annexed to the said decision.

17. The petitioner claims to be a co-sharer of the subject land, therefore, once the subject land has been taken over in case of a co-owner it is obvious that the possession of the petitioner's share has been taken over as well.

18. In view of the above, the present petition is unmerited and is, accordingly, dismissed.

VIBHU BAKHRU, J

TEJAS KARIA, J

FEBRUARY 21, 2025/tr