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

+ **W.P.(C) 7148/2015**

TIKA RAM & ORS

..... Petitioners

Through: Mr. Sanjay Parikh with Mr. Aagney
Sail and Ms. Maulshree Pathak, Advs.

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi, Adv. for L&B/LAC.
Mr. Abhishek Pundir and Ms. Anusuya Salwan,
Advs. for DSIIDC.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P.GARG

ORDER

03.08.2017

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1. The petitioners seek declaration that the acquisition of the suit lands, i.e. khasra No.16/15 (4-12), 17/11 (4-12), 19/2 (1-05), 20 (4-12), 21 (4-09), 22 (4-01), 38/12/2 (1-00), 37/16 (4-03), 25 (5-19), 38/19/1 (3-16), 20 (4-16), 21/1 (4-01) total (47-06), village Karala has lapsed in view 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”). The suit lands were subject to acquisition – having been notified under Section 4 of the Land Acquisition Act, 1894 on 25.08.2005; this was followed by Section 6 declaration and award was announced on 26.05.2008.

2. The petitioners complain that since the conditions spelt out in 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”) apply and that possession was effectively not taken over, the land should be declared to be free from acquisition. In the counter affidavit of both the contesting respondents i.e. the Land Acquisition Collector and the Delhi State Industrial and Infrastructural Development Corporation Ltd. (DSIIDC), there is a categorical statement that possession of parts of the land was taken over for which, in addition to compensation, Special Rehabilitation Package was announced and that due to existing constructions by way of built up properties in the rest of the land, possession was not taken over. The Land Acquisition Collector’s affidavit insofar as it is relevant is extracted below:-

“5. That the present writ petition is also liable to be dismissed as the actual vacant physical possession of the land under reference i.e. khasra number 16//15 (4-12), 17//11 (4-12), 19/2 (1-05), 20 (4-12), 21 (4-09), 22 (4-01), 38//12/2 (1-00), 37//16 (4-03), 25 (5-19), 38//19/1 (3-16), 20 (4-16), 21/1 (4-01) total (47-06) were acquired vide award no.3/08-09, village Karala. Out of these Khasra numbers, the actual vacant physical possession of kh. Number 16//15 (4-12), 17//11 (4-12), 19/2 (1-05), 20 (4-12), 21 (4-09), 22 (4-01), 38//12/2 (1-00) total (24-11) taken on 29.07.08. The physical possession of remaining land could not be taken. The ownership lies with Ganga Sahai S/o Dhara Singh (Full share) as item no.155. The awarded compensation to the tune of Rs. 1,31,03,639/- has been paid vide cheque no. 734264 dated 12.06.2009 for the land whose possession taken. Further, Special Rehabilitation Package (SRP), as announced by the GNCT of Delhi as enhanced compensations, has also been received by owners namely

Kitaboo Devi W/o Ganga Sahay (1/10), Tikka Ram S/o Ganga Sahay (1/10), Seema D/o Ganga Sahay (1/10), Darshna D/o Ganga Sahay (1/10), Puran Singh S/o Ganga Sahay (1/10), Ganesh S/o Ganga Sahay (1/10), Pawan Kumar S/o Ganga Sahay (1/10), Jagdish S/o Ganga Sahay (1/10), Ishwar S/o Ganga Sahay (1/10), Rajesh S/o Ramphal (1/20), Satpal S/o Ramphal (1/20) (being all LRs of Ganga Sahay) an amount of Rs. 11,33,346/- each vide cheque no. 929587 to 929593 dated 20.12.2011 for item no 155/1 to 155/7 cheque no 929691 dated 02.01.2012 for item no. 155/8, Rs. 5,66,673/- each vide cheque no. 929596 and 929597 dated 20.12.2011 for item no. 155/9 to 155/10. There is no dispute with regard to the payment of compensation as also the enhanced compensation under the SRP as the petitioners have duly admitted in para 5-6 of the writ petition that they have duly received the entire compensation from the Government. Thus the contention of the petitioner today that actual physical possession of the land was not taken holds no truth in it as it was only pursuant to the taking of actual physical possession of the land under reference, the petitioner applied for release of compensation and also availed the benefits of enhanced compensation under special rehabilitation package. Needless to say that the petitioner is making fool of the system and also the judicial process by first resorting to accept the compensation and thereafter the enhanced compensation and thereafter portraying as innocent villager who does not know as to for which reasons, he approached the Government and requested for release of compensation and also enhanced compensation.”

3. It is quite evident from the above pleadings that the particulars of land for which possession was not taken over has been stated clearly in the counter affidavit of DSIIDC which is extracted below:-

“7. That the physical possession of Khasra No 16//15/(4-12), 17//11(4-12), 19/2(1-05), 21(4-12), 22(4-09), 37//16(4-01), 38//12/2 (5-19)(B) was taken over on 29.07.2008. But

*possession of Khasra No 37//16 (4-03), 25 (5-19), 38//19/1 (3-16), 20(4-16), 21/1(4-01) has not been handed over to DSIIDC by the Land Acquisition Collector on account of the fact that the said portion of land is under unauthorized colony under regularization in compliance of order no F11(37)/07/L&B/LA/855980 dated 11.09.2007. Copy of the possession proceedings along with true English Translation of the possession proceedings is annexed herewith as **Annexure R-1** & copy of the site plan is being enclosed herein as **Annexure R-2.**”*

4. In view of the above developments, it is clear that the petitioners are entitled to a declaration in respect of the lands of which possession was not taken over by the respondents i.e. khasra Nos.37/16 (4-03), 25 (5-19), 38/19/1 (3-16), 20 (4-16) and 21/1 (4-01), Village Karala. A declaration to the effect that acquisition in respect of the said suit lands has lapsed is therefore given.

The writ petition is partly allowed in the above terms.

S. RAVINDRA BHAT, J

S.P.GARG, J

AUGUST 03, 2017
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