

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

Date of Decision: September 22, 2017

+ W.P.(C) 7153/2015

SURAJ SINGH AND ORS. Petitioner

Through: Mr. Aagney Sail, Advocate

Versus

GOVT. OF NCT OF DELHI AND ORS. Respondents

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

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SUNIL GAUR

S. RAVINDRA BHAT, J. (OPEN COURT)

1. The claim in this petition is for a direction that petitioners' land i.e. Khasra Nos. 64//3 (05-01) and Khasra No.64//9 (03-13), in village Karala (*hereinafter referred to as the 'suit land'*) 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'). The writ petition was earlier rejected but subsequently, petitioner successfully preferred a review, which was allowed.

2. In the present case, notification under Section 4 of the then prevalent Land Acquisition Act (of 1894) (*the old Act*) was of 28.05.2005, for the purpose of development of New Industrial Area in

village Kanjhawala. Later, a declaration under Section 6 of the said old Act was issued on 10.07.2006 and after consideration of the materials available, the Collector framed the Award on 26.05.2008. Petitioner's land, which included the suit lands as well as other portions, were finally subjected to land acquisition. The petitioner complains that after framing of the Award, neither possession was taken of the entire land of petitioners, including the suit land, nor was compensation paid in accordance with law.

3. The Counter affidavit of Government of NCT of Delhi , states *inter alia* as follows:-

“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 11/9/2 (4-03), 12 (3-07) total (07-10) at item no 71 and 64/2 (1-13), 3min (0-05), 8 (3-00), 12 (7-01) total (19-09) at item no 318 to 322 was duly taken on 29.7.2008 on the spot by preparing possession proceedings on the spot and handed over to the requisition agency on the spot. The ownership lies with Mukhtiar Singh S/o Chhotu (1/1) in (7-10) and Mukhtiar Singh S/o Chhotu (1/4), Vijender S/o Khazan Singh (1/8) and Rajender S/o Khazan Singh (1/8) and Dinesh S/o Mohan (1/8) in (20-08) at item no.318 to 322 respectively. The awarded compensation to the tune of Rs. 55,96,146/- for item no. 71 +318 for land (7-10) + (11-19) has been paid vide cheque no 734169 dated 25.05.2009. An amount of Rs. 7,97,869/- for item no 320 and 321 and an amount or Rs. 15,95,738/- for item no 322 has been paid vide cheque no. 734153 dated 25.05.2009, cheque no. 734154 dated 25/05/2009 and cheque no. 341380 dated 17.06.2009 respectively. Further, the Special Rehabilitation Package (SRP), as announced by the GNCT of Delhi as enhanced compensation, to the tune of Rs. 48,81,304/- for item no. 71+318 for land (7-10) +(11-19) has been paid vide cheque no 929986 dated 23.01.2012 to Omwati w/o Mukhtiar

(being LR of Mukhtiar who expired). An amount of Rs.6,95,251/- for item no.320 and 321 and an amount of Rs.13,90,502/- for item 322 has been paid vide cheque no. 929508 dated 13.12.2011, cheque no. 929509 dated 13.12.2011 and cheque no. 929494 dated 13.12.2011 respectively. 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.”

4. The above position also stands admitted by Delhi State Industrial and Infrastructure Development Corporation Ltd. (DSIIDC) in paragraph No.7 of its counter affidavit.

5. Supreme Court in *Pune Municipal Corporation and. Anr. v. Harakchand Misirimal Solanki and Ors.*, (2014) 3 SCC 183, has held that if the acquiring body either does not pay compensation to the land owner or does not take possession within five years before coming into force of the 2013 Act, the acquisition is deemed to have lapsed. In the present case, the respondents, especially the Land Acquisition Collector has admitted that petitioner's suit land to the extent of 64//3 (04-16) and 64//9

(03-13) have not been taken possession of.

6. In these circumstances, the petition has to succeed. A declaration is issued to the effect that the acquisition of suit lands i.e. 64//3 (04-16) and Khasra No.64//9 (03-13), in village Karala, Delhi, are free from acquisition and the acquisition is deemed to have lapsed by virtue of Section 24 (2) of the Act of 2013.

7. So far as the other portions of the suit lands mentioned in the writ petition are concerned, there is no dispute that possession was taken over and compensation was paid to the land owners.

8. The writ petition is therefore allowed in above terms.

S. RAVINDRA BHAT
(JUDGE)

SUNIL GAUR
(JUDGE)

SEPTEMBER 22, 2017

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