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

RESERVED ON: 03.08.2017

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PRONOUNCED ON: 02.11.2017

+ **W.P. (C) 5515/2015, CM APPL.9920/2015**

AZAD @ ANAND SINGH & ORS. ...Petitioners

Versus

GOVERNMENT OF NCT OF DELHI & ORS. ...Respondents

W.P. (C) 7143/2015, CM APPL.13107/2015

KHAZAN SINGH & ORS. ...Petitioners

Versus

GOVT .OF NCT OF DELHI & ORS. ...Respondents

Present: Mr. Sanjay Parikh with Mr. Aagney Sail and Ms. Maulshree Pathak, Advocates for petitioners.

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

Ms. Anusuya Salwan, Advocate for DSIIDC with Mr. Abhishek Pundir, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P. GARG

S.RAVINDRA BHAT, J.

1. All the petitioners in these writ proceedings, under Article 226 of the Constitution of India, claim benefit of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, '2013 Act'). The

lands in respect of which they claim the declaration are located in village Kilokari.

2. The lands in Karala, were subject to acquisition, by a notification under Section 4, dated 25.08.2005; declaration under Section 6 was issued on 10.07.2006. The award, being No. 03/2008-09 was made on 26.05.2008. According to the respondents possession of the suit lands and other such acquired lands, covered by the notification, was taken over in July. The lands were handed over to the beneficiary department/agency, on 9th February 2007.

3. The petitioners' claim that the acquisition has lapsed by virtue of the 2013 Act, is premised on their submission that though compensation was received by them or their predecessors in interest (in respect of the suit lands), possession was not taken over in accordance with law. They urge that the lands are still under their cultivation. It is submitted that the payment of compensation to them, or for that matter, any other amount, does not preclude challenge to the acquisition and that the 2013 Act applies inexorably.

4. Learned counsel relies on Section 24 of the said Act, which reads as follows:

“ Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases – (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),—

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

5. *Delhi Development Authority v. Sukhbir Singh* AIR 2016 SC 4275 was relied upon by the petitioners, especially the following analysis with respect to taking over of the possession:

“(a) Section 24(2) begins with a non-obstante clause keeping sub-section (1) out of harm’s way;

(b) For it to apply, land acquisition proceedings should have been initiated under the Land Acquisition Act;

(c) Also, an award under Section 11 should have been made 5 years or more prior to the commencement of the 2013 Act;

(d) Physical possession of the land, if not taken, or compensation, if not paid, are fatal to the land acquisition proceeding that had been initiated under the Land Acquisition Act;

(e) The fatality is pronounced by stating that the said proceedings shall be deemed to have lapsed, and the appropriate Government, if it so chooses, shall, in this game of snakes and ladders, start all over again”

Counsel submitted that two conditions had to be fulfilled for the application of Section 24(2) - the award must have been made 5 years or more prior to the commencement of the 2013 Act and either compensation has not been paid or physical possession of the land has not been taken by the respondents. The following passage in *Sukhbir Singh* (supra) was also relied upon:

“The picture that therefore emerges on a reading of Section 24(2) is that the State has no business to expropriate from a citizen his property if an award has been made and the necessary steps to complete acquisition have not been taken for a period of five years or more. These steps include the taking of physical possession of land and payment of compensation. What the legislature is in effect telling

the executive is that they ought to have put their house in order and completed the acquisition proceedings within a reasonable time after pronouncement of award. Not having done so even after a leeway of five years is given, would cross the limits of legislative tolerance, after which the whole proceeding would be deemed to have lapsed. It is important to notice that the Section gets attracted if the acquisition proceeding is not completed within five years after pronouncement of the award. This may happen either because physical possession of the land has not been taken or because compensation has not been paid, within the said period of five years. Secondly, the object of the Act, and Section 24 in particular, is that in case an award has been made for five years or more, possession ought to have been taken within this period, or else it is statutorily presumed that the balance between the citizen's right to retain his own property and the right of the State to expropriate it for a public purpose gets so disturbed as to make the acquisition proceedings lapse. Alternatively, if compensation has not been paid within this period, it is also statutorily presumed that the aforesaid balance gets disturbed so as to free such property from acquisition."

6. Learned counsel submitted that the manner of taking over possession, claimed by the respondents, is suspect and not in accordance with law. Reliance was placed on *Prahlad Singh v Union of India* (2011) 5 SCC 386, which had approved the observations in *Nahar Singh v State of UP* 1996 (1) SCC 434, where it was stated that:

"(iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the concerned authority will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the concerned authority

will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.”

Raghubir Singh Sehrawat v. State Of Haryana (2012) 1 SCC 792 too was relied on to say that possession was not taken over, as claimed and that the petitioners continue to be in control of the lands.

7. The NCT of Delhi, the appropriate government, and the Delhi State Infrastructure and Industrial Development Corporation (DSIIDC) dispute the petition and argue that the landowners are estopped from contending that they were not dispossessed from their lands. They urge that the petitioners applied for compensation; in those documents, they clearly stated that possession of their land had been handed over to the authorities. Copies of those applications are placed on the record. It is also submitted that in addition, the landowners also executed surety bonds, which too indicated that possession had been taken. Counsel for DSIIDC also points out that the arguments of the petitioners are without factual foundation, because after possession of the lands were taken over, they were developed and boundary walls were constructed. Further the contract for development of an industrial area was awarded, along with possession of the acquired lands. Most importantly, it is argued that the petitioners- or at least most of them, had claimed special rehabilitation package (SRP) amounts, in accordance with the Govt. of NCT scheme dated 01.10.2008. It was argued that by the SRP, farmers

covered by the scheme were given substantial additional packages, for each year when the acquisition was underway, in addition to the compensation payable under the old Act. The SRP was applicable to farm lands, and the land-owners had to give up the challenge to the assessed normal compensation in the award. It is submitted that in respect of identical lands, which were acquired in village Kanjhawala, this court had held, in *Jai Kishan v Govt. of NCT of Delhi* WP 5395/2015, decided on 21st February, 2017, that those who accepted such SRP amounts would not be entitled to maintain a challenge, under Article 226 of the Constitution, based on Section 24 of the 2013 Act.

8. In *Jai Kishan*, (*supra*) it was observed that no right, title or interest of the landowners survived in the acquired lands after they accepted the Special Rehabilitation Package and compensation and furnished a clear undertaking that they shall not pursue their rights in the lands. That judgment is therefore forthright that in the absence of any right, title or interest in the acquired land on the date of coming into force of the new Act, such benefit under that enactment cannot be extended to the petitioners/ land-owners. An earlier judgment in *Bhim Singh v Govt. of NCT of Delhi* WP 9101/2014 and connected cases, decided on 20 December 2016 *inter alia*, held that:

“The key point in this batch of matters is whether the petitioners had any right left in subject lands? As noted above, in the undertakings given by the petitioners in 2011, while opting for the Special Rehabilitation Package and receiving additional payments thereunder, they had clearly divested themselves of all

their rights in respect of the subject acquired lands. Thus, at the time of commencement of the 2013 Act on 01.01.2014, the petitioners had no right, title or interest left in the subject lands. Therefore, they cannot claim any benefit under section 24(2) of the 2013 Act. On this ground alone, the writ petitions are liable to be dismissed.

11. Consequently, we dismiss the writ petitions but, with no order as to costs. Interim orders, if any, stand vacated.”

9. In the present cases, the respondents have produced copies of applications where the petitioner landowners applied for compensation stating that they had handed over possession; they even applied for enhancement of compensation. In these circumstances, the petitioners cannot say that the authorities did not take possession. The *ratio* in *Jai Kishan*, (*supra*) applies squarely to bar the reliefs. It was argued in one of the proceedings that one of the petitioners (in W.P.(C) 7413/2015) did not collect the special compensation package. This court is of opinion that such a fact would not make any difference; even in law, possession is shown to have been taken, as far back as in 2008.

10. For the foregoing reasons, the petitions lack in merit; they are accordingly dismissed, without order on costs.

**S. RAVINDRA BHAT
(JUDGE)**

**S.P. GARG
(JUDGE)**

NOVEMBER 02, 2017