

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

Decided on: 21.08.2017

+ **W.P.(C) 7364/2015, C.M. APPL.13350/2015 & 35596/2016**
SHRI MAHESH CHAND & ORS Petitioners
Through: Sh. Anuroop. P.S., Advocate.

versus

LAND ACQUISITION COLLECTOR & ANR Respondents
Through : Sh. Yeeshu Jain, Standing Counsel with Ms.
Jyoti Tyagi, Advocate.
Sh. Arun Birbal and Sh. Sanjay Singh, Advocates, for
DDA.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SUNIL GAUR

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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Facts

1. The Petitioners are, and prior to them their predecessors-in-interest were, the recorded bhumidars of lands comprised in Khasra no. 403/268/1, area measuring 6 bighas 9 biswas, and Khasra no.403/268/2, 6 bighas 9 biswas, total area 12 bighas 18 biswas, situated in the Revenue Estate of Village Chilla Saroda Banger, Delhi (the “subject lands”).

2. The subject lands were notified under Section 4 of the *Land Acquisition Act, 1894* (the “Old Act”) on 17.11.1980 and in pursuant to the said notification a declaration under Section 6 of the Old Act was also issued by the Government on 29.09.1981. Based on the notifications under Sections

4 and 6 as mentioned above, Award No.39/82-83 was made on 30.09.1982 for the subject lands, under the provisions of the Old Act. It is the Petitioners' assertion that the physical possession of the subject lands was not taken and neither has the compensation been paid so far.

3. Citing the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* (hereafter also, "the New Act"), promulgated by the Parliament on 01.01.2014, the Petitioners highlighted Section 24, that envisages that, in case of a land acquisition proceeding initiated under the Old Act, where an award under Section 11 has been made five years or more prior to the commencement of the New Act, i.e. prior to 01.01.2014, and the physical possession of the said land has not been taken or the compensation has not been paid; the said proceedings shall be deemed to have lapsed.

4. The Petitioners aver that despite having applied for payment of compensation and despite having visited the offices of the Land Acquisition Collector (LAC) on various dates, the amount of compensation was neither tendered nor paid to the Petitioners and thus, they have resorted to filing this writ petition.

5. In the counter affidavit on behalf of one of the respondents, the Delhi Development Authority (DDA), dated 05.11.2015, it was stated that the possession of the subject lands had been acquired vide Award No. 39/82-83, although the physical possession had not been handed to the DDA by the LAC. It was further averred by the DDA that the compensation had also been remitted by them to the LAC/L&B Department of the GNCTD for the subject lands. Likewise, in the counter affidavit dated 30.01.2016, the LAC contended that the present writ petition was frivolously filed and is liable to

be dismissed as the recorded owner for the land falling in khasra number 403/268 min was the Gaon Sabha, and the Petitioners have wrongfully claimed ownership over the same.

6. Subsequent rejoinder affidavits were filed by the Petitioners refuting the contentions of the Respondents in their counter-affidavits.

Analysis

7. Section 24(2) of the New Act reads as follows:

“24. 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 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 determination of compensation shall apply; or

(b) Where an award under said section 11 has been made, then such proceeding 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 holding 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.”

8. Hence, for the land acquisition proceedings to be deemed to have lapsed, the award pertaining to the subject land has to be made more than five years prior to the commencement of the New Act; and neither should have physical possession been taken nor the compensation so awarded should have been paid to the landowners/persons interested, nor deposited in the Court.

9. In the present case too, the award was made on 30.09.1982, more than five years prior to the commencement of the New Act, but physical possession has not been taken till date, and neither has compensation been assessed nor paid by the Land Acquisition Collector to the Petitioners who are the *bonafide* recipient of the same. The Petitioners have averred that by application of Section 24(2) of the New Act, the proceedings should be deemed to have lapsed.

10. The Supreme Court, in its interpretation of section 24(2) of the Act in the seminal decision of *Pune Municipal Corporation and Anr. v. Harakchand Misirimal Solanki and Ors.*, AIR 2014 SC 982 held as follows:

“20. ...From the above, it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act. It is also admitted position that compensation so awarded has neither been paid to the landowners/persons interested nor deposited in the Court. The deposit of compensation amount in the government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested. We have, therefore, no hesitation in holding that the subject land acquisition

proceedings shall be deemed to have lapsed under Section 24(2) of the 2013 Act.

21. The argument on behalf of the Corporation that the subject land acquisition proceedings have been concluded in all respects under the 1894 Act and that they are not affected at all in view of Section 114(2) of the 2013 Act, has no merit at all, and is noted to be rejected. Section 114(1) of the 2013 Act repeals 1894 Act. Sub-section (2) of Section 114, however, makes Section 6 of the General Clauses Act, 1897 applicable with regard to the effect of repeal but this is subject to the provisions in the 2013 Act. Under Section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of 2013 Act and possession of the land is not taken or compensation has not been paid. The legal fiction under Section 24(2) comes into operation as soon as conditions stated therein are satisfied. The applicability of Section 6 of the General Clauses Act being subject to Section 24(2), there is no merit in the contention of the Corporation.”

11. Thus, going by the criteria of application of section 24(2) of the New Act, as interpreted in *Harakchand Misirimal (supra)*, the qualifications that arise for the land acquisition proceedings to lapse, are as follows:

- i. That the award pertaining to the subject land has to be made more than five years prior to the commencement of the New Act; and
- ii. That the compensation ought not to have been paid to the landowner; or
- iii. The physical possession of the subject land should not have been taken.

12. As was highlighted in *Sree Balaji Nagar Residential Association v.*

State of Tamil Nadu 2014 (6) ALLMR 414, the judgment of *Harakchand Misirimal (supra)* has been followed by another bench of three judges in the case of *Union of India and Ors. etc. v. Shivraj and Ors. etc* (2014) 6 SCC 564, that discussed the purpose of Section 24(2) of the New Act. In paragraphs 25 and 26 of that judgment, the Supreme Court took notice of a clarification issued by the Government of India, Ministry of Urban Development, Delhi Division dated 14.03.2014. Part of the circular extracted in that case clearly shows that the period of five years or more in Section 24(2) of the 2013 New Act has been prescribed with a view to benefit the land-losers and the period spent in litigation due to challenge to the award or the land acquisition proceedings cannot be excluded.

13. To that extent, as observed from the facts and circumstances of the present case, the award was made in 1982, well beyond five years prior to the commencement of the New Act, the compensation, as averred by the Petitioners and agreed to by the Respondents in their counter affidavits, has not been paid yet, and neither has physical possession of the subject lands been taken by the Respondents. Hence, by virtue of application of section 24(2) of the New Act, the land acquisition proceedings in terms of the subject lands have lapsed.

14. The writ petition is hereby allowed.

S. RAVINDRA BHAT
(JUDGE)

SUNIL GAUR
(JUDGE)

AUGUST 21, 2017