

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

Decided on: 13.09.2017

+ **W.P.(C) 7594/2015, C.M. APPL.14689/2015**
VIJAY KUMAR

+ **W.P.(C) 7595/2015, C.M. APPL.14690/2015**
NARAYAN SINGH

+ **W.P.(C) 7596/2015, C.M. APPL.14691/2015**
RAJ KUMAR

+ **W.P.(C) 7597/2015, C.M. APPL.14692/2015**
NATHI RAM

+ **W.P.(C) 7598/2015, C.M. APPL.14693/2015**
JAI KUMAR Petitioners

Through: Sh. Rajesh Yadav, Sh. Lalit. K.
Rawal, Sh. Sunil. K. Goel and Sh. Siddharth
Gupta, Advocates.

versus

GNCT OF DELHI AND ORS. Respondents

Through: Sh. Dhanesh Relan, Ms. Isha Garg
and Ms. Gauri Chaturvedi, Advocates, for
DDA.

Sh. Siddharth Panda, Advocate, for
L&B/LAC in Item No.28.

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

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SUNIL GAUR

MR. JUSTICE S. RAVINDRA BHAT

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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 Garhi Mendu, Khasra Nos. 274/28 to 31 (measuring 9-10 bighas; hereafter called “suit lands”). These petitions were heard separately, but since they involve common questions of fact and law, a common judgment is delivered.

2. The facts involved in these cases are that a notification dated 23.06.1989, under Section 4 of the *Land Acquisition Act, 1894* (hereafter “the old Act”) was issued for the planned development of Delhi. The declaration under Section 6 of the old Act was issued on 20.06.1990. The land owners and other persons interested were notified about the determination of compensation. Pursuant to the notices under Sections 9 and 10 of the old Act, such interested persons participated in the proceedings, before the Land Acquisition Collector (LAC) and made submissions. The LAC, on the basis of this material, discussed the evidence and made the award (No. 13/92-93) on 19.06.1992.

3. The petitioners have sought a declaration from this court, urging that neither was compensation paid, within the meaning of the expression, as explained in numerous judgments, to them (or to their predecessor-in-interest) nor was possession of the suit lands taken-over by the respondents (i.e. the Govt. of NCT of Delhi – referred to as “the appropriate government” or the Delhi Development Authority,

referred to as “DDA”). They rely on extracts of revenue records to establish their ownership and interest in the suit properties and also extracts of the *Naksha Mutzamin* – which is a revenue document, evidencing payment of compensation. They argue that these documents prove that compensation was never paid to them. To prove possession, they rely on photographs of the suit lands, taken contemporaneously.

4. In reply to the writ petition averments, the respondents (i.e. DDA and the appropriate government) have filed their reply affidavits. Both assert that possession of the suit lands, along with several other acquired lands, was taken over in accordance with law, on 25.01.2000.

5. The appropriate government, in its counter affidavit, *inter alia*, contends as follows:

“7. That it is submitted that finding a dispute over the payment of compensation as the interested persons refused to accept the compensation, the appropriate Government duly deposited the compensation amount with the Reference Court on 1.7.2004 vide cheque number 552791 amounting to Rs. 8,86,867.58 thereby leaving the recorded owners, and/or the claimants, stated supra, to decide the irrespective rights to receive the compensation in accordance with the law. It is pertinent to mention here that it is not the case of the petitioner that the compensation amount was not deposited by the LAC rather the petitioner contended that that he has not taken the same..”

6. Mr. Rajesh Yadav, who appeared on behalf of all the petitioners, argued that the pleadings clearly establish that compensation was not paid in the manner contemplated by law. He

cited *Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & Ors.* (2014) 3 SCC 183, to say that in relation to land acquisition proceedings under the old Act, if an order is made five years or more prior to the commencement of the 2013 Act and either of the contingencies is satisfied – namely, physical possession of the land is not taken or compensation has not been paid, the acquisition would lapse. It is also submitted that the respondents did not take-over possession of the suit land notwithstanding the assertions to the contrary. Mr. Yadav refuted the respondents' argument that amounts were deposited in Court, under section 31 of the old Act, on account of a dispute. It was submitted that the petitioners never received any notice from the Court, or the fact that amounts were being deposited.

7. Mr. Yeeshu Jain, learned counsel for the appropriate government and Mr. Dhanesh Relan, learned counsel for the DDA represented and argued on behalf of the respondents. It was argued that so far as possession is concerned, the petitioners cannot question the taking-over of their lands, pursuant to completion of possession proceedings. In fact, that became the bone of contention in other previous writ proceedings, i.e. W.P.(C) 4101/2001. That writ petition was filed by some other land owners; however, according to the learned counsel, the petitioners' predecessor had moved for impleadment through an application, which was allowed. The complaint in those proceedings was non-disbursement of compensation, which was attended to by the LAC, pursuant to a direction. Therefore, the petitioners had notice of compensation and the fact that it was deposited. The respondents also rely on the *Naksha*

Mutzamin document produced by the petitioners in this case, which records that “*Application received from Raje s/o Dalwa vide Diary No. 449/ADMILAC dated 28.06.2007 Khasra No. 274/28-31 will remain disputed*”.

8. Mr. Jain also relied on copies of the Cashbook extracts to say that cheques for ₹ 92,70,520/- and ₹1,41,49,396/- were prepared but had to be cancelled. The amounts were then paid into the treasury, as deposit, under intimation to the court, which had to decide the dispute under Sections 30/31 of the old Act. It was stated that under these circumstances, the acquisition was complete and the title vested with the respondents.

9. During the hearing, there was no serious dispute with respect to whether possession of the suit lands and others notified for acquisition were taken-over. The copy of possession proceedings relied on by the respondents clearly shows that the suit lands too were taken possession of. Apparently, that was the point of dispute, which impelled other land owners to approach this Court by filing W.P.(C) 4101/2001 earlier. Therefore, on the issue of possession, the petitioners’ arguments are unfounded.

10. The real controversy between the parties is whether compensation was paid, in terms of the decision in *Pune Municipal Corporation (supra)*. That decision had visualized the contingency of a dispute with respect to the receipt of compensation and the possible resolution:

“7. While enacting Section 24(2), Parliament definitely had in its view Section 31 of the 1894 Act. From that one

thing is clear that it did not intend to equate the word “paid” to “offered” or “tendered”. But at the same time, we do not think that by use of the word “paid”, Parliament intended receipt of compensation by the landowners/persons interested. In our view, it is not appropriate to give a literal construction to the expression “paid” used in this sub-section (sub-section (2) of Section 24). If a literal construction were to be given, then it would amount to ignoring procedure, mode and manner of deposit provided in Section 31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view, therefore, that for the purposes of Section 24(2), the compensation shall be regarded as “paid” if the compensation has been offered to the person interested and such compensation has been deposited in the court where reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act. In other words, the compensation may be said to have been “paid” within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33.”

11. In the present cases, the revenue and the appropriate government clearly assert that the previous proceedings were about the alleged unlawful dispossession. To verify that, the records of disposed of W.P.(C) 4101/2001 were called for. Although that case does not contain any reference to the petitioners’ predecessors, nevertheless, that pertains to the same village; the land owners owned lands that were acquired under the same acquisition notification. There

is a direction by the Court to deposit, or pay compensation. The records, in the form of *Naqsha Mutzamin* and cash book extracts, clearly show that amounts were sent to the reference Court, after cheques were cancelled.

12. These, in the opinion of the Court, are sufficient indicators that payment of compensation, in the manner contemplated under Section 31(2) of the old Act were duly made. The petitioners have also not indicated why they waited for over 15 years to agitate their rights. They too have to explain why they kept quiet, and did not agitate their rights, if they were really in the dark about payment or deposit of compensation, as is alleged. Therefore, it is held that the second issue has been explained by the respondents, who deposited amounts, in Court, in accordance with law (i.e. Section 31 of the old Act).

13. In the foregoing premises, the Court is of the opinion that the writ petitions have to fail; they are consequently dismissed along with the pending applications. No costs.

**S. RAVINDRA BHAT
(JUDGE)**

**SUNIL GAUR
(JUDGE)**

SEPTEMBER 13, 2017