

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

% *Date of decision: 9th November, 2017*

+ W.P.(C) 8606/2015

DAYA CHAND & ORS

..... Petitioners

Through: Mr. Anuroop P.S., Adv.

versus

UNION OF INDIA & ANR

..... Respondents

**Through: Mr. Yeeshu Jain, Standing Counsel with Ms. Jyoti Tyagi, Adv. for L&B/LAC
Mr. Pawan Mathur, Adv. for DDA**

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V. KAMESWAR RAO

G.S.SISTANI, J. (ORAL)

1. At the outset counsel for the petitioners submit that he wishes to delete the petitioner Nos. 1 to 4 and 8 to 9 from the array of parties. He restricts his claim as legal heirs of Jammuna Devi. The request is allowed. Amended memo of parties be filed during the course of the day.

2. With the consent of the parties, the present writ petition is taken up for final hearing and disposal.

3. The present petition has been filed under Article 226 of the Constitution of India by the petitioners seeking a declaration that the land comprised in Khasra Nos.304 (04-16), 307 (02-02) total measuring 06 bigha 18 biswas situated in the revenue estate of Village Satbari, Tehsil – Hauz Khas, Mehrauli, New Delhi, (hereinafter referred to as the ‘subject land’) stand lapsed on account of the fact that compensation has not been paid to the petitioners.

4. In this case a notification under section 4 was issued on 25th November, 1980 and another notification under section 6 of Land Acquisition Act, 1894 (hereinafter

referred to as 'Old Act') was issued on 27th May, 1985 and award was made on 26th May, 1987. It is the case of the petitioners that the present petitioners continue to remain in actual physical possession of the land in question and moreover, compensation has not been tendered to the petitioners.

5. Mr. Yeeshu Jain, learned counsel for LAC does not dispute that compensation has not been tendered to the petitioners. But it is vehemently submitted that other co-owners have already received the compensation and possession with respect to the land belonging to other co-owners has been taken over. Mr. Yeeshu Jain, relying on the proviso of section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 (hereinafter referred to as the 'New Act'), contends that since majority of co-owners have received the compensation, the petitioners' claim is liable to be restricted only to payment of compensation and the declaration being sought is liable to be rejected. Learned counsel further submits that in the cases of:

(i) Suraj Singh & Anr. v. The Hon. Lt. Governor of Delhi, W.P. (C) 6395 of 2014 decided on 02.05.2017 and *(ii) Satbir Singh & Ors. v. The Hon. Lt. Governor and Ors., W.P. (C) 5076 of 2014* decided on 16.08.2017, a co-ordinate Bench of this Court have granted a limited relief to the writ petitioners restricting their claim only to the payment of compensation under the Old Act.

6. Mr. Anuroop counsel for the petitioners submits that the judgments sought to be relied upon by Mr. Jain would not apply to the facts of the present case. It is firstly contended that case of each of the co-owners has been considered by the LAC separately, the objections were filed separately, the objections were decided separately, the compensation was assessed separately and compensation was paid separately. He contends that it is evident from the fact that even as per Land Acquisition Collector, separate payments have been made to separate co-owners and admittedly present petitioners have not been paid compensation. Learned counsel relies on the observations made in the case of *Sardar Amarjit Singh Kalra (dead) by*

L.Rs. and others vs. Pramod Gupta (Smt.) (Dead) by L.Rs. and Others, reported in **(2003) 3 SCC 272**. Paras 25 and 31 of its judgment read as under :-

“25. We have carefully considered the submissions of the learned counsel on either side. The consideration by the High Court seems to be too superficial on the basis of certain abstract principles without particular reference to the nature and character of the proceedings, the nature of claims and rights of parties, the statutory obligations cast on the courts dealing with a reference under Sections 30/31 originating from an award under Section 11 of the Act and the source as well as origin of rights of the claimants. The Land Acquisition Collector empowered under the Act to pass the award was not only obliged to, among other things, determine the total compensation to be allowed for the land but also apportion the said compensation among all the persons interested in the land depending upon their respective interests proportionately, whether they have appeared or not before him. If any dispute arises as to the apportionment of the compensation or any part thereof or as to the persons to whom the same or any part thereof is payable, the Land Acquisition Collector is obliged to refer such dispute to the decision of the court. If the amount could not be disbursed at his level due to any one or the other reasons set out in Section 31, the amount has to be deposited in the court to which normally a reference would be submitted. The claim of each one was in respect of his distinct, definite and separate share and their respective rights are not interdependent but independent. Among themselves there is no conflicting or overlapping interest and the grant of relief to one has no adverse impact on the other(s). The mere fact that there was no division by metes and bounds on state of ground is no reason to treat it to be a joint right — indivisible in nature to be asserted or vindicated only by all of them joining together in the same proceedings, in one capacity or the other. As a matter of fact, separate claims seem to have been filed by them before the Reference Court in respect of their own respective share. Even if they have engaged a common counsel or even if they have filed one claim in respect of their specified separate share, it could not have the effect of altering the nature of their claim or the character of their right so as to make it an indivisible joint right. Though the Reference Court has decided all such claims together, having regard to the similarity or identical nature of issues arising for consideration of the claims, in substance and reality the proceedings must be considered in law to be of multifarious claims disposed of in a consolidated manner resulting in as many number of awards of the Reference Court as there were claimants before it. There was no community of interest between them and that each one of them in vindicating their individual rights was

not obliged to implead the other claimants of their shares in one common action/proceeding and the orders/judgment though passed in a consolidated manner, in law, amounts to as many orders or judgments as there were claimants and, by no reason, can it be branded to be a joint and inseverable one. Similarity of the claims cannot be a justification in law to treat them as a single and indivisible claim for any or all purposes and such a thing cannot be legitimately done without sacrificing the substance to the form. The claim on behalf of the respondents that the compensation awarded is of a lump sum, though shares are divided, is belied by the scheme underlying Sections 11, 18, 30 and 31 of the Act, and cannot be countenanced as of any merit. Against the award of the Reference Court in this case, it was possible and permissible in law for every one of the appellants to file an appeal of his own separately in respect of his share without any need or obligation to implead every other of the claimants like him, as party-respondent or as co-appellant, because there is no conflicting interest or claims amongst them inter se. As such, the alleged and apprehended fear about possible inconsistent or conflicting decrees resulting therefrom if the appeals are proceeded with and disposed of on merits has no basis in law nor is well founded on the facts and circumstances of these cases. Even if the appellants succeed on merits, dehors the fate of the deceased appellants the decree passed cannot either be said to become ineffective or rendered incapable of successful execution. To surmise even then a contradictory decree coming into existence, is neither logical nor reasonable nor acceptable by courts of law. Otherwise, it would amount to applying the principle of vicarious liability to penalize someone for no fault of his and denial of one's own right for the mere default or refusal of the other(s) to join or contest likewise before the court. The fact that at a given point of time all of them joined in one proceedings because one court in the hierarchy has chosen to club or combine all their individual and separate claims for the purpose of consideration on account of the similarity of the nature of their claims or that for the sake of convenience they joined together for asserting their respective, distinct and independent claims or rights is no ground to destroy their individual right to seek remedies in respect of their respective claims. In cases of this nature, there is every possibility of one or the other among them subsequently reconciling themselves to their fate and settle with their opponents or become averse to pursue the legal battle for ever so many reasons, as in the case on hand due to disinterestedness, indifference or lethargy and, therefore, the attitude, approach and resolve of one or the other should not become a disabling or disqualifying factor for others to vindicate their own individual rights without getting eclipsed or

marred by the action or inaction of the others. Consequently, the fact that about 37 out of the total number of interested persons, like the appellants, were not parties before the High Court or this Court, does not, in any manner, affect or deprive the appellants to have their claims, duly and properly considered and adjudicated in accordance with law, on merits.

31. But, in our view also, as to what those circumstances are to be, cannot be exhaustively enumerated and no hard-and-fast rule for invariable application can be devised. With the march and progress of law, the new horizons explored and modalities discerned and the fact that the procedural laws must be liberally construed to really serve as handmaid, make it workable and advance the ends of justice, technical objections which tend to be stumbling blocks to defeat and deny substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of law inevitably necessitates it. Consequently, having regard to the nature of the proceedings under the Act and the purpose of reference proceedings and the appeal therefrom, the courts should adopt a liberal approach in the matter of condonation of the delay as well as the considerations which should weigh in adjudging the nature of the decree i.e. whether it is joint and inseverable or joint and severable or separable. The fact that the Reference Court has chosen to pass a decree jointly in the matters before us is and should be no ground by itself to construe the decree to be joint and inseparable. At times, as in the cases on hand, the court for its convenience might have combined the claims for joint consideration on account of similar nature of the issues in all such cases and for that reason the parties should not be penalized, for no fault of theirs. Actus curiae neminem gravabit (an act of court shall prejudice no one) is the maxim of law, which comes into play in such situations. A number of people, more for the sake of convenience, may be counselled to join together to ventilate, all their separate but similar nature of claims and this also should not result in the claims of all such others being rejected merely because one or the other of such claims by one or more of the parties abated on account of death and consequent omission to bring on record the legal heirs of the deceased party. At times, one or the other parties on either side in a litigation involving several claims or more than one, pertaining to their individual rights may settle among themselves the dispute to the extent their share or proportion of rights is concerned and may drop out of contest, bringing even the proceedings to a conclusion so far as they are concerned. If all such moves are allowed to boomerang adversely on the rights of the remaining parties even to contest and have their

claims adjudicated on merits, it would be a travesty of administration of justice itself.”

7. Mr. Anuroop further submits that in somewhat different facts, the Supreme Court of India has observed that the mere fact that there was no division by metes and bounds on state of ground is no reason to treat the land to be joint right-indivisible in nature to be asserted or vindicated only by all of them joining together in the same proceedings, in one capacity or the other. The Supreme Court has also recognized the fact that separate claims have been filed by the co-owners before the Revenue Court in respect of their own shares. Learned counsel contends that the observations made in paras 25 and 31 in the case of ***Sardar Amarjit Singh Kalra (supra)*** would apply to the facts of the present case in all force. He submits that decision of ***Sardar Amarjit Singh Kalra (supra)*** was not brought to the notice of Division Bench. Mr. Anuroop, also relies on para 7 of the judgment in the case ***Tarun Pal Singh and another vs. Lt. Governor of Delhi, W.P. (C) 8495 of 2014*** decided on 21.05.2015 in support of his submission that the proviso to Section 24 of New Act, which is relied upon by learned counsel for the LAC would not apply to the facts of the present case as the present case would be covered under Section 24(2) of the New Act and the proviso would come into play in relation to case where Section 24(1)(b) of the New Act would apply as has been held in the case of ***Tarun Pal Singh and another (supra)***.

8. We have heard learned counsel for the parties and considered their rival submissions. The submission of Mr. Anuroop can be summarized as under :-

- (i) the petitioners seek a declaration that the land acquisition proceedings stand lapsed in relation to 06 bighas and 18 biswas.
- (ii) the compensation stands paid to the co-owners by separate cheques.
- (iii) the co-owners had separately approached the Land Acquisition Collector and separately contested the matter.
- (iv) in view of decision rendered by the Apex Court in the case of ***Sardar Amarjit Singh Kalra (supra)***, the observation made in the cases of ***Suraj***

Singh (*supra*) and **Satbir Singh** (*supra*), would not apply to the facts of this case.

9. The submission of learned counsel for respondents can be summarized as under :-

- (i) the case of the petitioners would be covered by the proviso to Section 24 of the New Act and since other co-owners have been paid compensation, the petitioners would only be entitled for compensation and not for declaration.
- (ii) that the case of the petitioners is covered by **Suraj Singh** (*supra*) and **Satbir Singh** (*supra*).

10. There is no dispute that compensation by separate cheques have been paid to the co-owners by Land Acquisition Collector. It is also reflected in the counter affidavit filed by the LAC. Para 4 of the counter affidavit reads as under :-

“4. That it is submitted that the lands of village Satbari were notified vide Notification under section 4 of the Land Acquisition Act, 1894 dated 25.11.1980 which was followed by the Notification under section 6 of the Act dated 27.5.85. The Award was also passed vide Award No.14/87-88 dated 26.05.1987 and the actual vacant physical possession of the subject land falling in khasra numbers 304 (4-16) and 307 (2-02) total (6-18) was duly taken on 14.07.1987 on the spot by preparing possession proceedings and handed over to the DDA on the spot. The compensation was also paid to the recorded owners namely Jai Lal, Lal Chand, Sultan and Ganga Devi amounting to Rs.32383/- each and compensation in respect of one Jamuna Devi amounting to Rs.32383/- was sent in RD. The petitioners have claimed to be the successors of the above-said recorded owners who have already received compensation.”

11. We have no reason to differ with the observations made by a co-ordinate Bench of this Court in the case of **Tarun Pal Singh and another** (*supra*) where it has been held that the proviso to section 24 of New Act is applicable only in a case of Section 24(1)(b) and not in a case of Section 24(2).

12. The arguments raised by counsel for LAC that the proviso would be applicable since majority of the co-owners have been paid compensation is without

any force. We are of the opinion that since the observations made by the Supreme Court in the case of *Sardar Amarjit Singh Kalra* (*supra*), *Suraj Singh* (*supra*) and *Satbir Singh* (*supra*) were not brought to the notice of the co-ordinate Bench have the same would not apply to the facts of the present case. The observations made in *Sardar Amarjit Singh Kalra* (*supra*) would show that each of the co-owners have a separate and distinct rights.

13. In view of the above discussion, the case of the petitioners is fully covered by a decision rendered in the case of *Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & ors., reported at 2014 3 SCC 183*. The petitioners are entitled to a declaration that the said acquisition proceedings initiated under the Land Acquisition Act, 1894 with regard to the subject land are deemed to have lapsed. It is so declared.

14. The writ petition is allowed. There shall be no order as to costs.

CM No. 18694/2015

The application stands disposed of in view of the order passed in the writ petition.

G.S.SISTANI, J

V. KAMESWAR RAO, J

NOVEMBER 09, 2017/aky