

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of decision: October 25, 2017**

+ W.P.(C) 8561/2015, CM No. 18494/2015

CAPITAL LAND BUILDER (P) LTD.

..... Petitioner

Through: Mr. Vishal Maan, Adv.

versus

GOVT OF NCT OF DELHI & ORS.

..... Respondent

Through: Mr. Yeeshu Jain, Standing Counsel with
Ms. Jyoti Tyagi, Adv. for L&B/LAC
Mr. Arjun Garg, Adv. with Ms. Sunanda
Tulsyan, Adv. for Mr. Sushil Dutt Salwan,
Adv. for DDA

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V. KAMESWAR RAO

G.S.SISTANI, J. (ORAL)

1. Rule DB.
2. With the consent of the parties, the petition is setting down for final hearing and disposed of.
3. The petitioner seeks a direction that the entire acquisition proceedings in respect of land of the petitioner being comprised in khasra No. 835 and 837 measuring 1 bighas 2 biswas, situated in the Revenue Estate of village Chattarpur, Delhi including notification bearing no. 9(16)/80/L&B dated November 25, 1980 issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Old Act) and all subsequent proceedings to have lapsed in view of Section 24(2) of The Right to Fair

Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 (hereinafter referred to as the New Act).

4. Learned counsel for the petitioner submits that the case of the petitioner is fully covered by the decision rendered by a Coordinate Bench of this Court in the case of ***Ashwani Kumar Wadhwa and Ors v. Government of NCT of Delhi (2017) SCC OnLine Del 9460*** and ***Kanwal Jain and Anr v. Union of India and Ors 2017 LawSuit (Del) 3216***. At the outset counsel contends that although the Award was made in the year 1987, till date neither the compensation in view of acquisition has been paid to the petitioner Company nor deposited in the Court as mandated under the provisions of Section 31 of the Old Act. Counsel contends that the possession of the land in question has also not been taken by the respondent Authorities and the same is vested with the petitioner Company till date. While relying on Section 24(2) of the new Act, learned counsel contends that the acquisition proceedings in respect of the land in question would stand lapsed. Counsel further submits, the Supreme Court in the judgment of ***Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors (Civil Appeal No. 877/2014)*** and in the case of ***Sree Balaji Nagar Residential Association V. State of Tamil Nadu & Ors (Civil Appeal No. 8700/2013)*** has categorically held that if the compensation has not been paid to the landowners under Section 31(1) of the Old Act or deposited in Court under Section 31(2) of the Old Act, or where an Award under Section 11 has been made five years or more prior to the commencement of the New Act but the physical possession of the land has not been

taken or the compensation has not been paid, the entire acquisition proceeding is deemed to have lapsed under the New Act.

5. He further submits, the petitioner Company is the recorded owner of the land comprised in Khasra nos. 835 and 837 total admeasuring 9 bighas 5 biswas, situated in Revenue Estate of village Chattarpur, Delhi. Counsel further submits that a Notification bearing no. F.9(16)/80/L&B issued under the Old Act was issued for the acquisition of land in the Revenue Estate of village Chattarpur, New Delhi including the land in question owned by the petitioner Company for the public purpose namely 'Planned Development of Delhi. On June 07, 1985, the respondent No.1 in pursuance of Section 4 notification, issued a declaration bearing notification No. F.9(26)/85/L&B under Section 6 of the Old Act. He further states, in the year 1987, an Award bearing No. 15/1987-88 was made by the respondent No.2 in pursuance of the above said notifications. He states, although the award was passed by the respondent No.2 in respect of the land of the petitioner Company, however the compensation amount was neither paid to the petitioner company nor it was deposited with the Court as mandated under Section 31 of the Old Act. Moreover, no notice was issued to the petitioner Company after passing of the above said Award calling upon the petitioner Company to receive the compensation awarded therein. Counsel further states, the possession of the land in question has also not been taken by the respondent Authorities in pursuance of the impugned notifications and Award and the same is vested with petitioner till date.

6. Counsel further contends the petitioner through his G.P.A continues to be in the actual physical and effective possession of the land in question till date and same has

not been taken over by the respondents. He would rely upon Section 24 (1) & (2) of the New Act, which reads as under:-

“24.(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 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.”

7. Counsel contends that by effect of Section 24(2) of the New Act, the entire acquisition proceedings with respect to the land of the petitioner company stands lapsed inasmuch as although the Award in respect of the land of the petitioner Company was

made by the respondent No.2 in the year 1987, but till date, the possession of the said land in question has not been taken over by the respondents and the compensation has neither been paid to the petitioner company nor deposited in the Court as per the provisions of Section 31(2) of the Old Act. Counsel for the petitioner has also drawn the attention of the Court to para 4 of the counter affidavit filed by the respondent No.2 in support of his contention that even as per the record of the respondent No.2, neither compensation has been paid to the petitioner nor possession taken over.

8. Mr. Jain, learned counsel for the respondent No.2 submits that the present petition is not maintainable and the same is liable to be dismissed. However, the learned counsel does not dispute that neither the compensation has been paid to the petitioner nor the possession taken over. Counsel has also not been able to show us or draw any distinction between the present case and the judgments sought to be relied upon by counsel for the petitioner.

9. We have heard the learned counsel for the parties.

10. The basic facts in this case are not in dispute that a Section 4 notification was issued on November 25, 1980, Section 6 notification was issued on June 07, 1985 and Award was made by the Land Acquisition Collector in the year 1987. It would be useful at this stage to reproduce paragraph 4 of the counter affidavit filed by the respondent No.2.

“4. That it is submitted that the lands of village Chattarpur 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. The Award was also passed vide Award No. 15/87-88 dated 5.6.87 however possession of the land under reference neither could be taken nor the compensation could be paid and the same is lying deposited in RD. Further an entry in the Statement 'A' of Award No. 15/87-88 Village Chattarpur to the effect that an amount of Rs.194793740 was deposited in the RD on 29.03.1988 but the said amount was withdrawn vide RV No. 1372 dated 07.05.1993 for Award no. 1/93-94 Village Kakrola."

11. Identical issues were subject matter in the case of **Ashwani Kumar Wadhwa and Ors v. Government of NCT of Delhi (supra)** and **Kanwal Jain and Anr (supra)**. In the case of **Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors (2014) 3 SCC 183**, the Supreme Court in paras 14 and 20 held as under:-

"14. Section 31(1) of the 1894 Act enjoins upon the Collector, on making an award under Section 11, to tender payment of compensation to persons interested entitled thereto according to award. It further mandates the Collector to make payment of compensation to them unless prevented by one of the contingencies contemplated in sub-section (2). The contingencies contemplated in Section 31(2) are: (i) the persons interested entitled to compensation do not consent to receive it (ii) there is no person competent to alienate the land and (iii) there is dispute as to the title to receive compensation or as to the apportionment of it. If due to any of the contingencies contemplated in Section 31(2), the Collector is prevented from making payment of compensation to the persons interested who are entitled to compensation, then the Collector is required to deposit the compensation in the court to which reference under Section 18 may be made.

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.”

12. Having regard to the facts, the present case is fully covered by the decision in the case of **Pune Municipal Corporation & Anr (supra)**. We may also usefully refer to para 22 in the case of **Delhi Development Authority v. Sukhbir Singh and Ors (2016)**

16 SCC 258:-

“23. We now come to the argument of Shri Sharan that, in any case, the facts of this case, the pitch is queered by the presence of subsequent purchasers. As has been pointed out in Meera Sahni’s case [(2008) 9 SCC 177], that the moment Section 4 of the Delhi Lands (Restrictions on Transfer) Act, 1972, applies, a sale subsequent to a Section 6 notification becomes illegal, being hit by Section 4 of the said Act. This being the case, it is of no avail to the State, to submit (which submission has been made in the Supreme Court for the first time), that there is a dispute between the original owner and the subsequent purchaser, as a result of which compensation could neither be tendered nor paid. Apart from the said plea being an afterthought, it is also of no avail to either the

DDA or the Land Acquisition Collector who, in any case, were not in any dilemma as to who should be paid. In fact, it is clear that the deposit made in Court pursuant to the order of the High Court of Delhi dated 30th December, 2013 has only been made in order to pay the original owner of the land. Accordingly, this plea has also to be turned down.”

13. Resultantly, the Rule is made absolute. The writ petition is allowed. The acquisition proceedings in respect of land of the petitioner being comprised in khasra No. 835 and 837 measuring 1 bighas 2 biswas, situated in the Revenue Estate of village Chattarpur, Delhi including notification bearing no. 9(16)/80/L&B dated November 25, 1980 issued under Section 4 of the Old Act and all subsequent proceedings are quashed. No costs.

CM No. 18494/2015

Dismissed as infructuous.

G.S.SISTANI, J

V. KAMESWAR RAO, J

OCTOBER 25, 2017/ak