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

% Judgement delivered on: 11th April, 2017

+ **W.P.(C) 9023/2015 & CM No.20425/2015**

PREM CHAND Petitioner

Through : Mr.Arun Kumar Kaushik, Advocate.

Versus

UNION OF INDIA & ORS Respondents

Through : Mr.Siddharth Panda, Advocate for L
& B.
Mr.Pawan Mathur, Advocate for
DDA.
Mr.Rajesh Kumar & Ms.Santwana,
Advocates for UOI.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J. (Oral)

1. The facts alleged are that the petitioner is a co-owner to the extent of 1/3rd of the 1/4th joint share in Khasra Nos.228/1 (2-16), 229 (4-40), 230/1(2-12), 250 (4-16), 251 (4-16), 252/2 (2-16), 269/1 (2-00), 270 (4-16), total land admeasuring 28 bighas 16 biswas situated in the revenue estate of Village Kotla Mahigram, Tehsil Mehruali, Delhi.

2. The said land was sought to be acquired along with a large

chunk of land admeasuring 625 bighas and 12 biswas of village Kotla Mahigram, Tehsil Mehruali, Delhi. The notification under Section 4 of the Land Acquisition Act, 1894 (the old Act) was issued on 06.04.1964 for planned development of Delhi. Thereafter, the declaration under Section 6 (as per the old Act) was published on 07.12.1966. The award bearing No.205/1986-87 of village Kotla Mahigram, Tehsil Mehruali, Delhi was pronounced in the year 1986-87 whereby the aforesaid land belonging to the petitioner was also acquired.

3. It is the case of the petitioner that despite acquisition proceedings which culminated in the award made in the year 1986-87, the compensation in respect of the land, which is subject matter of the present petition, has not been paid to the petitioner by the LAC despite various applications made for making payment.

4. The respondents have filed their counter affidavit wherein they alleged that the petitioner has failed to place any documentary proof to demonstrate his ownership/claim over the land in question and has not made the other co-owners as party to the writ petition. However, the petitioner has filed a Khatoni of the year 1990-91 to demonstrate his ownership.

5. The following paragraph of the counter affidavit dated 15.03.2016 is relevant:-

“6. That the land in question i.e. Khasra No.228/1 (2-16), 229 (4-4), 230/1(2-12), 250(4-16), 251 (4-16), 252/2 (2-16), 269/1 (2-0), 270 (4-16) ad-

measuring 28 bighas 16 biswas (Petitioner is claiming 1/12 share)situated at the revenue estate of village Kotla Maigrain, New Delhi was notified under Section 4 of the Land Acquisition Act on 06.04.1964 followed by declaration under section 6 of the Land Acquisition Act on 07.12.1966 for Planned Development of Delhi. In pursuance of said notification, notices under section 9 & 10 as provided under the Act, were issued to the interested persons, inviting the claims from all the interested persons and claims were also filed by the interested persons. The then Land Acquisition Collector passed Award No.205/1986-87 dated 19.09.1986 after considering the claims of the claimants. Further, possession of the above mentioned land were taken over on 04.12.1986, 12.12.1996 and 05.03.1997 and handed over to the beneficiary department. That part payment of the compensation was paid to Sh.Balbir Singh s/o Sunehari on 28.02.2006 for Rs.28,728/- and remaining amount was sent in RD as there was some dispute.”

6. As per the counter affidavit, the part compensation has been paid only to a co-owner Balbir Singh s/o Sunehari on 28.06.2006 to the tune of `28,728/- and the remaining amount has been sent in RD as admittedly there was some dispute. The respondent had not disclosed whether any notice was sent or served upon the petitioner herein or any claim was filed by the petitioner or any amount of compensation has been paid to the petitioner in respect of the aforesaid acquisition.

7. Thus in the circumstances the Court is the opinion that the relief claimed has to be granted in view of the decision in *Pune*

Municipality Corporation & Anr. V. Harakchand Misirimal Solanki & Ors. (2014) 3 SCC 183 wherein the Supreme Court has held as under:-

“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 (emphasis supplied)”

8. Further, in *Bharat Kumar Vs. State of Haryana & Ors* 2014(3) SCALE 393, Supreme Court also held as under:-

“Sub-section (2) of section 24 commences with a non-obstante clause. It is a beneficial provision. In view of this provision, if the physical possession of the land has not been taken by the acquiring authority though the award is passed and if the compensation has not been paid to the land owners or has not been deposited before the appropriate forum, the proceedings initiated under the act, 1894 is deemed to have been lapsed.”

9. In the present case, the appropriate government has not denied that the compensation is not disbursed to the petitioner and therefore, this Court is of the opinion that though the issue of possession is disputed, but, in line with the decision in *Pune Municipality* (supra) the relief claimed needs to be granted. The declaration is issued that the acquisition of the land qua the share of the petitioner in respect of

aforesaid Khasra numbers has therefore lapsed in view of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Consequently, the respondents are granted a year's time to take appropriate suitable action failing which they shall ensure that possession is restored to the recorded owner.

10. The writ petition and pending miscellaneous applications are allowed in the above terms.

YOGESH KHANNA, J

S. RAVINDRA BHAT, J

APRIL 11, 2017

M/RS