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

% *Date of Judgment: 21st February, 2018*

+ W.P.(C) 631/2016
ASHOK KUMAR & ORS. Petitioners

Through: Mr.Anirudh Ahuja, Advocate

versus

GOVT. OF NCT OF DELHI & ORS. Respondents

Through: Ms.Astha Tyagi and Ms.Urmiljeet
Kaur, Advts for LAC/L&B.

Mr.Dhanesh Relan, standing counsel
for DDA with Ms.Kajri Gupta, adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. This is a petition under Article 226 of the Constitution of India filed by the petitioners. The petitioners seek a declaration that the acquisition proceedings initiated with respect to land comprised in Khasra nos.2/22 min (0-12), 4/2 min (1-10) measuring 2 bighas 02 biswas, situated in the revenue estate of village Kirari, Suleman Nagar (Patti Nithari), Delhi (hereinafter referred to as 'the subject land') is deemed to have lapsed in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the '2013 Act'), as neither the physical possession of the subject land has been taken nor the compensation has been paid to the petitioners.
2. Counsel for the petitioners submits that in this case a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 21.03.2003. A Section 6

declaration was made on 19.03.2004 and thereafter an Award bearing no.25/2005-06/DC (NW) was rendered on 06.02.2006. Counsel for the petitioners relies on Section 24(2) of the 2013 Act in support of his submission that as per the aforesaid Section, in case the award has been made five years or more prior to the commencement of the Act and either possession has not been taken or compensation has not been tendered, the acquisition proceedings would deem to have lapsed. Counsel for the petitioners further submits that the award was rendered as far back as in the year 2006 and till date the petitioners continue to remain in the actual physical possession of the subject land and compensation has also not been tendered to the petitioners. Reliance is also placed on the counter affidavit filed by the LAC, as per which, compensation has not been paid to the petitioners.

3. Counsel for the LAC has relied on para 7 & 8 of the counter affidavit so filed, which are reproduced as under:

“7. That under the aforesaid Award possession of Khasra Nos.2/22 min (0-10) and 4/2 min (3-09) has been taken by the government on 13.10.2006 leaving behind the remaining built up area of 2//22 min (0-07) & 4//min(1-00). That since the possession has been taken over in part from a particular Khasra No. therefore it is difficult to ascertain and state that as to from which plot holders/recorded owners the possession in part has been taken.

8. The compensation was paid to some of the plot owners but the same has not been paid to the petitioners for the aforesaid Khasras.”

4. Counsel for the Delhi Development Authority (DDA) submits that the possession of the land has been handed over to the DDA. However, the land has been encroached by the petitioners by putting in building material, bricks, rori and badarpur. We are

informed that the precise purpose for which the land is acquired is that the DDA proposes to construct a Smart City.

5. We have heard the learned counsel for the parties.
6. The counter affidavit filed by the LAC leaves no room for doubt that one of the conditions i.e. pertaining to payment of compensation as per Section 24 (2) of the 2013 Act has not been met by the LAC.
7. It is stated on behalf of the DDA that the land in question is to be used for the proposed smart city. There is no material on record to show that the subject land has been put to use by the DDA or is likely to be used in the immediate future.
8. Resultantly, since the award having been announced more than five years prior to the commencement of the 2013 Act and neither compensation has been tendered to the petitioners nor possession has been taken, the petitioners are entitled to a declaration that the acquisition proceedings initiated under the Land Acquisition Act, 1894 with respect to the subject land are deemed to have lapsed. It is ordered accordingly.
9. The petition stands disposed of.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

FEBRUARY 21, 2018/rb/