

\$~14

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

% *Date of Judgment: 15th February, 2018*

+ **W.P.(C) 861/2015**

BAL KISHAN & ORS.

..... Petitioners

Through: Mr.Pranjal Saran, Mr.Rajesh Gupta
and Mr.M.C.Verma, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Anuj Aggarwal, ASC (GNCTD)
with Ms.Deboshree Mukherjee,
Advocate for respondent no.1.
Mr.Siddharth Panda, Advocate for
respondent/LAC-L&B Department.
Mr.Santosh Kumar Tripathi, ASC for
GNCTD with Mr.Parth Vashishtha,
Advocate for respondent nos.6 & 7.

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 seeking a declaration that the acquisition proceedings in respect of the land comprised in Khasra No.23//13/2(1-10) and 23//18/2(3-5) total measuring 4 bighas 15 biswa situated in the revenue estate of village Mubarakpur Dabas, Delhi (hereinafter referred to as 'the subject land') stands 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 '2013 Act'), as neither the possession has been taken nor compensation has been paid to the petitioners.

2. Counsel for the petitioners submits that a Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 21.03.2003, a declaration under Section 6 of the Act was issued on 19.03.2004 and an Award bearing No.16/2005-06 was passed under Section 11 of the Act on 14.09.2005. He further submits that neither the physical possession of subject land has been taken nor the compensation has been tendered to the petitioners and, thus, the petitioners would entitle to a declaration so prayed.
3. Mr.Panda, counsel appearing for the LAC relies on the counter affidavit, more particularly para 7, to contend that physical possession of part of the land comprised in Khasra No.23//18/2 min (1-09) was taken and handed over to the beneficiary department on 04.04.2006, however, the possession of the remaining land was not taken and compensation pertaining to the entire land was not paid.
4. Counsel appearing for the respondent Nos.6 & 7 submits that averments made by counsel for the petitioners pertaining to possession of the land is factually incorrect as the DDA has allotted the land of which the possession has been taken by LAC to Delhi Police for construction of police housing Kanjhawala near Pocket R-23, Sector-40, Phase-V, Rohini, Delhi at a cost of Rs.29,57,28,854/-. This payment was made on 01.11.2013 and actual physical possession of the land was handed over to Delhi Police on 21.07.2014 and since then

Delhi Police is in actual physical possession of the land, the copy of allotment letter, copy of Administrative approval/expenditure sanction, copy of challan, copy of voucher, copy of cheque given to DDA and copy of photographs have been placed on record. Mr.Tripathi further contends that site plan of the land has also been placed on record and after taking over the physical possession of the land, Delhi Police has awarded the contract to National Building Construction Corporation (NBCC), an entity of Government of India for constructing 8 feet boundary wall around the said land in order to safeguard it from encroachment.

5. We have heard the counsels for the parties.
6. It is the case of the petitioners that the acquisition proceedings with respect to the land subject matter of this writ petition would deem to have lapsed, as neither the possession has been taken nor the compensation has been tendered. He submits that barring an area of 1 bigha 9 biswa, it is an admitted case of the respondents that the possession continues to remain with the petitioners.
7. Mr.Panda, counsel for LAC has relied upon para 7 of the counter affidavit which reads as under:

“7. That in the present case, the possession of land bearing Khasra No.23//18/2 min (1-09) was taken and handed over to the beneficiary department on 04.04.2006. However, possession of the remaining land were not taken over. The compensation with respect to above said lands were not paid to the recorded owners”.

8. Mr.Tripathi relied upon para 1 of the brief facts of his counter affidavit.
9. Para 7 of the counter affidavit filed by the LAC leaves no room for doubt that compensation has not been tendered to the petitioners and,

thus, the acquisition proceedings qua the land of the petitioners would stand lapsed, in view of the provision of Section 24(2) of 2013 Act.

10. We may also note that physical possession of the land as averred by the LAC in the counter affidavit has only been taken with respect to Khasra No.23//18/2 min(1-09) which is also admitted in the counter affidavit filed by respondent nos.6 & 7 and also put to use and the physical possession with respect to balance land has not been taken.
11. Resultantly, the writ petition is allowed.
12. The petitioners are entitled to a declaration that the acquisition proceedings in respect of the land of the petitioners are deemed to have lapsed, however, with respect to the land comprised in Khasra No.23//18/2 min(1-09), the petitioners would only entitle to compensation under the 2013 Act as physical possession has been taken and land has been put to use. It is ordered accordingly.
13. No other ground has been urged before us.
14. The writ petition stands disposed of.

CM No.20061/2015 (stay)

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

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

FEBRUARY 15, 2018

ssc