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

% *Date of Judgment: 20th March, 2018*

+ W.P.(C) 2608/2016

CHATAR SINGH AND ORS.

..... Petitioners

versus

UNION OF INDIA AND ORS.

..... Respondents

+ W.P.(C) 2695/2016

DHARAMPAL

..... Petitioner

versus

UNION OF INDIA AND ORS.

..... Respondents

Present: Mr.Rajesh Gupta, Mr.Harpreet Singh & Mr.Mool Chand Verma, Advocates for the petitioners in both the matters.
Ms.Shubhra Parashar and Dr.G.L.Bhatia, Advocates for UOI/respondents no.1 and 2.
Ms.Ruchika Rathi, Advocate for the LAC/L&B department in Item No.83.
Mr.R.K.Sharma, Advocate for the LAC/L&B department in Item No.84.
Ms.Renuka Arora, Adv. for DSIIDC in both the matters.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. Since both the writ petitions raise a common question of law, for the sake of convenience a common judgment is being rendered although both the petitions have been heard separately.
2. These are petitions under Article 226 of the Constitution of India filed by the petitioners. The petitioners in both the writ petitions seek a

declaration that the acquisition proceedings with respect to their respective lands are deemed to have lapsed as actual physical possession of the land has not been taken.

3. In W.P.(C) 2608/2016 the petitioners claim to be the co-owners of land bearing Khasra No.85//1, 2, 3, 4, 7, 8, 9, 10, 12/1 and 12/2 in the revenue estate of Village Sultanpur Dabas, Delhi. Whereas in W.P.(C) 2695/2016 the petitioner claims ownership of lands bearing Khasra No.78/11, 12, 13, 79/24, 89/9 min, 94/1 in the revenue estate of Village Sultanpur Dabas, Delhi.
4. In both the writ petitions notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 25.08.2005 and a Section 6 declaration was made on 10.07.2006. Thereafter an Award bearing no.1/2008-2009 for village Sultanpur Dabas, Delhi was rendered on 25.04.2008
5. Mr.Rajesh Gupta, counsel for the petitioners submits that although compensation stands paid to the respective petitioners but the petitioners continue to enjoy the actual physical possession over the subject land. Reliance is placed on Section 24 (2) Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the '2013 Act') in support of his submission that the onus to prove that actual physical possession was taken is on the LAC whereas the LAC has failed to discharge its onus to show that actual physical possession was taken as per law. He submits that reliance placed on the *Kabza Karyawahi* can be of no benefit to the respondents as the *Kabza Karyawahi* does not establish that the notice was given to the land owners prior to taking

possession over the land which was in cultivatory possession of the petitioners. It is contended that this is a mandatory requirement and in the absence of the respondents having complied with the same, it cannot be said that the physical possession of the land was taken by the respondents and thus, the case of the petitioners would be covered under the provisions of Section 24 (2) of 2013 Act as one of the two contingencies mentioned in the said provision has not been complied with. Elaborating his arguments further, Mr.Gupta submits that the LAC has miserably failed to discharge the onus of having taken actual physical possession as the LAC has not complied with the settled provisions of law and the judgments of the Supreme court wherein the term ‘actual physical possession’ and the manner in which possession is to be taken have been elaborately discussed. Mr.Gupta also contends that merely because the petitioners have executed documents to show that actual physical possession was taken, that would not bind the petitioners and the said documents would not come in the way of the rights of the petitioners in view of the 2013 Act. Mr.Gupta further contends that series of documents signed by the petitioners giving up all their rights to challenge the acquisition proceedings in future were signed prior to coming into effect of the 2013 Act and the effect of the 2013 Act is that the acquisition proceedings pertaining to the subject lands would automatically lapse in the absence of the LAC having produced any document to show that they had taken actual physical possession of the subject lands in September, 2011.

6. Learned counsels appearing for the LAC and DSIIDC have jointly opposed these petitions. It is contended that not only compensation

stands paid to the land owners in W.P.(C) 2608/2016 on 19.12.2008 and physical possession has been taken on 11.08.2008. In W.P.(C) 2695/2016 possession has been taken on 11.08.2008 and compensation duly stands paid on 22.11.2011. Learned counsels further submits that not only the petitioners have received compensation in terms of the Act but they have also availed the benefit of Special Rehabilitation Package and received payments which are not disputed or denied. Additionally, counsels contend that at no point of time the petitioners have alleged that they signed the documents under coercion, pressure or undue influence or without knowing or understanding the contents of the documents. Counsels also contend that the signatures on the documents have also not been disputed till date and thus, the petitioners are estopped from raising the contentions so raised before this Court. Counsels also submit that since the acquisition proceeding were completed i.e. possession has been taken and compensation has been paid, there was no occasion for the acquisition proceedings to have lapsed by coming into force of 2013 Act. Counsels also contend that the question so raised is no longer *res integra* and has been specifically dealt with in the case of ***Bhim Singh vs. Government of NCT of Delhi & Another***, W.P.(C) 9101/2014 and other writ petitions, which has also been followed by this Bench as well.

7. We have heard learned counsels for the parties.
8. Arguments so raised by Mr.Gupta, counsel for the petitioners have been dealt with in the case of ***Bhim Singh*** (*supra*). It is also not disputed before us that the petitioners have not only received the compensation but have also received the Special Rehabilitation Package post the order

dated 01.10.2008 pertaining to the Special Rehabilitation Package, which has been reproduced as under:

**“ GOVERNMENT OF NCT OF DELHI
LAND & BUILDING DEPARTMENT
B-BLOCK: VIKAS BHAWAN: NEW DELHI.**

No.F.9(20)/80/L&B/LA/Vol.II/8226-44

Dated: 01-10-2008

ORDER

The government of the NCT of Delhi have taken into consideration the general increase in prices of land and the inequity of giving compensation based on the procedure followed under the Land Acquisition Act, 1894. Therefore, the government have decided to give a Special Rehabilitation Package for the people affected by land acquisition in respect of the cases in which the land acquisition awards have not been announced till December 18, 2007, details of which are:-

1. The amount of compensation effective from December 18, 2007 would be discounted by Rupees 11.80 lakhs per acre per year for those lands which were notified under section 4 for acquisition in 2006 and 2005.
2. Though this Special Rehabilitation Package would involved additional funds for making payment of compensation to the farmers, the amount would be recovered while determining the cost of land allotted to other government agencies.
3. The other elements of the award namely solatium and interest would be allowed as per rules.
4. The Special Rehabilitation Package would not be treated as precedent for the future.
5. The payment of compensation should be done in a time bound manner.
6. The package would apply to all agricultural lands.
7. The Special Rehabilitation Package should be accepted by individual farmers and made applicable in each case only, if they do not mount a challenge to the award already announced

by the LAC. If they have challenged the award they must withdraw the petition to avail of the benefit of the Special Rehabilitation Package.

Sd/-
(G.S. MEENA)
Addl. Secretary (L&B)”

9. The petitioners accepted the rehabilitation package and received additional payments thereunder vide cheque no.295412 dated 23.11.2011 in the sum of Rs.63,13,553/- (by petitioners in W.P.(C) 2608/2016) and vide cheque no.295350 dated 22.11.2011 in the sum of Rs.13413410/- (by petitioner in W.P.(C) 2695/2016). The petitioners also submitted applications and undertakings for availing and receiving payments under the said package and a sample affidavit and undertaking of one of the petitioners is reproduced as under:

“BEFORE THE LAND ACQUISITION COLLECTION
(NORTH-WEST) KANJHAWALA, DELHI.

VILLAGE : SULTANPUR
DABAS

AWARD NO.01/2008-09

SUB: APPLICATION FOR PAYMENT OF SPECIAL REHABILITATION PACKAGE IN PURSUANCE OF ORDER PASSED BY NCT OF DELHI VIDE ITS ORDER NO.F.9(20)/80/L&B/LA/VOL.II/8226-44 dated 01.10.2008 IN RESPECT OF LAND BEARING KHASRA NUMBER 85/1 (4-3), 2 (4-4), 3 (4-4), 4 (1-18), 7 (2-15), 8 (4-16), 9 (4-16), 10 (4-16), 12/1 (3-8), 12/2 (1-8) SITUATED IN VILLAGE SULTANPUR DABAS, DELHI.

SIR,

It is submitted as under:-

1. That the land bearing khasra number as above situated in the revenue estate of village Sultanpur Dabas, Delhi has been acquired and possession of above said land has also been taken by the Govt. through LAC from the present applicant.
2. That I have also been received the compensation of above said land according to my share as per the award.
3. That the said land is free from all encumbrances, Court case, dispute and after examination of all aspects I have received the compensation amount according to my share in the above said land. Hence I am entitled to receive the Special Rehabilitation Package amount.
4. That I say that I have also submitted a undertaking/declaration as per clause 7 of the order dated 01/10/2008 passed by the GNCT vide its order No.F.9(20)/80/L&B/LA/Vol.II/8226-44 dated 01/10/2008.

PRAYER:-

It is therefore respectfully prayed that the payment of Special Rehabilitation Package according to order dated 01/10/2008 may kindly be released in favour of the applicant, in the interest of justice.

PLACE: DELHI

DATED: 05/09/2011

(APPLICANT)

Name:- Chhater
Singh

S/o:- Neki Ram

R/o VPO Sultanpur,
Delhi

**“UNDERTAKING FOR PAYMENT OF SPECIAL
REHABILITATION PACKAGE**

I, Chattar Singh s/o Sh.Neki Ram R/o Village Sultanpur Dabas, Delhi do hereby undertake as under:-

1. That my land bearing Khasra number 85/1 (4-3), 2 (4-4), 3 (4-4), 4 (1-18), 7 (2-15), 8 (4-16), 9 (4-16) etc. measuring total of

36 bigha 08 biswa, having 3/8 share in the revenue estate of village Sultanpur Dabas was notified u/s 4 of LA Act vide notification No.F 7(24)/2004/L&B/LA/6420 dated 25/08/2005 and u/s 6 of L.A. Act, vide declaration dated 10/07/2006.

2. That my above said land was acquired by the GNCTD vide Award No.1/2008-09 and market value was fixed at Rs.____ per Acre alongwith other statutory benefits under the provisions of Land Acquisition Act, 1894.
3. That whereas on representations made by the farmers the Government has announced a Special Rehabilitation Package dated 01/10/2008 which, I hereby accept. I have fully understood the contents of the Special Rehabilitation Package offered by the Government and shall abide by the same.
4. That I have already received the compensation awarded by the LAC vide the aforesaid award.
5. That now I am fully satisfied of my own free will and without any force, pressure, misunderstanding and inducement with the compensation including Special Rehabilitation Package being given to me by the Government in lieu of compulsory acquisition of my land.
6. That before the offer of Special Rehabilitation Package I have filed reference petition under section 18 of LA Act after receiving the compensation under protest, which is diarised at Sl. No.____ dated____ with the LAC (N-W) office.
7. That as I have agreed to receive the compensation on my own free will and consent alongwith the amount of Special Rehabilitation Package and after being fully satisfied with the total amount of compensation offered for my land my reference u/s 18 of the Act shall not be sent to Reference Court for adjudication, and the same shall be treated as withdrawn.
8. That I undertake not to agitate and raise any claim in respect of compensation and other related benefits in any Court of law or authority / authorities at any point of time.

This shall be acceptable to my successors, legal representatives, legal heirs and assignees as well. In the eventuality of my having preferred any appeal before any Court of law I shall withdraw the same and submit proof of it before claiming Special Rehabilitation Package.

9. That I further undertake not to challenge the terms and condition of Special Rehabilitation Package before any Court of law or authority or authorities at any point of time. This shall also be acceptable to my successors, legal representatives, legal heirs and assignees as well.

10. That on my above undertaking and acceptance of compensation including Special Rehabilitation Package, all my rights qua the acquired land shall cease. Hence no cause of action shall arise for agitating the matter in any court of law, or authority or authorities. I may, therefore, be disbursed the rehabilitation package towards full and final settlement in respect of my acquired land.

Deponent

VERIFICATION:-

Verified at Delhi on 6th day of September, 2011 that the contents of my above undertaking are true and correct and I have signed and verified the same after fully understanding the contents and implications of Special Rehabilitation Package, I have no concealed any material fact there from.

Deponent"

9. Based on the affidavits and undertakings, it would leave no room for doubt that the petitioners had accepted the compensation including Special Rehabilitation Package and had given up all rights of challenge in any court of law much prior to coming into force of the 2013 Act.
10. Mr.Gupta has laboured hard to convince this Court that the onus was on the LAC to show that the actual physical possession was taken and law

laid down by the Supreme Court giving mandatory directions with regard to the manner in which possession has to be taken has been ignored. In our view, this argument is not open to the petitioners as the petitioners have not disputed that possession has not been taken. Such an argument would be open only to those petitioners who contest that actual physical possession was not taken or given by them. In this case, once the petitioners themselves have admitted that actual physical possession was taken, it does not lie for the petitioners either to raise a ground or to contest that the LAC must discharge its onus. In our view, once the land owner himself has admitted that possession was taken, nothing further would be required to show that possession was taken, more so, where not only compensation has been paid to the petitioners, the petitioners have also availed of Special Rehabilitation Package and received additional payments and thus, divested themselves of all rights in respect of the acquired land.

11. For the reasons stated above, we find no merits in the writ petitions. The writ petitions are accordingly dismissed.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

MARCH 20, 2018

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