

\$~32

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

Date of Judgement: 3rd October, 2018

+ **W.P.(C) 2255/2016**

CHANDERMAL AND ORS

.....Petitioners

Through: Mr. Hara Prasad Sahu, Mr. Shiv Kant Mishra & Mr. Kamlesh Kumar Mishra
Advocates.

Versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr. L.C. Singhi & Mr. Mithilesh Pal
Advocates for R-1/UOI.
Ms. Astha Tyagi, Advocate for
LAC/L&B.
Mr. M.K. Singh, Advocate for DDA.

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 Constitution of India filed by the petitioners seeking a declaration that the acquisition proceedings with respect to 1 Bigha 7 Biswas land comprised in Khasra No. 15/2/2 situated in the revenue estate of village Ali, New Delhi (hereinafter referred 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 '2013 Act') as neither the actual physical possession of the

subject land has been taken nor the compensation in respect thereof has been paid to the petitioners.

2. In this case, a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'Act') was issued on 16.04.1964 and a declaration under Section 6 was made on 22.12.1966. Thereafter, an award bearing no. 3/97-98 was passed on 05.12.1997 but since there was no mention of Khasra No. 15/2/2(1-07), subsequently the LAC passed corrigendum to the Award on 10.12.1997.
3. Mr. Hara Prasad Sahu, learned counsel for the petitioners submits that since the actual physical possession of the subject land has not been taken and compensation in respect thereof has not been paid, thus the petitioners would be entitled to a declaration under Section 24 (2) of the 2013 Act.
4. Ms. Astha Tyagi, learned counsel for the LAC submits that the possession of Khasra No. 15/2/2 measuring 1 Bigha 7 Biswa has been taken over, however there is no record of payment of compensation in Naksha Mutzamin to the petitioners. Relevant Para.6 and Para.7 of the counter affidavit filed by LAC reads as under :-

"6. ...That initially the Khasra No. 15/2/2 (1-07) in question was not mentioned in the Award but was included subsequently by making modification in the Award and passing corrigendum. (kindly refer to Page 40 of the petition). The petitioners land bearing Khasra No, 15/2/2 was included by corrigendum vide Award No. 3/97-98 (supply)."

"7. That the details as regards compensation are not found in the Naksha Mutzamin with the respondent and the respondent has called for further records to ascertain the status of the compensation and other documents. That the possession of the land in question Khasra No. 15/2(01-07) has been taken by the answering respondent on 26.05.1998."

5. Mr. M.K. Singh, learned Counsel for DDA submits that the possession of the land has been handed over by LAC/L&B Department on 26.05.1998. Relevant Para of the Counter Affidavit filed by DDA is as under:-

"5(iii) That it is submitted that the physical possession of the above stated land of Khasra No. 15/2 (1-7) of village Aali, Delhi, to the extent as mentioned above, have been handed over to DDA by LAC/L&B Dept., GNCTD on 26.05.1998, the acquisition is complete qua such land and such land vests in the government free from any encumbrance."

6. We have heard learned counsels for the parties.
7. Reading of the counter affidavit filed by LAC makes it clear that possession of land falling in Khasra No 15/2/2 measuring 1 Bigha and 7 Biswa of village Aali, New Delhi, has been taken but the compensation in respect of the subject land thereof has not been tendered to the petitioners.
8. Taking into consideration the submissions made and the stand taken by LAC that possession of the subject land has been taken over but the compensation in respect of subject land has not been tendered to the petitioners, we are of the considered view that the necessary ingredients of Section 24 (2) of 2013 Act stand satisfied. Since the award having been announced more than five years prior

to the commencement of the 2013 Act and, having regard to the fact that the compensation has not been tendered, the petitioners are entitled to a declaration that the acquisition proceedings initiated under the Act with regard to the subject land is deemed to have been lapsed. It is ordered accordingly.

9. The writ petition stands disposed of in above terms.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

OCTOBER 3, 2018
afa

सत्यमेव जयते