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

Date of Judgement: 20th March, 2018

+ **W.P.(C) 5253/2016**

SANTOSH TIKOO

.....Petitioner

Through: Ms. Iti Sharma, Advocate.

Versus

GOVT OF NCT OF DELHI AND ORS

.....Respondents

Through: Mr. Yeeshu Jain, Standing Counsel for
L&B/LAC with Ms. Jyoti Tyagi,
Advocate.

Ms. Mrinalini Sen Gupta with
Mr. Tanmay Yadav Advocates for DDA.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S. SISTANI, J. (Oral)

1. Pleadings are complete. Accordingly, the present writ petition is set down for final hearing and disposal.
2. This is a petition under Article 226 of Constitution of India filed by the petitioner seeking a declaration that the acquisition proceedings with respect to 200 sq.yards of property bearing no.1124, comprised in Khasra No. 54/16, situated in the revenue estate of village Karala, Tirthankar Nagar, Jain Colony, Kongposh, New Delhi (hereinafter referred as the 'subject land') stand 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 physical

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possession of the subject land has been taken nor compensation has been paid to the petitioner.

3. In the present case, a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'Act') was issued on 21.03.2003 and a declaration under Section 6 was made on 19.03.2004. Thereafter, an award bearing no.22/2005-06 was passed by the Land Acquisition Collector on 28.12.2005.
4. Ms. Iti Sharma, learned counsel for the petitioner submits that as the physical possession of the subject land has not been taken and compensation in respect thereof has not been paid, the petitioner would be entitled to a declaration under Section 24 (2) of the 2013 Act. Learned counsel further relies on the decision rendered by the Supreme Court in **Govt. of NCT of Delhi Vs. Manav Dharma Trust and another**, reported in **2017 (6) SCC 751**, in response to the stand taken by LAC that the petitioner has no *locus standi* to file the present petition as he is not the recorded owner. Reliance is placed on para 28 of this judgment which reads as under:-

"28. Thus, the subsequent purchaser, the assignee, the successor in interest, the power-of-attorney holder, etc., are all persons who are interested in compensation/landowners/ affected persons in terms of the 2013 Act and such persons are entitled to file a case for a declaration that the land acquisition proceedings have lapsed by virtue of operation of Section 24(2) of the 2013 Act. It is a declaration qua the land wherein indisputably they have an interest and they are affected by such acquisition. For such a declaration, it cannot be said that the respondent-writ petitioners do not have any locus standi."

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5. Mr. Yeeshu Jain, counsel for the LAC submits that out of total land measuring 4 Bighas 16 Biswas comprised in Khasra No.54//16min, actual vacant physical possession of 4 Bighas 13 Biswas was taken in the year 2007 and handed over to DDA, and the compensation amount in respect thereof has not been paid to the recorded owner. Mr. Jain has also opposed this petition on the ground that the petitioner is claiming benefit under Section 24(2) of the 2013 Act based on General Power of Attorney and Agreement to Sell which cannot confirm title of the petitioner as the same are not admissible mode of transfer. Relevant portion of the counter affidavit filed by LAC reads as under:

"That the present writ petition is liable to be dismissed as petitioner is not the recorded owner of the subject land but the present writ petition has been filed in the name of the petitioner who is claiming to be the GPA holder. The GPA Holder cannot maintain the writ petition in his own name as the GPA/ Agreement to Sell/ Affidavit etc. does not confer any right, title or interest on the petitioner as these documents are not the admissible modes of transfer of lands.

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It is pertinent to mention here that out of the total land measuring 4-16, the government has taken physical possession of (4-13) and (0-03) could not be taken.

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The Award was also passed vide Award No. 22/2005-06 dated 28.12.2005 and the possession of the lands falling in khasra number 54//16min (4-13) was also taken in the year 2007 itself on the spot and handed over to the DDA on the spot by preparing possession proceeding on the spot. The recorded owner never

turned up- to claim compensation as he perhaps sold the lands through unauthorized modes of transfer."

6. Counter affidavit has also been filed by DDA, relevant portion of which reads as under:

"v. The content of the said paragraph is denied. It is submitted that the possession of Khasra No. 54//16(4-13) was handed over to DDA on 23.02.2007 by the LAC/L&B, which was later transferred to RPD-1 on 18.07.07 for Rohini Residential Scheme.

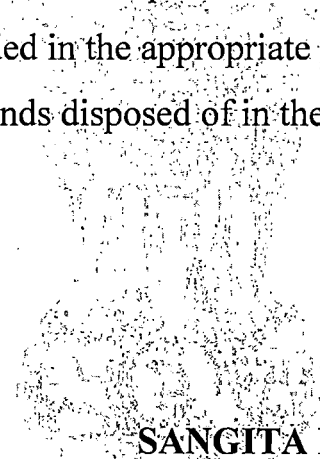
vi. The content of the said paragraph is specifically denied. It is denied that the compensation has not been paid. Instead it is submitted that the amounting to Rs.104,06,06,716/- was forwarded to LAC Department vide cheque no:094622 dated 06.06.06.."

7. We have heard learned counsel for the parties.
8. Reading of the counter affidavit filed by LAC and DDA makes it clear that out of the total land measuring 4 Bighas 16 Biswas comprised in Khasra No.54//16, the actual physical possession of only 4 Bighas 13 Biswas has been taken on 23.02.2007 and with respect to compensation, the counsel for LAC submits that the same has not been paid to the recorded owner. As far as the objection with regard to the maintainability is concerned, we find the same to be misplaced in view of the observations made by the Supreme Court in the case of **Manav Dharma Trust (supra)**. Accordingly, the submissions made by the counsel for the LAC that the petitioner has no *locus standi* to file the present petition as he is the subsequent purchaser, holds no ground.
9. Having regard to the submissions made and the categorical assertion made in the counter affidavit filed by LAC as well by

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DDA, that part possession of the subject land has been taken and the compensation in respect of the entire area of subject land has not been paid to the petitioner and since the award has been announced more than five years prior to the commencement of the 2013 Act, the petitioner is entitled to a declaration under Section 24(2) of the 2013 Act that the acquisition proceedings initiated under the Act with regard to the subject land are deemed to have lapsed. It is ordered accordingly.

10. It is also made clear that we have not expressed any opinion on the title of the above land. The question of title of the subject land is left open to be decided in the appropriate court of jurisdiction.
11. The writ petition stands disposed of in the above terms.


G.S. Sistani
G.S.SISTANI, J.

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SANGITA DHINGRA SEHGAL, J.

MARCH 20, 2018/gr