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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Judgement: 6th March, 2018

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W.P.(C) 3903/2015, CM APPL. 6971/2015, 3371/2016

KIRAN KUMAR ANAND

.....Petitioner

Through: Mr. Akhil Sachar, Advocate.

Versus

**THE LT. GOVERNOR, NATIONAL CAPITAL TERRITORY OF
DELHI & ORS.**

.....Respondents

Through: Mr. Yeeshu Jain, Standing Counsel with
Ms. Jyoti Tyagi, Advocate for
L&B/LAC. Mr. Nikhil Rohtagi with
Mr. Shashank Khurana, Advocates for
DDA.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J. (Oral)

C.M No. 3371/2016(Condonation of delay)

1. This is an application filed by the DDA seeking condonation of delay of 115 days in filing the counter affidavit. There is no opposition to the prayer made in this application. Accordingly, the application is allowed. Delay of 115 days is hereby condoned. Counter affidavit filed by DDA is taken on record.

W.P(C) 3903/2015

2. With the consent of the parties, the present Writ Petition is set down for final hearing and disposal.
3. This is a petition under Article 226 of Constitution of India filed by the petitioner seeking quashing and setting aside of the Notification

issued under Section 4 of the Land acquisition Act, 1894 being No. F11(19)/2001/L&B/LA/20112 dated 21.03.2003, setting aside of the declaration issued under Section 6 of the Land acquisition Act, 1894 being No.F11(15)/2004/L&B/LA/28227 dated 19.3.2004 and the Award No. 06/2005-06/DC(N-W) dated 27.06.2005/12.7.2005. The petitioner further seeks a declaration that the acquisition proceedings in respect of the land of the petitioner comprised in Khasra No.39/7,8, 13, admeasuring 500 square yards, situated in the revenue estate of village Lado Sarai, Tehsil- Hauz Khas, Mehrauli, New Delhi (hereinafter referred as the 'subject land') stand lapsed in view of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as '2013 Act') as neither the physical possession has been taken nor the compensation has been paid to the petitioner.

4. In this 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. 06/2005-06/DC (N-W) was passed on 12.07.2005 with respect to the subject land.
5. Mr. Akhil Sachar, learned counsel for the petitioner submits that he has not made a written prayer in his petition seeking benefit of lapse of proceedings under Section 24(2) of the Right to Fair Compensation and Transparency in Land acquisition Rehabilitation and Resettlement Act, 2013 Act (hereinafter referred to as 2013 Act) but relevant averments have been made in this regard before

this court and in the writ petition. The counsel submits that as neither the physical possession of the subject land was taken nor the compensation in that regard was paid by the respondents, 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 in the counter affidavit 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.”

6. Mr. Yeeshu Jain, learned Counsel for LAC raised an objection about the *locus standi* of the present petitioner on the ground that the present petition has been filed by the petitioner being a GPA holder of the subject property and not as a recorded owner of the subject property. He further submits that neither the possession of the subject land has been taken over from the land owners nor the compensation with regard to the subject land was paid to the

interested persons. Para 6 of the Counter affidavit filed by the LAC, reads as under :-

"6. That it is submitted that the lands of village Prehlad Pur Bangar were notified vide Notification under section 4 of the Land Acquisition Act, 1894 dated 21.3.2003 which was followed by the Notification under Section 6 of the Act dated 19.3.2004. The Award was also passed vide Awards No. 6/2005-06 dated 12.7.2005 however neither the possession could not be taken nor the compensation be paid for the subject land falling in above-said khasra numbers."

7. Further, the Counter affidavit has also been filed by the DDA and relevant portion of which reads as under :-

"f)Notwithstanding all of the above, in the alternate, I say that provisions of the Land Acquisition Act, 2013 do not apply to the land in question; as per the land records available with DDA, the land of Kh. 39/7(4-16), 8(4-15) & 13(1-14) village Prahlad Pur Bangar notified u/s 4 of the LA Act vide No. F11 (19)/2001/L&B/LA/ dated 21.03.2003, Declaration u/s 6 vide No. F11 (15)/2004/L&B/LA dated 19.03.2004 and acquired vide award No. 06/2005-06. The physical possession of the land of these Khasra Nos. of the Petition has not been handed over to DDA by LAC L&B Deptt. GNCTD due to existence of residential houses, factories, and Kotha Jat as per possession proceeding dated 26.08.2005. And that, DDA has remitted compensation to L&B Deptt through cheque No. 074064 dated 09.08.05 amounting to Rs. 80,40,76,004/- in respect of land acquired vide award No. 06/05-06. In any case, the Act cannot have retrospective application, even if it applies according to the understanding applied by the Petitioners herein."

8. We have heard learned counsel for the parties.
9. The learned counsel for the petitioner has submitted that neither physical possession of the subject land has been taken nor compensation has been paid to the petitioner. Counsel has also submitted that the objections of the LAC regarding *locus standi* of the petitioner is misplaced in view of the observations made by the Supreme Court in ***Manav Dharma Trust (supra)*** where the rights of the subsequent purchaser have been recognised.
10. We are of the considered view that the judgement of the Supreme Court in the case of ***Manav Dharma Trust (supra)*** apply to the facts of the present case for the reason that in this case the possession has not been taken and compensation has not been paid to the recorded owner. In this case as the physical possession has not been taken and compensation having not been paid at all, in those circumstances, the decision rendered in the case of ***Manav Dharma Trust (supra)*** would come to the aid and rescue of the petitioner and thus the submissions made by LAC in the counter affidavit that the petitioner is not a recorded owner but a GPA holder and therefore cannot claim release of the subject land is highly belated and misplaced.
11. Having regard to the submissions made and the categorical assertion made in the counter affidavit filed by LAC, that neither the possession of the land comprised in Khasra No. 39/7/8/13 admeasuring 500 square yards has been taken over nor the compensation in respect thereof has been paid to the petitioner and

since, the award having been announced more than five years prior to the commencement of the 2013 Act, the petitioner is entitled to a declaration that the acquisition proceedings initiated under the Land Acquisition Act, 1894 with regard to the subject land are deemed to have lapsed. It is ordered accordingly.

12. However, we make it clear that we have not expressed any opinion on the title of the subject land. The question of title of the subject land is left open to be decided in the appropriate court of jurisdiction.

13. The writ petition is disposed of.

C.M. APPL. 6971/15(Stay)

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

SANGITA DHINGRA SEHGAL, J

G.S.SISTANI, J.

MARCH 6, 2018

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