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

+ **W.P.(C) 5647/2016**

RAM DEVI AND ORS Petitioners

Through: Mr.Shekhar Gupta and Mr.Ankit Jain,
Advocates.

Versus

GOVT OF NCT OF DELHI AND ORS Respondents

Through: Mr.Sumit Jidani, Adv. for R-1.
Mr.Yeeshu Jain, Standing Counsel for
LAC/L&B Deptt.
Mr.Arun Birbal and Mr.Sanjay Singh,
Advocates for DDA.

+ **W.P.(C) 6290/2016 & CM APPL.25777/2016**

OM PRAKASH & ORS Petitioners

Through: Mr.Shekhar Gupta and Mr.Ankit Jain,
Advocates.

Versus

GOVERNMENT OF NCT OF DELHI THROUGH ITS CHIEF
SECRETARY & ORS Respondents

Through: Mr.Yeeshu Jain, Standing Counsel for
LAC/L&B Deptt.
Ms.Nazia Parveen for Mr.Sanjeev
Sagar, Standing Counsel for DDA.

+ **W.P.(C) 6292/2016 & CM APPL.25781/2016**

SURENDER SINGH RANA & ORS Petitioners

Through: Mr.Shekhar Gupta and Mr.Ankit Jain,
Advocates.

versus

GOVERNMENT OF NCT OF DELHI THROUGH ITS CHIEF
SECRETARY & ORS Respondents
Through: Ms.Nazia Parveen for Mr.Sanjeev
Sagar, Standing Counsel for DDA.
Mr.Arun Birbal and Mr.Sanjay Singh,
Advocates for DDA.
Mr.Yeeshu Jain, Standing Counsel for
LAC/L&B Deptt.

+ **W.P.(C) 7523/2016 & CM APPL.30955/2016**
ATTAR SINGH Petitioner
Through: Mr.Shekhar Gupta and Mr.Ankit Jain,
Advocates.
versus

GNCT OF DELHI THROUGH ITS CHIEF SECRETARY AND ORS
..... Respondents
Through: Mr.Arun Birbal and Mr.Sanjay Singh,
Advocates for DDA.
Ms.Astha Tyagi, Adv. for LAC/L&B.

+ **W.P.(C) 7525/2016 & CM APPL.30958/2016**
ROHIT RANA AND ORS Petitioners
Through: Mr.Shekhar Gupta and Mr.Ankit Jain,
Advocates.
versus

GNCT OF DELHI THROUGH ITS CHIEF SECRETARY AND ORS
..... Respondents
Through: Mr.Dinesh Kumar Chaurasia, Adv.
for R-1 & R-2.
Mr.Yeeshu Jain, Standing Counsel for
LAC/L&B Deptt.

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W.P.(C) 7526/2016 & CM APPL.30960/2016

BALBIR SINGH

..... Petitioner

Through: Mr.Shekhar Gupta and Mr.Ankit Jain,
Advocates.

versus

GNCT OF DELHI THROUGH ITS CHEIF SECRETARY AND ORS

..... Respondents

Through: Mr.Pawan Mathur, Standing Counsel
for DDA.
Mr.Yeeshu Jain, Standing Counsel for
LAC/L&B Deptt.

+

W.P.(C) 5648/2016

BALWAN & ANR.

..... Petitioner

Through: Mr.Shekhar Gupta and Mr.Ankit Jain,
Advocates.

versus

GNCT OF DELHI THROUGH ITS CHEIF SECRETARY AND ORS

..... Respondents

Through: Mr.Pawan Mathur, Standing Counsel
for DDA.
Mr.Yeeshu Jain, Standing Counsel for
LAC/L&B Deptt.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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21.12.2018

Dr. S. Muralidhar, J.:

1. These seven writ petitions, that were heard separately, arise out of a common set of facts and are being disposed of by this common judgment.
2. The Petitioners are seeking a declaration that the acquisition proceedings in respect of land admeasuring 15 bighas 4 biswas (15-4) comprised in Khasra No.27//14/2 (2-8), 15/2 (2-8), 16/1 (1-0), Khasra No.28//11 (4-16), 20(4-12) situated in the Revenue Estate of village Bijwasan, New Delhi (hereinafter 'the land in question') has lapsed in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('the 2013 Act').
3. The common case of all the Petitioners is that they, including their deceased parents and grandfathers, are the recorded owners and *bhumidars* and in physical possession of the land in question which is described as agricultural land. It is not in dispute that a notification dated 13th December, 2000 was issued under Section 4 of the Land Acquisition Act, 1984 ('LAA') followed by a declaration dated 7th December, 2001 under Section 6 of the LAA. Section 17 of the Act was invoked and notification dated 15th March, 2002 was issued. The acquisition of the land was for the public purpose of Dwarka Phase-II for the planned development of Delhi. The Land Acquisition Collector, District South-West, Kapashera, Delhi passed the order No.28/2002-03 dated 24th October, 2002.
4. It is common case of all the Petitioners that compensation in respect of the acquisition has been paid to each of them. However, it is alleged that the

Respondents have not taken the physical possession of the property. It is alleged that they have done so by “executing some alleged documents of the possession of the suit property”.

5. Elaborating the above submissions, learned counsel for the Petitioners submits that the Respondents-authorities never came to the suit property to take the actual physical possession and did not draw any “*panchnama*”. Their further case is that the signatures of the Petitioners or independent witnesses were not obtained on the *panchnama* as is mandatorily required in law.

6. It is admitted by the Petitioners that on 4th and 6th June, 2003, the Respondents issued certificates in respect of payment of compensation to the Petitioners and the certificates noted that possession had been handed over to the Respondents. It is nevertheless claimed that “actual physical possession of the suit property has never been taken by the Respondents-authorities till date”. Mr. Shekhar Gupta, learned counsel for the Petitioners, insisted that till date the Petitioners have continued cultivating the land in question. Even photographs taken by the Petitioners on 11th May, 2016 showed standing crops of the Petitioners with the tube well structure.

7. It is contended by the Petitioners that although Section 17 of the LAA was invoked, the Respondents did not “even take physical possession of the suit property much less commencement of the development for the alleged purpose.” Mr. Gupta relied upon on the decisions in *Pune Municipal Corporation v. Harakchand Misrimal Solanki (2014) 3 SCC 183* and *Delhi Development Authority v. Sukhbir Singh AIR 2016 SC 4275* to urge that as

long as possession of the plot remained with the Petitioners, it would not matter if they had received compensation since one of the conditions specified under Section 24 (2) of the 2013 Act stood fulfilled and this was sufficient for a declaration that the land acquisition proceedings were deemed to have lapsed. It is stated that on 8th June, 2016, the DDA unloaded bricks near the suit property with mala fide intention of raising a boundary wall.

8. At the hearing of Writ Petition (C) No.5647/2016, by an order dated 10th June, 2016, this Court directed status quo to be maintained by the parties. In response to the notice in the writ petition, the DDA filed a counter affidavit wherein it is, inter alia, pointed out that from the Annexure P-3 to the writ petition itself, it is evident that the actual physical possession of the property in question was taken and handed over to the DDA by LAC on 5th September, 2002 itself. It is denied that the actual physical possession of the land remained with the Petitioners. It is then averred that “If at all the petitioners are using the land as is their case, they have subsequently trespassed over the subject matter land and are rank trespassers on public land.”

9. As regards compensation, the DDA states as under:

“Further, the status of disbursement of compensation to the individual recorded owners can be correctly responded by the LAC/L&B Department, GNCTD. However, it is submitted that compensation of rupees one hundred and sixty crores (Rs. 160 crores) in respect of acquisition of the land in issue at village Bijwasan and three other villages vide the subject matter award was paid by DDA to the Land and Building Department, Govt. of

NCT of Delhi vide cheque no. 313070 dated 22.02.2002 and balance payment of rupees twenty five crores (Rs. 25 crores) was made vide cheque no. 790231 dated 09.12.2002. It is not in dispute that the petitioners have already received the compensation for the acquired land.”

10. It is pointed out by the DDA that a substantial part of the land has been acquired and compensation paid to a large number of interested persons.

11. At the outset, the Court would like to observe that neither in ***Pune Municipal Corporation*** nor in ***Delhi Development Authority v. Sukhbir Singh*** (*supra*), was there any observation to the effect that the retention of possession notwithstanding the acceptance of full compensation would per se attract provisions of Section 24 (2) of the 2013 Act. Whether in fact the Petitioners gave up possession is a question of fact. In this regard, it must be noticed that in the reply filed by LAC, it has given the details of the compensation paid to the recorded owners in a tabular form and explained the same as under:

“That it is submitted that as per the Revenue Record/ Khatoni available before the answering Respondent No. 2, Smt. Rama Devi w/o. Om Prakash, sh. Dharam Dev s/o. Gulab Singh, Sh. Bharam Dev S/o. Gulab Singh and Sh. Jai Dev s/o. Gulab Singh were the recorded owners of Khasra No. 27//14/2(2-8), 15/2(2-8), 16/1(1-0), 28//11(4-16) and 20(4-15) i.e total 15 Bigha and 07 Biswas land situated in village Bijwasan when the notification under section 4 was notified. Therefore, the compensation was paid to the respective land owners mentioned herein below:

<i>Land owners</i>	<i>Possession taken</i>	<i>Compensation paid</i>
<i>Smt. Rama</i>	<i>Possession of</i>	<i>Compensation of</i>

<i>Devi w/o Om Prakash</i>	<i>Khasra Nos.27/14/2(2-8), 15/2(2-8), 16/1(1-0), 28/11(4-16) and 20(4-15) i.e. total 15 Bigha and 07 Biswas taken on 05.09.2002.</i>	<i>Rs.3367325/- deducting TDS of Rs.3943.43/- vide cheque no.543408.</i>
<i>Sh.Dharam Dev s/o Gulab Singh.</i>	<i>do</i>	<i>Compensation of Rs.1122442/- deducting TDS of Rs.1314.17/- vide cheque no.543409.</i>
<i>Sh.Bharam Dev S/o Gulab Singh</i>	<i>do</i>	<i>Compensation of Rs.1122442/- deducting TDS of Rs.1314.17/- vide cheque no.543410.</i>
<i>Sh. Jai Dev s/o Gulab Singh</i>	<i>do</i>	<i>Compensation of Rs.3367325/- deducting TDS of Rs.3943.43/- vide cheque no.543411.</i>

12. The Supreme Court in ***Executive Engineer Jal Nigam Central Stores Division U.P. v. Suresh Nand Juyal (1997) 9 SCC 224*** considered what could be termed as ‘symbolic possession’ and held as under:

“Suffice it so say that after symbolic possession is taken, if the petitioner is enjoying the possession, he is enjoying the possession as a trustee on behalf of the public at large and that by itself cannot be considered to be a around to contend that possession is not taken. It is the duty of the person who is occupying the property to look after the property and to see that the property is not defaced or devalued by himself or by others. He cannot subsequently come to the Court to say that actual possession is not taken and therefore he should be protected and land be denotified.”

13. At the time of obtaining compensation, each of the Petitioners appear to have accepted the fact that he is no longer in actual physical possession of the land in question. In fact, the certificate states that the possession was taken over from the Petitioners on 5th September, 2002 itself. At no point of time thereafter did any of the Petitioners write to the Respondent authorities contending that the above statement in the payment certificate was erroneous, In other words the Petitioners never contended that notwithstanding that the payment certificated stated that the possession of the land has been handed over to the State on 5th September 2002, this was factually incorrect. The Petitioners virtually allowed that position to become final.

14. Further, the Court finds that in **DDA v. Sukhbir Singh** (*supra*), the Supreme Court referred to an earlier decision in **Raghubir Singh Sehrawat v. State of Haryana (2012) 1 SCC 792**, where the legal position was explained as under:

“(i) No hard and fast rule can be laid down as to what act would constitute taking of possession of the acquired land.

(ii) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a *panchnama* will ordinarily be treated as sufficient to constitute taking of possession.

(iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in

the presence of independent witnesses and get their signatures on the *panchnama*. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

(iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring /designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

(v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the acquired land has been utilized in furtherance of the particular public purpose, then the court may reasonably presume that possession of the acquired land has been taken”.

15. The case there is stated to have fallen within sub-paragraph (ii). In fact, in ***Sukhbir Singh*** (*supra*), the Court refused to accept the plea that physical possession was not taken. This decision, therefore, is not helpful to the Petitioners.

16. Once the compensation has been admittedly received in full and the Petitioners have in writing conveyed to the LAC that they gave up possession on 5th September, 2002 itself, the only inference could be that which is noticed in ***Suresh Nand Juyal*** (*supra*) that the Petitioners have again trespassed into the land after surrendering it. Consequently, none of the conditionalities attached to Section 24 (2) of the 2013 Act is fulfilled in the present case.

17. A further factor is that although the Award was passed way back on 24th October 2002, no effort was made thereafter by the Petitioners to assert that they continue to remain in actual physical possession of the land in question. They appear to have moved the Court only after the DDA unloaded the bricks near the suit property on 8th June, 2016. The delay in approaching the Court for relief is inordinate and has no convincing explanation.

18. In *Mahavir v. Union of India (2018) 3 SCC 588*, the Supreme Court observed as under:

“23. In the instant case, the claim has been made not only belatedly, but neither the petitioners nor their previous three generations had ever approached any of the authorities in writing for claiming compensation. No representation had ever been filed with any authority, none has been annexed and there is no averment made in the petition that any such representation had ever been filed. The claim appears not only stale and dead but extremely clouded. This we are mentioning as additional reasons, as such claims not only suffer from delay and laches but courts are not supposed to entertain such claims. Besides such claims become doubtful, cannot be received for consideration being barred due to delay and laches.

24. The High Court has rightly observed that such claims cannot be permitted to be raised in the court, and cannot be adjudicated as they are barred. The High Court has rightly observed that such claims cannot be a subject matter of inquiry after the lapse of a reasonable period of time and beneficial provisions of Section 24 of the 2013 Act are not available to such incumbents. In our opinion, Section 24 cannot revive those claims that are dead and stale.”

19. Consequently, for all the aforementioned reasons, the Court finds no merit in these writ petitions and the same are accordingly dismissed. The status quo orders dated 10th June, 2016 are hereby vacated. All pending applications are dismissed.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

DECEMBER 21, 2018
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