

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 30th November, 2018
Pronounced on: 19th December, 2018

+

W.P.(C) 3609/2017

**SHRI HARISH CHAND LOHIYA
DECEASED THROUGH: LRS.**

..... Petitioner

Through: Ms. Geeta Luthra, Senior Advocate
with Ms. Shivani Luthra Lohiya,
Mr. Prateek Yadav and Mr. Pranav
Vashishtha, Advocates.

versus

LAND ACQUISITION COLLECTOR/ADM & ORS. Respondents

Through: Mr. Brajesh Kumar, Advocate for
UOI.
Ms. Mrinalini Sen with Ms. Niharika,
Advocates for R2 & R6.
Ms. Shobhana Takiar, Advocate for
DDA.
Mr. Sanjay K. Pathak with Mr. Sunil
K. Jha, Mr. Kushal Raj Tater, Mr.
M.S. Akhtar and Mr. Shashi Kant
Maurya, Advocates for L&B/LAC.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE SANJEEV NARULA**

J U D G M E N T

Dr. S. Muralidhar, J.:

1. The prayer in this writ petition by the Legal Representatives ('LRs') of late Shri Harish Chand Lohiya is for a declaration that the acquisition in

respect of the land in Khasra No.639/446 Village Arakpur Bagh Mochi, New Delhi measuring 14 bigha 3 biswa situated in the revenue estate of Arakpur Bagh Mochi, Delhi, culminating in Award No. 20A/1974-75 dated 29th March 1975 is deemed to have lapsed on 1st January, 2014. The Petitioners are invoking Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('the 2013 Act')

2. With one preliminary objection of the Respondents being laches in preferring this writ petition, it is necessary to set out, in detail, some background facts.

3. The land in question forms part of the land measuring 24.1 acres that was given on perpetual lease by the Government of Delhi on 19th March, 1924 to one Ram Singh Kabli for the purpose of setting up a factory. There was no clause in the lease deed restricting the right of transfer of perpetual leasehold rights of any part of the land.

4. In 1935-36, Ram Singh Kabli sold his leasehold rights to several others, including late Shri Harish Chand Lohiya. All the names of the subsequent holders of the perpetual leasehold rights were entered into the revenue records.

5. Specific to the case in hand, late Shri Harish Chand Lohiya purchased, through registered sale deed executed in 1936, 14 bighas and 3 biswas of land out of the 24.1 acres of the land in question. These are known as Plot

Nos. 6 and 7, Factory Road, measuring 2 acres and 0.9545 acres respectively. The name of late Shri Harish Chand Lohiya was mutated in the revenue records i.e. the *Khasra Girdawri*, *Jamabandi* etc from 1936 to the last *Jamabandi* recorded in 1975. Thereafter, with the Award having been passed in respect of the acquisition of the land in question under the Land Acquisition Act, 1894 ('LAA'), the above entries were not continued in *Jamabandi*.

6. The general notification bearing No. F (15) F.59 LSG under Section 4 LAA for acquisition of the 34970 acres of land, which included the land in question, for public purpose, was issued on 13th November, 1959. With many landowners objecting to the vagueness of the above notification, a fresh notification under Section 4 of LAA was issued on 15th September, 1962 proposing to acquire 266 bighas and 7 biswas of land, including the land in question for public purposes. This was followed by a declaration under Section 6 of the LAA on 5th December, 1968.

7. On 25th August 1970, the lease of Plot No.6 measuring two acres was revoked since Shri Harish Chand Lohiya and his successors allowed the installation of a petrol pump on a portion of the said land admeasuring 1920 sq. yds. This revocation of lease was challenged in W.P. (C) Nos. 1136/1972 and 1343/1976 in this Court on the ground that the running of petrol pump was permissible under the Master Plan and was done with the express permission of the Land & Development Office ('L&DO'), the lessor. By an order dated 18th February, 1991 in the aforementioned writ petitions this Court quashed the revocation letter dated 25th August, 1970.

8. As regards Plot No.7, the leasehold rights in relation thereto were sought to be revoked by the letter dated 25th June, 1971 on the ground that the plot was being put to agricultural use and not for factory purposes for which it was leased. However, the possession of this plot remained with Shri Harish Chand Lohiya.

9. Award number 20-A/1974-75 in respect of the land situated in Village Arakpur Bagh Mochi, New Delhi was passed on 29th March, 1975. Admittedly, Plot Nos. 6 and 7 formed part of the said Award. However, the fact remained that possession of neither portion of the land was taken over by the Respondents. According to the Petitioners, the compensation determined in terms of the Award, though meagre, was not paid to any of the recorded owners or those having an interest in the land. The Award itself noted that in view of the challenge to the compensation amount, “the entire compensation will be sent to the Court u/s 30-31 LA Act for apportionment.”

10. On 22nd March, 1976, the Land Acquisition Collector (LAC) sent a reference being LAC No.145/1976 under Section 18 of the LAA to the Court of the Additional District Judge (ADJ), Delhi wherein in a statement under Section 19 of the LAA, the LAC referred to the dispute between the lessor and the lessee. The case of the Petitioners is that despite making the reference, the LAC did not in fact deposit the compensation amount in the said reference, as required by Section 31 of the LAA.

11. On 1st March, 1978 Shri Harish Chand Lohiya expired. On 18th May,

1978 an order was passed by the Land & Development (L & DO), Ministry of Works and Housing, Government of India that the re-entry/revocation of the perpetual lease of Plot No.7 was withdrawn and the lease was restored. The letter stated “your ownership and titles in the premises mentioned above are hereby restored to you and binding by the covenants of the original perpetuate lease deed.” This was addressed to Smt. Gunwati Devi, wife of late Shri Harish Chand Lohiya, for herself and on behalf of her sons.

12. It is submitted by the Petitioners that upon restoration of the lease of plot No. 7 and with the dispute over revocation of the lease of plot no.6 still pending, there was an anomalous situation. Award No. 20-A/1974-75 had been passed in respect of the entire land. No apportionment had been made vis-a-vis plots Nos. 6 and 7. No compensation had been tendered or deposited in Court pursuant to the reference under Section 18 of the LAA. Further, possession of the land covered by the Award continued to remain with the Petitioners.

13. Other similarly situated lessees of lands purchased from Ram Singh Kabli made representations to the Government of India protesting against non-completion of the land acquisition proceedings in respect of their lands. They asked for quashing of the proceedings and also for damages.

14. As a result of the above developments in 1982-84, the Government of India decided to compensate all lessees by earmarking land out of the notified land, changing its land use to residential and allotting the land for bonafide residential use of their lessees and their adult descendants. Out of

the initial 24.1 acres, four acres were 'spot zoned' and they were changed to residential and kept aside for compensating the lessees in terms of the residential leasehold plots for the lessees and their adult lineal descendants.

15. Consequently, the lessees of plot Nos. 3,4 and 5 i.e. the Gurcharan, Ukil and Dang families were allotted residential lands out of a portion earmarked for this purpose. The lessee of plot No. 8 Shri B. K. Gupta was allotted land in the same manner. Thus, according to the Petitioners, these allottees/lessees gave up their compensation in terms of the Award and accepted the allotment of residential plots. This was in terms of Section 31 (3) of the LAA.

16. As regards the Petitioners, a letter dated 22/23rd October, 1984 was addressed to the L&DO regarding release of plot Nos. 7 & 8 and that instead of monetary compensation, the Petitioners be granted lands for bonafide residential use from the spot zoned portion of the notified land itself on the norm of 500 sq. metres of lands for the principal lessee and 500 sq. m. for each adult lineal descendant. This was done under prior sanction of the Government under Section 31 (3) of the LAA.

17. On 29th February, 1986 the Government took over possession of the entire notified land. While the other similarly situated lessees were allotted lands for residential use out of the land specifically earmarked and spot zoned for the purpose, after an appropriate change of land use, the Petitioners were not granted any residential plots as compensation for the land acquired.

18. In the years 1986-89 the LR's of the Petitioners filed a series of Writ Petitions being CWP Nos. 344/1986 and 491/1986 and 1280/1986. On 19th August, 1986 the Union of India made a categorical statement that the land required for allotment had been set aside under the policy decision dated 22nd October, 1984 but that since there was an inter se dispute among the LR's, the actual allotment would be made subject to the outcome of the said dispute. On 19th August, 1986 an order was passed by this Court in CWP No. 344/1986 as under:

“This petition has been filed by the petitioner mainly for a writ of mandamus for enforcing a letter dated 22nd/23rd October, 1984 sent by the Government of India, Ministry of Works and Housing, Land Division to the Land & Development Officer, Nirman Bhawan, New Delhi.

In the reply filed on behalf of the Land and Development Officer one of the objections, inter-alia, in that matter is still under investigation as to the title of the petitioner to plot Nos 1 and 6 and also as to who is true owner out of the recorded owners of Plot no. 7. Learned counsel for the Land & Development submits it will take another six months to complete the enquiry. In this situation this writ petition is dismissed as pre-mature. We expect that Land & Development Officer will finish the enquiry within six months. Petitioner will have liberty to file afresh petition. However, it is mentioned on behalf of Land & Development Officer that land in relation to plot no. 7 is available for release but it will be subject to the decision of the enquiry.”

19. It is the case of the Petitioners that despite the Respondents demarcating an area of land and effecting a change of land use to residential purpose, that land was in fact not released to the Petitioners as promised in the sanction letter dated 22/23rd October, 1984. Also the dispute of title was not referred

for adjudication to the Reference Court.

20. The predecessors-in-interest of the Petitioners filed CS(OS) No 528/1987 in this Court to settle the title dispute to the demised land. This suit came to be decreed on 11th April, 2005 in terms of which the leasehold rights of plot Nos. 6 & 7 vested in Shri Harish Chand Lohiya through his LRs.

21. It is stated that right from the date when the suit was decreed till present, the Respondents have opposed the promised grant of compensation of allotment of lands even in the execution proceedings filed for enforcement of the decree. The Petitioners have in para 17 of the writ petition categorically averred that:

“To this day the petitioners have not been tendered compensation as promised vide the decision dated 22/23.10.1984. The petitioners have lost their land with absolutely no compensation as promised in the said decision. The land that was kept aside for allotment to the petitioners for their residential use is shaded in yellow colour in Annexure PI, and has since been allotted to other persons. Now there is no land available for allotment as sanctioned under Sec 31(3) of the L.A.Act 1897 to the petitioner. Once the Government had decided to compensate by allotment of lands for residential use for the lessees and their adult descendants as per the decision dated 22/23.10.1984, it was incumbent on the Government / land acquisition collector to communicate this decision to a reference Court where a reference under section 18 could be preferred.”

22. It is in the above circumstances that the Petitioners have invoked Section 24 (2) of the 2013 Act stating that the Respondents had taken possession of

the land more than twenty years ago on 29th February, 1986 which was more than five years earlier to the coming into effect of the 2013 Act and compensation in terms of the statement made in WP(C) No. 344/1986 by the Respondents on 19th August, 1986 has also not been paid. It is pointed out that the Petitioners should have been allotted nine plots of land admeasuring 4500 square metres spot zoned in the notified land consistent with the stand taken by the Respondents Nos.3 & 4 i.e. the MoUD and L&DO and pursuant to the decision dated 22/23rd October, 1984.

23. It is stated that Respondent No.5 i.e. the DDA took the stand that the allotment had to follow the procedure set out in ***Ramanand v. Union of India AIR 1994 Del 29*** although the said decision had nothing to do with the decision to compensate the lessees in terms of the sanction under Section 31 (3) of the LAA in terms of the communication dated 22/23rd October, 1984. The other untenable stand of the DDA according to the Petitioners was that the release of allotment of such land could only be by way of release of land under Section 48 of the LAA. It is stated that this was also misconceived as the decision dated 22/23rd October, 1984 was

“to compensate the lessees by making a change of land use of a part of the notified land to residential, allot the said land to the lessees and their descendants as per the letter dated 22/23.10.1984, acquire the rest of the land for no other compensation on the lessees giving undertakings that they shall neither claim compensation for the rest of the land or for the respondents keeping the land under acquisition for so long.”

24. It is pointed out that the lands that were to be kept aside for allotment to

the Petitioners in lieu of plot No. 7 were instead allotted to other persons. When the petition was first listed for hearing on 28th April, 2017 while issuing notice to the Respondents, the Court directed the parties to maintain the status-quo with regard to the title and possession of land in Khasra No. 634/446 in Village Arakpur Bagh Mochi, New Delhi measuring 14 bigha and 3 biswas.

25. On 19th January, 2018 the Court noted submission of counsel for the LAC that the correct Khasra No. is 639. Counsel for the Petitioners was told that the necessary correction was to be carried out.

26. This Court has heard Ms. Geeta Luthra, learned Senior counsel for the Petitioners, Mr. Yeeshu Jain, learned standing counsel for the LAC and Ms. Shobhna Takiar, learned counsel for DDA. It has also perused the entire record. The Court perused the record only to satisfy itself as to the factual position regarding deposit of the compensation.

27. It is seen from the counter affidavit of the LAC, the stand taken was that the land in the Revenue records has been shown in the name of Sarkar Daulatmadar (Central Government) and vacant physical possession was taken on 29th January, 1986. It is pointed out that the land in question has already been utilised by the Government. Reference is next made to the fact that the Petitioners had filed Execution Petition No. 22/2013 in this Court which got dismissed on 9th December, 2013 observing that once the decree of declaration was passed in favour of the Petitioners they had to apply for allotment of alternative plot and it could not be secured by way of an

execution petition. Execution First Appeal No.4/2014 filed by the Petitioners was also dismissed by the DB by a judgment dated 10th May, 2016. The DB declared that the letter dated 23rd October, 1984 did not constitute the policy and that apart from the procedure envisaged in ***Ramanand v. Union of India*** (*supra*), there was no method of allotment of land. It is submitted that what the Petitioners could not get from the civil proceedings, cannot indirectly be sought in the writ proceedings.

28. The assertion of the LAC in the counter affidavit was that the whole compensation amount with respect to Award No.20-A/1974-75 was sent to the Reference Court under Section 30-31 of the LA. According to the LAC, there was already reference made under Section 18 of the LA Act before the Reference Court in LAC No.145/1976. Thus, it is submitted that with the possession having been taken and compensation sent before the Reference Court, no relief can be granted to the Petitioners under the 2013 Act.

29. In response thereto, the Petitioners filed rejoinder affidavit. Annexures B to D of the said counter affidavit is the schedule of payments made by the LAC in the present proceedings. Specific reference is made to the order on the date when the Award was made i.e. on 29th March, 1975 when only some six persons were present in the office of the LAC. Although direction was issued that notices had to be issued under Section 12 (2) of the LAA to all claimants, no such notice was received by the Petitioners. The entire compensation amount was sent as a Revenue Treasury Deposit on 31st March, 1975 and therefore no compensation was ever tendered to the original Petitioner i.e. Shri Harish Chand Lohiya. It is pointed out that if the

claimants apply for a reference under Section 18 of the LA, the deposit was to be made in form 'D', if they failed to apply for a reference then a Treasury Deposit was to be made. However, there is no provision for a Treasury Deposit even before notices are issued under Section 12 (2) and 31 (1) of the LAA. Referring to the forms 'A' & 'D', it is pointed out that a Treasury Deposit is to be made only after the proprietors had failed to present themselves to pay and to apply for a reference under Section 18 of the LA.

30. As far as the facts of the present case are concerned, it is seen that on the Award being passed on 29th March, 1975 a notice was issued to Shri Harish Chand Lohiya under Sections 12 (2) & 31 (1) of the LAA on 5th April, 1975. It was served upon him on 28th May, 1975. The said notice stated that a sum of Rs. nil out of the total amount awarded could be claimed by the Petitioners after which no interest would be paid. The Petitioners are right in contending that this itself showed that no amount was tendered or paid to the Petitioner and without such tender, the amount was already deposited in the treasury. This was not a tender within the meaning of Section 24 (2) of the 2013 Act. As for the notice issued by the LAC on 5th April, 1975 under Section 12 (2) and 31 (3) of the LAA, the L & DO refused to accept the notice and endorsed the service report that they have not claimed the proceedings pertaining to the land. The Petitioners did not accept the Award of the nil amount as compensation. A reference was preferred under Section 18 which accordingly registered as LAC No. 145/76 on 22nd March, 1976. It is submitted that it was incumbent on the LAC to have deposited the compensation in the Court to which this reference was sent but he did not do

so. The compensation of the Petitioners' 14 bighas 3 biswas was determined by the LAC as Rs.128991.40 but this was not deposited in the Court.

31. Specifically referring to a schedule of the final calculations and payments which is enclosed as Annexure 'D' to the rejoinder, the Petitioners have pointed out that out of the 88 bighas 1 biswas that was the subject matter of the Award, 3 bighas and 7 biswas constituted Khasra No.640/446 and an equal extent in Khasra No.641/446. 1 bigha and 18 biswas had an injunction against acquisition. This left a balance of 79 bighas 9 biswas. The precise averment reads as under:

“Compensation for 6 Bighas and 14 Biswas contained in Khasra No. 639/446/1, plus 58 Bighas and 12 Biswas contained In Khasra No. 639/446/3 was deposited court of reference under Sec 30-31 entitled "LAC versus Sarkar Daulat Madar and others". The compensation amount of Rs. 8,67,700=15 paise was determined as described in Annexure "D" and was deposited in court on 15.03.1990. Compensation for the remaining area of 14 Bighas and 3 Biswas, which was the petitioners land, was not included in this reference. The petitioner's name was not included in the memo of interested parties in this reference. This reference pertained to lands whose lease stood determined due to breaches in the terms of the lease.”

32. In other words, that amount of Rs.128991.40 was never deposited in the reference court. It is averred that the Petitioners and the others whose lands were proposed to be left out of acquisition were informed that the issue of payment of compensation would arise only if and when the possession was taken by the LAC.

33. To verify the correctness of the above averments, the Court has perused

the original records which were produced by the Respondents. It is seen that the compensation payable for Khasra No. 639/446 was not in fact deposited either in the RD or in the Court of the ADJ.

34. The resultant position is that the Petitioners' contention that possession of the land in question was taken but no compensation was ever tendered much less paid to them is borne out by the record. There was thus no valid land acquisition Award qua the aforementioned land of the Petitioners. The said land was also not released from the acquisition. The essential conditions for attracting Section 24 (2) of the 2013 Act stand fulfilled.

35. As regards the plea of delay and laches in filing the petition, the detailed narration of facts shows that the original Petitioner, and after his demise his LRs, have been continuously and diligently pursuing their remedies in the Courts in various proceedings that have been referred to hereinabove. With the enactment of the 2013 Act the plea of the Petitioners got further strengthened. Therefore, the petition cannot be said to be barred by laches. The preliminary objection of the Respondents is accordingly rejected.

36. Accordingly, in terms of Section 24 (2) of the 2013 Act, a declaration is issued to the effect that the acquisition in respect of land bearing in Khasra No. 639/446 admeasuring 14 bighas and 3 biswas situated in the Revenue Estate of Arakpur Bagh Mochi, Delhi is deemed to have lapsed as on 1st January 2014.

37. The writ petition is allowed in the above terms with no order as to costs.

S. MURALIDHAR, J

SANJEEV NARULA, J

DECEMBER 19, 2018

rd/mw

