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

% *Date of Judgment: 16th February, 2018*

+ W.P.(C) 4872/2015

NARESH KUMAR SHARMA Petitioner
Through: Mr. Daleep Dhyani, Advocate

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Manish Mohan, CGSC with Ms. Devjyoti Behuria and Mr. Shubham Pundhir, Advocates for UOI.
Mr. Siddharth Panda, Advocate for L&B/ LAC.
Mr. Sanjeev Sabharwal, Standing Counsel 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 the Constitution of India filed by the petitioner. The petitioner seeks a declaration that the acquisition proceedings initiated with respect to land of petitioner comprised in Khasra nos.694 and 698 measuring 9 bigha 14 biswas, situated in the revenue estate of village Madipur, Punjabi Bagh, New Delhi

(hereinafter referred to 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 the '2013 Act'), as neither the physical possession of the subject land has been taken nor the compensation has been tendered.

2. Brief facts which are required to be noticed for the disposal of this writ petition are that a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 13.11.1959, a Section 6 declaration was made on 10.06.1963 and thereafter an Award bearing no.1691 was rendered under Section 11 of the Act on 23.03.1964. The writ petition also reveals that father of the petitioner died on 15.01.1999. Another aspect which has been revealed in the writ petition is that in the year 2000, a writ petition bearing W.P.(C).2604/2000 was filed on behalf of RWA Punjabi Bagh Apartments Association for removal of encroachment. It is the case of the petitioner that the petitioner was illegally dispossessed on the directions of this Court passed in W.P.(C).2604/2000.
3. Mr. Dhyani, learned counsel for the petitioner submits that the father of the petitioner had not received any compensation and also the petitioner continues to remain in actual physical possession of the subject land. Counsel submits that since neither the compensation has been tendered to the petitioner nor the physical possession has been taken, the petitioner is entitled to a declaration that the acquisition proceedings with respect to land of petitioner is deemed to have lapsed in view of Section 24 (2) of the 2013 Act.

4. Counter affidavits have been filed by the LAC and also the DDA. As per the counter affidavit filed by the LAC, actual physical possession has been taken and compensation to the tune of Rs.22,385/- stands paid to Shri Krishan S/o Sh. Manohar vide LAC order no.1691/L&B/Rev./642 dated 17.04.1964. Paragraphs 6 and 7 of the counter affidavit filed by the LAC, reads as under:

- “6. That it is submitted that the physical possession of Khasra No.698 (3-10) was taken and handed over to the beneficiary department on 27/04/1964 and Khasra No.694 (6-4) was taken over on 03/09/1981. As per the report of Account Clerk, Statement ‘A’ of Award No.1691 is not available in the branch, however, from other related records, it is revealed that an amount of Rs.22,385/- was paid to Sh.Krishan Son of ShManohar vide LAC order No.1691/L&B/Rev./642 dated 17.04.1964.
7. That it is humbly submitted that in the present case provisions of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 would not be applicable as the compensation has been deposited in paid to the owner and possession was also taken over the handed over to the beneficiary department.”

5. Counter affidavit has also been filed by the DDA. As per the counter affidavit filed by the DDA, the possession of the subject land has been taken over and the land is lying vacant, however, a wall has been constructed. Relevant portion of paragraph (viii) of the counter affidavit filed by the DDA, reads as under:

- “viii. It is further submitted that the physical possession of the acquired land i.e. Khasra No.698(3-10) has been

handed over to the Respondent 3-Delhi Development Authority by the LAC/Land and Building Department, Govt. of NCT of Delhi on 22.04.64 and it is further submitted that Khasra No.698(6-4) has been handed over to the Respondent 3-Delhi Development Authority by the LAC/Land and Building Department, Govt. of NCT of Delhi on 03.09.81 and the same lying vacant with boundary. ...”

6. We may note that during the course of hearing, learned counsel for the petitioner has submitted that barring a bald statement that a sum of Rs.22,385/- has been paid to the father of the petitioner, no document was placed on record by the LAC to substantiate their stand taken. Time was granted to the LAC to file an additional affidavit. In the additional affidavit, the stand taken in the original counter affidavit has been reiterated. Along with the additional affidavit, a photocopy of the original letter dated 17.04.1964 addressed to the Treasury Officer has been filed. Attention of the Court has been drawn by Mr. Panda where an endorsement has been made on this communication that *“copy alongwith the refund voucher for Rs.22385.00 forwarded to Sh.Kishan S/o Manohar Lal.”* Relying on the aforesaid document, Mr. Panda submits that there is no room for any doubt that the amount was deposited in the Treasury and thereafter a voucher was made in favour of the father of the petitioner. Mr. Panda also contends that there has been complete silence on the part of the petitioner and by his deceased father that from 1964 till the filing of the present writ petition in the year 2015 with regard to the non-receipt of the compensation.

7. In response to the submissions made by Mr. Panda, learned counsel for the petitioner disputes that payment was ever received by the father of the petitioner. It is submitted that filing of the communication dated 17.04.1964 is not substantial proof that, in fact, payments stand tendered and/or received by the deceased father of the petitioner. Additionally, counsel submits that the LAC should be called upon to place additional/better documents on record to substantiate their claim regarding payment of compensation to the petitioner.
8. We have heard the learned counsel for the parties. The basic facts, as detailed in paragraph 2 foregoing, are not in dispute regarding issuing of a Section 4 and 6 notification on 13.11.1959 and 10.06.1963 respectively and pronouncement of the Award on 23.03.1964. As far as the plea with regard to possession is concerned, the stand of the petitioner is that the petitioner continues to remain in physical possession till he was illegally dispossessed at the behest of RWA Punjabi Bagh Apartments Association. The consistent stand of both the LAC and the DDA is that actual physical possession has been taken and a boundary wall was erected by the DDA to protect its possession. It is the common stand of the respondents that the petitioner was a rank trespasser of government land and he was forced to be evicted by the orders of this Court passed in WP(C).2604/2000 titled '**Resident Welfare Association v. D.D.A**'. Counsel for the respondent further contends that the order dated 18.09.2002 passed in the aforesaid writ petition has attained finality and no such plea was raised by the petitioner even during the pendency of the writ petition or post the disposal of the aforesaid writ petition that compensation

was not paid to him and he thus, could not be deprived of his land. Counsel for the respondent, rightly so, have submitted that the petitioner cannot take advantage of the delay in approaching the Court especially when the Award was made as far as back in the year 1964. We may note that a communication, copy whereof has been filed, was issued on 17.04.1964. The correct particulars of the Award, the name of the father of the petitioner, particulars of the amount and the area finds mentioned. Relevant stamp has also been affixed on this communication and we have no reason to disbelieve such a document. The communication dated 17.04.1964, reads as under:

“OFFICE OF THE DEPUTY COMMISSIONER: DELHI

(LAND ACQUISITION BRANCH)

No.1691/LAC/REV/642 Dated the 17-4-64.

To

The Treasury Officer,
Delhi,

Sub:- Payment of Compensation, Award No.1691.

Sir,

I have to say that a sum of Rs.2679467.42P was placed in Revenue Deposit on as undisbursed amount of compensation.

Shri Kishan adopted s/o Manohar Lall R/o Madipur, Delhi has been found entitled to receive Rs.22385.00P out of the above sum. The refund voucher for Rs.22385.00P (Rupees_____).

Issued to him may, therefore, please be passed for payment as and when presented by him at the Treasury.

Yours faithfully,

Sd/-



LAND ACQUISITION COLLECTOR:DELHI

No.1691/LAC/Rev./643 Dated the 17-4-64.

Copy alongwith the refund voucher for Rs.22385.00P forwarded to Sh. Kishan adopted S/o Manohar Lall R/o Madipur, Delhi for n.a.

sd/-

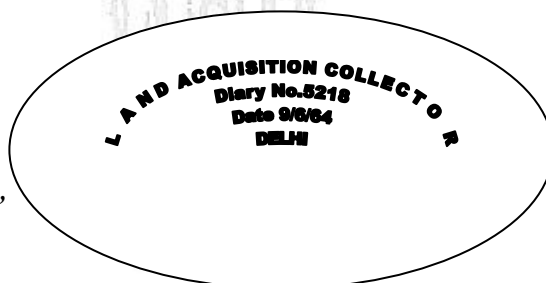
LAND ACQUISITION COLLECTOR:DELHI

DELHI

Revenue

Paid No.6

Date 2/5



Accountant"

9. Mr. Dhyani, learned counsel for the petitioner has also submitted that the possession of the land was taken on two separate dates, i.e., on 23.11.1977 and 03.09.1981, whereas as per the LAC a refund voucher for a sum of Rs.22,385/- was tendered on 17.04.1964. It is contended that after the physical possession was taken, the compensation could not be tendered.
10. This submission made by the counsel for the petitioner is without any force as the compensation was offered and paid to the father of the

petitioner after this award was rendered. In the case of *Delhi Development Authority v. Sukhbir Singh and Others*, reported in (2016) 16 SCC 258, the Supreme Court has observed that as soon as the award is made, under Section 12(2) of the Act, the Collector is to give immediate notice of the award to such of the persons interested as are not present personally. This provision, when read with Section 31 of the Act, makes it clear that the statutory scheme is that the Collector is to tender payment of compensation awarded by him to the persons who are interested and entitled thereto, according to the award, on the date of making the award itself. It is therefore, clear that under the statutory scheme, the Collector must be armed with the amount of compensation payable to persons interested as soon as the award is made. Para 9 of the *Sukhbir Singh and Others*(supra), reads as under:

“9. The scheme of the Land Acquisition Act, in so far as the making of award and the payment of compensation to persons interested, is as follows. On the day fixed, the Collector after the inquiry that is contemplated under Section 11, has to make an award which must contain the necessary ingredients mentioned in Section 11. As soon as the award is made, under Section 12(2) of the Act, the Collector is to give immediate notice of the award to such of the persons interested as are not present personally. This provision, when read with Section 31 of the Act, makes it clear that the statutory scheme is that the Collector is to tender payment of compensation awarded by him to the persons who are interested and entitled thereto, according to the award, on the date of making the award itself. It is therefore, clear that under the statutory scheme, the Collector must be armed with the amount of compensation payable to persons interested as soon as the award is made. Such persons have to be paid the sum mentioned in the award, it being well settled that the award is

only an offer which may be accepted or rejected by the claimants. If accepted, whether under protest or otherwise, it is the duty of the Collector to make payment as soon as possible after making the award. It is only in a situation where the persons interested refuse consent to receive monies payable, or there be no person competent to alienate the land, or if there be any dispute as to title to receive compensation or its apportionment, is the Collector to deposit the amount of compensation in the reference court. It is only after these steps have been taken that the Collector may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances. The Act further makes it clear, on a reading of Section 34, that where such compensation is neither paid or deposited on or before taking possession of the land, interest is payable at the rate of 9 per cent per annum for one year and 15 per cent per annum thereafter. This is because a person becomes divested of both possession and title to his property without compensation having been paid or deposited, as the case may be. This statutory scheme has been adverted to in some of the decisions of this Court.

9.1. *In New Riviera Coop. Housing Society v. Special Land Acquisition Officer*, (1996) 1 SCC 731 at para 3, this Court held:

“3...Once the award has been made and compensation has been deposited or paid under Section 31 of the Act, the Land Acquisition Officer is entitled to take possession and the possession thereby taken stands vested in the State under Section 16 of the Act free from all encumbrances.”

11. The learned counsel for the petitioner has submitted that the LAC should file a better proof of payment having been made. We find no force in the submission of the learned counsel for the petitioner. The claim of the petitioner is a stale claim. In cases, where actual possession of the land is not taken, we have returned that land owners are reluctant to press for compensation lest they lose possession over

their land, however, in the present case, the petitioner was dispossessed by the orders passed in W.P.(C).2604/2000. Nothing prevented the petitioner or his deceased father for seeking compensation or making a grievance that the compensation has not been tendered at least in the year 2002, when he was removed by the orders dated 18.09.2002 of this Court, which we have procured from the record. The order dated 18.09.2002, reads as under:

“Learned counsel appearing for the Delhi Development Authority points out that the encroachment has been removed. However, learned counsel for the petitioner states that after the removal of the encroachment the encroacher has again returned to the site and has occupied the same. Learned counsel for the Delhi Development Authority in response says that immediate action shall be taken for removal of the encroacher. She also states that action shall be taken against the official responsible for not preventing the encroacher from taking over the land.

In view of the submissions of learned counsel for the parties and keeping in view the fact that the encroachment on public land must be removed, we direct the respondent - Delhi Development Authority to take action against the official who failed to prevent the encroacher from re-occupying the land. The action taken against the person responsible for the encroacher to take over the land shall be placed before us. The Delhi Development Authority shall also take action against the encroacher in accordance with law.

The Delhi Development Authority shall develop the land in question as per the layout plan. The development should take place within a reasonable period of time. Any further encroachment of land shall be viewed seriously.

With the aforesaid observations and directions the Writ Petition is disposed of. However, the matter be placed before us on 30th October, 2002, only for the purposes of considering the action taken report which is required to be filed by the Delhi Development Authority.”

12. Having regard to the order dated 18.09.2002 passed in W.P.(C).2604/2000 by an earlier Division Bench order of this Court and also the documents placed on record, it can be safely said that the physical possession of the subject land stands taken and the compensation was tendered/paid to the father of the petitioner. We find no merit in the writ petition. The same is accordingly dismissed.

CM.APPL 8806/2015(stay)

13. The application also stands dismissed in view of the order passed in the writ petition.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

FEBRUARY 16, 2018

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