

\$~43

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

% *Date of Judgment: 19th February, 2018*

+ W.P.(C) 12178/2016

BUSHRA KHAN

..... Petitioner

Through: Mr. Rajiv Kumar Ghawana, Advocate.

versus

GOVT OF NCT OF DELHI AND ORS.

..... Respondents

Through: Mr. Jitendra Kumar Tripathi and Mr. Vipul Agrawal, Advocates for UOI.

Mr. Sanjeev Sabharwal, Standing Counsel for DDA.

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

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 seeking a declaration that the acquisition proceedings pertaining to land of the petitioner i.e. Plot No. H-19, Abdul Fazal Enclave, Part-II, Shaheen Bagh, Okhla, New Delhi comprised in Khasra Nos. 409, admeasuring 160 Sq. Yards in the revenue State of Village Jasola, Delhi (hereinafter referred to as 'the Subject Land') is deemed to have been 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 the physical possession has been taken nor compensation has been paid to the petitioner.

2. Counsel for the petitioner submits at the outset that a typographical error has occurred in the prayer clause (a) of the writ petition whereas “H-19” instead of “H-18” has been written and the same may be read as ‘H-18’. Learned counsel for the LAC has no objection to the correction of the typographical error. Learned counsel for the petitioner adds that the acquisition proceedings with respect to the same Khasra number i.e. 409, which is the subject matter of the present writ petition, has already lapsed in terms of the order passed by this Court in W. P. (C) 1880/2017 titled as Sarfaraz Ahmad Vs. Govt. of NCT of Delhi & Ors. and identical objections raised have not been accepted by the Court.
3. In this case, a Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as ‘the Act’) was issued on 23.06.1989, a declaration under Section 6 of the Act was issued on 22.06.1990 and an Award bearing No.21/1992-93 was passed on 18.06.1992.
4. Counter affidavit has been filed by LAC. As per para 5 of the counter affidavit, compensation has not been paid to the recorded owners based on the Naksha Mutzamim. However, an objection has been raised with regard to the locus standi of the petitioner.
5. We have heard learned counsel for the parties.
6. Para 5 of the counter affidavit reads as under:

“5. That it is submitted that the lands of village Jasola were notified vide Notification under Section 4 of the Land Acquisition Act dated 23.06.1989 which was followed by Notification under Section 6 of the said Act vide Notification dated 22.06.1990. That the then Land Acquisition Collector passed an Award No. 21/92-93 dated 18.06.1992 and the possession of the

total land falling in khasra number 409 (14-15) was taken on 16.07.2017 after preparing Possession Proceedings on the spot and was handed over to the beneficiary department i.e. DDA immediately. The Naksha Mutzamin however did not contain any entry regarding payment of compensation whereas Statement A's is untraceable thus the exact status of payment of compensation cannot be ascertained or informed at this stage."

7. It may be noted that the subject land pertains to khasra No. 409, two writ petitions pertains to Khasra No. 409 being W. P. (C) 1880/2017 and 3714/2015 have already been allowed.
8. Learned counsel for the petitioner submits that the petitioner is the subsequent purchaser of the subject land and copies of Agreement to Sell, GPA's, Will, receipts and affidavits have been filed on record. He further submits that the case of the petitioner would be covered by 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**.
9. In the case of ***Manav Dharma Trust (supra)***, the Apex Court has held 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."

10. Having regard to the observation made by the Apex Court in *Manav Dharma Trust (Supra)*, in our view the objection raised by learned counsel for LAC/L&B is misplaced. However, we make it clear that this order would not confirm the title of the petitioner.
11. Reading of the counter affidavit would show that the compensation has not been paid to the recorded owner. Resultantly, it is declared that the acquisition proceedings pertaining to land of the petitioner is deemed to have lapsed in view of Section 24 (2) of 2013 Act . We accept the undertaking given by the petitioner that they have not received the compensation and they shall remain bound by the same. Should it be proved otherwise, it could amount to making a false statement to the Court.
12. Since, the award having been announced more than five years prior to the commencement of the 2013 Act, the petitioner is entitled to declaration that the acquisition proceedings in respect of the subject land i.e. Plot No. H-18, Abdul Fazal Enclave, Part-II, Shaheen Bagh, Okhla, New Delhi, are deemed to have lapsed. It is ordered accordingly.
13. The writ petition stands disposed of.

CM APPLN. No. 48062/2016 and 2885/2017

These applications stand disposed of in view of the order passed in the writ petition.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

FEBRUARY 19, 2018 / gr