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

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Date of Judgment: 19th March, 2018

+ W.P.(C) 11150/2015

SHAKUNTALA DEVI & ANR

..... Petitioners

Through Ms. Richa Oberoi with Mr. Ankit
Banati, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through Mr. Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi, Advocate for
L&B/LAC.
Mr. Arjun Pant, Advocate 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 petitioners seeking a declaration that the acquisition proceeding initiated in respect of the land of petitioners comprised in Khasra no.394 (0-10) and 396 (0-13), measuring 1 bigha 3 biswas, situated in the revenue estate of village Neb Sarai, 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 the compensation has not been tendered to the petitioners.
2. In this case a notification under Section 4 of the Land Acquisition Act, 1894 (in short 'the Act') was issued on 05.11.1980 and a declaration

under Section 6 of the Act was made on 21.05.1985. Thereafter an award bearing no.12/1987-88 was rendered on 20.05.1987.

3. At the outset, learned counsel for the petitioners admits that the physical possession of the subject land has been taken by the respondent.
4. As per para 3(k) of the counter affidavit filed by the DDA, the physical possession of the land stands taken on 05.09.2005. Para 3(k) of the counter affidavit filed by the DDA reads as under :-

“3(k) I say that the petitioners are claiming to be owners and in possession of land bearing Khasra No.394 (0-10) and 396 (0-13) situated in Village Neb Sarai, Delhi. The land in question was notified under Section 4 on 5.11.1980 and under Section 6 on 21.5.1985 for public purpose for planned development of Delhi with due process of law. After notifications under Sections 4 & 6, the land stands acquired vide Award No.12/1987-88. Physical possession of the same has been handed over to DDA by the Land Acquisition Collector (South)/L&B Department, Govt. of NCT of Delhi on 05.09.2005. The new Acquisition Act “The Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013” is not applicable in the present case because physical possession of the same was handed over to the DDA on 5.9.2005 and the new Land Acquisition Act came into force w.e.f. 01.01.2014. Copy of the possession proceedings dated 5.9.2005 are annexed as **ANNEXURE R.3/1.**”

5. In the counter affidavit filed by the LAC, it has been averred that the amount was deposited in the R.D. with respect to award in question but later on withdrawn vide R.V. No.436 dated 07.05.1993 for the

award bearing no.1/93-94 of village Kakrola, Delhi. Para 5 of the counter affidavit filed by the LAC reads as under :-

“5. That the physical possession of the Government is not disputed by the petitioner. However, there is no entry in the Naksha Muntazamin as to whether any payment was made to the petitioners or not. The statement “A” of the Award No.12/87-88 is not traceable. An NCR has also been lodged with the P.S. Neb Sarai bearing LR. No.0063/2017 dated 07/02/2017. However as per the Revenue Deposit Register, the total amount of Rs.8,10,28,938/- of Award No.12/87-88 was deposited in R.D. but the same was later withdrawn vide R.V. No.436 dated 07.05.1993 for the Award No.1/93-94 Village Kakrola, Delhi as per Dy. Secy. (L&B) Letter No.F.19/(145/88-89/L&B/F.A.-20392dated 07.07.1992).”

6. Counsel for the petitioners submits that reading of para 5 of the counter affidavit would leave no room for doubt that the amount was never offered or tendered to the petitioners and was never deposited in the R.D. She further submits that no benefit can accrue in favour of the LAC on account of the fact that the compensation was deposited in the RD, at the first instance. Additionally, there is no document on record to show that the petitioners were ever declined the acceptance of the compensation. On the contrary, learned counsel for the petitioners submits that the amount deposited in R.D. was later on withdrawn and deposited with respect to another award bearing no.1/1993-94. She relies on Section 24(2) of the 2013 Act to support her argument that the condition for payment of compensation has not been fulfilled. Hence, petitioners are entitled to a declaration that the acquisition proceedings stand lapsed.

7. We have heard learned counsel for the parties. As per the counter affidavit filed by the LAC, the amount of compensation was deposited in RD, but subsequently withdrawn and deposited with respect to another award. The counter is completely silent as to whether the amount of compensation was ever offered or tendered to the petitioners. Taking into consideration the submission made and also the stand taken by the LAC in the counter affidavit that the amount was not tendered to the petitioners and after being deposited in R.D, later on, the same was withdrawn and deposited with respect to another award, the petitioners in our view are entitled to a declaration that the acquisition proceedings stand lapsed. It is ordered accordingly.

8. The writ petition stands disposed of.

CM APPL 28955/2015 (stay)

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

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

MARCH 19, 2018/ck/