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

Date of Judgement: 8th March, 2018

+ **W.P.(C) 11181/2015**

SHRI PRAKASH & ANR

.....Petitioners

Through: Mr. Raj Bahadur Singh, Advocate.

Versus

UNION OF INDIA & ORS

.....Respondents

Through: Mr. Yeeshu Jain, Standing Counsel with
Ms. Jyoti Tyagi Adv. for L&B/LAC.
Mr. M.K. Singh Adv. for DDA.
Mr. Pushkar Sood & Mr. Rahul Keshav
Advocates for DMRC.
Mr. Rakesh Kumar CGSC for Union of
India/Respondent No.1.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S. SISTANI, J. (Oral)

1. With the consent of the parties, the present writ petition is set down for final hearing and disposal.
2. This is a petition under Article 226 of Constitution of India filed by the petitioners seeking a declaration that the acquisition proceedings with respect land bearing Khasra No. 490(01-01), measuring 01 Bighas 01 Biswa, situated in the revenue estate of village Madanpur Khadar, Tehsil Kalkaji, New Delhi (hereinafter referred as the 'subject land') stand 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 physical possession of the subject land has been taken nor compensation has been paid to the petitioners.

3. In the present case, a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'Act') was issued on 23.06.1989 and a declaration under Section 6 was made on 22.06.1990. Thereafter, an award bearing no.20/1992-93 was passed on 19.06.1992.
4. Mr. Raj Bahadur Singh, learned counsel for the petitioners submits that as the physical possession of the subject land has not been taken and compensation in respect thereof has not been paid, the petitioners would be entitled to a declaration that the acquisition proceedings have lapsed. Reliance is placed on Section 24 (2) of the 2013 Act.
5. Mr. Yeeshu Jain, counsel for the LAC submits that actual vacant physical possession of the subject land was taken on 03.12.2012 and handed over to the DDA, and the compensation amount in respect thereof has been deposited in the Reference Court under Section 30-31 of the Act, on 14.04.2014 on account of an apportionment dispute. Relevant portion of the counter affidavit filed by LAC reads as under:

"4. That the than Land Acquisition Collector passed an Award No. 20/92-93 dated 19.6.92 and the actual vacant physical possession of the land falling in khasra number 490 (01-01) was taken on 3.12.2012 after preparing Possession Proceeding on the spot and was handed over to the beneficiary department i.e. DDA immediately. The compensation of the same

was also sent to Reference Court u/s 30-31 of Act, 1894 on 14.4.2014 as there was an apportionment dispute."

6. Counter affidavit has also been filed by DDA, relevant portion of which reads as under:

"The physical possession of Kh.No.490(1-01) area measuring 01Bigha-01Biswa of Village-Madanpur Khadar has been handed over to DDA on 03.12.2012 by LAC through L&B Department Govt. of NCT of Delhi. The vacant physical possession taken over land has been handed over to DMRC on dated 08.01.2013. The work of DMRC in progress at the site. The compensation has already been sent to Land Building Department, GNCTD vide cheque No. 887574 dated 28.08.1990 of Rs. 10 Crores by DDA for Channelization of Yamuna River Scheme."

7. Counter affidavit has also been filed by DMRC, relevant portion of which reads as under:

" That it is submitted that the possession of the Land measuring 2,27,978.52 sqm was given to DMRC on 08.01.2013."

8. We have heard learned counsel for the parties.
9. Taking into consideration the counter affidavit filed by LAC, DDA and DMRC, it is clear that the actual physical possession of the subject land was taken over by LAC on 03.12.2012 and handed over to the DDA. The possession of the subject land was further transferred by the DDA to the DMRC on 08.01.2013 and the same has been utilized for construction of the Kalindi Kunj Metro Depot. Accordingly, the submission made by the counsel for the petitioners that actual physical possession of the subject land has not been taken is without any force. As far as payment of

compensation is concerned, learned counsel for LAC submits that on account of an apportionment dispute, the compensation amount was sent to Reference Court on 14.4.2014. Since the compensation has not been paid to the petitioners and is deposited in the Reference Court post coming into force of the 2013 Act, we are of the considered view that the necessary ingredients for the application of Section 24(2) of the 2013 Act, stands satisfied.

10. Resultantly, applying the law laid down to the facts of the present case, since the award having been announced more than five years prior to the commencement of the 2013 Act and the fact that the compensation has been sent to Reference Court under Section 30-31 of the Act post coming into force of the 2013 Act, the petitioners are entitled to a declaration that the acquisition proceedings initiated under the Land Acquisition Act, 1894 with regard to the subject land are deemed to have lapsed. However, as the possession of the subject land has been taken over and the land has been put to use, the petitioners, would only be entitled to compensation as per the New Act. Compensation be released within one year from today. It is ordered accordingly.
11. The writ petition stands disposed of in the above terms.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

MARCH 8, 2018