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

% *Date of Judgment: 27th September, 2018*

+ W.P.(C) 412/2016

SHYAM KUMAR SRIVASTAVA AND ORS Petitioners

Through: Mr.Parvinder Chauhan, Advocate.

versus

LT GOVERNOR AND ORS Respondents

Through: Ms.Sangita Rai, Mr.Pradeep Tomar and
Mr.Kumud Ray, Advocates for R-1 & 2.

Mr Yeeshu Jain and Ms Jyoti Tyagi, Advs
for LAC/L&B.

Mr.Ajay Digpaul, Advocate for SDMC.

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 Constitution of India filed by the petitioners seeking a declaration that the acquisition proceedings with respect to 5 biswas land of the petitioners admeasuring 250sq. yards, comprised in Khasra No.286 situated in the revenue estate of Village Tihar, Delhi (hereinafter referred as the 'subject land') are 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 '2013 Act') as although the possession of the subject land has been taken, compensation in respect thereof has not been paid to the petitioners.

2. In this case, a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'Act') was issued on 31.03.1992 and a declaration under Section 6 was made on 21.05.1992. Thereafter, an Award bearing No.5/1994-1995 was passed by the Land Acquisition Collector under Section 11 of the Act on 19.05.1994.

3. Learned counsel for the petitioners submits that even though the physical possession of the subject land has been taken, compensation has not been paid to the petitioners and thus, the petitioner would be entitled to a declaration that the acquisition proceedings are deemed to have lapsed in view of Section 24 (2) of the 2013 Act.

4. Mr Yeeshu Jain, learned counsel for the LAC submits that as per the counter affidavit filed by him, possession of the subject land has been taken on 04.05.1994, however, as per the account's record, statement 'A' is not available in LAC account regarding payment of compensation to the petitioners. Relevant portion of paragraph 9 of the counter affidavit filed by the LAC reads as under:-

"The award 05/1994-95 dated 19.05.1994 of village Tihar has been published and possession has been taken on 04.05.1994 in respect to the subject Khasra of the Petitioners. Further as per the record of the A/c, it is submitted "A" of award No.05/1994-95 not available in the LAC account as per the record. Photocopy of ENM is enclosed. A demand was sent to requisition/L&B department. But, amount not received till date."

5. We have also examined the counter affidavit filed by the SDMC. Paragraph 4 of the counter affidavit reads as under:-

"I say that erstwhile MCD had taken over the possession of Khasra No.286, min area 5 Biswa (250 Sq yards) from

Land & Building Deptt., GNCTD on 04.05.1994 site developed as a park, Annexure- 'B'."

6. We have heard learned counsels for the parties.
7. Reading of the counter affidavit filed by the LAC and SDMC shows that the possession of the subject land has been taken but compensation has not been paid to the petitioners and thus, one of the necessary ingredients of Section 24(2) of 2013 Act are accordingly fulfilled.
8. Having regard to the submissions made and the stand taken by the LAC in the counter affidavit, we are of the considered view that the necessary ingredients for the application of Section 24 (2) of 2013 Act stand satisfied. Since the award having been announced more than five years prior to the commencement of the 2013 Act and having regard to the fact that possession of the subject land has been taken but compensation has not been paid to the petitioners, in our view, the petitioners are entitled to a declaration that the acquisition proceedings initiated under the Act with regard to the subject land are deemed to have lapsed. It is ordered accordingly. Since as per the counter affidavit of SDMC the land has been put to use and utilized as a park, the petitioners would only be entitled for grant of compensation as per the 2013 Act. Compensation be released within one year from the date of this order. It is ordered accordingly.
9. The writ petition stands disposed of in above terms.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 27, 2018/afa