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

+ **W.P.(C) 2603/2016**

BALWAN SINGH & ORS.

..... Petitioners

Through: Mr. Rajesh Gupta and
Mr. M.C.Verma,, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Nikhil Goel and Mr. Gurpreet
Hora, Advocates for DDA.
Mr. Sachin Nawani, Advocate for R-4
& R-5.
Ms. Subra Prasar, Senior Counsel for
UOI.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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16.01.2019

1. The prayer in the present petition reads a under:

“(I) Issue writ of DECLARATION and/or any other appropriate Writ, Order or Direction in the like nature declaring the impugned acquisition proceedings commenced vide notification under Section 4 of Act 1894 bearing no. F.11(19)/01/L&B/LA/20112 Dated 21.03.2003 resulting in Award no. 25/2005-06 for Village Kirari Suleman Nagar (Patti Nithari) Delhi vis-avis subject lands (detailed in Para 5.1) stands lapsed;

(II) Consequently issue writ of CERTIORARI quashing the impugned acquisition proceedings commenced vide notification under Section 4 of Act 1894 bearing no.

F.11(19)/01/L&B/LA/20112 Dated 21.03.2003 resulting 1 in Award no. 25/2005-06 for Village Kirari Suleman Nagar (Patti Nithari) Delhi vis-a-vis subject lands (Para 5.1);

(III) Issue MANDAMUS and/or any other Writ, Order or direction in the like nature commanding the respondents not to interfere with and/or obstruct the petitioners in peaceful enjoyment of the subject lands (detailed in Para 5.1) situate in village Kirari Suleman Nagar (Patti Nithari), Delhi;

(IV) Pass any other or further writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

2. The Petitioners claim to be the joint owners of the subject land, and to be in actual physical possession of it in the revenue estate of village Kirari Suleman Nagar (Patti Nithari) Delhi. The details of the land are set out in a tabular form in para 5.1 of the petition. It is further stated that the Land Acquisition Collector (LAC) “paid the compensation but failed to take possession of subject lands and thus the acquisition having lapsed under Section 24(2) of the LA Act, 2013, the acquisition vis-à-vis subject lands is being challenged”. As regards Khasra No. 1//16 (04-11), it is stated that “neither possession was taken nor compensation was paid.” It is stated that the acquisition *qua* the said land was challenged in this Court in W.P.(C) 1836/2015 which came to be allowed by a judgment dated 3rd November 2015.

3. It is further stated in para 5.2 that the lands in question were acquired for the public purpose of planned development of Delhi under the ‘Rohini Residential Scheme’. The narration in the petition reveals that following the

notification issued under Section 4 of the Land Acquisition Act, 1894 ('LAA') on 21st March 2003, declaration under Section 6 LAA was issued on 19th March 2004. Subsequently, Award No.25/2005-06 was passed on 6th February 2006.

4. It is thereafter stated that with the coming into force of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act') with effect from 1st January 2014, the right of the Petitioners to seek declaration of lapsing of the acquisition proceedings under Section 24 (2) of the 2013 Act arose. While directing notice to be issued in the present petition on 24th May 2016, this Court directed status quo to be maintained as regards "title of the possession of the subject land" by the order dated 9th July 2018, the interim order is made absolute.

5. In response to the present petition, counter affidavits have been filed by the DDA and the LAC (North West). In the counter affidavit of the DDA filed on 1st June 2018, it is *inter alia* stated that after the passing of the Award No. 25/2005-06, "*kabza karwai*/possession was undertaken by DDA and the permission of the land in question as mentioned in para 5.1 of the writ petition was handed over to the DDA by the LAC to the Land and Building Department on 13th October 2006." It is further stated that the land in question was placed at the disposal of the Engineering Wing of the DDA-RPD-7 on 18th October 2006 for its development under the Rohini Residential Scheme. As regards compensation, in para 13 of the affidavit of the DDA, it is stated as under:

“13. It is submitted that regarding disbursement that amount of compensation can specifically be replied by LAC i.e. respondent No. 5. However, as per the statement "A" provided by LAC, the petitioners have withdrawn the amount of compensation against their respective share through Checque No. 921153 dated 08.11.06 for Rs.1,50,65,913/-, Checque No. 921584 dated 22.12.06 for Rs.32,58,222/-, Checque No. 921154 dated 08.11.06 for Rs.75,32,956/- and 16,29,111/-. The copy of statement "A" is annexed as **ANNEXURE "A".**”

6. It is also pointed out that the claim of the Petitioners is hopelessly time barred and that their predecessor in interest did not take any action in the last decade regarding the land in question. Despite the above affidavit having been filed on 1st June 2018, till date no rejoinder has been filed by the Petitioner. In the separate counter affidavit filed by the LAC on 21st September 2017, it is stated in paras 7 and 8 as under:

“7. That out of the abovementioned land, the possession of khasra No. 1//16(2-11), 17(4-00). 8//19(3-19}, 22(4-16), 23/1(1-14}, 16//1(4-16), 2(4-16), 3(4-16), 9/2(1-04)' 10/1(1-04)' 17//11(4-10)' 20/2(2-2 "t) 05), 18//2(4-12), 3(3-14), 8(5-14), 9(4-16), 16(4-08), 24(4-12), 25/1(1-06), 25/3(0-19), total admeasuring 70 bigha and 12 biswa was taken over and handed over to the beneficiary department on 13.10.2006, whereas the possession of the remaining land falling in kh. No. 1//16(2-00), 24(4-16), 25(4-16}, 34//2(0-13}, 35//16(4-10}, 17(4-16) total admeasuring 21 bigha 11 biswa has not been taken over.

8. That the compensation with respect to the khasra No. 1//17(4-00), 8//19(3-19}, 22(4-16), 23/1(1-14}, 16//1(4-16}, 2(4-16}, 3(4-16), 9/2(1-04)' 10/1(1-04)' 18//2(4-12}, 3(3-14), 8(5-14), 9(4-16), 24(4-12L 25/1(1-06)' total admeasuring 55 bigha 19 biswa has been received by the recorded owners vide cheque no. 921153 dated 08.11.2006 to the tune of Rs. 1,50,65,913/- for item no. 179. Further cheque no. 921154 & 921156 dated 08.11.2006 amounting to Rs. 75,32,956/- has been paid for item

no. 180-181 respectively. The compensation for the land falling in Kh. No. 17//11(4-10), 20/2(2·05), 18//16(4-08), 25/3(0-19) total admeasuring 12 bigha 2 biswa has been received by the recorded owners vide cheque no. 921584 dated 22.12.2006 to the tune of Rs. 32,58,222/- for item no. 179. The cheque no, 921585 & 921586 dated 21.12.2006 amounting to Rs. 16,29111/- for item no. 180-181 respectively has also been paid to the recorded owners.”

7. Again no rejoinder has been filed to in reply to the above counter affidavit by the LAC till date.

8. From the above pleadings, it is seen that even the Petitioners do not dispute having accepted compensation pursuant to the land acquisition Award, however they claim that they remain in possession. On the latter aspect both the affidavits of the DDA and LAC present a contrary picture. Therefore, the question of possession is a disputed question of facts which possibly cannot be examined in the present proceedings.

9. There is an added difficulty as far as this petition is concerned. In relation to the lands acquired for the Rohini Residential Scheme, an order has been passed by the Supreme Court on 18th October 2016 in certain applications in SLP Civil Nos. 16385-88/2012 (**Rahul Gupta v. Delhi Development Authority**) wherein *inter alia* it has been observed as under:

“In view of the order dated 10.3.2015, passed by this Court in SLP(C) Nos.16385-16388 of 2012, and a subsequent order dated 28.1.2016, passed in the same special leave petitions, the interim order passed by the High Court of Delhi on 21.4.2015 in W.P.(C) No.3841/2015, (Annexure A-11, in the instant interlocutory applications), is liable to be vacated, and is accordingly vacated.

We grant liberty to the Delhi Development Authority to produce a copy of this order in all matters, pertaining to land acquisition relating to the Rohini Residential Scheme, pending before the High Court, for vacation of similar interim directions.

It is made clear that in case the applicant has re-entered possession or otherwise, he shall vacate the said land and hand over its possession forthwith to the Delhi Development Authority, failing which it shall be assumed to be in possession of the Delhi Development Authority, after the expiry of ten days from the passing of the instant order.”

10. Therefore notwithstanding any assertion to the contrary by the present Petitioner, in terms of the above orders of the Supreme Court, the DDA is deemed to be in possession of the lands in question. Consequently, neither condition of Section 24 (2) of the 2013 Act – compensation and possession - is fulfilled.

11. The petition is accordingly dismissed. The interim order dated 24th May 2016 as confirmed on 9th July 2018 is hereby vacated.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

JANUARY 16, 2019

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