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

+ **W.P.(C) 4846/2016**

AMIT KUMAR AND ORS Petitioners
Through Mr. M. Dutta, Advocate

versus

UNION OF INDIA AND ANR Respondents
Through Mr. Rajneesh Sharma, Advocate for
Respondent/LAC/L & B Deptt.
Mr. J. K. Srivastava, Advocate for
Respondent No.2/DMRC

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

% **ORDER**
02.08.2019

1. The prayers in the present petition read as under:

“issue an appropriate writ, order or direction that this Hon'ble Court deems just and proper declaring and directing, that the Petitioner(s) are entitled to compensation under and in accordance with The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;

b) award costs of the present proceedings in favour of the Petitioner(s) and against the Respondent(s).”

2. There are four Petitioners in the present petition. Petitioner No.4 is represented by his legal representatives (LRs). The Petitioners claim to be the owners in possession of the property at Plot No. 340/47, 340/48, Friends

Colony Industrial Area, Jhilmil Tahirpur, Shahadra, Delhi-110095 (hereafter, 'property in question'). For the purposes of the acquisition of the property in question, a notice under Section 4 of the Land Acquisition Act, 1894 ('LAA') was issued on 12th April, 2006 for the public purpose of the MRTS Project Phase-II at G.T. Road, Shahdara. This was followed by a declaration under Sections 6 and 17 of the LAA on 22nd May, 2006. Possession of the property in question was taken over on 17th August, 2006.

3. By an Award dated 31st December, 2007 the Land Acquisition Collector ('LAC') determined the compensation payable. The amount so determined was released by the beneficiary i.e. Delhi Metro Rail Corporation Limited ('DMRC') (Respondent No. 2) to the Land and Building Department by a cheque dated 15th May, 2006 (for 80% of the amount) and the balance, by another cheque dated 23rd January, 2008. The Petitioners preferred a reference under Section 18 of the LAA for enhancement of compensation. In terms of the counter affidavits filed by the DMRC and LAC, these reference proceedings are pending in the Court of the learned Additional District Judge (ADJ). The compensation amount has been sent to that Court.

4. The Petitioners do not dispute that possession of the property in question has been taken over. The only plea on the basis of which the relief under Section 24 (2) of the The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act') is sought is that no compensation was "ever offered or paid to the Petitioners till 1st January, 2014."

5. The LAC has disputed the above contention by pointing out that compensation amount has been sent to the Court of the learned ADJ under Sections 30-31 of the LAA. Prior thereto, notices under Sections 9 and 10 of the LAA were issued to all the interested persons and it was on that basis that the award was prepared. It appears that the Petitioners never questioned the land acquisition proceedings at any point between the years 2007 and 2016 when the present petition was filed. There is no explanation forthcoming for the failure to do so.

6. On the other hand, the Petitioners appear to have accepted the validity of the land acquisition proceedings and were in the Court of the ADJ for enhanced compensation. These facts, which have emerged from the counter affidavits, have not been disputed by the Petitioners by filing any rejoinder.

7. Counsel for the Petitioners sought to contend that the question whether the deposit of the compensation in the Court of the ADJ would amount to tendering of compensation for the purposes of Section 24 (2) of the 2013 Act was pending consideration before a Constitution Bench of the Supreme Court. Referring to the order in *State of Haryana v. M/s G .D. Goenka Tourism Corporation Limited (2018) 3 SCC 585*, he submitted that till such time the Constitution Bench decides the issue, this Court should not proceed with the present petition.

8. This Court is unable to agree with the above submission. This aspect of the matter has already been discussed in detail by this Court in *Mool Chand v. Union of India 2019 173 DRJ 595 (DB)* and a similar contention has

been rejected. The following observations in the said decision are relevant:

“40. Even assuming that when the Constitution Bench of the Supreme Court in its referral order while using the expression ‘all aspects’ was referring even the above question of the non-revival of dead or stale claims by resorting to Section 24 (2) of the 2013 Act for consideration by the larger Bench, it is significant that the Constitution Bench did not continue the injunction issued by the three Judge Bench in *State of Haryana v. G. D. Goenka Tourism Corporation Ltd.* (*supra*). In other words, the Constitution Bench of the Supreme Court in the referral order dated 6th March, 2018 in *Indore Development Authority v. Shyam Verma* (2018) 3 SCC 405 did not intend to and in fact did not restrain the High Courts from proceeding with writ petitions where interpretation of Section 24 (2) of 2013 Act was involved. Also, importantly, the Constitution Bench while making the reference did not stay the operation of the decision of the three-Judge Bench in *Indore Development Authority v. Shailendra* (*supra*).

41. While the Court takes note of the observation in *D. K. Trivedi & Sons v. Ambalal Manibhai Patel* (*supra*) that if a larger Bench of the Supreme Court is seized of an issue, the High Court should ordinarily not proceed to decide the matter, in the present case considering that an earlier stay order passed by the three Judge Bench of the Supreme Court in *State of Haryana v. G. D. Goenka Tourism Corporation Ltd.* (*supra*) was not continued by the Constitution Bench at the time of making the reference, the said decision in the *D. K. Trivedi & Sons v. Ambalal Manibhai Patel* (*supra*) is distinguishable on facts.”

9. In the present case it is not possible to accept the plea of the Petitioners that compensation has not been tendered to the Petitioners, in view of the admitted fact that the compensation amount is lying deposited in the Court of the ADJ and the Petitioners are pursuing their application under Section 18 of the LAA in that Court.

10. Consequently, the Court is not inclined to grant the relief prayed for.

11. The petition is accordingly dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 02, 2019

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