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

+ **W.P.(C) 6205/2015 & CM No. 7636/2019**

MANOJ KUMAR

..... Petitioner

Through: Sh. B.S. Mathur, Advocate with Ms.
Aditee and Mr. Rajat Mathur,
Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Sarat Chandra, Advocate for
Respondent No.1.
Ms. Shobhana Takiar, Advocate for
DDA.
Mr. Yeeshu Jain, Advocate with Ms.
Jyoti Tyagi, Advocate for LAC/L&B.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

ORDER
27.02.2019

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1. With the consent of the parties, the writ petition is taken up for final hearing.

2. The Petitioner has prayed for the declaration of the entire acquisition proceedings culminating an Award dated 28th November 2005 passed by Land Acquisition Collector (LAC) with respect to the land of Petitioner in Khasra No. 17/15 (1-5) and 17/17 (0-4) measuring 1 bighas 9 biswas in the Revenue Estate of Village Muhamadpur Majri, Delhi, has lapsed.

3. The case of the Petitioner is that pursuant to a notification issued under Section 4 of the Land Acquisition Act (LAA) 1894 on 21st March 2003 seeking to acquire the Petitioner's land for the public purpose of the Rohini Residential Scheme, the Petitioner filed objections under Section 5-A of LAA.

4. Nonetheless, a declaration was issued under Section 6 LAA on 19th March 2004 and an Award pronounced on 28th November 2005. According to the Petitioner, the actual physical possession of the land continued to remain with him and compensation was also not paid. The Petitioner, thereafter, states that with the enactment of the 2013 Act, with effect from 1st January 2014 and with all the conditions stipulated under Section 24 (2) of the 2013 Act having been fulfilled, the Petitioner is entitled to the relief in terms thereof.

5. When the petition was first heard on 3rd July 2015 while directing to issue notice, the Court directed that status quo be maintained with regard to nature, title and possession of the said land. That interim order was made absolute on 5th April 2018.

6. In the meanwhile, replies were filed by the DDA on 28th February 2015 and the LAC on 7th July 2017 confirming that neither has possession of the land in question been taken nor has the compensation been paid.

7. CM No. 7636/2019 has been filed by the DDA for vacating the status quo

order. It is stated that the land in question is required by the National Highway Authority of India (NHAI) for extension of the Urban Extension Road-II which is of national importance and had been declared as a National Highway Road No. 344M. Reference is also made to the orders passed by the Supreme Court in SLP (C) No. 16385-16388/2012 (**Rahul Gupta v. DDA**) concerning the acquisition of land for the Rohini Residential Scheme. It is accordingly prayed that interim orders passed by the Court should be vacated.

8. At the outset, Mr. B.S.Mathur, learned counsel for the Petitioner, states that the Petitioner is no longer seeking the lapsing of the land acquisition proceedings particularly since the land is proposed to be used for the National Highway Road No. 344M. He states that since compensation admittedly has not been paid and possession also not taken so far, he is entitled to compensation in terms of the 2013 Act. He refers to the proviso to Section 24(2) of the 2013 Act of LAA. He states that if a direction is issued to the LAC to consider the Petitioner's plea for compensation to be paid under 2013 Act, the Petitioner undertakes to surrender possession of the land in question to the LAC and DDA. He further points out that the NHAI notification shows the land to be government land and therefore no useful purpose will be served in asking him to go before the NHAI under the National Highways Act to seek compensation.

9. Learned counsel appearing for the LAC and DDA do not dispute that physical possession of the land in question remains with the Petitioner and that compensation has also not been paid, notwithstanding that the Award

was passed way on 28th November 2005.

10. Under Section 16 of the LAA, the land in question cannot be said to vest in the Government unless possession is taken pursuant to the Award passed. However, with the Petitioner willing to part with possession, while not disturbing the Award, the only question that remains would be the payment of compensation.

11. The proviso to Section 24(2) of 2013 Act reads as under:-

“Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

12. In other words, the proviso to Section 24 (2) of the 2013 Act, is an exception to Section 24 (2) which talks of lapsing of the land acquisition proceedings. In terms of the proviso, while the Award passed under the LAA would be left undisturbed, compensation would be payable under the 2013 Act subject to fulfilment of the condition stipulated therein. In the present case, with the Petitioner making a categorical statement that he does not wish to challenge the land acquisition proceedings, and being agreeable to surrender possession, the Proviso to Section 24 (2) of the 2013 Act in so far as compensation is concerned, would stand attracted since admittedly no compensation has been paid to the Petitioner till date.

13. Accordingly, the Court directs that subject to the Petitioner handing

over peaceful possession of the land in question to the LAC and the DDA on site on or before 15th March 2019, and the possession proceedings being drawn up by the LAC in the presence of the Petitioner and the DDA, the Petitioner would be entitled to compensation for the said land in terms of the proviso to Section 24 (2) of the 2013 Act. In other words, even while the Award dated 28th November 2005 would be left undisturbed, the compensation amount will be calculated in terms of the 2013 Act.

14. The Petitioner's claim before the LAC, which will be made not later than one month after the handing over of possession under para 13 above, for payment of compensation in terms of the proviso to Section 24 (2) of the 2013 Act, will be processed and examined in accordance with law by the LAC and a speaking order passed thereon not later than two months thereafter. If the Petitioner is aggrieved by the said order, it will be open to him to seek appropriate remedies in accordance with law.

15. The petition along with pending application is disposed of. The interim order dated 3rd July 2015 confirmed on 5th April 2108 is hereby vacated.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 27, 2019

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