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

+ **W.P.(C) 7798/2015**

RANDHAWA SINGH & ORS Petitioners
Through **Mr. B.S.Mathur, Advocate**

versus

UNION OF INDIA & ORS Respondents
Through **Mr. Chiranjeev Kumar, Advocate for Respondent No.1**
Mr. Arjun Pant, Advocate for DDA
Mr. Yeeshu Jain, Standing counsel with Ms. Jyoti Tyagi, Advocate for LAC/ L&B

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
26.07.2019

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Dr. S. Muralidhar, J.:

1. The Petitioners, 13 in all, are stated to be permanent residents of Village Tikri Khurd, Delhi. Originally, there was only one substantive prayer (a) seeking a declaration that the entire land acquisition proceedings under Award No. 10/2008-09/DC(N-W) dated 16th February, 2009 in respect of the land in Khasra Nos. 24//24(4-16), 25(4-14), 28(0-4), 25//17(4-16), 18(4-16), 19(4-16), 20/2(2-16), 21(4-16), 22(4-16), 23(4-16), 24(4-16), 33//1(4-16), 10(4-16), 34//5(4-16), totally measuring 60 *Bighas* 10 *Biswas* situated in the aforementioned Village have lapsed in terms of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition,

Rehabilitation and Resettlement Act, 2013 ('the 2013 Act').

2. Later the petition was permitted to be amended to add prayer 'b', which reads as under:

“(b) The Land Acquisition Collector be directed to assess and award/give compensation to the petitioners of their lands in accordance with the provisions of the New Act, 2013.”

3. It is the case of the Petitioners that the ownership of the subject land either in their favour or in favour of their predecessors-in-interest was duly recorded in the revenue record i.e. the *Khatauni*, which according to them has a presumption of correctness under the Delhi Land Revenue Act, 1954. A copy of the *Khatauni* for the year 2000-2001 issued on 21st July, 2011 has been enclosed with the petition.

4. The admitted fact is that the aforementioned land in village Tikri Khurd (hereafter 'the subject land') was notified for acquisition by notification dated 23rd February 2006 under Section 4 of the Land Acquisition Act 1894 (LAA). It must be noted here that in the list of dates appended to the writ petition (both initially filed and later amended), against the date of 23rd February, 2006 it is stated *inter-alia* that “the said built up land of the Petitioners was also included in the impugned notification”. This averment is however not found in the narration of the main writ petition itself.

5. Following the aforementioned notification under Section 4 LAA, a declaration under Section 6 LAA was issued on 22nd February 2007 stating the public purpose of the acquisition to be the planned development of

Delhi.

6. The Petitioners state that the Government of NCT of Delhi ('GNCTD') decided to grant additional compensation in cases where Awards in respect of the above declaration under Section 6 LAA had not been announced till 18th December, 2007. This was provided for in a Special Rehabilitation Package (hereafter 'SRP') announced on 1st October, 2008.

7. The Petitioners state that without giving effect to the SRP, the Land Acquisition Collector (North-West) [LAC (NW)] pronounced an Award on 16th February, 2009 under Section 11 LAA by giving compensation at prices which were fixed in 2005. In paras 11 and 12 of the petition, it is averred that a demand was raised for release of a sum of Rs.1,20,59,80,769.63 by the LAC by letter dated 24th November 2011 for the compensation to be paid to the affected people, including the Petitioners, in terms of the SRP. It is further averred that "Additional Dist. Magistrate/LAC of Dist. North West without paying complete compensation to the villagers further revised demand of special rehabilitation package in respect of the award in question which was sent to the Additional Secretary, Land & Building, Govt. of NCT Delhi vide its communication dated 09.09.2012."

8. In para 13 it is averred as under:

"13. That till date, the compensation of the petitioners as well as majority of the land holders have not been deposited in their accounts, consequently they also did not allow the respondents to take the physical possession of their lands, till date, as the same has been under cultivation of the Petitioners till today. It is not out

of place to submit that the land of the petitioners has remained undeveloped for more than five years, therefore, the same is also liable to be returned to them back as unutilized, as per provisions of Section 101, of the said Act. Photographs of the, Land in question, showing the standings crops are annexed as ANNEXURE P-7(COLLY).”

9. The Petitioners then advert to the 2013 Act, and in particular to Section 24 (2) thereof, seeking the relief of declaration of deemed lapsing of the land acquisition proceedings.

10. As far as the above prayer (a) is concerned, since the Award was passed on 16th February, 2009 i.e. within five years of the coming into force of the 2013 Act on 1st January, 2014, one of the essential conditions for the grant of relief under Section 24(2) of the 2013 Act is not fulfilled. This Court therefore by its order dated 5th February, 2019 had rejected prayer ‘a’ seeking that relief. The discussion hereafter is as regards the tenability of the Petitioners’ Prayer ‘b’ i.e. seeking compensation in terms of the 2013 Act.

11. In support of the above prayer (b), reliance is placed on the proviso to Section 24 (2) of the 2013 Act. For this it is necessary to refer to the entire Section 24 of the 2013 Act reads as under:

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,

(a) where no award under section 11 of the said Land Acquisition Act has

been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

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 5 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

12. Mr. B. S. Mathur, learned counsel appearing for the Petitioner placed reliance on the judgment of this Court in ***Tarun Pal Singh vs. Lt. Governor, GNCTD (2015) SCC OnLine Del 9789***, where it was held that in cases where awards were made within a period of five years prior to the commencement of the 2013 Act, Section 24 (2) would not apply. However, it was held that Section 24 (1) (b) would apply and that the exception carved by the proviso, which has been placed after Section 24 (2) of the 2013 Act, would also apply. The reason for this, on the facts of that case, was explained by this Court, as under:

*“This is so because compensation in respect of the majority of the land holdings has not been deposited in the account of the beneficiaries. This is an admitted fact. **The consequence of this***

would be that all the beneficiaries which include the petitioners here who have been specified in the notification under section 4 of the 1894 Act would be entitled to compensation in accordance to the provisions of the 2013 Act. It is held accordingly.” (emphasis supplied)

13. It requires to be noticed at the outset that the abovementioned decision of this Court was reversed by a two Judge Bench of the Supreme Court in ***Delhi Metro Rail Corporation Limited v. Tarun Pal Singh (2018) 14 SCC***

161. It was *inter-alia* held by the Supreme Court as under:

“25. If the proviso to Sub-Section (2) of Section 24 is read as part of Sub-Section (1) of Section 24, the same makes the said provision completely different and inconsistent. When we consider the expression "where an Award under Section 11 has been made" provided under Section 24(1)(b), the proceedings have to continue under the provisions of Act of 1894. If the proviso to Sub-Section (2) of Section 24 read as proviso to Section 24(1), then Section 24(1)(b) will be rendered nugatory and/or becomes otiose. True effect has to be given to the provision contained in Section 24(1)(b) which says that when award under Section 11 has been made, then such proceedings shall continue under the provisions of Land Acquisition Act 1894, as if the said Act has not been repealed.

26. The three contingencies are provided under Sub-Section (2) of Section 24 i.e. (i) in case if award was passed five years or more prior to the commencement of Act of 2013 and (ii) if compensation has not been paid, or (iii) possession has not been taken. Exception is carved out by adding the proviso to Section 24(2) - wherein the land acquisition would not lapse, in case some of the land losers are paid compensation but land owners of majority of holding are not paid. Thus we are of the considered opinion that the proviso to Section 24(2) cannot be lifted and made part of Section 24(1) (b).”

14. It further requires to be noted that subsequently, by an order dated 27th February 2019, in *Delhi Development Authority v. Virender Lal Bahri (2019) SCC online SC 279* the correctness of the above decision of the Supreme Court in *Delhi Metro Rail Corporation v. Tarun Pal Singh (supra)* was doubted by another two Judge Bench of the Supreme Court and the matter has been referred to a larger Bench of the Supreme Court.

15. Be that as it may, if all the above decisions were to be kept aside on the ground that the legal position in this regard is not clear, it is plain that one of the essential requirements, even in terms of the proviso below Section 24 (2) of the 2013 Act, is that “compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries”.

16. This factual position regarding non-deposit of the compensation in respect of the majority of land holdings has to exist if the relief claimed in terms the proviso below Section 24 (2) of the 2013 Act is to be granted. This is assuming the said proviso would apply to Section 24 (1) (b) of the 2013 Act as well, as is contended by Mr. Mathur.

17. It must be noted at the outset that this factual position of non-deposit of compensation in respect of the majority of land holders has been seriously contested by the LAC in its counter affidavit dated 16th November, 2017. In para 4 of the said counter affidavit it is stated as under:

“That the present writ petition is liable to be dismissed as the possession of the lands which became the subject matter of the present writ petition was duly taken way back on 21.6.2011 and the compensation was also paid to the recorded owner/s way

back in 2011 itself by cheque number 260332 dated 5.7.2011 amounting to Rs.20,44,059/- as the petitioners moved an application seeking release of compensation in view of the fact that the possession of the land was taken from them. Thus the present writ petition is devoid of any cause of action and the same is liable to be dismissed.”

18. It is further pointed out by the LAC that the contention of the Petitioners that since the land remained undeveloped for more than five years, it should be returned back to them as ‘unutilized’, is an admission on their part that “actual vacant physical possession of the subject land was duly taken by the appropriate Government and the compensation was also been made”. It is further pointed out that the possession proceedings dated 21st June, 2011 have not been challenged by the Petitioners.

19. Enclosed with the counter affidavit of the LAC are the documents to show receipts of the compensation deposited with six of the Petitioners in the sum of Rs.20,44,059/- each. A sampling of the application made by two of them at the time of receipt of compensation has been enclosed. In the said application signed by each of the Petitioners it is *inter-alia* stated as under:

“2. That possession of the land was taken from the applicant hence no other person except the applicant is entitled to-receive the compensation.

3. That the applicants shall receive the compensation under protest and subject to the filing of reference U/S 18 of LA Act.”

20. In the affidavit of the DDA filed on 21st August, 2007 the extract from Statement ‘A’ in respect of each of the Petitioners has been set out in full demonstrating that most of them had been paid the above compensation,

whilst some of the Petitioners like Ram Karan (Petitioner No.7), Ram Kishan (Petitioner No.8) and Vinod Kumar (Petitioner No.9) have received Rs.30,66,088.62 as compensation. It is pointed out that the DDA released a further sum of Rs.92,28,32,568.53 to the Land and Building Department of the GNCTD by a cheque dated 12th September 2014, on account of the SRP which was to be released subject to the following conditions:

- “1. That the farmers will not agitate/demand any further enhancement of compensation,
2. That the farmers will not cause any obstructions in the development works of DDA.
3. That the farmers will withdraw all court cases pending in different court of law and also not file any court case in future on compensation of land by DDA.”

21. Even in the amended petition, there is no averment anywhere about any of the Petitioners having received compensation in respect of the subject land, which fact only emerged in the counter affidavits of the LAC and DDA. On 11th December, 2017, the Petitioners filed a rejoinder where they do not dispute that they did receive the above compensation. In the para-wise reply to Para 4 of the counter affidavit of the LAC, it is *inter-alia* averred in the rejoinder that

“In other words, compensation released to the Petitioners vide cheque number 260332 dated 05.07.2011 amounting to Rs.20,44,059/- (twenty lacs forty four thousand fifty nine rupees only) is only a major part of compensation of the total amount and hence, compensation including the special package for rehabilitation in respect of majority of land holders has not been deposited in the account of the beneficiaries in present case. Further, it is a matter of record that Petitioners moved an application seeking release of the entire compensation, but the

same was not accepted and more portion of compensation was released which was accepted under protest (as is also evident from Letter dated 16.02.2009, which is part of the answering Respondent's Counter-affidavit as Annexure R-1) which has been conveniently omitted to be mentioned by the answering Respondent in its Counter Affidavit under reply. However, it is again reiterated at the cost of repetition that actual physical cultivatory possession till date is with the Petitioners only, as is stated in the Paras 9 to 13 of the Writ Petition.”

22. It will be recalled that the ‘letter’ dated 16th February, 2009 seeking release of compensation which is referred to above is the same application, paras 2 and 3 of which have been extracted hereinbefore. The Petitioners, therefore, do not dispute that they did submit that application admitting that possession of the land in question had been taken and undertaking to resort to Section 18 of the LAA for seeking higher compensation under protest.

23. In the circumstances, it is a moot point whether the word ‘compensation’ occurring in the proviso below Section 24 (2) of the 2013 Act would include compensation payable under an SRP. The admitted position here is that compensation payable as per the Award has been received in full by each of the Petitioners, although under protest. Their application to that effect was given to the LAC on 16th February, 2009 itself long before the 2013 Act came into force. Why the Petitioners have not till the filing of this petition, submitted such reference applications under Section 18 LAA is for the Petitioners to explain. If in fact they have filed such reference applications, then they should pursue that course in accordance with law.

24. This Court therefore fails to appreciate in the above factual position how

the Petitioners can seek the benefit of the proviso to Section 24 (2) of the 2013 Act and claim that compensation should be paid to them under the 2013 Act.

25. It must be noted here that both in *Tarun Pal Singh v. Lt. Governor (supra)* and in the case in which reference was made to the larger Bench viz., *Delhi Development Authority v. Virender Lal Bahri (supra)*, the admitted position was that compensation in respect of a majority of landholdings had not been deposited in the accounts of the beneficiaries. Neither of the cases appeared to have involved the issue whether the word ‘compensation’ in the proviso to Section 24 (2) would include compensation in addition to that payable under the Award i.e. under the SRP in this case. In any event, the compensation payable under the SRP was made conditional upon the farmers abiding by the conditions explained hereinbefore. It is extremely doubtful therefore that the word ‘compensation’ in the context of the Section 24(2) of the 2013 Act would include compensation payable under an SRP.

26. In the present case, even otherwise the Petitioner’s stand as is noted by the application dated 16th February, 2009 is that they agreed to pursue the case by filing a reference under Section 18 LAA. The factual requirement in terms of the proviso below Section 24 (2) of the 2013 Act that compensation in respect of a majority of landholdings had not been deposited in the accounts of the beneficiaries cannot be said to be an ‘admitted’ position in the present case. Rather, it is undisputed that the entire compensation in terms of the Award in question has indeed paid in full to the Petitioners.

27. For the aforementioned reasons, the relief claimed in prayer (b) of the writ petition cannot be granted. The writ petition is dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 26, 2019
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