

\$~17

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

+ **W.P.(C) 10141/2015 & CM APPL. 19774/2019**

SHRI PARDEEP KUMAR & ANR

..... Petitioners

Through: Mr.N.S.Vasisht with Mr. M.P.
Bhargava, Mr.Vishal Singh and
Ms.Jyoti Kataria, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr.Arun Birbal, Advocate for DDA.
Mr.Yeeshu Jain, Standing Counsel for
LAC/L&B with Ms.Jyoti Tyagi,
Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

%

16.05.2019

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

“(i) issue a writ of certiorari and/or any other writ, order or direction of the similar nature declaring the entire acquisition with respect to the said land of the Petitioner having lapsed and further quashing the impugned notification No. No. F.11(92)/2004/L&B/LA/14103 dated 23.02.2006 issued under Section 4 of the Land Acquisition Act, 1894, the notification No.F.11(92)/2004/L&B/LA/17513 dated 22.02.2007 issued under Section 6 of the Land Acquisition Act, 1894 and the Award no. 10/2008-09/DC (N-W) dated 16.02.2009 with 9 respect to with respect to 44 Bighas 11 Biswas of land comprised in Khasra Nos. 27/1/2 (1-8), 27/10 (4-16), 27/11 (4-16), 27/12 (4-16), 27/19 (4-16); 27/20 (4-16), 27/21 (4-16), 27/22 (4-16) & 10/3 (4-15), 10/4 (4-16), situated in Village Tikri Khurd, NCT of Delhi.

AND

(ii) issue a writ of mandamus and/or any other writ, order and direction of the similar nature issuing directions to the Respondents not to Interfere with and/or obstruct the Petitioner in the peaceful enjoyment of 44 Bighas 11 Biswas comprised in Khasra Nos. 27/1/2 (1-8), 27/10 (4-16), 27/11 (4-16), 27/12 (4-16), 27/19 (4-16), 27/20 (4-16), 27/21 (4-16), 27/22 (4-16) & 10/3 (4-15), 10/4 (4-16), situated in Village Tikri Khurd, NCT of Delhi;”

2. A perusal of the petition shows that the Petitioners claim to be recorded owners in actual physical possession of 44 bighas 11 biswas of land as described above. A copy of the Khatauni of the land is enclosed with the petition. It is stated that the land is partly constructed and rest is being used for agricultural purposes.

3. It is acknowledged that the land was sought to be acquired by notification dated 23rd February, 2006 under Section 4 of the Land Acquisition Act, 1894 (LAA) followed by declaration under Section 6 LAA issued on 22nd February, 2007. The impugned Award no. 10/2008-09/DC (N-W) was passed by the Land Acquisition Collector (LAC) on 16th February, 2009.

4. The Petitioners claim that no compensation was paid or offered to them or deposited or tendered in any Court and that there was non-compliance with Section 31 of the LAA.

5. According to the Petitioners they, along with other villagers whose lands were sought to be acquired made a representation dated 1st May, 2009 to the Lt. Governor (LG) of the Government of NCT of Delhi (GNCTD) under

Section 48 of the LAA for de-notification of the land. According to the Petitioners the land in question fell within clause 3 of directions issued by the LG on 1st March, 2009 that “the land for which de-notification request is pending before the Land & Building Department (L & B Department) possession shall not be taken over during the pendency of the representation.”

6. Thereafter, the Petitioners along with owners of adjacent land filed WP(C) No.3017/2011 in this Court seeking the quashing of the aforementioned Award. The said writ petition was dismissed on 6th May, 2011 noting the decision of the LG dated 1st March, 2011. Thereafter on 12th May, 2011 the Petitioners gave a representation to the LAC.

7. In order to ascertain the status of the representation, the Petitioners on 29th July, 2005 filed an application under Right to Information Act, 2005 (RTI Act). By a letter dated 2nd September, 2015 the Deputy Secretary, L & B Department informed the Petitioners that their representation under Section 48 LAA was still under process.

8. Thereafter, reference is made in the petition to the legal opinion of the Solicitor General furnished to the Government of India as regards the scope of the purported Section 24 of the 2013 Act dated 28th December, 2013 and 15th January, 2014. According to the Petitioners the essential features of the said legal opinion, which interpreted Section 24(2) of the LAA were as under:

“(i) It clarified that physical possession would only mean where actual

physical possession has been taken by demarcation with effective physical and absolute control and that the possession have been taken within five years of the award.

(ii) The new law under Section 24(2) would apply in all those cases where prescribed five years period was not complete on 01.01.2014, however, the pendency of the acquisition had continued for a period five years or more and the situation has remained unchanged, that is, possession has not been taken over or compensation has not been paid.

(iii) The period during which the acquisition proceedings were stayed due to any action in Court, were included in the prescribed five years period.”

9. According to the Petitioners the above opinion was accepted by the L & B Department and Circulars dated 13th January, 2014 & 14th March, 2014 were issued. It is further pointed out that the said circulars and legal opinion have been referred to by the Supreme Court in its decisions in ***Union of India v. Shiv Raj (2014) 6 SCC 564*** and ***Sree Balaji Nagar Residential Association v. State of Tamil Nadu (2015) 3 SCC 353***.

10. The Petitioners have also referred to the decisions in ***Pune Municipal Corporation v. Harak Chand Misiri Mal Solanki(2014) 3 SCC 183***, ***Bharat Kumar v. State of Haryana (2014) 6 SCC 586*** and ***Bimla Devi v. State of Haryana (2014) 6 SCC 583*** wherein under similar circumstances the land acquisition proceedings were quashed.

11. When this petition was listed for hearing on 30th October, 2015. While directing notice to issue therein this Court directed the parties to maintain

status-quo with regard to the nature, title and possession of the land in question. Thereafter on 7th November, 2017 the said interim order was made absolute during the pendency of the petition.

12. The Delhi Development Authority (DDA) filed its counter affidavit on 7th November, 2017 pointing out *inter-alia* that possession of the land in question had been in fact taken over on 22nd November, 2002 and 2nd January, 2004. It was only on account of the status-quo order passed that no further activity took place on the land in question. As regards compensation, it was stated that 80% of the compensation was released on 17th December, 2003 and the balance 20% on 5th March, 2004 towards Award No. 7/2003-04. As regards Award No.10/2008-09 the compensation amount was released on 5th November, 2009.

13. The LAC has filed a counter affidavit on 21st March, 2018 pointing out, *inter alia*, that the Award was passed on 16th February, 2009 which is within five years of the coming into force of the 2013 Act and therefore an essential condition of Section 24(2) of the 2013 Act is not satisfied. It was also pointed out that no new cause of action has arisen in favour of the Petitioner. None of the recorded owners appeared to have challenged the land acquisition proceedings which concluded with the passing of the Award. It also reiterated that actual vacant physical possession was taken on the spot and handed over to the DDA in 2011. It is submitted that the land has vested with the Government free from all encumbrances.

14. Thereafter, CM No. 19774/2019 was filed by the DDA seeking vacation

of the status-quo order. In the said application, the DDA pointed out that the land in question is acquired for allotment to the Law Department, GNCTD for the construction of a building and residential staff quarters for judicial officers. This is said to be monitored by the High Court on the administrative side. On this application notice was issued by this Court on 29th April, 2019. On the next date i.e. 8th May, 2019 the Court decided that the writ petition itself would be heard finally.

15. In response to the query regarding non-fulfilment of an essential condition of Section 24 (2) of the 2013 Act, viz., that the Award under which land was acquired under the LAA should be more than five years prior to the coming into force of 2013 Act on 1st January 2014, Mr. Vasisht, learned counsel for the Petitioner referred to the two opinions of the learned Solicitor General of India, which has been noted hereinbefore. Having examined those opinions, this Court is unable to find anything therein which even remotely states that notwithstanding that the land acquisition Award under the LAA may be within a period of five years prior to 1st January, 2014, as in the present case, the land acquisition proceedings would nevertheless be deemed to have lapsed.

16. Next Mr. Vasisht placed reliance on the decision of the Supreme Court in *DDA v. Virender Lal Bahri 2019 (3) SCALE 853*. Again, having carefully perused the said decision, the Court finds no support for the above proposition advanced by Mr. Vashisht that even where the Award in question is within five years prior to 1st January 2014, the relief under Section 24(2) of the 2013 Act will be available.

17. Mr. Vashisht then focused on the second proviso to Section 24(2) which was interpreted by this Court in its decision vide order dated 21st May, 2015 in WP(C) No. 8596/2014 (*Tarun Pal Singh v. Lt. Governor, Govt. of NCT of Delhi*) as being a proviso also to Section 24(1) (b) of the 2013 Act. In sum, the attempt by Mr. Vashisht was to urge this Court to consider granting relief the Petitioners thereunder on the basis that “compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries’.

18. The Court finds that there is no prayer in the present petition that the Petitioners should be granted relief under the proviso to Section 24 (2) of the 2013 Act. Correspondingly, there is no averment whatsoever in the entire petition about the failure by the LAC to deposit compensation in respect of a majority of land holdings in the account of the beneficiaries. In the absence of any such factual foundation being laid by the Petitioners, it is not possible to grant any relief in terms of the proviso to Section 24 (2) of the 2013 Act. Moreover, the affidavits of both the DDA and the LAC maintain that compensation was paid to the beneficiaries.

19. Consequently, the Court is not inclined to entertain the Petitioners except stating it will be open to the Petitioners to separately make a representation on this aspect to the LAC and such representation if made within a period of one month from today will be considered by the LAC in accordance with law and a decision thereon would be communicated to the Petitioner within a period of three months thereafter.

20. It will be open to the Petitioners to question the said decision of the LAC, if it is adverse to them, in accordance with law.

21. The petition is dismissed and the application is disposed of in the above terms.

22. The interim order dated 30th October, 2015 which stood confirmed on 7th November, 2017 is hereby vacated.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MAY 16, 2019

mw