

(2016) 02 DEL CK 0020

In the Delhi High Court

Case No : W.P. (C) 6380/2014 & CM No. 15363/2014

Alka Luthra and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-02-2016

Acts Referred:

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24(2)

Citation : (2016) 02 DEL CK 0020

Hon'ble Judges : Badar Durrez Ahmed and Sanjeev Sachdeva, JJ.

Bench : Division Bench

Advocate : Ateev Mathur, Richa Oberoi and A.P.S. Sehgal, Advocates, for the Appellant; Rajesh Gogna, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Badar Durrez Ahmed, J.—1. The petitioners seek the benefit of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the 2013 Act") which came into effect on 01.01.2014. A declaration is sought to the effect that the acquisition proceeding initiated under the Land Acquisition Act, 1894 (hereinafter referred to as "the 1894 Act") in respect of which Award No. 10/87-88 dated 14.05.1987 was made, inter alia, in respect of the petitioners' land comprised in Khasra Nos. 146(0-13), 147 Min (3-17) and 148(2-13) measuring 7 bighas 3 biswas in all in village Sahoorpur shall be deemed to have lapsed.

2. Though the respondents claim that possession of the said land was taken on 14.07.1987, the petitioners dispute this and maintain that physical possession has not been taken over. With regard to the issue of compensation, the learned counsel for the petitioners submitted that earlier in respect of the very same acquisition proceedings, the Division Bench of this Court had dealt with the case of Balbir Singh v. Union of India & Ors.: , 39 (1989) DLT 233. In that decision,

the Division Bench had, inter alia observed and held as under:-

"2. The Delhi Administration as also the Delhi Development Authority have taken up a very fair stand before us. Their contention is that certain land owners have received compensation and as such they should not be allowed to deal with the land till the compensation is paid back to the Delhi Administration with interest at the rate of 12% per annum from the date they received the payment till the date they have refunded the amount. The contention raised is quite fair and is accepted. It is further stated by learned counsel for the respondents that no effort would be made to take possession of any land from anybody and the possession already taken of these lands will be restored back to the land owners on receipt of the refund of compensation, if made with interest. It is further contented that in certain cases, the land owners have been allotted alternate plots in lieu of their land having been acquired and in those cases the alternate plots must be surrendered before the land owners can take advantage of the quashing of the notifications. The counsel for the petitioner accepts this suggestion of the respondents. Consequently, we direct that the possession of the petitioners will not be disturbed except in case where the compensation has been received by the land owners or alternate plots have been allotted until the compensation amount and the alternate plot is surrendered. Counsel for the petitioners agree that the land owners who have received compensation or have been allotted alternate plots would surrender the same as indicated above within two months from today. All other land owners who have their lands the way they like and their possession will not be disturbed by the respondents. Delhi Administration will see to it that the Revenue records are amended accordingly. The proper authority i.e. the Land Acquisition Collector will receive the refund of compensation with 12 per cent interest per annum as well as the surrender of the alternate plots when and if offered. The writ petitions are disposed of in these terms."

The matter was taken to the Supreme Court and the same was disposed of by a judgment reported in , (1997) 5 SCC 430 whereby the appeals preferred by the Delhi Development Authority and Union of India and others were dismissed. The order of the High Court was, therefore, not disturbed.

3. The learned counsel for the petitioners submitted that consequent upon the said decision, the compensation amount had been returned to the respondents in 1989 itself. In this context, on 01.12.2015, the learned counsel for the Land Acquisition Collector required further time to verify as to whether as per their records the compensation had been returned. We had directed that the Land Acquisition Collector should file a short affidavit within four weeks. While passing the order dated 01.12.2015, we had made it clear that no further time would be granted for verification of the aforesaid factum of the return of compensation amount. We had also indicated that in case no affidavit was filed or there was no contrary evidence on behalf of the respondents, it would be deemed that the compensation amount had been returned as already expressed in our order

dated 29.09.2015.

4. No such affidavit has been filed on behalf of the Land Acquisition Collector and the learned counsel has not been able to produce any contrary evidence with regard to the return of the compensation amount. He, however, requested for some more time but, that option had been foreclosed by our order dated 01.12.2015.

5. In these circumstances, it will be deemed that the compensation amount was returned. As such, the immediate corollary is that the petitioners have not received any compensation inasmuch as whatever they had received earlier had been returned pursuant to the directions of this Court alongwith interest.

6. Therefore, without going into the controversy of the physical possession, the Award having been made more than five years prior to the commencement of the 2013 Act, and the compensation not having been paid, as indicated above, the necessary ingredients for the application of Section 24(2) of the 2013 Act as interpreted by the Supreme Court and this Court in the following cases stand satisfied:-

(1) Pune Municipal Corporation and Anr v. Harakchand Misirimal Solanki and Ors: , (2014) 3 SCC 183;

(2) Union of India and Ors. v. Shiv Raj and Ors: , (2014) 6 SCC 564;

(3) Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors: Civil Appeal No. 8700/2013 decided on 10.09.2014;

(4) Surender Singh v. Union of India & Others: WP(C) 2294/2014 decided on 12.09.2014 by this Court; and

(5) Girish Chhabra v. Lt. Governor of Delhi and Ors: WP(C) 2759/2014 decided on 12.09.2014 by this Court.

7. As a result, the petitioners are entitled to a declaration that the said acquisition proceedings initiated under the 1894 Act in respect of the subject land are deemed to have lapsed. It is so declared.

8. The writ petition is allowed to the aforesaid extent. We also grant liberty to the respondents to seek a modification of this judgment in case they find that the compensation had not been returned by the petitioners. But this opportunity would be available only for a period of two months from today. There shall be no order as to costs.