

(2018) 03 DEL CK 0401

In the Delhi High Court

Case No : Civil Writ Petition No. 9706 Of 2015

Alok Mohan Kar & Anr

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 12-03-2018

Acts Referred:

Constitution Of India, 1950 — Article 226
Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 24(2)
Land Acquisition Act, 1894 — Section 4, 6

Citation : (2018) 03 DEL CK 0401

Hon'ble Judges : G.S.Sistani, J; Sangita Dhingra Sehgal, J

Bench : Division Bench

Advocate : N.S. Vasisht, M.P. Bhargava, Siddharth Panda, Dhanesh Relan, Kajri Gupta, Saroj Bidawat

Final Decision : Disposed Of

Judgement

G.S.Sistani, J

1. Pleadings are complete. Accordingly, the present writ petition is set down for final hearing and disposal.

2. This is a petition under Article 226 of Constitution of India filed by the petitioners seeking a declaration that the acquisition proceedings with respect to land bearing Khasra No. 926/759/596, measuring 1 Bigha situated in the revenue estate of village Maidan Garhi, New Delhi (hereinafter referred as the 'subject land') stand lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as '2013 Act') as neither actual physical possession of the subject land has been taken nor the compensation has been paid to the petitioners.

3. The necessary facts to be noticed for disposal of this writ petition are that a

Section 4 notification of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 25.11.1980. Section 6 declaration was made on 18.06.1985. Thereafter an Award bearing no. 23/87-88 was passed by the Land Acquisition Collector on 17.06.1987.

4. Mr. N.S. Vasisht, learned counsel for the petitioners submits that since the physical possession of the subject land has not been taken, and the compensation in respect thereof has not been paid, the petitioners would be entitled to a declaration under Section 24 (2) of the 2013 Act. Learned counsel further relies on the decision rendered by the Supreme Court in Govt. of NCT of Delhi Vs. Manav Dharma Trust and another, reported in 2017 (6) SCC 751, in response to the stand taken by LAC in the counter affidavit that the petitioners have no locus standi to file the present petition as they are not the recorded owners. Reliance is placed on para 28 of this judgment which reads as under:-

"28. Thus, the subsequent purchaser, the assignee, the successor in interest, the power-of-attorney holder, etc., are all persons who are interested in compensation/landowners/ affected persons in terms of the 2013 Act and such persons are entitled to file a case for a declaration that the land acquisition proceedings have lapsed by virtue of operation of Section 24(2) of the 2013 Act. It is a declaration qua the land wherein indisputably they have an interest and they are affected by such acquisition. For such a declaration, it cannot be said that the respondent-writ petitioners do not have any locus standi."

5. On the other hand, Mr. Panda learned counsel for the LAC submits that physical possession of the subject land has been taken on 16.07.1987 and compensation has been paid to the recorded owner namely Sh. Ram Phal vide Cheque No. 81069 dated 09.09.1987. He further submits that it is not open for the petitioners to dispute the possession for the reason that the petitioners are the subsequent purchaser and the possession was taken from the recorded owner to whom compensation was also paid. Relevant Para(s) of the counter affidavit filed by LAC reads as under:

"8. That in the present case, the possession of the land in question was taken over and handed over to the beneficiary department on 16.07.1987 and as per Statement "A" compensation amounting to Rs.10,52,884.69 was paid to the recorded owner Sh. Ram Phal vide Ch. No. 81069 dated 09.09.1987. Further the petitioner is not the recorded owner and compensation has already been paid to the recorded owner."

6. Counter affidavit has also been filed by DDA, relevant portion of which reads as under:

The Physical possession of above land Kh.Nos.926/759/596(4-18) of Village Maidangarhi handed over to DDA by Land Acquisition Collector (South) through Land & Building Department. Govt. of NCT of Delhi on 16.07.87. The above Khasra Nos is part of Tilpat Belly Biodiversity Park."

7. We have heard learned counsel for the parties.

8. The learned counsel for the petitioners has submitted that neither physical possession of the subject land has been taken nor compensation has been paid to the petitioners. Counsel has also submitted that the objections of the LAC regarding locus standi of the petitioners is misplaced in view of the observations made by the Supreme Court in Manav Dharma Trust (supra) where the rights of the subsequent purchaser have been recognised.

9. Reading of the counter affidavit filed by LAC makes it clear that compensation was paid to the recorded owner Sh. Ram Phal vide Cheque No. 81069 dated 09.09.1987. Accordingly, the submissions made by the counsel for the petitioners that the compensation has not been tendered to the petitioners is without any force. As far as possession of the subject land is concerned, the counter affidavit filed by LAC and DDA makes it clear that the possession of the subject land has been taken on 16.07.1987. In our view it is not open for the petitioners who claim to be the subsequent purchasers, to raise the plea that the possession proceedings are not in accordance with law for the reason that the person who received the compensation, at no point complained that physical possession has not been taken. This objection of the petitioners regarding possession is highly belated and misplaced.

10. We are of the considered view that the judgement of the Supreme Court in the case of Manav Dharma Trust (supra) does not apply to the facts of the present case for the reason that in this case the physical possession has been taken on 16.07.1987 and compensation has been paid to the recorded owner in the year 1987. In case the physical possession had been taken and compensation having not been paid at all, in those circumstances, the decision rendered in the case of Manav Dharma Trust (supra) would come to the aid and rescue of the petitioners.

11. Having regard to the submissions made and the categorical assertion made in the counter affidavit filed by LAC as well by DDA, that the possession of the subject land has been taken over on 16.07.1987 and the compensation has been paid to the recorded owner, we are of the considered view that the relief so claimed and pressed before this Court by the petitioners cannot be granted.

12. Hence we are of the view that the present petition lacks merit and is liable to be dismissed.

13. The writ petition stands disposed of in the above terms.