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(2017) 11 DEL CK 0707

In the Delhi High Court

Case No : Civil Writ Petition No. 2913 Of 2016, Civil Miscellaneous No. 12171 Of 2016

Beena Gupta & Ors — APPELLANT

Vs

Union Of India & Ors — RESPONDENT

Date of Decision : 03-11-2017

Acts Referred:
Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 24(2)

Citation : (2017) 11 DEL CK 0707

Hon'ble Judges : G.S.Sistani, J;V. Kameswar Rao, J

Bench : Division Bench

Advocate : Prateek Kohli, Richa Oberoi, C.M. Goyal, Arun Birbal, Sanjay Singh, Rohan Mehra, Mini Pushkarna, Vasundhara Nayyar

Final Decision : Allowed

Judgement

G.S.Sistani, J

1. The petitioners claim that the acquisition proceedings pertaining to land measuring 1203 sq. yards and 212 sq. yards forming part of khasra no. 657 (min) & 673/1 respectively situated in the revenue estate of village Neb Sarai, Tehsil Hauz Khas, New Delhi (hereinafter referred to as 'subject land') has lapsed by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'Act').

2. The petitioners claim to be the subsequent purchaser of the land in question. Counsel for the petitioner further submits that the writ petitions arising out of the same Award, have been allowed by orders dated 8th August, 2017 in the case of Asha Jain & Anr v. Union of India & Ors, W.P.(C) No. 2987/2016. This decision was followed in the case of Jasjeet Singh Makhija & Anr. v. Union of India & Ors, W.P.(C) No. 2920/2016 and Suman Chhabra v. Union of India & Ors., W.P.(C) No. 2995/2016 dated 21st September, 2017. Counsel for the petitioner has drawn

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the attention of the Court to the counter affidavit filed by the LAC, as per which it is admitted that the physical possession of the land in question has not been taken over and further it could not be ascertained whether compensation has been paid or not. Paragraphs 6 and 8 of the counter affidavit read as under:

"6. That as regards physical possession, perusal of record shows that physical possession of the land in question pursuant to the aforesaid award, has not been taken. As regards the compensation, it is submitted that the land in question was originally owned by M/S Laxmichand Bhagaji Limited, a public limited company duly incorporated under the Companies Act, 1956, who was absolute owner and in possession of the whole of the agricultural land admeasuring about 20 acres 4 Bighas and 14 biswas, including the land in question, i.e. Khasra Nos. 657 and 673/1. Thus the compensation with respect to Khasra Nos. 657 and 673/1 was to be made to M/s Laxmichand Bhagaji.

8. That since Statement A of Award No. 12/87-88 Village Neb Sarai was not available in accounts Branch of LAC, it could not be ascertained whether compensation has been made or not. Thus, a circular to trace out the same has been issued on 02/03/2016 to find out whether compensation was paid or not. An NCR has also been lodged with the P.s. Neb Sarai bearing LR No. 0063/2017 dated 07/02/2017. It is humbly requested that the present case may not be decided against the interest of the Govt. till the above documents are traced out."

3. In Asha Jain & Anr. (supra), an identical claim for relief that the lands were free from acquisition was examined and the following findings were recorded:

"7. Learned counsel for the respondents urged that the petitioners have no locus to seek declaration as the suit land was purchased by them on the basis of General Power of Attorney and Agreement to Sell. The submission is devoid of merits. It is admitted in the counter affidavit that M/s.Laxmichand Bhagaji Limited was the recorded owner of the suit land and it was sold to the petitioners.

8. Record reveals that originally the land forming part of Khasra No. 675 was recorded in the name of M/s. Laxmichand Bhagaji Limited - a non-banking company. Subsequently, several winding up petitions were filed against it in the High Court of Judicature at Bombay including company petition No. 50/1990, where the official liquidator was appointed. Scheme of Arrangement or Compromise between the company and its depositors was accepted, approved and sanctioned by the Bombay High Court vide its orders dated 24.10.1991 and 28.11.1991. In Company Application No. 298/2001 in Company Petition No. 76/1991, permission was sought to sell the entire land in possession of the company. The Bombay High Court vide its order dated 10.08.2001 granted permission for the sale of the land after receipt of full consideration. Suman Chabbra sole proprietor of M/s. Sukhshanti Associates purchased the suit land and Agreement to Sell dated 02.01.2004 was executed in favour of M/s. Sukhshanti Associates. In terms of the said agreement, M/s. Sukhshanti Associate was authorized to make payment of the consideration and the

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"committee" was to execute Agreement to Sell along with irrevocable General Power of Attorney in favour of M/s. Sukhshanti Associates and / its nominee. The petitioners further averred that pursuant to the agreement dated 02.01.2004, the committee executed a separate Agreement to Sell dated 09.05.2005 in favour of the petitioner - Asha Jain wherein Suman Chhabra had made the confirming party. Along with the agreement dated 09.05.2005, General Power of Attorney was executed in her favour and possession certificate was also issued qua the land measuring 93 sq.yds. in Khasra No.675 situated in the village Neb Sarai.

9. The petitioners further aver that the land forming part of Khasra No. 653 (min) was recorded in the name of Chandro Devi (1/3rd in 838 sq.yds.), S.B.Chaudhary (400 sq.yds.), Balwan Singh, Baljeet Singh and Kuldeep Singh (320 sq.yds. collectively). The said land measuring 800 sq.yds. was purchased by Suman Chhabra vide Agreement to Sell dated 05.06.2000, 07.03.2005 and 05.06.2005, respectively. The same has been transferred in favour of the petitioners vide registered General Power of Attorney dated 09.05.2005 and Agreement to Sell in favour of the petitioner No.1 alongwith possession certificate. These facts have not been controverted by the respondents in the counter-affidavit. Apparently, petitioners are the "persons interested" to claim compensation which was never offered or tendered to them.

10. It is relevant to note that in similar circumstances in W.P.(C) 2988/2016 & 2921/2016, decided on 01.08.2017, similar relief was granted to the petitioners therein.

11. As the respondents have not denied that the compensation of the suit lands has not been paid and its possession has not been taken, the petitioners are entitled to the declaration sought. Accordingly, it is held that acquisition of suit land in Khasra No.653 and 675 admeasuring 800 sq.yds. and 93 sq.yds. respectively vide award No.12/87-88 dated 20.05.1987 is deemed to have lapsed by virtue of Section 24(2) of the Act."

4. Having regard to the fact that the LAC has admitted that possession of the suit land was not taken over and compensation not paid, we are of the view that the petitioner is entitled to a declaration to the extent that the acquisition proceedings stand lapsed by virtue of Section 24(2) of the Act. The writ petition is allowed in above terms. No costs.

CM No. 12171/2016

The interim order dated 6th April, 2016 is confirmed.

CM stands disposed of.

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