

(2014) 09 DEL CK 0134

In the Delhi High Court

Case No : Writ Petition (Civil) 2459/2014 and CM 5124/2014

Dewan Harbhagwan Nanda

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:

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

Citation : (2014) 09 DEL CK 0134

Hon'ble Judges : Siddharth Mridul, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : P.S. Bindra, Advocate for the Appellant; Sanjay Kumar Pathak, Sunil Kumar Jha, Kiran Pathak and Ajay Verma, Advocate for the Respondent

Judgement

Badar Durrez Ahmed, J.—The learned counsel for the petitioner states that this matter is covered by the decision of this Court in the case of Girish Chhabra vs. Lt. Governor of Delhi and Ors.: W.P.(C) 2759/2011 decided on 12.09.2014. He states that although possession of the subject land has been taken, the award under the Land Acquisition Act, 1894 (hereinafter referred to as "the 1894 Act") was made more than five years prior to the commencement 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. In this case Award No.10/1987-88 was made on 14.05.1987. He also states that compensation has not yet been paid to the petitioner. Therefore, the requirements of section 24(2) of the 2013 Act have been fulfilled and the petitioner is entitled to a declaration that the subject acquisition under the 1894 Act has lapsed. The land in question is situated in Village Sayoorpur in Khasra Nos. 147 min, 149/1, 149/2, 150, 151 and 152 measuring 18 bighas 19 biswas in all.

2. Admittedly, though physical possession of the subject land has been taken on 24.11.2005, compensation has not been paid to the petitioner. The Award is also

more than five years prior to the commencement of the 2013 Act. Consequently, the decision of this Court in *Girish Chhabra (supra)* applies on all fours and the subject acquisition has lapsed.

3. A prayer has also been made seeking return of possession of the subject land as a consequence of the acquisition having lapsed in view of the provisions of Section 24(2) of the said Act. It is the contention of the learned counsel for the DDA there cannot be any direction with regard to the return of the land to the petitioners inasmuch as the earlier acquisition had been confirmed by the Supreme Court. He further states that the subject land has also been handed over to the CISF on 31.08.2012.

4. We are not in agreement with the submission made by Mr. Verma, the learned counsel appearing on behalf of the DDA, inasmuch as the Supreme Court in the case of *Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others*, had not interfered with the order of the High Court which quashed the acquisition proceedings and directed restoration of possession. The logical sequitur of the acquisition having lapsed by virtue of Section 24(2) of the said Act is that the acquiring authority would have no legal basis for retaining the said land. It is always open to the appropriate government under Section 24(2) , if it so chooses, to initiate proceedings for acquisition afresh in accordance with the provisions of 2013 Act. But, till that happens, the land, which is the subject matter of acquisition which has lapsed, cannot be retained by the acquiring authority or its transferee.

5. The writ petition is allowed to the aforesaid extent. There shall be no order as to costs.