

(2019) 03 DEL CK 0262

In the Delhi High Court

Case No : Civil Writ Petition No. 9698 Of 2017, Civil Miscellaneous Application
No. 39496 Of 2017, 46868 Of 2018

Harinder Singh & Ors

APPELLANT

Vs

Lt. Governor & Anr

RESPONDENT

Date of Decision : 29-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4, 6, 9, 10, 17(1), 18
Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And
Resettlement Act, 2013 — Section 24, 24(2)

Citation : (2019) 03 DEL CK 0262

Hon'ble Judges : Dr. S. Muralidhar, J; I.S.Mehta, J

Bench : Division Bench

Advocate : Leeza Taneja, Swati Yadav, Sachin Nawani, Ajay Verma, Sapna
Chauhan, Sumit Mishra

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, J

1. The prayers in the present writ petition read as under:

"It is therefore most respectfully prayed that this Hon'ble Court may kindly be pleased to issue appropriate Writ Order or direction, more specifically in the nature of Certiorari to quash the award 26/2002-2003 dated 23.10.2002 in respect of the land of Petitioner No. 1 measuring 2 acre, in Khasra No. 30/16,17,24/1,25,29,31/20,21/1, further in respect of land of Petitioner No. 2,3 and 4 measuring 1 acre forming part of Khasra No. 19/16/2,17/2,24/2,25/2,234/1, further in respect of Petitioner No. 5 had expired and his LRs having land measuring 6 acres, forming part of Khasra No. 10/3,4,7,8,9,13,14,15/2,17/1,18,27/16,25,44/4/2,5,6/2 further in respect of Petitioner No. 6 measuring 1 acre and 13 biswas of land, forming part of Khasra No. 19/17/3,23/2,24/1,234/1, further in respect of Petitioner no. 7, 8 and 9

jointly having land measuring 3 acre and 3 bigha of land, forming part of Khasra No. 9/24,25/1,21/10/2,11,20,28,22/4,5,6,7,14/1,15,16,29,171, 172,479 being in cultivatory possession, even after acquisition.

It is further prayed for issuance of a writ of mandamus thereby directing the respondents to restore the title of the respective land, in favour of the petitioners, since the land mentioned hereinabove was not a part of the scheme, at the time of the acquisition, of the land of the petitioners, subject to the petitioners returning the amount of compensation, enhanced compensation and the interest thereon."

2. On 3rd November 2017 while directing notice to issue in the present petition, the following order was passed:

"This is a petition filed under Article 226 of the Constitution of India by the petitioners. It is claimed by the petitioners that despite a Section 4 Notification of the Land Acquisition Act, 1894 having been issued on 13.12.2000, Section 6 Notification of the Act having been issued on 15.03.2002 and an Award having been made on 23.10.2002, the possession of the land in question of the petitioners has not been taken nor compensation paid.

Notice to show cause as to why the petition be not admitted. Counsels appearing for the respondents accept notice. Notice in the stay application as well.

Counter affidavit to the petition and reply to the application be filed within six weeks. Rejoinder, if any. be filed within four weeks thereafter.

Counsel for the petitioners seek leave to file amended memo of parties as the Land and Building Department has not been arrayed as a party. Let amended memo of parties be filed.

List on 29.01.2018."

3. Following the above order on 6th November 2017 an amended memo of parties was filed. In terms thereof, there are 9 Petitioners. The Land Acquisition Collector ("LAC") South West (SW) is Respondent No.1, the Delhi Development Authority (DDA) is Respondent No.2 and the Land and Building Department (L&B) is Respondent No.3.

4. A counter-affidavit was filed by the LAC (SW) on 9th April 2018 inter alia contending as under:

(i) The petition is liable to be dismissed on the ground of delay and laches; the Petitioners are invoking the writ jurisdiction and seeking a declaration in terms of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("the 2013 Act") after lapse of more than 3 years of the coming into force of the 2013 Act.

(ii) The notification under Section 4 of the Land Acquisition Act, 1894 (LAA) was issued on 13th December 2000 for the public purpose for the Dwarka Phase-2

under Plan Development of Delhi. This was followed by declaration under Section 6 LAA issued on 7th December 2001. A notice under Section 17(1) of the LAA was issued on 15th March 2002. Notices under Sections 9 and 10 of the LAA issued inviting claims and such claims are also filed. Ultimately an Award No.26/2002-03 was passed by the LAC on 23rd October 2002. Possession of the land was taken over and handed over to the DDA on 14th August 2002.

(iii) As per statement "A" compensation has already been released to the interested persons. Annexure R/1 to the counter-affidavit contains the details of the compensation paid to the interested persons.

(iv) Inasmuch as neither of the two essential conditions of Section 24 (2) of the 2013 Act stands fulfilled, the relief prayed for cannot be granted.

5. A separate counter-affidavit was filed by the DDA on 20th July 2018 stating that:

(i) Although not specifically stated in the prayer, it is claimed by the Petitioner in the grounds to the writ petition that a declaration of deemed lapsing of land acquisition proceedings should be issued by the Court under Section 24 (2) of the 2013 Act.

(ii) The Petitioners do not dispute that they have already received the compensation as well as the enhanced compensation under LAA. However, no document has been placed on record by the Petitioners to show that they are in possession of the land in question.

(iii) Actual physical possession of the land was taken over by the LAC and handed over to the DDA on 14th August 2002.

(iv) The Petitioners have not disclosed the basis for claiming ownership of the land in question or filed any document which reflects their respective rights, title or interest therein. It is further pointed out that the Petitioners have given wrong measurements of some of the land in question involved.

(v) On 23rd March 2016 the Union Cabinet approved the creation of an state of the art world class Exhibition-cum-Convention Centre (ECC) on land measuring 89.72 Hectares in Sector-25, Dwarka. Consequently, the DDA by letter dated 28th April 2016 approved the transfer of the aforementioned extent of land for the ECC to the Department of Industrial Policy and Promotion ("DIPP").

(vi) Following this, on 6th September 2016, physical possession of the said land was handed over to the DIPP. Approximately 22.69 acres of the land handed over to DIPP forms part of the land in respect of which the present petition has been filed.

(vii) DIPP has formed a company for implementing the project of construction and commission of the International Convention and Expo Centre in Sector-25, Dwarka at a the total estimated costs of Rs.26,000 crores. The project is being monitored at the highest levels of the of the Government of India and is being

developed in two phases under strict timelines.

6. The DDA points out a similar petition being WP(C) 11637 of 2016 (Bhoop Singh v. Union of India) was filed in which a detailed order was passed on 20th April 2018 by this Court vacating the interim orders earlier passed in the said writ petition. Thereafter, the said writ petition was dismissed on 29th May 2018 for non-prosecution.

7. While no rejoinder has been filed to the above counter-affidavits, the Petitioners have filed an application being CM No.46868 of 2018 for amendment of the writ petition. In this application it is stated that the Petitioners are still in cultivatory possession of 13 acres, 3 bighas and 13 biswas of land. It is now claimed that since the scheme for which the land has been acquired is already completed and the land still remains unutilised, it is liable to be restored to the farmers/original owners. The Petitioners "undertake to refund the compensation along with interest in the event the ownership of the land, in their possession, is restored back to them." The alternative prayer is that land in lieu of that acquired must be allotted to the Petitioners.

8. A reference is made to the orders passed by the learned Additional District Judge (ADJ) in the petitions filed under Section 18 of the LAA enhancing the compensation that had been awarded. Reference is also made to the order thereafter passed by this Court on 6th January 2012 further enhancing the compensation by granting a 10% increase. It is also pointed out that the further appeals filed by the land owners in the Supreme Court being Civil Appeal No.2232 of 2014 were allowed by the Supreme Court by its judgment dated 13th February 2014 enhancing the compensation awarded by this Court for Block-A lands from Rs.16.50 lacs per acre to Rs.21 lacs per acre and from Rs.14.60 lacs per acre to Rs.19 per acre for Block-B. It is not disputed that the Petitioners have received the enhanced compensation.

9. Relying on the judgment in Pune Municipal Corporation v. Harakchand Misirimal Solanki (2014) 3 SCC 183, it is claimed by the Petitioners that they are entitled to a declaration under Section 24 (2) of the 2013 Act since the land belonging to them which has been acquired by the Respondents is lying unutilised for more than 16 years and no development has taken place.

10. It must be noticed at the outset that no notice has been issued in the said application. This Court, therefore, decided to hear the main writ petition along with the pending applications.

11. It requires to be noticed that all of the above submissions were taken note of by this Court in its order dated 20th April 2018 in Bhoop Singh v. Union of India (supra). Incidentally, the subject matter of that petition was the very same relating to proceedings for acquisition of lands in villages Bharthal, Bijwasan, Pochhanpur and Dhul Siras for the development of Dwarka Phase-2. Initially, a status quo order had been passed by this Court on 14th December 2016 in the said writ petition. The DDA then filed an application for vacating the status quo

order and pointing out that land measuring 89.72 hectares in Sector 25 had been handed over to the DIPP for constructing the ECC.

12. The Court in its order dated 20th April 2018 in Bhoop Singh (supra) noted how the counsel for the Petitioners in that case candidly admitted to having received both the compensation as well as the enhanced compensation. The counsel for the Petitioners there contended that "the Petitioners are in actual physical cultivating possession of the land and crops are standing over the land in question." There too, just as in the present application for amendment, a reference was made to the scheme of allotment of alternative plots and the argument of the learned counsel that they should be granted alternative plots. In para 9 of the order dated 20th April 2018 the said submission was recorded by this Court as under:

"9. Mr Sharma, counsel for the petitioners submits that though the possession of the subject land was taken in the year 2002 and 15 days time was granted to the petitioners to cut the crops and they have applied for alternate plot between the years 2003 and 2004, however it cannot be said that the petitioners are not in actual physical possession of the subject land."

13. A reference was made in the above order to a sample copy of the application made on 28th October 2002 by Bhoop Singh and others for release of compensation where inter alia it was admitted that "Land Acquisition Collector has taken possession of the land and award in respect of the land of the Applicant has been announced". The Court, therefore, agreed with the Respondents that actual physical possession of the land had been taken by the LAC but 15 days time had been granted to the Petitioners in that case to cut the crops. In the circumstances, the Court vacated the interim order by directing as under:

"14. Having regard to the submissions made, the documents referred hereinabove and taking into consideration that the compensation of the entire land has been received including enhanced compensation up-to the Supreme Court, interim order dated 14.12.2016 which was confirmed on 27.11.2017 is vacated."

14. The above writ petition was subsequently dismissed for non-prosecution on 29th May 2018.

15. In the present case too, the Petitioners do not dispute that they have received the compensation as well as enhanced compensation for the land in question. Their plea that they remain in cultivator possession raises a disputed question of fact particularly in light of the consistent stand taken by both the LAC and the DDA in their respective counter affidavits to which no rejoinder has been filed by the Petitioners. In the circumstances, the possibility that, after having surrendered physical possession to the Respondents, the Petitioners somehow re-entered and illegally occupied the land in question and re-commenced cultivating it cannot be ruled out.

16. The prayer for alternative land does not hold good since the Petitioners have already received the full compensation for the land in question. The plea that the purpose for which the land was acquired no longer survives also deserves to be rejected. The land is required, as stated by the Respondents in their counter affidavits, for the ECC and for which purpose a portion of the land has already been handed over to the DIPP.

17. As far as the plea for a declaration under Section 24 (2) of the 2013 Act is concerned, it is seen that the earlier proceedings were not a challenge to the acquisition proceedings as such but only to the quantum of compensation. On this issue, the matter travelled up to the Supreme Court and the enhanced compensation has also been collected by the Petitioners. Section 24 (2) of the 2013 Act is not meant to be invoked by such persons. The Court considers it appropriate to refer the following observations of a three-Judge Bench of the Supreme Court in *Indore Development Authority v. Shailendra* (2018) 3 SCC 412:

"128. In our considered opinion section 24 cannot be used to revive the dead or stale claims and the matters, which have been contested up to this Court or even in the High Court having lost the cases or where reference has been sought for enhancement of the compensation. Compensation obtained and still it is urged that physical possession has not been taken from them, such claims cannot be entertained under the guise of section 24 (2). We have come across the cases in which findings have been recorded that by which of drawing a Panchnama, possession has been taken, now again under Section 24(2) it is asserted again that physical possession is still with them. Such claims cannot be entertained in view of the previous decisions in which such plea ought to have been raised and such decisions would operate as *res judicata* or constructive *res judicata*. As either the plea raised is negated or such plea ought to have been raised or was not raised in the previous round of litigation. Section 24 of the Act of 2013 does not supersede or annul the court's decision and the provisions cannot be misused to reassert such claims once over again. Once Panchnama has been drawn and by way of drawing the Panchnama physical possession has been taken, the case cannot be reopened under the guise of section 24 of Act of 2013.

129. Section 24 is not intended to come to the aid of those who first deliberately refuse to accept the compensation, and then indulge in ill-advised litigation, and often ill-motivated dilatory tactics, for decades together. On the contrary, the section is intended to help those who have not been offered or paid the compensation despite it being the legal obligation of the acquiring body so to do, and/or who have been illegally deprived of their possession for five years or more; in both the scenarios, fault/cause not being attributable to the landowners/claimants.

130. We are of the view that stale or dead claims cannot be the subject-matter of judicial probing under section 24 of the Act of 2013. The provisions of section 24 do not invalidate those judgment/orders of the courts where under rights/claims have been lost/negated, neither do they revive those rights which have

come barred, either due to inaction or otherwise by operation of law. Fraudulent and stale claims are not at all to be raised under the guise of section 24. Misuse of provisions of section 24(2) cannot be permitted. Protection by the courts in cases of such blatant misuse of the provisions of law could never have been the intention behind enacting the provisions of section 24 (2) of the 2013 Act; and, by the decision laid down in Pune Municipal Corporation (supra), and this Court never, even for a moment, intended that such cases would be received or entertained by the courts."

18. In the present case, having already derived the benefit of enhanced compensation by contesting the issue at all stages up to the Supreme Court it is no longer open to the Petitioners to contend that no compensation was tendered. Their plea that they continue to remain in actual physical possession is a disputed question which cannot be examined in the present petition.

19. For the aforementioned reasons, the petition is dismissed. The applications are also dismissed.