

(2018) 02 DEL CK 0648

In the Delhi High Court

Case No : Civil Writ Petition No. 1755 Of 2016

Jai Prakash Gupta & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 27-02-2018

Acts Referred:

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

Citation : (2018) 02 DEL CK 0648

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

Bench : Division Bench

Advocate : S.K.Rout, Ansh Tewatia, Akhil Mittal, Dhanesh Relan, Gauri Chaturvedi

Final Decision : Allowed

Judgement

G.S.Sistani, J

1. This is a petition under Article 226 of the Constitution of India filed by the petitioners seeking a declaration that the acquisition proceedings in respect of their land admeasuring 405 square yards comprised in Khasra Nos.1157/320, property bearing nos.26 & 26 (part), Gali Nos.2 & 3, Friends Colony Industrial Area, G.T. Road, Shahdara, Delhi (hereinafter referred to 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 the 2013 Act), as although the physical possession of the subject land had been taken but compensation has not been paid to the petitioners.

2. Counsel for the petitioners submits that the petitioners claim ownership based

on two Sale Deeds dated 16.05.1991 and 28.03.2001, copies whereof have been placed on record. The petitioners have also placed reliance on a copy of the Khasra Girdhawari, copy of which has been placed on record pertaining to the years 1967-68 and at page 47 an endorsement has been made in the year 2009.

3. In this case, a Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") was issued on 14.10.2005,

a declaration under Section 6 of the Act was issued on 05.10.2006 and an Award bearing No.01/2008-09 was passed on

26.07.2008. It is the case of the petitioners that although the physical possession of the subject land has been taken and it has been put to use but the compensation was not tendered to the petitioners who are rightful owners.

4. Counter affidavit has been filed by the Land Acquisition Collector (in short "LAC"). In the counter affidavit, it has been averred that the

physical possession of the subject land has been taken and further the petitioners are not recorded owners as per revenue record. Another objection

taken is that no relief can be granted to the petitioners as compensation of the subject land stands deposited in the Court of Additional District Judge

(in short "ADJ") on 22.03.2016.

5. Mr.Rout, counsel for the petitioners has rebutted the submissions made by counsel for the LAC, he submits that deposit of compensation post

coming into force the Act in the year 2013 is of no consequence as the acquisition is deemed to have lapsed prior to the deposit. Additionally, he

submits that there is no explanation on record as to why the compensation has now been deposited in Court of ADJ in view of the fact that

compensation at no point of time was tendered to the petitioners. He submits that objection with regard to ownership is misplaced in view of copies of

documents related to the subject land having been placed on record and mutation in favour of the petitioners prior to issuance of notification. He

further submits that the subject land was purchased prior to issuance of the Notification under Section 4 of the Act.

6. Counsel for the DDA submits, on instructions, that the land vests with PWD free from all encumbrances by virtue of the Notification under Section

4 and declaration under Sections 6 of Act and passing of Award No.1/2008-09.

7. Mr.Rout, counsel for the petitioners submits that the petitioners only seek

compensation as admittedly the possession of the subject land has been taken by the LAC.

8. We have heard the counsels for the parties.

9. Taking into consideration the submissions made and documents placed on record, we are of the view that the objection raised by counsel for the

LAC pertaining to ownership is misplaced. We are also in agreement with the submissions made by Mr. Rout that deposit of compensation in Court of

ADJ post coming into force the 2013 Act is of no consequence. Additionally, there is nothing on record to suggest that the petitioners were offered

compensation and the same was refused directly or indirectly.

10. On reading of the counter affidavit, it leaves no room for doubt that the possession of land subject matter of this writ petition has been taken on

09.09.2009 and as per revenue records the compensation has been deposited in the Court of ADJ.

11. Having regard to the submissions made and stand taken by the LAC in the counter affidavit that the possession of the land of the petitioners has

been taken but compensation has been deposited in the Court of ADJ for the reasons stated above, we are of the considered view that the acquisition

proceedings pertaining to the land of the petitioners are deemed to have lapsed. The petitioners would only be entitled to compensation as per 2013

Act which shall be paid within a period of one year from the receipt of the order. It is ordered accordingly.

12. The writ petition is allowed.

CM No.7512/2016 (stay)

The application stands disposed of, in view of order passed in the writ petition.