

(2018) 12 DEL CK 0344

In the Delhi High Court

Case No : Civil Writ Petition No. 6287, 6297 Of 2014, Contempt of Court Case (Civil) No. 212 Of 2015, Civil Miscellaneous No. 15208, Civil Miscellaneous No. 20431 Of 2014, 4631, 10049 Of 2015

Kartar Singh & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 19-12-2018

Acts Referred:

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24(2)
Land Acquisition Act, 1894 — Section 4, 6, 17, 18, 48

Citation : (2018) 12 DEL CK 0344

Hon'ble Judges : S. Muralidhar, J; Sanjeev Narula, J

Bench : Division Bench

Advocate : Ravi Prakash Gupta, Monica Arora, Harsh Ahuja, Mrinalini Sen, Kritika Gupta, Tanmay Yadav, Yeeshu Jain

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, J

1. These are two writ petitions and a contempt petition all are arising out of the same background facts. They are accordingly being disposed of by this common judgment.

2. As far as the Petitioners in WP (C) 6287 of 2014 are concerned there are 39 of them. The subject matter of this petition is land admeasuring 60 bighas and 12 biswas located in village Sanoth, P.O. Narela, North-West Delhi. a notification issued under Section 4 of the Land Acquisition Act, 1894 (LAA) on 7th December 2001 for the public purposes of construction of an 80 meter wide road for development of Narela township under the Planned Development of Delhi. This was followed by notifications dated 16th January 2002 under Sections 6 and 17 LAA and an Award No. 17/2003-04 dated 22nd October 2003. In WP (C) 6297 of 2014 there are 212 Petitioners who are concerned with land measuring 1612

bighas 18 biswas out of a total of 3092 bigha and 4 biswas in the same village Sanoth P.O. Narela which was sought to be acquired under a Notification dated 27th January 2003 under Section 4 LAA followed by a declaration dated 23rd January 2004 under Section 6 LAA and Award dated 6th July 2004. This acquisition was stated to be for the public purpose of development of Narela Bawana Phase-II under the Planned Development of Delhi.

3. The case of both sets of Petitioners is the same viz., that although they have received compensation, actual physical possession of the land in question has not been taken from them despite the expiry of over 11 years after the passing of the respective Awards. In both petitions the main prayer is for a declaration that the land acquisition proceedings should be deemed to have lapsed in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("the 2013 Act").

4. In WP (C) 6287 of 2014 it is averred that "nothing has been done for the construction of the said 80 meter road nor it is possible to be constructed as there is standing school building which has not yet been demolished despite acquisition from the last 15 years as is evident from the possession memo dated 19th December 2003 where the authorities did not demolish the building till date." It is stated that "except for ritual symbolic possession signed by Government officials in their office (Annexure-P3) no actual possession was taken from the Petitioners who are still today in the cultivating possession of their land and are continuously growing crops over the same as shown in the latest photographs filed with this writ petition (Annexure-P2)."

6. As far as WP (C) 6297 of 2014 is concerned, it is contended that "despite acquisition in the year 2004, not even a single brick has been put over the same" and that "no actual possession was taken from the Petitioners who are still today in the cultivating possession of their land." Here too photographs are annexed to substantiate this averment.

7. In both writ petitions, on 19th September 2014 this Court while issuing notice directed the parties to maintain status quo "with regard to the nature, title and possession of the subject land." According to the Petitioners on 3rd December 2014 some officials of the Delhi Development Authority (DDA) along with private contractors "stormed the land of Petitioners" and attempted to "forcibly dispossess the Petitioners which was resisted by the Petitioners and other villagers."

8. The DDA on its part filed an application being CM No.20431 of 2014 in WP(C) 6297 of 2014 seeking vacation of the interim order. This Court by an order dated 19th December 2014 clarified that it was modifying the earlier interim order dated 19th September 2014 "to the extent that where the actual development / construction work of the project had commenced prior to the issuance of the interim order dated 19th September 2014, the same may continue. In so far as the rest of the area is concerned, the interim order earlier granted shall

continue." A similar application CM 21301 of 2014 was filed by the DDA in WP (C) 6287 of 2014 which came up for hearing on 24th December 2014 and an identical interim order modifying the earlier interim order dated 19th September 2014 was passed by this Court.

9. According to the Petitioners despite the above limited modification of the interim order, the DDA still planned to forcibly take over the possession of the land in question. It is stated that the local police intervened to enable the parties to arrive at an amicable settlement on 3rd January 2015. According to the Petitioners again DDA with the help of the police tried to storm a part of the land of the 212 writ Petitioners in WP (C) 6297 of 2014 on 19th February 2015 raising some tin sheds, off-loading concrete slabs and starting to make "steel concrete basement for raising towers after deep digging of the land."

10. Consequently, on 7th March 2015 Contempt Case (C) 212 of 2015 was filed which was heard by this Court on 13th March 2015. However, no formal notice was issued in the said contempt petition. On 25th March 2015 the statement of counsel appearing for Contemnor No.1, i.e. the Executive Engineer (EE) of the DDA was recorded that the orders dated 19th September and 19th December 2014 passed by the Court "shall be complied with in letter and spirit and are not being violated."

11. Thereafter, these matters have all continued on board together and in the meanwhile pleadings have been completed. The Legal Representatives (LRs) of some of the Petitioners who expired in the meanwhile have been brought on record.

12. The Court may now refer to the replies filed in W.P. (C) 4287 of 2014. An affidavit dated 16th December 2014 was filed by the DDA stating that the Land and Building (L&B) Department, GNCTD had already handed over physical possession of the subject land to the DDA on 16th April 2002 and it had also been transferred to the user department on the same day. It was further pointed out that compensation against the Awards by way of cheque dated 27th December 2001 for Rs.7,55,98,640/- and cheque dated 6th April 2004 for Rs.4,66,83,069/- was remitted by the DDA to the L&B Department. It is pointed out that even the Petitioners in both petitions have acknowledged receiving the said compensation.

13. It is reiterated by the DDA that since physical possession of the land is with the DDA, as per the settled law once the land stood vested in the State free from all encumbrances "there is no question of divesting the land and re-vesting the land to the erstwhile owners." It was further pointed out by the DDA in its affidavit as under:

"It is further submitted that the Respondent has utilised the subject land for the construction of 80 meter road which is almost complete except a small portion under Govt school which is in the process of shifting and a sum of Rs10,00,00,000 (Ten Crore) has already been spent on construction of the said

80 Meter Road. A copy of Shizra plan superimposed on the development plan is annexed hereto and marked as Annexure "B". The land involved in the present petition has been marked on the plan by Green shaded lines. The portion of road which has already been completed is marked on the said plan by black colours which indicates that major portion has already been completed. Apart from the construction of 80 meter road the answering respondent has utilized the land in the said area for construction of 13904 LIG & 2579 EWS including internal development and electrification at Sector-G-2 & G-6 and G-3 & G4, Narela (Group II), in Division ND-12, Civil Circle 8, North Zone and have incurred an expenses of Rs. 370.36 Crores. It is stated that there have been 1680 EWS houses constructed in Pocket-II, Sector G-2 & G-6, Narela for which a cost of Rs. 147.81 Crores has been incurred by the Respondent. The Respondent has utilised the land for the purpose it was acquired for, which is also evident from the photographs placed on record, which are annexed hereto and marked as Annexure C."

14. Reference is made by the DDA to the decisions of the Supreme Court in *Mahadev v. State of UP* (2013) 4 SCC 524 and *Sulochana Chandra Galande v. Pune Municipal Corporation* (2012) 1 SCC 138 to urge that once land is vested in the State it cannot be divested.

15. The LAC (North) has filed an affidavit on 19th 6287 of 2014 where inter alia the following maintainability of the petitions have been raised:

April 2018 in W.P. (C) objections as to the

(i) The Petitioners are not connected and/or in relation with each other nor the khasra and rectangle numbers are common as there are involved various different khasra numbers falling in different rectangles. The writ petition is liable to be dismissed on account of misjoinder of necessary parties.

(ii) In para 23 of the writ petition, the Petitioners have admitted that they were paid the compensation.

16. On merits, it is pointed out that actual physical possession of the subject land was taken on 16th April 2002 on the spot and handed over to the DDA. It is further stated that thereafter the Petitioners applied to the office of LAC seeking release of compensation. Copies of the applications filed by the Petitioners in WP (C) 6287 of 2014 have been enclosed as Annexure-R1 with the counter-affidavit. It is a standard format application which reads as under:

"1. That the land of the applicant as per Revenue Record has been acquired and the payment is pending before this Hon"ble Court. No dispute is pending regarding the land in any court of law and the applicant is entitled to take the compensation of the land.

2. That possession of the land was taken from the applicant and hence no other person except the applicant is entitled to receive the compensation.

3. That the applicant shall receive the compensation under the protest and subject to the filing of reference under section 18 of LAC Act.

It is, therefore, respectfully prayed that the compensation of the applicant's land may kindly be released in the interest of justice."

17. At this juncture it should be noted that many of the 39 Petitioners in WP (C) 6287 of 2014 have filed the above applications and received compensation in full and without protest. These include Daya Nand (Petitioner No.2), Ved Pal (Petitioner No.5), Raghubir Singh (Petitioner No.9), Rajesh Kumar (Petitioner No.4), Ramesh Kumar (Petitioner No.3), Naresh Kumar (Petitioner No.10), Kartar Singh (Petitioner No.1) and Devender (Petitioner No.7). The relevant Form CC showing the actual amount paid and the cheque number have been enclosed with the counter affidavit of the LAC. These are all dated 30th October 2003. No rejoinder has been filed by the Petitioners to the affidavit of the LAC or to the affidavit of the DDA.

18. Therefore, in WP (C) 6287 of 2014, with no rejoinder having been filed by the Petitioners, it is plain that many of the Petitioners have received compensation on 30th October 2003 and possession has also been taken from them as acknowledged by them in their individual applications submitted to the LAC at the time of receiving compensation.

19. As far as WP (C) 6297 of 2014 it is not disputed by the Petitioners themselves that possession proceedings were prepared on 10th September 2004. Although the possession proceedings are challenged on the ground that they do not have signatures of "independent witnesses," it is averred in para 23 as under:

"23. That the petitioners being on road for having left on the verge of starvation with no source of income have although withdrawn the compensation which they are ready to return on declaration of acquisition proceedings as lapsed."

20. From the aforementioned averment in para 23 of W.P. (C) 6297 of 2014, two things are clear:

(i) That the Petitioners do not have actual physical possession of the lands in question or otherwise they would not state that they are "on road for having left on the verge of starvation."

(ii) The Petitioners have "withdrawn the compensation which they are ready to return."

21. Consequently, as far as WP (C) 6297 of 2014 is concerned, the Court fails to appreciate how, with neither condition specified in Section 24 (2) of the 2013 Act being satisfied, any relief in terms thereof can be granted to the Petitioners.

22. Mr. Ravi Prakash Gupta, learned counsel for the Petitioners did not dispute that compensation has in fact been received by the Petitioners. His submissions are summarised as under:

(i) In view of the order dated 6th March 2018 of the Constitution Bench of the Supreme Court of India in *Indore Development Authority v. Shyam Verma* the hearing of these petitions should be adjourned awaiting the Constitution Bench judgment of the Supreme Court. It was pointed out that even this Court had on 26th April and 2nd July 2018 adjourned the cases for that purpose.

(ii) In view of the decisions in *Balwant Narayan Bhagde v. MD Bhagwat* (1976) 1 SCC 700, *Prahlad Singh v. Union of India* (2011) 5 SCC 386, *Magnum Promoters Pvt. Ltd. v. Union of India* (2015) 3 SCC 327, *Velaxan Kumar v. Union of India* (2015) 4 SCC 325, *Banda Development Authority, Banda v. Moti Lal Agarwal* (2015) SCC 394 and *Delhi Development Authority v. Sukhbir Singh* 2015 (7) SCALE 191, the Court should hold that no actual physical possession of the land in question was in fact taken by the DDA in the present cases.

(iii) Reference is also made to the circular dated 14th March 2014 of the Government of India, Land and Building Department clarifying the expression "physical". Mr. Gupta reiterated that the Petitioners are still ploughing their lands and that the possession memo prepared by the LAC was "fake and fabricated." He claimed that the compensation was "forced upon" the Petitioners. Reliance was also placed on the decision of the Madras High Court in *Tamil Nadu Housing Board v. Gate Global Solutions Limited* 2016 (2) CTC 241 and the decision of the Punjab & Haryana High Court in *Sunita Sehrawat v. State of Haryana* 2015 (4) RCR (Civil) 528.

(iv) It is submitted out that the memo of possession in the present case does not contain signatures of independent witnesses as is required by law. Mr. Gupta referred to the satellite photos taken in 2004, which would demonstrate, according to him, that there was standing crop on the land in question. He pointed out that a tender was floated by the DDA on 7th July, 2014 for removal of the crop and, therefore, this further proved that the Petitioners continue to remain in possession of the land in question.

23. Mr. Yeeshu Jain, learned counsel for the LAC, and Mr. Danesh Relan, learned counsel for the DDA on the other hand, referred to the fact that there was an admission by the Petitioners in both petitions that when they had received compensation and had lost physical possession of the lands in question. Both sets of Petitioners have offered to return the compensation. According to counsel for the Respondents, in such circumstances, Section 24 (2) of the 2013 Act cannot possibly be invoked. Reliance is placed on the decision in *Dr. Rajbir Solanki v. Union of India* 148 (2008) DLT 363 (DB) to contend that once possession of the land was taken over by the Respondents, the fact that the Petitioners continued to sow crops even after the land vested in the State was "wholly inconsequential". Such cultivation at best could be deemed to be "permissive" and for that purpose should be deemed to be held in trust by those cultivating the land.

24. As regards the submission that these petitions must be adjourned to await

the Constitution Bench decision of the Supreme Court, it is necessary to carefully peruse the order dated 6th March, 2018 of the Constitution Bench of the Supreme Court in *Indore Development Authority v. Shyam Verma* (supra). In the said order, the Supreme Court noted the apparent conflict between the decisions in *Pune Municipal Corporation v. Harakchand Misirimal* (2014) 3 SCC 183 and *Indore Development Authority v. Shailendra* (2018) SCC OnLine 100. The order also noted the answers given by the three-Judge Bench in *Indore Development Authority v. Shailendra* (supra) to various questions.

25. It was further noted by the Constitution Bench of the Supreme Court in its order dated 6th March 2018 in *Indore Development Authority v. Shyam Verma* (supra) that subsequently, another three-Judge Bench of the Supreme Court in SLP (Civil) No.8453/2017 (*State of Haryana v M/s G.D. Goenka*) passed an order on 21st February, 2018 where inter alia it was observed as under:

"Taking all this into consideration, we are of the opinion that it would be appropriate if in the interim and pending a final decision on making a reference (if at all) to a larger Bench, the High Courts be requested not to deal with any cases relating to the interpretation of or concerning Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The Secretary General will urgently communicate this order to the Registrar General of every High Court so that our request is complied with."

26. As can be seen, the above interim order was to continue only till the reference to the Constitution Bench was made. That reference happened by the order dated 6th March 2018 of the Constitution Bench in *Indore Development Authority v. Shyam Verma* (supra). It was observed as under:

"Keeping in view the aforesaid orders, it was thought appropriate by the Chief Justice of India to constitute a Constitution Bench to deal with all the issues in an apposite manner, and that is how these matters have been placed before us."

Learned counsel for the parties argued at some length and requested for framing questions of law. We think it appropriate to state, this Bench shall consider all the aspects including the correctness of the decision rendered in *Pune Municipal Corporation* (supra) and the other judgments following the said decision as well as the judgment rendered in *Indore Development Authority* (supra)."

27. Thus, it would be seen that the interim order earlier passed in *State of Haryana v. G.D. Goenka* (supra), restraining the High Court from proceeding with in the matters was not continued by the Supreme Court when it referred the matters to the Constitution Bench by the order dated 6th March, 2018 in *Indore Development Authority v. Shyam Verma* (supra).

Consequently, the question of adjourning these matters to await the decision of the Constitution Bench, does not arise.

28. Also, it is not clear whether the Constitution Bench would be considering

issues limited to the "tendering" of compensation or whether other issues like laches and delay, the taking of actual physical possession would also be considered. Be that as it may, what is apparent is that the Constitution Bench in its order dated 6th March 2018 in *Indore Development Authority v. Shyam Verma* (supra) has not continued the stay on the proceedings pending in the various High Courts. Importantly, it has not stayed the operation of the decision of the three-Judge Bench in *Indore Development Authority v. Shailendra* (supra).

29. In that view of the matter, there is no bar for this Court in proceeding to hear these petitions notwithstanding the reference made to the Constitution Bench in *Indore Development Authority v. Shyam Verma* (supra) by the order dated 6th March, 2018.

30. Now turning to the merits of the case, there are three conditions in terms of Section 24 (2) of the 2013 Act which are required to be satisfied before a declaration can be issued that the land acquisition proceedings are deemed to have lapsed. The first is that the Award must be more than five years prior to the coming into force of the 2013 Act i.e. more than five years prior to the 1 st January, 2014. In this case, that condition has been met.

31. The other conditions that have to be satisfied are:

(a) Actual physical possession of the land must continue to remain with the claimant (who presumably is one entitled to such relief) or;

(b) Compensation has not been paid pursuant to the acquisition of the land.

32. As far as the present cases are concerned, since it is not even disputed that the Petitioners before the Court have received compensation the only question that arises is whether it can be said that the actual physical possession of the lands in question have never been taken by the Respondents.

33. Here again, as far as the Petitioners in W.P.(C) No. 6297/2014 are concerned, they contend that they are "on the road". In other words, they do not dispute that they are not in actual physical possession of the lands in question. As far as the Petitioners in W.P.(C) No. 6287/2014 are concerned, they question the possession proceedings drawn up by the Respondents and contend that they are not valid.

34. The Court would first like to refer to the Circular dated 14th March, 2014 issued by the Government of India enclosing the opinion of the Solicitor General of India (SG) on the issue of "actual physical possession" of lands sought to be acquired. The relevant portion refers to the advisory of the Ministry from physical possession which states "physical possession will be considered to have been taken when the land acquired had been physically demarcated and effective physical and absolute control taken within 5 years of the award." The opinion of the SG on this aspect was that:

"The advisory regarding physical possession also does not militate against the

spirit and intent of the Act. And therefore appears to be in order."

35. It will be a pure question of fact in a given case whether actual physical possession of lands in respect of which an Award has been passed and compensation also paid, has ever been taken over by the LAC and/or the beneficiary for whom the acquisition has been made. While the Petitioners have enclosed photographs to show that they are still cultivating the lands in question, the fact remains that as far as the Petitioners in W.P.(C) No. 6297/2014 are concerned, they admit to being "on the road". As far as the Petitioners in W.P.(C) No. 6287/2014 are concerned, they have no answer to the counter affidavit of the LAC which encloses copies of their own applications signed by them admitting that the possession of land was taken from them as a result of which they were entitled to and in fact did receive compensation.

36. The requirement in terms of the law as explained in Balwant Narayan Bagde (supra), Prahlad Singh (supra), Magnum Promoters (supra) and Velaxan Kumar (supra) that a panchnama has to be drawn up and be signed by independent witnesses cannot be raised in the present case in view of the clear admission by the Petitioners in writing that the actual physical possession of the land in question was taken from them.

37. In the circumstances, the averment in both petitions that the Petitioners are still cultivating the lands in question can lead only to one inference viz., that they have re-entered upon the land in question after physical possession was taken over by the LAC/DDA. Section 24 (2) of the 2013 Act will not come to the aid of a person who knowingly encroaches upon the land that has already vested in the State upon passing of the Award.

38. In such circumstances, the law explained in Dr Rajbir Solanki v. Union of India (supra) would apply. Although the said decision was rendered in the context of the prayer for de-notification of land under Section 48 of the LAA, it would be relevant even in the present case. There the official records were produced before the Court to show that the possession of the land in question stood taken over on 1st November, 1999. Yet, the

Petitioners before the Court were claiming to be still cultivating the land in question. In that context, it is observed by the Court as under:

"The fact that the petitioners continued to sow crops on the land even after the land had vested in the State was in that view of the matter wholly inconsequential. As a matter of fact, any such cultivation could at best be deemed to be permissive and the land for that purpose deemed to be in trust with those cultivating the same. We are supported in that view by a decision of the Division Bench of this Court in Nagin Chand Godha v. Union of India and Ors. 2003 (70) DRJ 721 where the Court has while dealing with a similar contention observed:

The Apex Court in the case of Executive Engineer Jal Nigam Central Stores

Division U.P. v. Suresha Nand Juyal, (1997) 9 SCC 224, also considered the question of symbolic possession taken by the Officers. Therefore, in view of what is stated hereinabove, it is not possible for this Court to agree with the submission of the learned Counsel that possession is not taken. Suffice it to say that after symbolic possession is taken, if the petitioner is enjoying the possession, he is enjoying the possession as a trustee on behalf of the public at large and that by itself cannot be considered to be a ground to contend that possession is not taken. It is the duty of the person who is occupying the property to look after the property and to see that the property is not defaced or devalued by himself or by others. He cannot subsequently come to the Court to say that actual possession is not taken and therefore he should be protected and land be denotified.

10. A special leave petition against the above decision was also dismissed and so was a review before the Supreme Court."

39. Therefore, in the present cases, having lost physical possession way back on 30th October 2003, having received compensation in the sum of over Rs. 11 crores, and not having made any attempt thereafter for 11 years to assert any right, title or interest in the lands in question, the Petitioners cannot be heard to say that the requirement of Section 24 (2) of the 2013 Act stood satisfied and, therefore, they were entitled to seek a declaration in terms thereof.

40. Mr. Gupta was also not able to explain as to why despite knowing about the passing of an Award, and accepting compensation, the Petitioners sought no legal remedy against the possession proceedings, if according to them, it had been obtained contrary to law. At no point in time till the time of filing of the present petitions, did the Petitioners question the possession certificates which were signed by them. Although they now claim that they were forced to accept compensation, and forced to sign the possession proceedings, there appears to have been no attempt made by them to make any representation in that regard to the authorities concerned. In other words, the Petitioners are unable to satisfy the Court for the delay and laches in preferring the present writ petitions.

41. For all of the aforementioned reasons, the Court finds no merits in either of the writ petitions. Both writ petitions are accordingly dismissed. The pending applications in each of the petitions are also dismissed.

42. In the circumstances, the Court is of the view that no case is made out for proceeding in Cont. Cas (C) 212/2015 either. The said case is also hereby closed. The pending applications are disposed of.