

(2018) 02 DEL CK 0349

In the Delhi High Court

Case No : Civil Writ Petition No. 7299 Of 2016

Kundan Ram @ Kundan Singh

APPELLANT

Vs

Land Acquisition Collector / A.D.M. & Ors

RESPONDENT

Date of Decision : 13-02-2018

Acts Referred:

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

Citation : (2018) 02 DEL CK 0349

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

Bench : Division Bench

Advocate : Pankaj Vivek, Manpreet, Atul Tripathi, Siddharth Panda, Sanjeev Sabharwal, Hem Kumar, Virender Pratap Singh Charak, Shubhra Parashar

Final Decision : Disposed Of

Judgement

G.S.Sistani, J

1. With the consent of the parties, the present writ petition is set down for final hearing and disposal.

2. This is a petition under Article 226 of the Constitution of India filed by the petitioner seeking a declaration that the acquisition proceedings with

respect to the land i.e. residential plot no.5 area measuring 100 square yards out of Khasra No.629/2 (5-11) situated in the revenue estate of village

Roshanpura, abadi known as Shyam Vihar, Delhi (hereinafter referred to as 'the subject land') is 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 (hereinafter referred to as

'2013 Act'), as neither the physical possession has been taken nor

compensation has been paid to the petitioner.

3. Counsel for the petitioner submits that in this case, the petitioner had purchased the residential plot no.5 area measuring 100 square yards situated in the revenue estate of village Roshanpura, Delhi by way of a registered General Power of Attorney, Will, Agreement to Sell, Receipt and Affidavit He further submits that the Provisional Certificate of Regularization was issued in favour of the colony where the land is situated being Shyam Vihar, an unauthorized colony.

4. The necessary facts to be noticed for disposal of this petition are that a Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") was issued on 07.04.2006, a Notification under Section 6 of the Act was issued on 04.04.2007 and an Award bearing No.08/2008-09 was passed on 14.11.2008. Counsel for the petitioner submits that neither possession has been taken nor compensation has been tendered to the petitioner. He also submits that his submission is further fortified by the stand taken by the LAC in the counter affidavit.

5. Counsel for the LAC submits that the subject land vests in Gaon Sabha, thus, the petitioner would not be entitled to claim any compensation.

Mr.Jain has also opposed this petition on the ground that the petitioner is not the rightful owner. In support of his submissions, he relies on paragraphs

5 & 6 of the counter affidavit, which read as under:

5. That the land in question i.e. Khasra No.629/2 (100 Sq. Yrds out of 5 Bighas and 11 biswas) situated at the revenue estate of village

Roshanpura, Najafgarh, New Delhi was notified under Section 4 of Land Acquisition Act on 07.04.2006 followed by declaration under

section 6 of Land Acquisition Act, made on 04.04.2007 for public purpose namely "Construction of 100 Mtr. Road" under planned

development of Delhi. In pursuance of said notification, notices under section 9 & 10 as provided under the Act, were issued to the

interested persons, inviting the claims from all the interested persons and claims were also filed by the interested persons. The then Land

Acquisition Collector passed Award No.08/2008-09 dated 14.11.2008 after considering the claims of the claimants.

6. That it is submitted that the physical possession of the above mentioned land could not be taken over being built up and as per Statement

the land belongs to Gaon Sabha and compensation has not been paid. Further, the Petitioner is not the recorded owner and has not placed any document on record to show that the land in question has been purchased from the recorded owner. It is claimed by the petitioner that the land in question has been purchased through GPA/Agreement to Sell/Will. The Honâble Supreme Court has in number of cases has held that the GPA/Agreement to Sell/Will are not valid instruments for transferring title. Further, the petitioner has purchased the land in question from a person who had no title. The subject land vests in Gaon Sabha and the petitioner have no locus to file the present writ petitionâ??.

6. Counsel for the petitioner has submitted that the objection raised by Mr.Jain, as far as title of the land is concerned, be kept open to be decided in appropriate proceedings. Counsel submits further that an identical issue had arisen before another Division Bench of this Court in the case of Sanjeev Solanki Vs. Delhi Development Authority and Ors, W.P. (C) 1999/2015, decided on 24.01.2017. Counsel submits that a similar view has also been expressed by this Court in the case of Parshotam Joshi vs. Govt. of NCT of Delhi & Ors., W.P. (C) 4255/2016, decided on 08.11.2017.

7. We have heard the counsel for the parties.

8. As far as the objection raised by the counsel for the LAC with regard to the land being vested in the Gaon Sabha is concerned, we deem it appropriate to follow a decision rendered by the Division Bench of this Court in the case of Sanjeev Solanki (supra), paragraph 5 of which reads as under:-

â??5. While we have declared that the subject acquisition has lapsed, it is made clear that this would not amount to giving title to the petitioner or perfecting the petitionerâ??s title inasmuch as Mr.Jain has taken the plea in the counter-affidavit filed on behalf of the respondent no.2 that the Gaon Sabha has been shown as the recorded owner. This fact is disputed by the learned counsel for the petitioner. But, we are not entering into the controversy of title which may be sorted out elsewhere. Insofar as the acquisition is concerned, the same has lapsed because neither physical possession was taken over nor compensation was paid.â??

9. On reading of the counter affidavit, it leaves no room for doubt that neither

the physical possession of 100 square yards out of Khasra No.628/2(3-05) and 631/2(4-12) has been taken nor the compensation has been tendered.

10. Accordingly, the petitioner is entitled to a declaration that the acquisition proceedings in respect of the land subject matter are deemed to have lapsed. It is declared accordingly. However, we make it clear that we have not expressed any opinion on the title of the above land. The question of title of the subject land is left open to be decided in the appropriate court of jurisdiction.

11. The writ petition stands disposed of in above terms.

CM No.30022/2016 (stay)

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