

(2018) 03 DEL CK 0206

In the Delhi High Court

Case No : Civil Writ Petition No. 6774 Of 2016

Ram Singh Negi

APPELLANT

Vs

Land Acquisition Collector/A.D.M & Ors

RESPONDENT

Date of Decision : 13-03-2018

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

Citation : (2018) 03 DEL CK 0206

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

Bench : Division Bench

Advocate : S.K. Rout, Yeeshu Jain, Jyoti Tyagi, S.K. Sharma

Final Decision : Disposed Off

Judgement

Sangita Dhingra Sehgal, J

1. Pleadings are complete. Accordingly, 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 land bearing Plot no. 29, area admeasuring 150 square yard comprised in Khasra No. 633/2(1-16) 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. 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 Declaration under Section 6 of the Act was issued on 04.04.2007 and an Award bearing No.08/08-09 was passed on 14.11.2008.

4. Mr. S.K. Rout, learned Counsel for the petitioner submits that in this case, the petitioner had purchased the subject land measuring 150 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.

5. He further submits that since the physical possession of the subject land has not been taken and the compensation in respect thereof has not been paid, the petitioner would be entitled to a declaration under Section 24 (2) of the 2013 Act. Counsel further submits that his submissions are further fortified by the stand taken by LAC in their counter affidavit. Learned counsel further relies on the decision rendered by the Supreme Court in Govt. of NCT of Delhi Vs. Manav Dharma Trust and another, reported in 2017 (6) SCC 751, in response to the stand taken by LAC in the counter affidavit that the petitioner has no locus standi to file the present petition as he is not the recorded owner. Reliance is placed on para 28 of this judgment which reads as under:-

"28. Thus, the subsequent purchaser, the assignee, the successor in interest, the power-of-attorney holder, etc., are all persons who are interested in compensation/landowners/ affected persons in terms of the 2013 Act and such persons are entitled to file a case for a declaration that the land acquisition proceedings have lapsed by virtue of operation of Section 24(2) of the 2013 Act. It is a declaration qua the land wherein indisputably they have an interest and they are affected by such acquisition. For such a declaration, it cannot be said that the respondent-writ petitioners do not have any locus standi."

6. On the other hand, Mr. Yeeshu Jain, learned counsel for the LAC submits that the possession of subject land could not be taken and as 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. The relevant para(s) of the counter affidavit, read as under:

"4. That the present writ petition is liable to be dismissed as the subject land falling in khasra No. 633/2(1-16) belonged to Gaon Sabha and it is not clear as what title one Bhim Singh derived who executed GPA/Agreement to Sell/ Will/ Affidavit etc. which culminated into chain of further such document in the names of Kuldeep Singh, SK Sharma, Kundan Singh and Ram Singh Negi, the petitioner herein. The petitioner has not annexed any document showing the entitlement of said Bhim Singh. It is submitted that even otherwise, the first document i.e. GPA/ Agreement to Sell/WILL dated 10.06.1998 available at page 22,29 and 30,

through which further people claimed to have derived right in the subject property, did not even carry the subject khasra number thus in the absence of the khasra number, the first person namely Kuldip Singh and other persons thereafter till petitioner herein, cannot derive any right, title or interest in the subject property. All the documents executed by all such persons are void and have no legal authority/ sanctity for any purpose, what so-ever. The petitioner is claiming relief of 150 sq. yards through such inadmissible documents which relief is liable to be rejected for the reasons, stated supra.

4A. That it is submitted that the lands of village Roshanpura were notified vide Notification under Section 4 of the Land Acquisition Act dated 07.04.2006 which was followed by Notification under Section 6 of the said Act vide Notification dated 4.4.2007 and the Award No. 08/08-09 dated 14.11.2008 was also passes as per the law. It is submitted that the possession of the subject land falling in khasra numver 633/2(1-16) however could not be taken nor the compensation has been paid as the rightful claimant is Gaon Sabha and the petitioner has suppressed this material aspect from the Hon'ble Court for the reasons best known to him."

7. Counter Affidavit has also been filed by DDA, the relevant portion of which read as under:

"(d) that the physical possession of the land bearing aforesaid Khasra no. 633/2(1-16) of village-Roshanpura, Delhi has not been handed over to DDA by LAC/L&B Deptt."

8. We have heard the counsel for the parties.

9. The learned counsel for the petitioner has submitted that neither physical possession of the subject land has been taken nor compensation has been paid to the petitioner. Counsel has also submitted that the objections of the LAC regarding locus standi of the petitioner is misplaced in view of the observations made by the Supreme Court in Manav Dharma Trust (supra) where the rights of the subsequent purchaser have been recognised.

10. As far as the objection with regard to maintainability is concerned, we find the same to be misplaced in view of the observations made by the Supreme Court in the case of Manav Dharma Trust (supra). Accordingly, the submissions made by the counsel for the LAC that the petitioner has no locus standi to file the present petition as he is the subsequent purchaser, holds no ground.

11. In relation to 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 Vs. Delhi Development Authority and Ors, W.P. (C) 1999/2015, decided on 24.01.2017, paragraph 5 of which reads as under:-

"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

petitioner'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."

12. As per the counter affidavit filed by LAC it is clear that, neither the possession of the land bearing Plot no. 29 area admeasuring 150 square yard comprised in Khasra No. 633/2(1-16) has been taken nor the compensation has been tendered to the petitioner as being assessed in the name of Gaon Sabha and since, the award having been announced more than five years prior to the commencement of the 2013 Act, the petitioner is entitled to a declaration under Section 24(2) of the 2013 Act that the acquisition proceedings initiated under the Act with regard to the subject land are deemed to have lapsed. It is ordered accordingly.

13. However, we make it clear that we have not expressed any opinion on the title of the subject land. The question of title of the subject land is left open to be decided in the appropriate court of jurisdiction.

14. The writ petition is disposed of in above terms.