

(2019) 03 DEL CK 0151

In the Delhi High Court

Case No : Civil Writ Petition No. 9353 Of 2016

Ravinder Singh & Ors

APPELLANT

Vs

Lt. Governor & Ors

RESPONDENT

Date of Decision : 20-03-2019

Acts Referred:

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, 16

Citation : (2019) 03 DEL CK 0151

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

Bench : Division Bench

Advocate : N.Prabhakar, Dhruv Sharma, Yeeshu Jain, Jyoti Tyagi, Ashutosh Ghade, N.Goel

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, J

1. The prayers in the petition read as under:

"a. Issue a writ of declaration that the acquisition proceedings with respect to the land in khasra no. 160/02 min (5 Bigha 14 Biswas) in the village Lado Sarai have lapsed in terms of the section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition (Rehabilitation and Resettlement) Act 2013;

b. issue a writ of mandamus or any suitable directions to the respondent no. 4 who also happens to maintain record of rights to make/cause to be made appropriate changes in the revenue record/record of rights in favor of the petitioners and other members of the family having interest therein as per the Annexure P-1;

c. pass any other order/suitable directions as this Honourable court deems just and appropriate in the facts and circumstances of the case."

2. Notice was issued in the present petition on 7th October, 2016 and on the same date, an interim order was passed directing the parties to maintain status-quo with regard to nature, title and possession of the land.

3. A counter affidavit was filed on 28th February, 2018 by the Additional District Magistrate/ADM (S) in which it was pointed out that in respect of the land in question, a notification under Section 4 was issued on 13th November, 1959 followed by declaration under Section 6 of the LAA on 16th May, 1966. It was pointed out that the impugned Award No. 36/80-81 was passed on 19th June, 1980. The award was challenged by the Petitioners in Writ Petition (C) No. 444/1982 (which was disposed of along with a batch of cases of which the lead case was Roshnara Begum vs. Union of India 1996 (36) DRJ 34 in 1995).

4. It is further asserted in the counter affidavit that physical possession of the land in question was taken on 24th June 1980 on the spot and handed over to the DDA. It was further mentioned the "amount of compensation was duly tendered to the Petitioner but they denied to accept the same." Till date no rejoinder has been filed for the above affidavit. Nevertheless, when the matter was heard on 4th May, 2018 the submission was made by counsel for the Petitioners that "no documents have been filed in support of the plea raised in the counter affidavit that payments have been made." The counsel for the LAC undertook to produce the original records on the following date. Further time was granted to the DDA to file an affidavit.

5. Thereafter, on 31st October, 2018 the following order was passed:-

"1. Two issues have arisen in the present petition in relation to the averments in the writ petition. One is that the Petitioners claim to continue to remain in possession of the land in question, i.e. Khasra No. 160/02 MIN in village Lado Sarai admeasuring 5 bigha 14 biswa. The second issue is that the Petitioners claim that compensation in respect thereof "has not been received by either of the Petitioners or the karta of the HUF till the filing of this petition".

2. According to the first issue, it is offered in the counter affidavit filed by the LAC that "the amount of compensation was duly tendered to the Petitioners but they deny to accept the same". Although the counter affidavit purports to enclose "a copy of such denial" there are no such documents enclosed with the counter affidavit. Today, in Court, learned counsel for the LAC has pulled out from the original file of the LAC, a document purportedly signed by Mr. Raghbir Singh, father of Petitioner No.2, declaring to receive compensation in respect of the land admeasuring 5 bigha and 14 biswa. This has been shown to learned counsel for Petitioners who states that he will have to seek instructions on whether the handwriting is in fact that of Mr. Raghbir Singh. Secondly, it is submitted that Mr. Raghbir Singh is one of the claimants whereas the present petition is by four Petitioners.

3. The LAC is directed to place the said documents on the record with an affidavit not later than two weeks from today with advance copies to the Petitioners as

well as counsel for the DDA.

4. On the issue of possession, the case of LAC is that possession was taken over and handed over to the DDA way back in 1980.

5. The DDA is yet to file a counter affidavit. Learned counsel states that it will be filed within one week with an advance copy to the Petitioners who are permitted to file rejoinder thereto before the next date.

6. The documents relevant for the handing over of possession by the LAC and taking over of possession by the DDA should be enclosed with the affidavit.

7. List on 6th March 2019.

6. In compliance with the above order, the DDA has filed a counter affidavit on 24th November, 2018. In the said affidavit it is inter-alia stated that physical possession of Khasra no. 160/2 (min) 5 bighas 14 biswas of Village Lado Sarai, Delhi was handed over to the DDA on 29th July, 1980 by the Land Acquisition Collector, L & B, Government of NCT of Delhi. It is stated that neither the Petitioners nor their predecessors-in-interest have produced any title documents or revenue records to prove their claim as regards ownership of the said land and they have no locus to challenge the acquisition proceedings. It is submitted that the acquisition is complete and the land vests with the Government free from all encumbrances. A mention is made of the fact that after the Award was passed on 19th June, 1980 possession of the land was transferred to the Horticulture Department on 24th June, 1980. As regards compensation in respect of Award No.36/1980-81 is concerned, it is stated that it was paid to the L&B Department by cheque dated 16th June 1980 to the amount of Rs.1,84,87,000/-.

7. Today during the course of proceedings, learned counsel for the DDA has produced the Possession Report which shows that actual physical possession of the land in question was taken by the L&B on 24th June, 1980. The possession report clearly indicates that the Tehsildar and Patwari were present on behalf of the L&B and the DDA was also represented by two officials.

8. The possession report states that a total of 1933 bighas 2 biswas was taken over after proper identification of the boundaries on the spot and the physical possession was handed over to the Tehsildar of the L&B department. It clearly sets out those Khasra numbers which could not be taken over due to being "built up". The Khasra numbers mentioned in this lot does not include Khasra No. 160/2 (min), which is the land which forms the subject matter of the present petition. This Khasra number is included in the whole list of Khasra numbers of which possession was taken over on 20th June 1980.

9. Learned counsel for the Petitioners sought to contest the above possession report by referring to a ?pre-award survey? which is enclosed as Annexure P-3, which according to him showed that the land in question was already "fully built up". He therefore contests the correctness of the possession report.

10. It must be noted that the LAC had itself filed an affidavit on 28th February, 2018 on the aspect of possession and no rejoinder has been filed till date by the Petitioner. The only objection made by the counsel for the Petitioners, as recorded by this Court in its order dated 4th May 2018 was that "no documents have been filed in support of the plea raised in the counter affidavit that payments have been made."

11. The DDA has corroborated the stand of the LAC by producing the possession report. This Court is therefore unable to agree with the counsel for the Petitioner that this Court should go by Annexure P-3 and ignore the possession report which clearly indicates that physical possession of the land in question i.e Khasra No.160/2 (min) was in fact taken way back on 20th June, 1980 and that further possession was handed over to the DDA on 24th June, 1980 itself. At the highest this gives rise to a disputed question of facts which obviously cannot be examined in these proceedings.

12. Mr. Prabhakar, learned counsel for the Petitioner seeks to argue that till such time possession is not taken of the land which forms part the subject matter of the proceedings, the acquisition itself is not complete in terms of the Section 16 of the LAA. In support of this proposition he placed reliance on the decision in *Prahlad Singh v. Union of India* (2011) 5 SCC 386.

13. A careful perusal of the said judgment reveals that in that case counsel appearing for the State "could not draw" the attention of the SC "to any material to show that actual and physical possession of the acquired land had been taken by the said authorities." However in the present case, apart from the affidavit of the LAC to which no rejoinder has been filed by the Petitioner, the DDA has also produced the possession report which shows that possession of the land in question was taken on 20th June, 1980 and handed over to the DDA on 24th June, 1980.

14. In respect of an Award that was passed merely four decades ago on 19th June, 1980 and with possession also having been taken the very next day, the petition is clearly barred by laches with the Petitioner having no valid explanation for the delay in approaching the Court for relief. Here again, the only explanation the Petitioner has is that till such time as actual physical possession was not taken, he was not obliged to come forth to challenge the acquisition proceedings. This argument requires to be rejected for the simple reason that in the present case, the Petitioner appears to have been aware of the fact of possession having been taken. The Possession Report records "concerned person remain present at the time of taking over possession but they refused to sign the possession papers". It also answers the plea of the counsel for the Petitioner about the requirement of the law, as far as taking of possession is concerned, not having been complied with which was adverted to by the Supreme Court in his decision in *Banda Development Authority, Banda vs. Moti Lal Agarwal* (2011) 5 SCC 394.

15. On the issue of laches, the decision of the Supreme Court in *Indore*

Development Authority v. Shailendra (2018) 3 SCC 412 is categorical where it has been observed as under:

"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 negatived 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/negatived, 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."

16. There is an additional difficulty in the way of the Petitioner and relief being granted under Section 24(2) of the 2013 Act. The land in respect of which the relief is being sought is clearly a fully built up unauthorised colony. Lado Sarai Extension has been notified at Sl.No. 453 on the list of unauthorised colonies put

up on the website of the Department of Urban and Development, Govt. of NCT of Delhi. It appears to have been granted a provisional Registration No. 453.

17. Properties forming part of an unauthorised colony will not qualify for any relief under Section 24(2) of the 2013 Act in terms of the decision of this Court in *Mool Chand v. Union of India* 2019 (173) DRJ 595 (DB), which held as under:

"48. The third aspect of the case is that the Petitioner admits that the land in question is part of an unauthorised colony. The very basis for seeking regularisation of an unauthorised colony is that it is located on land which belongs either to the public or to some other private parties. The Petitioners would therefore not have the locus standi to seek a declaration in terms of Section 24 (2) of the 2013 Act in such cases since the very fact that they have sought regularisation on the basis that they are in unauthorised colony would be an admission that they do not otherwise have any valid right, title or interest in the land in question.

49. This Court has by order dated 19th December 2018 in WP(C) No.190/2016 (*Harbhagwan Batra v. Govt. Of NCT of Delhi*) and order dated 8th January 2019 in WP(C) No.10201/2015 (*Gurmeet Singh Grewal v. Union of India*) negated similar pleas by the Petitioners who were trying to seek similar declaration of lapsing even while admitting that they were pursuing regularisation of an unauthorised colony.

50. In a decision dated 10th January 2019 in W.P. (C) 3623 of 2018 (*Akhil Sibal v. Govt. of NCT of Delhi*) this Court observed in this context as under:

"18. The Court at this stage may also observe that many of the unauthorized colonies are awaiting regularization orders. A large portion of these colonies are by way of encroachment on public land, some of it may be on private land, but in any event, the constructions themselves are unauthorized. The major premise on which such regularization is sought is that these constructions have been erected on public or private land which does not belong to the persons who are under occupation of those structures. That very basis gets contradicted as some of them try to seek a declaration about lapsing of the land acquisition proceedings by invoking Section 24 (2) of the 2013 Act. This is a contradiction in terms and is legally untenable."

18. The above decision has been followed and the legal position has been reiterated by this Court in an order dated 25th January, 2019 in W.P.(C) No.3438/2015 (*Krishna Devi v. Union of India*).

19. Mr. Prabhakar also contended that if in fact possession had been taken, there was no reason why the entries in the revenue records even after 1980 would continue to reflect the name of the owner. The non-correction of the entries in the revenue record will not take away from the fact that the Award No.36/1980-81 was passed on 19th June, 1980 and possession of the land in question in this petition was in fact taken over on 20th June, 1980. This

therefore will not give assistance to the Petitioner.

20. For the aforementioned reasons, there is no merit in the petition and is dismissed as such. The interim order dated 7th October 2016 which stood confirmed on 20th February 2018 is hereby vacated.

21. As clarified in Krishna Devi v. Union of India (supra), the dismissal of the present petition will not come in the way of the Petitioner pursuing the claim for regularisation of the unauthorised colony in question.