

(2017) 11 DEL CK 0631

In the Delhi High Court

Case No : Civil Writ Petition No. 3014 Of 2016

Saahil Goel & Anr

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 07-11-2017

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6
Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 24(2)

Citation : (2017) 11 DEL CK 0631

Hon'ble Judges : G.S.Sistani, J;V. Kameswar Rao, J

Bench : Division Bench

Advocate : Richa Oberoi, Prateek Kohli, Roshan Lal Goel, Anju Gupta, Sanjay Kumar Pathak, Sunil Kumar Jha, Kushal Raj Tater, Sanjeev Sabharwal, Ridhi Suman

Judgement

G.S.Sistani, J

1. Counter-affidavit not filed by the respondent L&B/LAC. Learned counsel for the respondent submits that counter-affidavit is ready and he has handed over the same today in the Court. Same is taken on record.

2. With the consent of the parties, writ petition is set out for final hearing and disposal. Learned counsel for the petitioners submits that acquisition proceedings qua land admeasuring 750 Sq. Yds. forming part of Khasra No. 675 and 676 situated in the Revenue Estate of Village-Neb Sarai, Tehsil-Hauz Khas, New Delhi (hereinafter referred to as the 'subject land') is deemed to have lapsed in view of the fact that compensation has not been paid to the petitioners and in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

3. Petitioners claim to be owners of the land admeasuring 750 sq. yds. forming part of Khasra No. 675 and 676 situated in the revenue estate of Village Neb Sarai, Tehsil Hauz Khas, New Delhi on the basis of an Agreement to Sell dated

4th April, 2013 and registered General Power of Attorney dated 15th April, 2013 along with the possession Certificate executed by M/s. Sukhshanti Estates Pvt. Ltd. through its duly authorized Director Sh. Suman Chhabra, the original owner of total land of 1500 Sq. Yds. of Khasra No. 675 and 676. Counsel for the petitioners submits that the present case is fully covered by the decision rendered by the Division Bench of this Court in the case of Asha Jain and Anr. v. Union of India and Ors. W.P. (C) 2987/2016 decided on 8th August, 2017. Similar view has also been taken in the case of Sunil Jain and Anr. v. Union of India and Ors. W.P.(C) No. 2989/2016 decided on 17th July, 2017, Ripple Kaur v. Union of India and Ors. W.P.(C) No. 2921/2016 decided on 1st August, 2017 and Kanwal Jain and Anr. v. Union of India and Ors. 2988/2016 decided on 1st August, 2017.

4. The petitioners aver that pursuant to the award, neither physical possession of the suit land was taken over by the respondents nor any compensation in respect thereof was ever paid or tendered. Relying upon Pune Municipal Corporation & Anr. vs. Harakchand Misirimal Solanki & Ors., 2014 (3) SCC 183, counsel urged that the acquisition has lapsed since five year period indicated in Section 24(2) of the Act has ended.

5. Counsel for the LAC submits that the petitioners have no locus to seek declaration as the suit land was purchased by them on the basis of General Power of Attorney and Agreement to Sell.

6. In this case, necessary Notification under Section 4 of the Land Acquisition Act, 1894 was issued on 5th November, 1980, declaration under Section 6 was issued on 21st May, 1985 and Award bearing No. 12/87-88 was made in respect of the subject land on 20th May, 1987. It is the case of the petitioners that pursuant to the Award neither physical possession of the subject land was taken over by the respondent nor any compensation paid nor tendered and the case of the petitioners shall be fully covered by the decision rendered by the Apex Court in the case of Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors(2014) 3 SCC 183.

7. Para 11 of the counter affidavit which has been filed by the respondent no.2 in the court shows that no payment has been made to the petitioners. Para 11 of the counter-affidavit reads as under:

"That there is no entry in the Naksha Muntazamin as to whether any payment was made to the petitioners or not. The statement "A" of the Award No. 12/87-88 is not traceable. An NCR has also been lodged with the P.S. Neb Sarai bearing LR. No. 0063/2017 dated 07/02/2017. However, as per the Revenue Deposit register, the total amount of Rs.8,10,28,938/- of Award No. 12/87-88 was deposited in the R.D. but the same was later withdrawn vide R.V. No. 436 dated 07.05.1993 for the Award No. 1/93-94 Village Kakrola, Delhi as per Dy. Secy. (L&B) Letter No. F.19/(145/88-89/L&B/F.A-20392 dated 07.07.1992. As per the Naksha Muntazamin recorded owner of the land at Khasra No. 667 is M/s. Laxmi Chand. Compensation amount mentioned is Rs.303445.70/-. As per the

Naksha Muntazamin recorded owner of the land at Khasra No. 675 is M/s. Laxmi Chand. Compensation amount mentioned is Rs.1489000.99/-. There is no remarks in the Naksha Muntazmin as to whether compensation amount has been paid or not."

8. We have heard learned counsel for the parties. Having regard to the fact that the compensation has not been paid or tendered to the petitioners, petitioners are entitled to declaration that the acquisition proceedings of the subject land stand lapsed.

9. Counsel for the respondent has urged that the petitioners have no locus standi to seek a declaration as the subject land was purchased by them on the basis of Power of Attorney and Agreement to Sell. Similar objections were raised by the respondent in earlier writ petitions as mentioned in para 3 above, which were also rejected.

10. Almost similar issue has been decided by the Supreme Court in the case of Govt. of NCT of Delhi v. Manav Dharam Trust and Anr. (2017) 6 SCC 751. Paragraphs 26 to 29 of which reads as under:

"26. The main purpose of the 2013 Act is clearly stated in the preamble which reads as follows:-

"An Act to ensure, in consultation with institutions of local self- government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto."

There is a clear indication that the Act proposes to protect the interest of those persons, among others who are affected by the acquisition. The subsequent purchasers/successors, etc., in the cases before us, are all people affected by the acquisition, and therefore, also they are entitled to seek a declaration on lapse under the 2013 Act.

27. The High Court of Karnataka at Bengaluru in Suryaprakash and others v. State of Karnataka and others 2016 SCC OnLine Kar 8215 has considered a situation of lapse and locus standi of the subsequent purchaser to file a writ petition for a declaration on lapse, though not under Section 24(2) of the 2013 Act. At paragraph-16, it has been held:

"16. ... the principle that transferee of land after the publication of preliminary

notification cannot maintain a writ petition challenging the acquisition, cannot be made applicable to a case where the acquisition itself has been abandoned and has stood lapsed due to efflux of time on account of the omission and inaction on the part of the acquiring authority, particularly because, it is because of the lapse of time and the abandonment of the acquisition, right accrues to the original owner to deal with his property including by way of the sale and the purchaser will acquire right to protect his interest. Hence, the judgment in the case of Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur and others (2013) 5 SCC 427, will have no application to the facts of the present case." We are of the view that this decision, in principle, applies to the facts of these appeals as well.

28. Thus, the subsequent purchaser, the assignee, the successor in interest, the power of attorney, etc., are all persons who are interested in compensation/land owners/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 respondents/writ petitioners do not have any locus standi.

29. Thus, we do not find any merit in these appeals and they are accordingly dismissed. All Interlocutory Applications for Impleadment and Intervention, other than those by Legal Representatives, are also rejected. Applications for Impleadment of Legal Representatives are allowed. There shall be no order as to costs."

11. Resultantly, we find that there is no merit in the objection raised by the counsel for the respondent / LAC with regard to maintainability of the writ petition. The same is liable to be rejected.

12. In view of the discussion above, the petitioners are entitled to a declaration that the acquisition proceedings with respect to land admeasuring 750 Sq. Yds. forming part of Khasra No. 675 and 676 situated in the Revenue Estate of Village-Neb Sarai, Tehsil-Hauz Khas, New Delhi are deemed to have lapsed. It is so declared.

CM. No. 12678/2016

Interim order dated 6th April, 2016 stands confirmed.

CM disposed of.