

(2018) 02 DEL CK 0409

In the Delhi High Court

Case No : Civil Writ Petition No. 3792 Of 2015

Vijay Mohan

APPELLANT

Vs

Lt. Governor, Nct Of Delhi & Ors

RESPONDENT

Date of Decision : 15-02-2018

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

Citation : (2018) 02 DEL CK 0409

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

Bench : Division Bench

Advocate : Akhil Sachar, Yeeshu Jain, Jyoti Tyagi, Dhanesh Relan, Akshita Manocha, Komal, Gauri

Final Decision : Allowed

Judgement

G.S.Sistani, J

1. With the consent of the parties, the 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 writ, order or direction for quashing the impugned

Notification bearing No.F.11(19)/2001/L&B/LA/20112 dated 21.03.2003 as also Notification under Section 6 of the Land Acquisition Act, 1894.

3. Mr.Jain, counsel appearing for LAC at the outset submits that as noticed in the order dated 12.12.2017, counter affidavit filed on 04.01.2017 was

withdrawn as it contained incorrect Khasra number. He submits that time was sought to place a fresh counter affidavit on record; however he submits

that barring incorrect Khasra number and measurement there is no change in the

contents of the counter affidavit and the LAC would rely upon the same. It is further submitted by Mr.Jain that he has received comments from the department.

4. Counsel for the petitioner submits that acquisition proceedings pertaining to the land measuring 1008 square yards comprised in Khasra Nos.39//7, 8

& 13 min situated in the revenue estate of village Prehladpur Bangar, National Capital Territory of 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 of aforesaid land has been taken nor

compensation has been paid to the petitioner.

5. Mr.Sachar further submits that barring the description of the land and stand taken by the LAC in the counter affidavit so filed which is identical

even now is the same.

6. Mr.Jain, counsel appearing for LAC while relying upon the copy of the comments received by him submits that the possession has not been taken

and compensation has also not been tendered. Copy of counter dated 04.01.2017 has been handed over in Court, as also copy of the comments, both

shall form part of the court record. Correction in the counter affidavit has been made in Court and initialed in today's date.

7. In this case, a Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") was issued on 21.03.2003,

a declaration under Section 6 of the Act was issued on 19.03.2004 and an Award bearing No.06/2005-06 was passed on 12.07.2005.

8. Counsel appearing for DDA relies upon para 4 (i) of the preliminary objections. The DDA in para 4 (i) has made the following averments:-

"(i) Physical possession of land of above said Khasras of Village Prahladpur Bangar was not handed over to the

answering Respondent by the Land Acquisition Collector/Land and Building Department of the Govt. of NCT of Delhi on 26.08.2005 due to

existence of residential houses, factories and Kotha Jat as per Possession Proceedings dated 26.08.2005."

9. Counsel for respondent/DDA submits that the land was acquired for Planned Development of Delhi for Rohini Residential Scheme.

10. Counsel for the petitioner submits that from 2003 till date, no steps have been taken by the DDA to take physical possession or to tender the compensation to the petitioner. Even otherwise, the area is built up and, thus, simply saying that land is required for Rohini Residential Scheme, no benefit can be accrue in favour of the respondents. Even otherwise, it is open for the respondents to acquire the land afresh, if there is any need arises in the near future.

11. We find force in the submissions made by Mr.Sachar. Nothing has been produced before us to show as to why steps have not been taken to take actual physical possession of the subject land since 2005 i.e. date of the award or tender the compensation nor any document has been placed on record to show that the land is required immediately for any scheme.

12. Having regard to the submissions made and the stand taken by the respondents in their counter affidavits that the physical possession of the subject land has not been taken and compensation has not been tendered, the petitioner would be entitled to a declaration in respect of the land subject matter of writ petition, in terms of Section 24(2) of 2013 Act. It is declared accordingly.

13. No other ground has been urged before us.

14. The writ petition stands allowed.

CM No.6791/2015 (stay)

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