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**(2018) 03 DEL CK 0508**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 12039 Of 2015

Yogesh Bansal & Anr APPELLANT

Vs

Union Of India And Ors RESPONDENT

**Date of Decision :** 22-03-2018

**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, 5A, 6, 9, 10, 17

**Citation :** (2018) 03 DEL CK 0508

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

**Bench :** Division Bench

**Advocate :** D.V. Khatri, Vivek Goyal, Harsh Pandit, Rajeev Ranjan Shahi, Yeeshu Jain, Jyoti Tyagi, Sanjeev Sabharwal, Hem Kumar

**Final Decision :** Disposed Of

# Judgement

G.S.Sistani, J

1. Counter affidavit has been handed over in Court after removing the objections, which is taken on record.

2. Pleadings are complete. The writ petition is set down for final hearing and disposal.

3. The petitioners have filed the present writ petition under Article 226 of the Constitution of India. The petitioners seek a declaration that the acquisition proceedings initiated in respect of the land of petitioners comprised in Khasra no.48//1 min, measuring 1 bigha 10 biswas, situated in the revenue estate of village Mamoorpur, Narela, 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 the "2013 Act"), as neither

the physical possession of the subject land has been taken nor the compensation has been tendered.

4. The petitioners claim that their father Late Shri Ramesh Chand was the recorded owner and in physical possession of the above described land. Shri Ramesh Chand expired on 30.07.2006 leaving behind five legal heirs, out of which his wife Smt. Saroj Devi and two daughters, namely, Arti Mangla and Jyoti Gupta have relinquished their rights by executing a Relinquishment Deed dated 07.10.2013 in favour of the petitioners herein. A copy of the Death Certificate and the Relinquishment Deed have been placed on record.

5. Mr. Khatri, learned counsel for the petitioners submits that in view of Section 24 (2) of the 2013 Act, the petitioners are entitled to a declaration that the acquisition proceedings have lapsed as both the ingredients of Section 24 (2) of the 2013 have not been met. Mr. Khatri has also drawn the attention of this Court to the counter affidavit, which has been handed over in Court, wherein an averment has been made that the compensation could not be paid nor the possession could be taken due to court case. Mr. Khatri submits that this averment has been made without any application of mind for the reason that the Award is dated 17.02.2004 and the writ petition instituted by the petitioners was dismissed on 07.05.2004, which is also admitted by the LAC in the counter affidavit. Counsel submits that between the period 2004 and till date, there was no reason as to why the LAC did not either take physical possession or tender the compensation to the petitioners.

6. We have heard the learned counsels for the parties and considered their rival submissions.

7. In the present case, a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") was issued on 02.05.2001, Section 6 declaration was made on 23.04.2002. Thereafter, an Award bearing no.28/2003-04 was rendered on 17.02.2004. Para 4 of the counter affidavit filed by the LAC would be relevant, which is reproduced below:

"4. That the present writ petition is liable to be dismissed on delay and laches as the recorded owner/petitioner never preferred to challenge the acquisition proceedings. It is submitted that as per the Award, in view of the pendency of CWP No.6970-7053/2004, the possession of the subject land could not be taken, however the said writ petition was dismissed on 7.5.2004 as withdrawn. The possession of the subject land falling in khasra number 48/1 min(1-10) could not be taken nor the compensation been paid due to the court case."

8. Para 5(vii) of the counter affidavit filed by the DDA, reads as under:

"vii. It is further submitted that the physical possession of the acquired land of village Mamoorpur, Narela, Delhi has not been handed over to the respondent-Delhi Development Authority by the LAC/Land and Building Department, Govt. of NCT of Delhi because stay in Civil Writ Petition No.6970-7053/2004. It is further

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submitted that the petitioner has not placed on the records of the present case any document to show its possession over the acquired land. The photographs filed before the Hon"ble Court can be anywhere."

9. The only objection which is sought to be raised by the LAC in this case is that possession could not be taken and compensation could not be paid on account of court case. This objection, in our view, is unfounded and misplaced and cannot be accepted in view of the fact that admittedly the writ petition filed was dismissed as far back as on 07.05.2004. There is no explanation as to what prevented the respondents from either taking physical possession of the subject land or tendering the compensation after the writ petition was dismissed on 07.05.2004.

10. Having regard to the fact that possession of the subject land has not been taken over nor compensation tendered and since the award having been announced more than five years prior to the commencement of the 2013 Act, the case of the petitioners is covered by the provisions of Section 24(2) of the 2013 Act and thus, the petitioners are entitled to a declaration that the acquisition proceedings initiated under the Land Acquisition Act, 1894 with regard to the subject land are deemed to have lapsed. It is ordered accordingly.

11. The writ petition stands disposed of.

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