

Ashwal Vadera Vs. Union of India and ors

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Court : Delhi

Decided On : Jul-30-2014

Judge : Badar Durrez Ahmed

Appellant : Ashwal Vadera

Respondent : Union of India and ors

Judgement :

THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

30. 07.2014 W.P.(C) 1897/2014 ASHWAL VADERAA ... Petitioner versus UNION OF INDIA & ORS ... Respondents
Advocates who appeared in this case: For the Petitioner : Mr V.P. Singh, Senior Advocate with Ms Anju Bhattacharya, Mr Elgin Matt John and Mr Ashwal Vadera with petitioner in person For the Respondents : Mr Rakesh Khanna, Senior Advocate with Mr Ajay Verma for DDA Mr Yeeshu Jain and Mr Jyoti Tyagi for L&B and LAC Mr Sanjay Kumar Pathak for GNCTD
CORAM:HONBLE MR JUSTICE BADAR DURREZ AHMED HONBLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL) 1. The petitioner seeks a writ of Certiorari essentially declaring the acquisition proceedings which had been initiated by virtue of a notice under Section 4 of the Land Acquisition Act, 1894 dated 19.09.1967 as having lapsed in view of the provisions of Section 24(2) of the Right to Fair

Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It is stated in the petition that after the Section 4 notification dated 19.09.1967, the declaration under Section 6 was issued on 12.02.1968 and the award in respect of the land was made on 07.03.1991 under the 1894 Act. The entire award was in respect of the petitioners land alone.

2. It is the petitioners case that since the award was made more than 5 years prior to the coming into effect of the said 2013 Act and because no possession of the land was taken nor was any compensation paid, by virtue of the provisions of Section 24(2) of the 2013 Act, the acquisition has lapsed.

3. The learned counsel appearing on behalf of the Land Acquisition Collector as well as the Land and Building Department submitted that though possession was taken on 26.08.2005, that had been done despite there being an order of status quo having earlier been passed by this court in W.P.(C) No.1398/1994. The order dated 25.02.2009 passed in the said writ petition was referred to wherein the entire circumstances under which the possession was taken has been related. In conclusion, this court in the said writ petition in its order dated 25.02.2009 observed that in the circumstances there cannot be any question of taking over possession after 25.03.1994 as status quo in respect of possession was directed to be maintained in terms of the said order. The court specifically noted that the consequence of this would be that the possession, if taken over after 25.03.1994, would be in breach of the order of status quo and would not be possession in accordance with law.

4. That being the position, it can be safely stated that possession of the said land was not taken at all in law. Insofar as payment of compensation is concerned, the learned counsel appearing on behalf of the Land Acquisition Collector and the Land and Building Department of the Government of NCT of Delhi has candidly stated that the same was neither paid to the petitioner nor deposited in court in terms of Section 31 of the Land Acquisition Act, 1894.

5. Mr Ajay Verma, the learned counsel, appearing on behalf of the DDA, for whose benefit the said acquisition had been initiated, however, contended that compensation had been paid and possession had also been taken. We do not

agree with this submission of Mr Verma. Insofar as the question of possession is concerned, the order passed by the Division Bench on 25.02.2009 in W.P.(C) No.1398/1994 makes it clear that the same cannot be regarded as possession in law. W.P.(C) No.1897/2014 payment of compensation, the mere fact that the DDA made the funds available to the Land Acquisition Collector would not amount to payment of compensation. The exact manner in which the compensation is required to be paid has been specifically indicated by the Supreme Court in the case of Pune Municipal Corporation and Another v. Harakchand Misirimal Solanki and Others: (2014) 3 SCC183 The Supreme Court, in the said decision, categorically held as under:

From the above, it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act. It is also admitted position that the compensation so awarded has neither been paid to the landowners / persons interested nor deposited in the court. The deposit of compensation amount in the Government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners / persons interested. We have, therefore, no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the 2013 Act.

(underlining added) 6. As a result, it is clear that neither possession was taken nor compensation paid to the petitioner. It is only the petitioners land which was the subject matter of the award which, admittedly, had been made in 1981 which was more than five years prior to the commencement of the 2013 Act. Consequently, the provisions of Section 24(2) of the 2013 Act get triggered and as a result the acquisition of land shall be deemed to have lapsed thereunder.

7. The writ petition is allowed. There shall be no order as to costs. BADAR DURREZ AHMED, J JULY30 2014 SU W.P.(C) No.1897/2014

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