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Prem Singh & Ors vs.govt. Of Nct of Delhi & Ors

Prem Singh & Ors vs.govt. Of Nct of Delhi & Ors

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Court : Delhi

Decided On : Feb-21-2017

Appellant : Prem Singh & Ors

Respondent : Govt. Of Nct of Delhi & Ors

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI * % + W.P.(C) 5395/2015 & CM No.9724/2015 Judgment Reserved on:

04. 01.2017 Judgment delivered on:

21. 02.2017 JAI KISHAN & ANR GOVERNMENT OF NCT OF DELHI & ORS .....

... RESPONDENTS
. + W.P.(C) 5399/2015 & CM97332015 .....

... Petitioner
s versus RANVIR SINGH & ORS GOVERNMENT OF NCT OF DELHI & ORS .....

... RESPONDENTS
+ W.P.(C) 5406/2015 & CM97422015 .....

... Petitioner
s versus SAMUNDER SINGH & ORS GOVERNMENT OF NCT OF DELHI & ORS .....

... RESPONDENTS
+ W.P.(C) 5430/2015 & CM97832015 .....

... Petitioner
s versus ANAND KUMAR & ANR GOVERNMENT OF NCT OF DELHI & ORS .....

... RESPONDENTS
+ W.P.(C) 5431/2015 & CM97842015 .....

... Petitioner
s versus HARI SINGH & ORS .....

... Petitioner
s W.P.(C) 5395/2015 & Ors. Page 1 of 14 versus GOVERNMENT OF NCT OF DELHI & ORS .....

... RESPONDENTS
+ W.P.(C) 5432/2015 & CM97852015 JAI PRAKASH AND ORS. GOVERNMENT OF NCT OF DELHI & ORS .....

... RESPONDENTS
+ W.P.(C) 5433/2015 & CM97862015 .....

... Petitioner
s versus KRISHAN SINGH GOVERNMENT OF NCT OF DELHI & ORS .....

... RESPONDENTS
+ W.P.(C) 5436/2015 & CM9787215 .....

... Petitioner
s versus RAJENDER SINGH GOVERNMENT OF NCT OF DELHI & ORS .....

... RESPONDENTS
+ W.P.(C) 5437/2015 & CM97882015 .....

... Petitioner
versus RAM CHANDER & ANR GOVERNMENT OF NCT OF DELHI & ORS .....

... RESPONDENTS
+ W.P.(C) 5448/2015 & CM98032015 .....

... Petitioner
s versus PREM SINGH & ORS versus .....

... Petitioner
s W.P.(C) 5395/2015 & Ors. Page 2 of 14 GOVERNMENT OF NCT OF DELHI & ORS .....

... RESPONDENTS
+ W.P.(C) 5449/2015 & CM98042015 RAMPHAL AND ORS. GOVERNMENT OF NCT OF DELHI & ORS .....

... RESPONDENTS
+ W.P.(C) 5452/2015 & CM98082015 .....

... Petitioner
s versus RAM KANWAR & ORS. GOVERNMENT OF NCT OF DELHI & ORS .....

... RESPONDENTS
+ W.P.(C) 5460/2015 & CM98302015 .....

... Petitioner
s versus DHANPATI & ORS. GOVERNMENT OF NCT OF DELHI & ORS .....

... RESPONDENTS
+ W.P.(C) 5473/2015 & CM98432015 .....

... Petitioner
s versus .....

... Petitioner
s CHARAN SINGH & ORS. GOVERNMENT OF NCT OF DELHI & ORS .....

... RESPONDENTS

+ W.P.(C) 7138/2015 & CM131002015 versus RANBIR SINGH AND ORS. versus .....

... Petitioner
s W.P.(C) 5395/2015 & Ors. Page 3 of 14 GOVERNMENT OF NCT OF DELHI & ORS .....

... RESPONDENTS
+ W.P.(C) 7142/2015 & CM131062015 DHARAMVIR SINGH & ORS. GOVERNMENT OF NCT OF DELHI & ORS .....

... RESPONDENTS
+ W.P.(C) 7149/2015 & CM131142015 .....

... Petitioner
s versus SUKHBIR SINGH & ORS GOVERNMENT OF NCT OF DELHI & ORS .....

... RESPONDENTS
+ W.P.(C) 7153/2015 & CM131182015 .....

... Petitioner
s versus SURAJ SINGH AND ORS. GOVERNMENT OF NCT OF DELHI & ORS .....

... RESPONDENTS
.....

... Petitioner
s versus + W.P.(C) 7154/2015 & CM131192015 RAJ KARAN & ORS GOVERNMENT OF NCT OF DELHI & ORS .....

... RESPONDENTS
+ W.P.(C) 7155/2015 & CM131202015 .....

... Petitioner
s versus KARTAR SINGH & ORS GOVERNMENT OF NCT OF DELHI & ORS .....

... RESPONDENTS

.....

... Petitioner

s versus W.P.(C) 5395/2015 & Ors. Page 4 of 14 + W.P.(C) 7179/2015 & CM132002015 JAI KISHAN AND ORS. GOVERNMENT OF NCT OF DELHI & ORS .....

... RESPONDENTS

+ W.P.(C) 7181/2015 & CM132032015 .....

... Petitioner

s versus HAR PRATAP SINGH & ANR .....

... Petitioner

s versus GOVT. OF NCT OF DELHI & ORS + W.P.(C) 7183/2015 & CM132042015 OM PRAKASH & ORS versus GOVT. OF NCT OF DELHI & ORS + W.P.(C) 7185/2015 & CM132062015 .....

... RESPONDENTS

.....

... Petitioner

s .....

... RESPONDENTS

KHEM RAJ & ORS. versus GOVT. OF NCT OF DELHI & ORS .....

... Petitioner

s .....

... RESPONDENTS

+ W.P.(C) 7187/2015 & CM132082015 DAYANAND & ORS .....

... Petitioner

s versus GOVT. OF NCT OF DELHI & ORS + W.P.(C) 7189/2015 & CM132102015 .....

... RESPONDENTS
W.P.(C) 5395/2015 & Ors. Page 5 of 14 NARAYAN SINGH & ANR. .....

... Petitioner
s versus GOVT. OF NCT OF DELHI & ORS + W.P.(C) 7190/2015 & CM132112015 ROHTASH SINGH & ORS versus GOVT. OF NCT OF DELHI & ORS .....

... RESPONDENTS
.....

... Petitioner
s .....

... RESPONDENTS
+ W.P.(C) 7194/2015 & CM132162015 KARTAR SINGH & ORS .....

... Petitioner
s versus GOVT. OF NCT OF DELHI & ORS + W.P.(C) 7196/2015 & CM132182015 DARSHANA & ORS versus GOVT. OF NCT OF DELHI & ORS Advocates who appeared in this case:-

"For the

... Petitioner
s: .....

... RESPONDENTS
.....

... Petitioner
s .....

... RESPONDENTS

Mr Sanjay Parikh with Mr Aagney Sail & Ms Nimi Susan Thomas. For the Respondent L&B/LAC: Mr Yeeshu Jain, Standing counsel with Ms Jyoti Tyagi. For the Respondent L&B/LAC: Mr Siddharth Panda. For the Respondent DSIIDC: Ms Renuka Arora with Ms Anusuya Salwan & Mr Kunal Kohli. W.P.(C) 5395/2015 & Ors. Page 6 of 14 CORAM:-

"HONBLE MR JUSTICE BADAR DURREZ AHMED HONBLE MR JUSTICE ASHUTOSH KUMAR JUDGMENT ASHUTOSH KUMAR, J1 In all these writ petitions, the petitioners have prayed for the benefit 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), i.e., a declaration to the effect that the land acquisition proceedings in respect of their lands be deemed to have lapsed in view of the provisions of Section 24(2) of the 2013 Act. The aforesaid prayers have been made in the background of the fact that the petitioners have received compensation but they remained in continuous physical possession of the land in question even though the award was made more than 5 (five) years prior to the commencement of the 2013 Act (i.e. on 01.01.2014). All the writ petitions are based on almost identical facts except the description of lands and some dates. The facts of the case of the petitioners in W.P.(C) No.5395/2015 Jai Kishan & Anr. is taken as the reference case.

2. Hence, all the writ petitions are being disposed of by this common W.P.(C) 5395/2015 & Ors. Page 7 of 14 judgment.

3. The land acquisition proceedings in the aforesaid batch of cases commenced under the old Land Acquisition Act of 1894. The notification under Section 4 of the 1894 Act was issued on 25.08.2005 for the acquisition of land for public purpose viz. for development of New Industrial Area admeasuring 1343 bighas and 03 biswas of land in village Kanjhawala; 1774 bighas and 09 biswas of land in village Sultanpur Dabas; 1905 bighas and 05 biswas of land in village Karala; and 30 bighas and 09 biswas of land in village Pooth Khurd. Thereafter declaration under Section 6 of the 1894 Act was made on 10.07.2006 and ultimately award no.3/2008-09 dated 26.05.2008 was passed for the lands in village Karala which included the land of the petitioners in W.P.(C) 5395/2015 (Jai Kishan and Anr.).

Separate awards were passed for lands acquired in other villages.

4. The award clearly indicated that the physical possession of the land under acquisition would be taken after the announcement of the award.

5. The respondents have contended that the physical possession of the subject lands was taken on 29.07.2008 and the compensation to the petitioners was also paid. In some of the cases, the subject land was W.P.(C) 5395/2015 & Ors. Page 8 of 14 taken on different dates. The aforesaid facts have been disputed by the petitioners and they asserted that the physical possession was still with them and that only paper possession was taken.

6. The petitioners in this batch of cases had challenged the compensation which was determined by the Collector by moving reference under Section 18 of the 1894 Act. During the pendency of such reference petitions, Government floated a Special Rehabilitation Package (SRP) wherein taking into consideration the general increase in the prices of the land and the inequity of giving compensation based on the procedure followed under the 1894 Act, it was decided that with respect to the land for which the awards were not announced till December, 2007, a special benefit would be given to the people affected.

7. The Special Rehabilitation Package read as under: GOVERNMENT OF NCT OF DELHI LAND & BUILDING DEPARTMENT B-BLOCK: VIKAS BHAWAN: NEW DELHI. No.F.9(20)/80/L&B/LA/Vol.II/8226-44 Dated:

01. 10-2008 ORDER The government of the NCT of Delhi have taken into consideration the general increase in prices of land and the inequity of giving compensation based on the procedure W.P.(C) 5395/2015 & Ors. Page 9 of 14 followed under the Land Acquisition Act, 1894. Therefore, the government have decided to give a Special Rehabilitation Package for the people affected by land acquisition in respect of the cases in which the land acquisition awards have not been announced till December 18, 2007, details of which are:-

"1. The amount of compensation effective from December 18, 2007 would be discounted by Rupees 11.80 lakhs per acre per year for those lands which were

notified under section 4 for acquisition in 2006 and 2005.

2. Though this Special Rehabilitation Package would involved additional funds for making payment of compensation to the farmers, the amount would be recovered while determining the cost of land allotted to other government agencies.

3. The other elements of the award namely solatium and interest would be allowed as per rules.

4. The Special Rehabilitation Package would not be treated as precedent for the future.

5. The payment of compensation should be done in a time bound manner.

6. The package would apply to all agricultural lands.

7. The Special Rehabilitation Package should be accepted by individual farmers and made applicable in each case only, if they do not mount a challenge to the award already announced by the LAC. If they have challenged the award they must withdraw the petition to avail of the benefit of the Special Rehabilitation Package. Sd/- (G.S. MEENA) Addl. Secretary (L&B) 8. The petitioners accepted such package (SRP) and gave an W.P.(C) 5395/2015 & Ors. Page 10 of 14 undertaking, in accordance with the terms of the package, of their having accepted the compensation including SRP, leading to cessation of all their rights qua the acquired land. In the undertaking given by the petitioners, it was categorically stated that no cause of action would arise for agitating the matter in any courts of law or authority or authorities and that it was towards full and final settlement in respect of the acquired land.

9. Be it noted that these undertakings of the petitioners were made prior to the commencement of 2013 Act i.e. on 01.01.2014.

10. A bench of this Court in W.P.(C) 9101/2014: Bhim Singh & Ors. vs. Government of NCT of Delhi & Ors. and other batch cases held, without going into the question and distinction of the physical possession or the paper possession that the land owners, after having accepted the SRP and having given their

undertaking in that regard, had actually surrendered their rights in the subject lands.

11. Since it was held in the aforesaid cases that the land owners, by accepting the SRP and giving an undertaking referred to above, had divested themselves of all their rights with respect of the subject acquired land prior to the commencement of 2013 Act, they could not have W.P.(C) 5395/2015 & Ors. Page 11 of 14 claimed any benefit under Section 24(2) of the 2013 Act.

12. The facts of these batch of cases are virtually identical and are covered by the aforesaid judgment delivered on 20.12.2016 in Bhim Singh & Ors. vs. Government of NCT of Delhi & Ors.

13. The learned counsel appearing for the petitioners however contended that an undertaking given by the petitioners as ordained in the Special Rehabilitation Package could not have snatched away the statutory rights of the petitioners under the New Act and that the undertaking merely was with respect to their rights for continuing with the proceedings under Section 18 i.e. for enhancement of compensation, under the 1894 Act. The aforesaid submission was based on the premise that without taking the actual possession of the land acquired by the Government, the land remained with the land owners and therefore they would definitely be entitled to the benefit of Section 24(2) of the New Act of 2013 which provides succour to such land owners with respect to whose lands, even after passing of the award, awarded compensation is not paid or possession is not taken. Thus, it was argued that despite the undertaking given by the petitioners as contemplated in the SRP, the rights under Section 24(2) of the New Act could not be denied to them. It W.P.(C) 5395/2015 & Ors. Page 12 of 14 was contended that the acquisition proceedings would not be deemed to have been completed till possession is taken. Section 16 of the Land Acquisition Act 1894 provides that collector may take possession of land, which shall thereupon vest absolutely in the government, free of all encumbrances. It was further argued that the power of acquisition and possession of property falls within the power of eminent domain, and therefore strict compliance with the provisions of the Land Acquisition Act, 1894 and Article 300-A of the Constitution is a must. Vesting of land under Section

16 of the Land Acquisition Act, 1894 pre-supposes actual physical possession and the onus of taking possession is on the acquiring authority. Since the land acquisition proceedings are expropriatory in nature, the provisions of the Act has to be construed strictly. The new rights under the new Act of 2013, therefore, cannot be denied, notwithstanding the acceptance of SRP and the undertaking of giving up of rights qua the acquired land.

14. There is no gainsaying that the provisions of the Land Acquisition Act, 1894 have to be strictly complied with but we are afraid, we cannot accede to the submissions of the petitioners as it has been clearly laid down in W.P.(C) 9101/2014 (Bhim Singh Vs. Government of NCT of W.P.(C) 5395/2015 & Ors. Page 13 of 14 Delhi & Anr.) that no right, title or interest of the petitioners is left in the subject lands after the land owners accepted the Special Rehabilitation Package and compensation and gave a clear undertaking that they shall not pursue their rights in the subject lands. The aforesaid judgment is absolutely clear and unambiguous that in the absence of any right, title or interest in the subject land on the date of coming into force of the New Act, such benefit thereunder cannot be extended to the petitioners/ land owners.

15. The case of the petitioners are squarely covered by the judgment delivered in Bhim Singh & Ors. vs. Government of NCT of Delhi & Ors.

16. Accordingly, it is held that the petitioners cannot claim any benefit under Section 24(2) of the 2013 Act.

17. These writ petitions are dismissed accordingly but without any costs and all the pending applications stand disposed of.

18. Interim orders, if any, stand vacated. FEBRUARY21 2017/ab ASHUTOSH KUMAR, J BADAR DURREZ AHMED, J W.P.(C) 5395/2015 & Ors. Page 14 of 14

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