

Dhan Singh and Ors vs.union of India and Ors

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Court : Delhi

Decided On : Apr-17-2018

Appellant : Dhan Singh and Ors

Respondent : Union of India and Ors

Advocate for Pet/Ap. : Mr. Rajesh Gupta

Judgement :

\$~35 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Judgement:

17. h April, 2018 + W.P.(C) 10239/2016 DHAN SINGH & ORSPetitioners Through: Mr. Rajesh Gupta and Mr. M.C. Verma, Advocates. Versus UNION OF INDIA & ORSRespondents Through: Mr. Rajul Jain, Advocate for UOI. Mr. Yeeshu Jain, Standing Counsel with Ms. Jyoti Tyagi, Advocate for L&B/LAC. Mr. Sumit Rana, Advocate DSIIDC. for CORAM: HON'BLE MR. JUSTICE G.S.SISTANI HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL G.S.SISTANI, J.

(Oral) 1. This is a petition under Article 226 of Constitution of India filed by the petitioners seeking a declaration that the acquisition proceedings with respect to land bearing Khasra No.'s 77//12, 19, 20, 22, 85//5, 86//1, 2, 9 and 85//6, 86//10, 77//21, 78//24/1, 24/2, 25, situated in the revenue estate of village Sultanpur Dabas, Delhi (hereinafter referred as the 'subject land') stand 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 the actual physical possession of the subject land has not been taken. W.P.(C) 10239/2016 Page 1 of 5 2. The necessary facts to be noticed for disposal of this writ petition are that a Section 4 notification of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 25.08.2005. Section 6 declaration was made on 10.07.2006. Thereafter an Award bearing No.01/2008-09 was passed by the Land Acquisition Collector on 25.04.2008.

3. Mr. Rajesh Gupta, counsel for the petitioners submits that although compensation stands paid to the respective petitioners but the petitioners continue to enjoy the actual physical possession over the subject land. Reliance is placed on Section 24 (2) Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the

"2013 Act") in support of his submission that the onus to prove that actual physical possession was taken is on the LAC whereas the LAC has failed to discharge its onus to show that actual physical possession was taken as per law. He submits that reliance placed on the Kabza Karyawahi can be of no benefit to the respondents as the Kabza Karyawahi does not establish that the notice was given to the land owners prior to taking possession over the land which was in cultivatory possession of the petitioners. It is contended that this is a mandatory requirement and in the absence of the respondents having complied with the same, it cannot be said that the physical possession of the land was taken by the respondents and thus, the case of the petitioners would be covered under the provisions of Section 24 (2) of 2013 Act as W.P.(C) 10239/2016 Page 2 of 5 one of the two contingencies mentioned in the said provision has not been complied with. Elaborating his arguments further, Mr. Gupta submits that the LAC has miserably failed to discharge the onus of having taken actual physical possession as the LAC has not complied with the settled provisions of law and the judgments of the Supreme court wherein the term "actual physical possession" and the manner in which possession is to be taken have been elaborately discussed. Mr. Gupta also contends that merely because the petitioners have executed documents to show that actual physical possession was taken, that would not bind the petitioners and

the said documents would not come in the way of the rights of the petitioners in view of the 2013 Act. Mr. Gupta further contends that series of documents signed by the petitioners giving up all their rights to challenge the acquisition proceedings in future were signed prior to coming into effect of the 2013 Act and the effect of the 2013 Act is that the acquisition proceedings pertaining to the subject lands would automatically lapse in the absence of the LAC having produced any document to show that they had taken actual physical possession of the subject lands in September, 2011.

4. Learned counsels appearing for the LAC and DSIIDC have jointly opposed the present petition. It is contended that the compensation stands paid to the land owners and the physical possession of the subject land was taken on 11.08.2008. Learned counsels further submits that not only the petitioners W.P.(C) 10239/2016 Page 3 of 5 have received compensation in terms of the Act but they have also availed the benefit of Special Rehabilitation Package and received payments which are not disputed or denied and the same have been enumerated in Para. 9 of the Short Affidavit filed on behalf of DSIIDC. Counsels also contends that the present writ petition deserves dismissal as the same is fully covered by the common judgement rendered by this Bench in the case of Chatar Singh and Ors. Vs. Union of India and Ors. W.P.(C)2608/2016 and Dharampal Vs. Union of India and Ors. W.P.(C)2695/2016 dated 20.03.2018.

5. We have heard learned counsels for the parties.

6. Arguments so raised by Mr.Gupta, counsel for the petitioners have been dealt with in the case of Chatar Singh (supra) and Dharampal (supra). In the said petitions, this Court observed as under:

"9. Based on the affidavits and undertakings, it would leave no room for doubt that the petitioners had accepted the compensation including Special Rehabilitation Package and had given up all rights of challenge in any court of law much prior to coming into force of the 2013 Act.

10. Mr. Gupta has laboured hard to convince this Court that the onus was on the LAC to show that the actual physical possession was taken and law laid down by

the Supreme Court giving mandatory directions with regard to the manner in which possession has to be taken has been ignored. In our view, this argument is not open to the petitioners as the petitioners have not disputed that possession W.P.(C) 10239/2016 Page 4 of 5 has not been taken. Such an argument would be open only to those petitioners who contest that actual physical possession was not taken or given by them. In this case, once the petitioners themselves have admitted that actual physical possession was taken, it does not lie for the petitioners either to raise a ground or to contest that the LAC must discharge its onus. In our view, once the land owner himself has admitted that possession was taken, nothing further would be required to show that possession was taken, more so, where not only compensation has been paid to the petitioners, the petitioners have also availed of Special Rehabilitation Package and received additional payments and thus, divested themselves of all rights in respect of the acquired land.

11. For the reasons stated above, we find no merits in the writ petitions. The writ petitions are accordingly dismissed."

7. Keeping in view the forgoing observations, we find no merit in the present writ petition. The writ petition is accordingly dismissed. G.S. SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

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