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Daya Kishan vs.union of India and Anr

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SooperKanoon Citation : sooperkanoon.com/1216612

Court : Delhi

Decided On : Jul-31-2018

Appellant : Daya Kishan

Respondent : Union of India and Anr

Advocate for Pet/Ap. : Mr. Anil Kumar

Judgement :

$~56 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Judgement:

31. July, 2018 + W.P.(C) 7520/2017 & C.M. No.31007/2017 DAYA KISHAN .....

... Petitioner
Through: Mr Anil Kumar, Adv versus UNION OF INDIA & ANR .....

... RESPONDENTS
Through: Mr Yeeshu Jain, Adv for LAC/L&B CORAM: Mr Pawan Mathur, Adv for DDA 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 petitioner seeking a declaration that the acquisition proceedings with respect to land of the petitioner comprised in Khasra No.31/33, total measuring 1 Bigha, situated in the revenue estate of village Tikri Kalan, Delhi (hereinafter referred as the 'subject land') are 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 actual physical possession of the W.P.(C) 7520/2017 Page 1 of 5 subject land has been taken nor the compensation in respect thereof has been paid to the petitioner.

2. In this case, a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'Act') was issued on 12.02.1987 and a declaration under Section 6 was made on 26.02.1987. Thereafter, an award bearing no.11/1988-89 was passed on 10.02.1989.

3. Mr. Anil Kumar, learned counsel for the petitioner submits that since the actual physical possession of the subject land has not been taken and compensation in respect thereof has not been paid, thus the petitioner would be entitled to a declaration under Section 24 (2) of the 2013 Act.

4. Mr. Yeeshu Jain, learned counsel for the LAC submits that neither possession of the subject land has been taken nor the amount of compensation has been paid to the petitioner. Para.5 of the counter affidavit filed by LAC reads as under :-

""That it is submitted that the lands of village Tikri Kalan were notified vide Notification under Section 4 of the Land Acquisition Act, 1894 dated 12.02.1987 which was followed by the Notification under Section 6 of the Act dated 26.02.1987. The Award was also passed vide Award No.11/1988-89 dated 10.02.1989. The present writ petition has been filed seeking the benefit for the 1 bigha in Khasra 31//33 however the possession of the same could not be taken nor the compensation has been paid. W.P.(C) 7520/2017 Page 2 of 5 5. Mr. Jain, learned counsel for the LAC has opposed the petition on the ground that the petitioner is claiming relief based on General Power of Attorney, Will, receipt etc. which cannot confer title on the petitioner.

6. On the other hand, Mr. Anil Kumar learned counsel for the petitioner submits that as far as objection with regard to the ownership and title is concerned, the case of the petitioner would be covered by the decision rendered by the Supreme Court in Govt. of NCT of Delhi vs. Manav Dharma Trust and another, reported in 2017 (6) SCC751 7. Mr. Pawan Mathur, learned Counsel for DDA submits that the

land has not been requisitioned by the DDA and therefore, the petition is liable to be dismissed qua the DDA. Relevant para 3(b) of the counter affidavit filed on behalf of the DDA reads as under:-

"I say that the land in question has not been requisitioned by the respondent No.2 - Delhi Development Authority and therefore the present petition is liable to be dismissed qua the DDA. 8. We have heard learned counsels for the parties.

9. Having regard to the observation made by the Apex Court in the case of Manav Dharma Trust (Supra), in our view the objection raised by Mr. Jain, learned Standing Counsel for LAC/L&B is misplaced. In the case of Manav Dharma Trust (supra), the Apex Court has held as under : W.P.(C) 7520/2017 Page 3 of 5 interested

"28. Thus, the subsequent purchaser, the assignee, the successor in interest, the power-of-attorney holder, etc., are all persons who are in compensation/landowners/ affected persons in terms of the 2013 Act and such persons are entitled to file a case for a declaration that the land acquisition proceedings have lapsed by virtue of operation of Section 24(2) of the 2013 Act. It is a declaration qua the land wherein indisputably they have an interest and they are affected by such acquisition. For such a declaration, it cannot be said that the respondent-writ petitioners do not have any locus standi."

10. Reading of the counter affidavit filed by LAC makes it abundantly clear that neither physical possession of the subject land has been taken nor compensation has been tendered.

11. Having regard to the submissions made and the categorical assertion made in the counter affidavit filed by the LAC that neither physical possession has been taken nor compensation has been tendered, and since the award having been announced more than five years prior to the commencement of the 2013 Act, we are of the considered view that the necessary ingredients of Section 24 (2) of 2013 Act stand satisfied. The petitioner is entitled to a declaration that the acquisition proceedings initiated under the Act with regard to the subject land are deemed to have been lapsed. It is ordered accordingly.

12. However we make it clear that this order would not confer any title on the petitioner. The question of title of the subject land is left open to be decided in the appropriate court of jurisdiction. W.P.(C) 7520/2017 Page 4 of 5 13. The writ petition stands disposed of in above terms. C.M. No.31007/2017 (Stay) 14. In view of the order passed in the writ petition, the present application stands disposed of. G.S.SISTANI, J.

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