

Devender and Anr vs.union of India and Ors

Devender and Anr vs.union of India and Ors

SooperKanoon Citation : sooperkanoon.com/1222177

Court : Delhi

Decided On : Mar-25-2019

Appellant : Devender and Anr

Respondent : Union of India and Ors

Advocate for Pet/Ap. : Mr. S.K. Rout, Mr. Aman Mehrotra, Mr. Vinay Kumar, Mr. Omkar Prasad, Mr. Yeeshu Jain, Ms. Jyoti Tyagi, Mr. Ajay Verma, Mr. Gurmehar S. Sistani, Mr. Sumit Mishra, Mr. Siddharth Panda

Judgement :

\$~33 to 39 & 65 * IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 7362/2016 RAVINDER

... Petitioner

Through: Mr. S.K. Rout, Advocate with Mr. Aman Mehrotra, Mr. Vinay Kumar and Mr. Omkar Prasad, Advocates. versus UNION OF INDIA AND ORS

... RESPONDENTS

Through: Mr. Yeeshu Jain, Standing Counsel with Ms. Jyoti Tyagi, Advocate for LAC/L&B. Mr. Ajay Verma, Advocate with Mr. Gurmehar S. Sistani and Mr. Sumit Mishra, Advocates for DDA. + W.P.(C) 7372/2016 NARESH KUMAR AND ORS

.....

... Petitioner

s Through: Mr. S.K. Rout, Advocate with Mr. Aman Mehrotra, Mr. Vinay Kumar and Mr. Omkar Prasad, Advocates. versus UNION OF INDIA AND ORS

... RESPONDENTS

Through: Mr. Yeeshu Jain, Standing Counsel with Ms. Jyoti Tyagi, Advocate for LAC/L&B. Mr. Ajay Verma, Advocate with Mr. Gurmehar S. Sistani and Mr. Sumit Mishra, Advocates for DDA. W.P. (C) 7362 of 2016 and batch Page 1 of 10 + W.P.(C) 7373/2016 DEVENDER AND ANR

... Petitioner

s Through: Mr. S.K. Rout, Advocate with Mr. Aman Mehrotra, Mr. Vinay Kumar and Mr. Omkar Prasad, Advocates. versus UNION OF INDIA AND ORS

... RESPONDENTS

Through: Mr. Siddharth Panda, Advocate for LAC/L&B Department. Mr. Ajay Verma, Advocate with Mr. Gurmehar S. Sistani and Mr. Sumit Mishra, Advocates for DDA. + W.P.(C) 7374/2016 DHARAMPAL AND ORS

... Petitioner

s Through: Mr. S.K. Rout, Advocate with Mr. Aman Mehrotra, Mr. Vinay Kumar and Mr. Omkar Prasad, Advocates. versus UNION OF INDIA AND ORS

... RESPONDENTS

Through: Mr. Siddharth Panda, Advocate for LAC/L&B Department. Mr. Ajay Verma, Advocate with Mr. Gurmehar S. Sistani and Mr. Sumit Mishra, Advocates for DDA. + W.P.(C) 7378/2016 OM PRAKASH

... Petitioner

Through: Mr. S.K. Rout, Advocate with W.P. (C) 7362 of 2016 and batch Page 2 of 10 Mr. Aman Mehrotra, Mr. Vinay Kumar and Mr. Omkar Prasad, Advocates. versus UNION OF INDIA AND ORS

... RESPONDENTS

Through: Mr. Yeeshu Jain, Standing Counsel with Ms. Jyoti Tyagi, Advocate for LAC/L&B. Mr. Ajay Verma, Advocate with Mr. Gurmehar S. Sistani and Mr. Sumit Mishra, Advocates for DDA. + W.P.(C) 7379/2016 BALRAJ SINGH AND ORS

... Petitioner

s Through: Mr. S.K. Rout, Advocate with Mr. Aman Mehrotra, Mr. Vinay Kumar and Mr. Omkar Prasad, Advocates. versus UNION OF INDIA AND ORS

... RESPONDENTS

Through: Mr. Yeeshu Jain, Standing Counsel with Ms. Jyoti Tyagi, Advocate for LAC/L&B. Mr. Ajay Verma, Advocate with Mr. Gurmehar S. Sistani and Mr. Sumit Mishra, Advocates for DDA. + W.P.(C) 7382/2016 KRISHAN KUMAR AND ANR

... Petitioner

s Through: Mr. S.K. Rout, Advocate with Mr. Aman Mehrotra, Mr. Vinay Kumar and Mr. Omkar Prasad, W.P. (C) 7362 of 2016 and batch Page 3 of 10 versus Advocates. UNION OF INDIA AND ORS

... RESPONDENTS

Through: Mr. Yeeshu Jain, Standing Counsel with Ms. Jyoti Tyagi, Advocate for LAC/L&B. Mr. Ajay Verma, Advocate with Mr. Gurmehar S. Sistani and Mr. Sumit Mishra, Advocates for DDA. + W.P.(C) 7377/2016 ISHWAR SINGH AND ORS

... Petitioner

s Through: Mr. S.K. Rout, Advocate with Mr. Aman Mehrotra, Mr. Vinay Kumar and Mr. Omkar Prasad, Advocates. versus UNION OF INDIA AND ORS

... RESPONDENTS

Through: Mr. Siddharth Panda, Advocate for LAC/L&B Department. CORAM: JUSTICE S.MURALIDHAR JUSTICE I.S.MEHTA %

ORDER

2503.2019 Dr. S. Muralidhar, J.:

1. In all these petitions, the facts more or less are similar and the reliefs sought are almost identical. They are accordingly being disposed of by this common order. Nevertheless, each of the petitions was heard separately. W.P. (C) 7362 of 2016 and batch Page 4 of 10 2. In each of these petitions, the main relief sought is for a

declaration of deemed lapsing of the land acquisition proceedings under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the 2013 Act). The declaration is sought in respect of land situated in the Revenue Estate of Village Barwala in Delhi. The acquisition is by means of notification dated 21st March 2003 issued under Section 4 of the Land Acquisition Act, 1894 (LAA) followed by a declaration dated 19th March 2004 under Section 6 LAA and an Award No.12/2005-06 dated 5th August 2005. The public purpose of the acquisition was for the Rohini Residential Scheme. The only difference in the petitions is as regards the khasra Nos. and the extent of land.

3. Two facts are admitted by the

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s in these petitions. One is that each of them has received compensation in terms of the land acquisition Award. Second, that the same land acquisition proceedings in respect of lands in the Revenue Estate of Village Barwala, were challenged in an earlier round of litigation by way of a batch of writ petitions where the lead matter was W.P. (C) 2501/2013 (Naresh Kumar & Ors. v. Union of India), By a detailed judgment dated 17th April 2013, a Division Bench (DB) of this Court dismissed the writ petition inter alia holding as under: We, at the inception, put to learned senior counsel for the petitioners as to why and how can we permit a settled position to be unsettled after a decade. This is so as the petitioners chose to remain silent when the acquisition proceedings were initiated, accepted the same, took compensation and sought references for W.P. (C) 7362 of 2016 and batch Page 5 of 10 enhancement of compensation. The aforesaid facts have to be examined in the conspectus of the purpose for which the land was acquired which was planned development of Rohini Residential Scheme. In Delhi there has been large scale acquisition by the DDA which was originally the only authority which was engaged in development of land and meeting the housing needs of the people. No doubt in this process while large tracts of land were acquired, some land remain undeveloped and the DDA could not protect its land pool with the result encroachment took place. These encroachments have been on such a massive scale with practically no prevention that a large part of habitants of Delhi

reside in these colonies. The Government has come up now with schemes of regularization of these colonies. Rohini Residential Scheme like other schemes is in the nature of a mini township. Such a mini township will contain all the essential features, i.e. residential areas, commercial areas, institutional areas. Thus, while there will be development of residential plots, there would also be development of commercial areas to take care of the needs of residents. These may be shopping arcades or there may be hotel sites, etc. Similarly there would be institutional requirements like for purpose of schools, hospitals, community facilities, etc. If land is allotted for all these purposes it cannot be said that the purpose of acquisition has disappeared or there is mala fide exercise of the power of acquisition. The DDA would spend large amount of monies on development of the area and, thus, to have a transparency auction is often the method, adopted for allotment, at least, with commercial areas while in case of residential areas there may be auction of plots or particular schemes under which plots and flats are allotted. It may be possible even to allot land to certain societies for their needs. Similarly hotel sites and commercial buildings are often auctioned. We are, thus, of the view that the nature of allegations made in this writ petition cannot be said of such a nature as to suggest that there is a mala fide exercise of power or improper use of the land, W.P. (C) 7362 of 2016 and batch Page 6 of 10 which has been acquired. We are of the view that the petitioners cannot after such a long period seek to rake up the issue of acquisition merely on the basis of some recent pronouncements by the Honble Supreme Court even when they accepted the compensation qua acquisition of the land by neither challenging the acquisition proceedings nor the award but on the other hand were only interested in enhancement of compensation for which they have sought a reference. They have also recovered the compensation and for them now to say that they are willing to return that compensation after number of years and should be permitted the acquisition proceedings would not, in our view, be the appropriate direction to be passed. In view of these facts and circumstances, we are not inclined to entertain the petition seeking to challenge the acquisition proceedings both on grounds of delay and laches as also on account of the acquiescence and conduct of the petitioners qua the acquisition proceedings. Dismissed. to assail 4. On 3rd February 2015 the Supreme Court of India passed the following orders in SLP (C)

No.17121/2013 (Naresh Kumar v. Union of India) and a batch of special leave petitions (SLPs), all of which were directed against the above order dated 17th April 2013 of the DB of this Court in W.P. (C) 2501/2013 and batch. The order reads as under: SLP (C) Nos. 17121, 33188 of 2013 & SLP (C) 17482, 13358 of 2014 Shri T. N. Singh and Dr. Surat Singh, learned counsels for the

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s instructions, seek permission of this Court to withdraw these petitions. respective matters on in Permission sought is granted. W.P. (C) 7362 of 2016 and batch Page 7 of 10 The special leave petitions are disposed of as withdrawn. Contempt Petition (S) No.319 of 2013 in SLP (C) 17121 of 2013 In view of the withdrawal of the special leave petition, nothing survives for consideration and decision in this contempt petition. The contempt petition is dismissed in terms of the signed order. 5. Thus no liberty was granted to the

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s in the above matters to challenge the land acquisition proceedings afresh. The order dated 17th April 2013 passed by the DB of this Court in Naresh Kumar (supra) rejecting the challenge to the land acquisition proceedings qua the lands in village Barwala for the Rohini Residential Scheme attained finality.

6. Mr. S. K. Rout, learned counsel appearing for the

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s while not disputing the above two facts, bases his claim for the relief of deemed lapsing under Section 24 (2) of the 2013 Act on the ground that possession of the lands in question still remains with the

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s. He questioned the stand of the LAC as well as the DDA in their respective counter affidavits that actual physical possession of the land in question has been taken from the

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7. In this context, a reference needs to be made to the orders passed by the Supreme Court on 10th March 2015, 28th January 2016 and 18th October 2016 in SLP (C) Nos. 16385-88/2012 (Rahul Gupta v. Delhi Development Authority) and in the interlocutory applications (I.As) in the said SLPs. Although, in the order dated 10th March 2015, the Supreme Court referred to the acquisition of land for the Rohini Residential Scheme in Sectors 34, 35, W.P. (C) 7362 of 2016 and batch Page 8 of 10 36 and 37, in the subsequent order dated 18th October 2016, it was made clear that the effect of the said order of the Supreme Court was to be applied to all the lands acquired for the Rohini Residential Scheme. In the order dated 18th October 2016 while disposing of various I.As in the aforementioned SLPs, the Supreme Court directed as under: Heard Mr. V. Giri, learned Senior Counsel appearing for the applicants and perused the interlocutory applications. (Annexure A-4 In view of the order dated 10.03.2015, passed by this Court in SLP (C) Nos. 16385-16388 of 2012, and a subsequent order dated 28.01.2016, passed in the same special leave petitions, the interim order passed by the High Court of Delhi on 04.3.2015 in W.P.(C) No.1915/2015 instant interlocutory applications), is liable to be vacated, and is accordingly vacated. We grant liberty to the Delhi Development Authority to produce a copy of this order in all matters, pertaining to land acquisition relating to the Rohini Residential Scheme, pending before the High Court, for vacation of similar interim directions. It is made clear that in case the applicants have re-entered possession or otherwise, they shall vacate the said land and hand over the Delhi Development Authority, failing which it shall be assumed to be in possession of the Delhi Development Authority, after the expiry of ten days from the passing of the instant order. With the aforesaid directions, these interlocutory applications stand disposed of. (emphasis supplied) its possession forthwith in the to 8. These directions were repeated in the remaining I.As which were disposed of on the same date i.e. 18th October 2016. In effect therefore, the position is that if anyone still in possession of lands acquired for the Rohini Residential W.P. (C) 7362 of 2016 and batch Page 9 of 10 Scheme had not surrendered possession thereof to the DDA within ten days of the order dated 18th October 2016, then the possession thereof was deemed to be with the DDA. It would no longer be open to such persons to contend that actual physical possession of the lands in question remains with them.

9. This legal position has been clarified by this Court in its order dated 22nd November 2018 in W.P. (C) 51118/2016 (Jawahar Singh v. Lt. Governor) and reiterated in the order dated 25th January 2019 in W.P. (C) 3438/2015 (Krishna Devi v. Union of India).

10. Thus with neither of the two essential ingredients of Section 24 (2) of 2013 Act viz., retention of actual physical possession or non-tendering of compensation, being satisfied in the instant case, the reliefs sought cannot be granted.

11. The petitions are accordingly dismissed. MARCH 25 2019 nd S. MURALIDHAR, J.

I.S. MEHTA, J.

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