

Devender Kumar & Ors. Vs.govt. Of Nct of Delhi & Ors.

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Court : Delhi

Decided On : Mar-25-2019

Appellant : Devender Kumar & Ors.

Respondent : Govt. Of Nct of Delhi & Ors.

Advocate for Pet/Ap. : Mr. Rajiv Kumar Ghawana, Mr. Yeeshu Jain, Ms. Jyoti Tyagi, Mr. Ajay Verma, Mr. Gurmehar S. Sistani, Mr. Sumit Mishra

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI W.P.(C) 9309/2014

... Petitioner

s Through: Mr. Rajiv Kumar Ghawana, Advocate \$~46, 47, 59 * + RAMESH KUMAR & ORS. GOVT. OF NCT OF DELHI & ORS. versus + DEVENDER KUMAR & ORS. GOVT. OF NCT OF DELHI & ORS. versus

... 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) 12/2015 Through: Mr. Rajiv Kumar Ghawana, Advocate

... Petitioner

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... 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) 616/2016 + RAJESH KUMAR YADAV & ANR. Through: Mr. Rajiv Kumar Ghawana, Advocate

... Petitioner

s W.P.(C) 9309/2014& Ors. Page 1 of 8 GOVT. OF NCT OF DELHI & ORS. versus

... 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. 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.

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/DC (NW) 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 W.P.(C) 9309/2014& Ors. Page 2 of 8 extent of land.

3. For convenience, the facts of W.P. (C) No.9309/2014 titled Ramesh Kumar &Ors. v. Govt. of NCT of Delhi &Ors. are discussed in detail. The prayers in the present petition read as under: a) issue a writ, order or declaration declaring that the entire acquisition proceedings i.e. Section 4 notification dated 21.3.2003, Section 6 declaration dated 19.3.2004 and the award no.12/2005-06/DC (NW) dated 5.8.2005 in respect of the land of the petitioners admeasuring 9 bigha 06 biswa comprised in Khasra nos.

(4-16) and

(4-10), situated in the Revenue Estate of Village Barwala, Delhi have lapsed in view of sub-section 2 of section 24 of "THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013"; and interfere with the said b) issue a writ of mandamus directing the respondents not to the peaceful in any manner whatsoever; enjoyment and possession of in possession and occupation of the petitioners; and c) pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case. lands presently 4. The case of the

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s is that they have not received any compensation and still remain in possession of the land in question and therefore are entitled to the relief under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (2013 Act).

5. In the counter affidavit of the LAC, it is stated that the physical W.P.(C) 9309/2014 & Ors. Page 3 of 8 possession of the subject land was taken on 28th January 2006 and handed over to the DDA on spot. It is further stated that compensation could not be paid and the same is lying in the RD.

6. The DDA in its counter affidavit submitted that the petition is severely barred by delay and laches. It is also submitted that the physical possession of the land falling in Khasra No.

(4-16) and

(4-10) was taken by the LAC and handed over to the DDA on 17th February 2006.

It is further submitted that the land was further transferred to the Engineering Department. On the aspect of compensation it is submitted that: to iv. Further, with regard to the status of disbursement of compensation the recorded owners can be correctly responded by the LAC/L&B Department, GNCTD. However, it is submitted that DDA remitted to L&B Deptt. vide. Cheque No.339383 dated 9.9.2005 and Cheque No.460990 dated 16.3.1988 for an amount of Rs. 302,35,05,048/- on account of compensation. Further LAC has the compensation in respect of Khasra No 69//17 & 69//24 village Barwala to the recorded owners. also disbursed 7. In the rejoinder filed by the

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s to the counter affidavit of DDA, it is stated that the possession taken is only paper possession and the actual physical possession still remains with the

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s further state that no compensation has been received by them. The facts in the companion petition are almost identical with only the Khasra numbers being different.

8. Inasmuch as the lands were acquired for the Rohini Residential Scheme, on the question of actual physical possession, a reference needs to be made W.P.(C) 9309/2014 & Ors. Page 4 of 8 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, 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 its possession forthwith in the to W.P.(C) 9309/2014& Ors. Page 5 of 8 from the passing of the instant order. With the aforesaid directions, these interlocutory applications stand disposed of. (emphasis supplied) 9. 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 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.

10. 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).

11. As regards the claim for compensation, the fact remains that the

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s have no explanation to offer for the inordinate delay in approaching the Court for the relief. The claim for compensation is being made with reference to an Award that was passed on 5th August 2005. In Indore Development Authority v.

Shailendra (2018) 3 SCC 412 the Supreme Court observed as under: 128. In our considered opinion section 24 cannot be used to revive the dead or stale claims and the matters, which have been contested up to this Court or even in the High Court having lost W.P.(C) 9309/2014 & Ors. Page 6 of 8 the cases or where reference has been sought for enhancement of the compensation. Compensation obtained and still it is urged that physical possession has not been taken from them, such claims cannot be entertained under the guise of section 24(2). We have come across the cases in which findings have been recorded that by which of drawing a Panchnama, possession has been taken, now again under Section 24(2) it is asserted again that physical possession is still with them. Such claims cannot be entertained in view of the previous decisions in which such plea ought to have been raised and such decisions would operate as res judicata or constructive res judicata. As either the plea raised is negatived or such plea ought to have been raised or was not raised in the previous round of litigation. Section 24 of the Act of 2013 does not supersede or annul the court's decision and the provisions cannot be misused to reassert such claims once over again. Once Panchnama has been drawn and by way of drawing the Panchnama physical possession has been taken, the case cannot be reopened under the guise of section 24 of Act of 2013.

129. Section 24 is not intended to come to the aid of those who first deliberately refuse to accept the compensation, and then indulge in ill-advised litigation, and often ill-motivated dilatory tactics, for decades together. On the contrary, the section is intended to help those who have not been offered or paid the compensation despite it being the legal obligation of the acquiring body so to do, and/or who have been illegally deprived of their possession for five years or more; in both the scenarios, the landowners/claimants.

130. We are of the view that stale or dead claims cannot be the subject-matter of judicial probing under section 24 of the Act of 2013. The provisions of section 24 do not invalidate those judgments/orders of the courts where under rights/claims have been lost/negatived, neither do they revive those rights which have come barred, either due to inaction or otherwise by operation of law. Fraudulent and stale claims are not at all to be faulted/cause not being attributable to W.P.(C)

9309/2014& Ors. Page 7 of 8 raised under the guise of section 24. Misuse of provisions of section 24(2) cannot be permitted. Protection by the courts in cases of such blatant misuse of the provisions of law could never have been the intention behind enacting the provisions of section 24 (2) of the 2013 Act; and, by the decision laid down in Pune Municipal Corporation (supra), and this Court never, even for a moment, intended that such cases would be received or entertained by the courts. 12. It may be noted here that the reference made by a Constitution Bench in Indore Development Authority v. Shyam Verma (2018) 4 SCC405 regarding the correctness of the aforesaid decision in Indore Development Authority v. Shailendra (supra) is only as regards the extent to which it differs from the earlier view of the Supreme Court in Pune Municipal Corporation v. Harakchand Misrimal Solanki (supra) regarding the tendering of compensation, and not on the question of petitions seeking declaration under Section 24 (2) of the 2013 Act being barred by laches. This legal position was explained by this Court recently in its decision in Mool Chand v. Union of India 2019 (173) DRJ595DB.

13. In the circumstances, it is not possible to grant the

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s relief under Section 24 (2) of the 2013 Act. The writ petitions are dismissed both on the ground of laches as well as on merits. The interim orders, if any, stand vacated. S.MURALIDHAR, J.

I.S. MEHTA, J.

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