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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 03.03.2025+ **W.P.(C) 9045/2018**

SHRI KISHAN

.....Petitioner

Through: Mr. L. B. Rai, Mr. Satvik Rai & Mr.
Vineesh Tyagi, Advocates

Versus

UNION OF INDIA AND ANR.

.....Respondents

Through: Mr. Sanjay Kumar Pathak, Mrs. K. K.
Kiran Pathak, Mr. Sunil Kumar Jha,
Mr. M. S. Akhtar, Mr. Mayank, Mr.
Sami Sameer Siddiqui, Advs. for R-
1/LACMs. Manika Tripathy, SC for DDA
with Mr. Gautam Yadav, Advocate
for R-2/DDA**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE TEJAS KARIA****VIBHU BAKHRU, J.**

1. The petitioner has filed the present petition, *inter alia*, praying that acquisition proceedings in respect of Khasra No.22//14min (1-16) situated in the revenue estate of village Mubarakpur, Dabas, Delhi [hereafter the **subject land**] be declared lapsed by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [**2013 Act**].

2. The petitioner submits that an Award [being Award No.16/2005-06/DC/(NW)] under Section 11 of the Land Acquisition Act, 1894 [hereafter



the **LA Act**] in respect of the lands, including the subject land, was pronounced on 14.09.2005. It is stated that a notification under Section 4 of the LA Act in respect of certain lands including the subject land was published on 21.03.2003. This was followed by a declaration under Section 6 of the LA Act which was issued on 19.03.2004.

3. It is the petitioner's case that possession of the subject land has not been taken over and the petitioner has also raised certain construction on the subject land. In addition, the petitioner claims that the subject land is surrounded by a densely populated area. The petitioner also claims that no compensation has been paid for the subject land.

4. The notice of the present petition was issued on 28.08.2018 and six weeks time was granted to the respondents to file their counter affidavits. Thereafter, the petition was listed before this court on 03.12.2018. However, the counter affidavits were not filed by the respondents, and accordingly, this court directed that the petition be listed before the concerned Registrar for the completion of pleadings. Thereafter, the matter was listed on several occasions and several opportunities were granted to the respondents to file the counter affidavits. Whilst respondent no.2/Delhi Development Authority [**DDA**] had filed the counter affidavit, respondent no.1/Land Acquisition Collector [**LAC**] had failed and neglected to file the counter affidavit and traverse the averments made in the present petition.

5. It is also relevant to refer to Section 24 of the 2013 Act which reads as under:

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.–(1) Notwithstanding



anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),—

- (a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or
- (b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

6. It is clear from the above that in case where an award under Section 11 of the LA Act was made prior to the 2013 Act coming into force, the acquisition proceedings would continue under the LA Act. Sub-section (2) of Section 24 of the 2013 Act carves out an exception to the above and expressly stipulates that acquisition would lapse when more than five years have passed after the award under Section 11 of the LA Act was pronounced, and the compensation has not been paid or the possession of the acquired land has not been taken over.



7. In *Indore Development Authority (LAPSE -5J) v. Manohar Lal and Ors.*: (2020) 8 SCC 129, the Supreme Court held that the use of the word “or” as used in Section 24(2) of the 2013 Act is required to be construed “and” and the acquisition would lapse only if both the conditions – that is, (i) compensation has not been paid; and, (ii) possession has not been taken over are cumulatively satisfied. Thus, an order for an acquisition to lapse by virtue of Section 24(2) of the 2013 Act – the following three conditions are required to be satisfied: (i) that an award has been pronounced under Section 11 of the LA Act and more than five years have lapsed on or before 01.01.2014, being the date on which the 2013 Act come into force; (ii) that the compensation for the subject land has not been tendered; and, (iii) that the possession of the subject land has not been taken over.

8. In the present case, the Award was pronounced on 14.09.2005 and there is no cavil that more than five years have elapsed prior to the 2013 Act coming into force. Thus, the first condition is satisfied.

9. Insofar as possession of the subject land is concerned, the LAC has not controverted the assertion that possession of the subject land was not taken over. The DDA has filed the counter affidavit expressly conceding that “the possession of the land in question has not been taken¹”. The DDA has also enclosed with the counter affidavit, the possession proceedings in relation to the award. It is relevant to set out the following extract of the possession proceedings. The same is set out below:

“Total area measuring 1185 Bigha 12 Biswa which is vacant at site, the Physical Possession taken from land owners and handed

¹ Paragraph 5(iii) of the DDA’s counter affidavit dated 05.07.2019



over to Sh. Surrender Vashisth Kgo Land & Building Dpptt.

In addition details of Khasra Nos. which is acquired vide Award No.16.2005-06 and status quo order passed by Hon'ble High Court details given as under

WP(C) 11541/05, Bhagya Vihar Resi. Welfare Association V/s UOI & ors (DDA) Khasra No.3//5/1-2min(3-00), 5//1 (5-14), 2 (4-04), 9//1 (4-16), 13//1 (1-09), 2 (4-16), 8 (4-16), 14//7/2 (1-00), 23//14min (2-00), 25 (4-12), 24//24 (4-12), 31//12 (1-05), 13 (4-16), 14/1(3-14), 32//5min (1-18). Total area measuring 52 Bigha 12 Biswa possessions has not been taken over. Remaining Khasra No. acquired through above award, possession not taken due to built-up as houses boundary, walls at site, which Physical possession taken after demolition. No hindrance at site at the time of possession proceeding. A copy of possession proceeding sent through Tehsildar for entry of record.

Possession Proceeding completed on 4.4.06.”

10. Admittedly the subject land is not included in 1185 Bighas 12 Biswas of land possession of which was taken over on 04.04.2006. The subject land is also not included in the description of the lands in respect of which possession could not be taken over on account the stay order passed by this court.

11. The possession proceedings indicate that possession of the remaining land was not taken over due to built up houses boundary, walls at site etc. The English translation of the possession proceedings as set out above is not accurate. The possession proceedings in Hindi language indicate that the possession of the land which was built up and bounded by boundary walls was not taken over and the same would be taken over after demolition [कब्ज़ा बाद मैं demolition करके लिया / दिया जाएगा]. This clearly indicates that possession of the subject land was not taken over, and more than nineteen years have since passed.



12. In view of the above, we accept that the second condition – that is possession of the subject land was not taken over – for applicability of Section 24(2) of the 2013 Act is satisfied.

13. The only question that remains to be answered is the third condition – whether the compensation has been paid – is satisfied. In *Indore Development Authority (LAPSE -5J) v. Manohar Lal and Ors.* (*supra*), the Supreme Court had clarified that the expression “compensation has not been paid” is required to be construed as “compensation has not been tendered” as required under Section 31 of the LA Act. Thus, if the compensation has been tendered, the same would be sufficient to preclude the applicability of Section 24(2) of the 2013 Act. However, in the present case, there is no averment to the effect that the compensation for the subject land was tendered to the petitioner. As noted above, the LAC has not filed the counter affidavit – despite several opportunities – to controvert the petitioner’s assertions that the compensation for the subject land has not been paid. There is also no assertion that notice under Section 12(2) of the LA Act has been issued to the petitioner or the petitioner was otherwise invited to collect the compensation for the subject land.

14. In view of the above, we accept that the conditions as stipulated under Section 24(2) of the 2013 Act are satisfied.

15. Mr. Sanjay Kumar Pathak, the learned counsel appearing for the LAC had contended that the present petition ought to be dismissed at the threshold as it was barred by limitation and laches. He submitted that acquisition proceedings were complete, with the Award being rendered on 14.09.2005, and thus the concluded acquisitions could not be reopened.



16. We are unable to accept the said contention. In terms of Section 16 of the LA Act, the acquired land would vest absolutely with the government free from all encumbrances on the Collector taking possession of the same. In the present case, although the Award was delivered on 14.09.2005, the possession has not been taken over. Thus, the land is not vested absolutely with the government.

17. In view of the above, the present petition is allowed. The acquisition in respect of the subject land is declared as lapsed by virtue of Section 24(2) of the 2013 Act.

VIBHU BAKHRU, J

TEJAS KARIA, J

MARCH 03, 2025

‘gsr’

Click here to check corrigendum, if any