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ITEM NO.2 COURT NO.3 SECTION XIV

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

I.A.Nos.29-37, 42-45/2015 & 46-57/2016 in Petition(s) for Special  
Leave to Appeal (C) No(s).16385-16388/2012

RAHUL GUPTA Petitioner(s)

VERSUS

DELHI DEVT.AUTH.& ORS. Respondent(s)

(For clarification of Court's order and exemption from filing O.T.  
and interim relief/directions and intervention and interim relief  
and office report)

With

I.A.Nos.58-61, 62-65, 66-69 & 70-73 and 74-77 & 78-81/2016

(Appln.(s) for clarification and exemption from filing O.T.)

Date : 28/01/2016 These applications were called on for hearing  
today.

CORAM :

HON&#39;BLE MR. JUSTICE JAGDISH SINGH KHEHAR

HON&#39;BLE MR. JUSTICE C. NAGAPPAN

For Petitioner(s) Mr. Rohit Kumar Singh, Adv.

Ms.Kirti Kumar, Adv.

For Respondent(s)/

Applicants

(For DDA) Mr.Mukul Rohtagi, AG

Mr.A.Sharan, Sr.Adv.

Ms. Binu Tamta, Adv.

Mr.Dhruv Tamta, Adv.

Mr.V.B.Saharya, Adv.

Ms.Nikita Shrivastava, Adv.

Mr.A.K.Sanghi, Sr.Adv.

Ms.Usha Reddy, Adv.

Ms.Gunwant Dara, Adv.

Ms.Kiran Bhardwaj, Adv.

Ms. Sushma Suri, AOR(NP)

Mr.Dhruv Mehta, Sr.Adv.

Ms.Esha Majumdar, Adv.

Ms. Priyanjali Singh, Adv.

Mr. Alok Gupta, Adv.

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Mr. P. Parmeswaran, Adv.

Mr.Ajay Bansal, Adv.

Mr.Gaurav Yadava, Adv.

Mr. Praveen Swarup, Adv.

Mr.Suresh Kumar, Adv.

Mr. R. Nedumaran, Adv.

Mr. R. P. Gupta, Adv.

Mr.Atul Kumar, Adv.

Mr. S. K. Verma, Adv.

Mr.Rajiv Ghawana, Adv.

Mr. T. V. S. Raghavendra Sreyas, Adv.

Mrs.Gayatri Gulati Sreyas, Adv.

Mr.Sangram Singh Bhosle, Adv.

Mr. Vikas Upadhyay, Adv.

Mr.Akhil Sachar, Adv.

Mr.Raghu Vashisht, Adv.

Ms. Jasmine Damkewala, Adv.

Respondent-in-person

Mr.Shrehar Siddartha, Adv.

Ms.Aparjita Mukherjee, Adv.

Ms.Nikita Srivastava, Adv.

Upon hearing the counsel the Court made the following

O R D E R

I.A.Nos.29-36 in SLP(C)Nos.16385-16388 of 2012

Consequent upon the order passed by this Court on  
10.03.2015, while dealing with the Special Leave Petition  
(C)Nos.16385-16388 of 2012, the applicants have approached this

Court for an interim injunction claiming, that they are in possession of the land, and as such, they be not divested thereof. Insofar as the claim for an interim injunction is concerned, it would be relevant to notice, that undisputedly the acquisition proceedings of the land of the applicants were

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The most significant issue which arises for our consideration is, whether possession was retained by the applicants consequent upon the acquisition proceedings? In this behalf, Mr. Mukul Rohtagi, learned Attorney General, appearing for the Delhi Development Authority invites our attention to the possession proceedings of village Barwala, which have been placed on the record of this case as Annexure R-1 (in the rejoinder affidavit filed by the applicants themselves). A perusal thereof reveals, that the authorities engaged in taking possession were the Patwari (Land Acquisition), the Patwari (Land and Building Department) and the Patwari (Delhi Development Authority). They were supported by their superiors namely, the Kanungo from the same three departments. The possession proceedings reveal, that a demolition squad and a police force were also present. The said squad,

I.A.2 9-37,42-45/15 & 46-57/16 in SLP(C)16385-88/12 4 demolished the construction on the acquired land, and the acquired land was got vacated with the help of the police. The above possession proceedings commenced on 28.09.2005 and culminated on 06.10.2005. It is not a matter of dispute that the applicants' land fell in the area measuring 5742 bigha, of which possession was taken and handed over to Shri Surender Kumar, Kanungo (Land and Building).

It is also the contention of the learned Attorney General, that it is not open to the applicants before this Court to raise the issue of possession, inasmuch as, the acquisition proceedings which commenced on 21.03.2003, and culminated on payment of compensation on 05.08.2005, should be deemed to have resulted in the vesting of the acquired land in the Government finally. This assertion is made on account of the fact, that none of the applicants before this Court had assailed the acquisition proceedings before any Court whatsoever. The fact that the applicants did not raise a challenge to the acquisition proceedings emerges also from their having approached the High Court of Delhi by filing Writ Petition (C)No.2501 of 2013 (Naresh Kumar and others vs. Union of India and others). It is clearly mentioned in the above order:

â- S However, it is not in dispute that at no stage was any challenge laid by the petitioners to any acquisition proceedings under the said Act till filing of the present petition in April, 2013. 10 years after issuance of Section 4 notification and 8 years of publication of the award. Not only that, it is also not in dispute that in pursuance of the award published the petitioners have also taken the compensation determined. On a query, learned counsel for the petitioners states that references were sought for enhancement of compensation and those references are stated to be

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pending.â- \235

Consequently, based on the cumulative factual background that the compensation was paid and the compensation was taken, the applicants did not raise a challenge to the acquisition proceedings. It was the assertion of the learned Attorney General representing the Delhi Development Authority, that the issue of acquisition cannot now be reopened under the provisions of the Land Acquisition Act, 1894 at the hands of the applicants. In order to controvert the contention advanced by the learned Attorney General representing the Delhi Development Authority, it is the vehement submission of the learned counsel representing the applicants, that they had raised a challenge to the acquisition proceedings by filing Writ Petition (C)No.2501 of 2013 before the High Court of Delhi wherein the acquisition proceedings were assailed on account of the fact, that their lands had been acquired for the purpose of the Rohini Residential Scheme whereas the aforesaid purpose was sought to be changed and the acquired land was to be used for setting up a helipad. Since the purpose of acquisition was changed, the applicants approached the High Court to assail the acquisition itself. The aforesaid challenge was rejected by the High Court when Writ Petition (C)No.2501 of 2013 came to be dismissed by the High Court on 17.04.2013. It is however the contention of the learned counsel for the applicants, that the order passed by the High Court dismissing their writ petition came to be assailed by them before this Court through Special Leave Petition (C)No.17121 of 2013. It

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is submitted, that the petitioners did not press the above petition but withdrew the same so as to agitate their claims under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the 2013 Act&#39;). It is submitted that consequent upon the promulgation of the 2013 Act, the petitioners acquired further rights as were available to them under Section 24 thereof. Section 24 of the 2013 Act is being extracted hereunder:

â- S24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases.-(1) Notwithstanding anything contained in the 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

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this Act.â- \235

Based on Sub-section (2) of Section 24 of the 2013 Act, it is the submission of the learned counsel for the applicants, that physical possession of the land had not been taken from the applicants. The above position is seriously disputed by the Delhi Development Authority. In fact, when this Court passed its original order in the main special leave petition on 10.03.2015, it was expressly noticed that the land over which the plots were to be carved out, was available with the Delhi Development Authority. That being so, it is not possible for us to accept the legitimacy of the continued possession of the applicants, over the acquired land. We, therefore, hereby, decline the prayer for an injunction raised by the applicants. The above inference, would however not stand in the way of the petitioners, in their claims under Section 24 of the 2013 Act. With the above observations, the instant I.As stand disposed of.

Since the main special leave petitions in hand pertain to allotments of residential plots to the petitioners, who have been waiting for the same since the year 1981 onwards, we are of the view, that an appropriate direction is required to be issued even to the Delhi Development Authority, that in case the applicants succeed in their claim under Section 24 of the 2013 Act, the Delhi Development Authority shall not hand over possession of the acquired land to the petitioners, but would pay compensation to them afresh, in accordance with the provisions of the 2013 Act (as contemplated under Section 24 thereof). Ordered accordingly. In view of the instant order, any hindrance at the hands

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of the applicants in implementation of the order passed by this Court on 10.03.2015, will entail all legal consequences, coercive and otherwise, as would be available to the Delhi Development Authority.

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The instant application is dismissed.

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Issue notice.

Ms.Binu Tamta, learned counsel, accepts notice.

Reply, if any, be filed within four weeks from today.

List thereafter.

(SATISH KUMAR YADAV)

AR-CUM-PS

(RENUKA SADANA)

COURT MASTER