

# Fakir Chand & Ors vs Union Of India & Ors on 2 November, 2020

**Author: Rajiv Sahai Endlaw**

**Bench: Rajiv Sahai Endlaw, Asha Menon**

\$~VC-3

\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ W.P. (C) 8556/2020  
FAKIR CHAND & ORS.

.....Petitioners

Through: Mr. Sanyam Khetarpal & Mr.  
Nitesh Goyal, Advocates

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms. Monika Arora, Advocate for  
UOI.  
Mr. Yeeshu Jain, Standing Counsel  
for R-4/L&B with Ms. Jyoti Tyagi,  
Advocate.  
Mr. Satya Ranjan Swain, Advocate  
for applicant in C.M. Appl.  
No.27598/2020.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW  
HON'BLE MS. JUSTICE ASHA MENON

ORDER

% 02.11.2020

[VIA VIDEO CONFERENCING]

C.M. Appln. No.27598/2020 (for exemption from filing certified/typed copy of dim annexures and originals)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

W.P. (C) 8556/2020

3. The six petitioners seek direction to the respondents Union of India (UOI), Land & Building Department, Delhi Development Authority (DDA) and Land Acquisition Collector (LAC), to handover possession of 9 Bighas of land comprising in new Khasra Nos. 909 (1-2), 932 (1-5), 938 (2-10), 939 (2-10) and 940 (1-13) situated in revenue estate of Mehrauli, New Delhi to the petitioners and impugns the act of the respondents of taking possession thereof without initiating

the acquisition proceedings.

4. It is the case of the petitioners (i) that vide order dated 2 nd November, 2015 of this court in W.P. (C) 9205/2014 earlier filed by the petitioners, it was declared that the acquisition vide notifications dated 7th December, 1966 under Sections 4 & Section 6 of the Land Acquisition Act, 1894 and vide award dated 25th March, 1983 pursuant to the said notifications, had lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, for the reason of the possession of the land having not been taken and for the reason of the compensation having not been paid; (ii) that the SLP preferred thereagainst was dismissed with a direction to the respondents to, if so desire, commence fresh land acquisition proceeding within one year and if had taken possession of the land, to return the possession to the petitioners; and, (iii) that the respondent No. 3 DDA, in the year 2018 forcibly took possession of the land and has developed a public park thereon.

5. The counsels for all the respondents appear on advance notice.

6. The counsel for the respondents No. 4 and 5 LAC, on enquiry whether the larger bench of the Supreme Court in Indore Development Authority v. Manoharlal 2020 SCCOnline SC 316 has given any direction with respect to the matters which stood settled pursuant to the earlier judgment which was overruled, states that no such direction has been given, but review petitions are being filed in the SLPs which were dismissed.

7. We have further enquired from the counsel for the petitioners as well as the counsels for the respondents that if it was the admitted position before this Court, as recorded in the order of this Court allowing the earlier writ petition, that possession of the land has not been taken, what was the occasion for the Supreme Court to, while dismissing the SLP, observe that the possession, if had been taken by the respondents, be returned.

8. None of the counsels have been able to answer the question.

9. One possibility as emerges from the said observation of the Supreme Court is, that the observation of this Court, in the order allowing the writ petition, to the effect that it was the admitted position that the possession has not been taken, was factually not correct. The petitioners, along with writ petition, as Annexure A-6 thereto have filed the photographs of the public park which is stated to have been developed over the said land and it seems unlikely that the said public park has been developed overnight. There is no explanation why, when the work of development of the public park was being undertaken in the year 2018 as is sought to be vaguely alleged in the writ petition, no action was taken by the petitioners and why this petition has been filed after such a long gap of time and after the public park has been developed and is in use.

10. The counsel for the petitioners, save for repeating what has been written in the petition, and which as observed is non-specific, is unable to say anything.

11. The counsel for the respondents No. 4 and 5 LAC states that since the claim is for possession, suit is the remedy and not the writ petition.

12. As aforesaid, the Supreme Court in its order dismissing the SLP has ordered possession to be returned.

13. The said question, however, is kept open.

14. Issue notice.

15. Notice is accepted by the counsel for the respondents.

16. Counter affidavits be filed within six weeks.

17. Rejoinders, if any thereto be filed within further four weeks thereafter.

18. List on 18th March, 2021.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

NOVEMBER 02, 2020 ck