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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 13.11.2014

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W.P.(C) 2299/2002, C.M. NO.7190/2014

SANTOSH SINGH & ANR.

..... Petitioners

Through: Mr. Ravinder Sethi, Senior Advocate
along with Mr. N.S. Vasisht &
Mr. Ramesh Khatri, Advocates.

versus

UOI & ORS.

..... Respondents

Through: Ms. Rachana Srivastava & Ms. Kanika
Singh, Advocates for the respondents
No.2, 3 & 4/GNCTD.
Ms. Shobhana Takiar, Advocate for
the respondent No.5/ DDA.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE VIPIN SANGHI

S. RAVINDRA BHAT, J. (OPEN COURT)

1. In these proceedings, the petitioner seeks a declaration that the notification dated 13.12.2000 (under Section 4 of the repealed Land Acquisition Act, 1894 - hereinafter referred to as the "old Act"); the declaration dated 07.12.2001 under Section 6 of the old Act in respect of the petitioner's land - to the extent the said notification and the declaration dealt with Khasra Nos. 29/6/2, 7/2, 180/2, 29/6/3, 7/3, 14 and 15 situated in the revenue estate of village Pochanpur, Tehsil Mehrauli, Delhi, be declared illegal and inoperative. Originally, the writ petitioner sought for quashing of

these notifications to the extent that they dealt with the suit lands. In the application moved, i.e. C.M. No.7190/2014, it is urged that the said acquisition proceedings have lapsed by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Settlement Act, 2013 (hereinafter referred to as the new LA Act). After notice was issued, the respondents filed their reply. The application and writ petition were heard in these circumstances.

2. The facts necessary to decide the case are that the petitioner claims to be the owner in possession of the suit lands and has - in support, relied upon several documents for that purpose. On 13.12.2000, these lands were sought to be acquired under a notification published under Section 4 of the old Act. The petitioner resisted the move and filed response to the notice issued by the DDA on 14.12.2000 under Section 5A of the old Act. The declaration – which was the next step under the old Act, was published on 07.12.2001 under Section 6 of the old Act. Thereafter on 21.03.2002, invoking the emergency clause, the respondents issued a notification under Section 17(1) of the old Act. Immediately the petitioner moved this Court. At the first hearing, the petitioner also sought for interim order staying dispossession. This Court, on 11.04.2002, made the following order in the said application:

“C.M. No.3989/2002

Notice for the date fixed.

Mr. Aggarwal accepts notice on behalf of respondent No.1. Ms. Sarkar accepts notice on behalf of respondents 2 to 4. Ms. Takiar accepts notice on behalf of respondent No.5.

In the meantime, possession will not be taken pursuant to

the notification issued under Section 17(1) of the Land Acquisition Act. It is submitted by learned counsel for the petitioner that the demolition order has been stayed by the Court. Be that as it may this order will not come in the way of any action which the authorities may take in accordance with law pursuant to the order of demolition passed by the appropriate authority provided there is no stay of demolition. DASTI. Renotify on 29th April, 2002.”

3. It is not in dispute that thereafter the interim order is subsisting and has been complied with by the parties - in that the respondents have not sought to dispossess the petitioner all this while. The other significant event is that the award – second action under the old Act, was made on 09.12.2002.

4. With effect from 01.01.2014, the new LA Act was brought into force. Section 114 of the new LA Act has the effect of repealing the old Act. Section 24, which is pertinent for the purpose of the present case – and has been relied upon in C.M. No.7190/2014 filed by the petitioner, reads as follows:

“24. (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 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, 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.”

5. It is urged that the facts of the present case show that the acquisition is squarely covered under Section 24(2) - in that, all the three ingredients, i.e. continued physical possession of the land with the owner; non-payment of compensation; and, preparation and publication of the award more than five years before the coming into force of the new LA Act on 01.01.2014, have been fulfilled and, consequently, the acquisition proceedings initiated on 13.12.2000 and all consequential steps are deemed to have lapsed.

6. Learned counsel relies upon ***Pune Municipal Corporation & Another Vs. Harakchand Misirimal Solanki & Others***, (2014) 3 SCC 183, to say that mere deposit of compensation in the Treasury is insufficient compliance with Section 24(2) and that actual payment to the land owner, or deposit in Court under Section 31(2) of the old Act would be construed as compliance contemplated under the new LA Act. More crucially, learned counsel relies upon the decision of the Supreme Court in ***Sree Balaji Nagar Residential***

Association Vs. State of Tamil Nadu & Others, Civil Appeal No.8700/2013 decided on 10.09.2014, to say that the circumstance that an interim order constrained the State, or its agencies from taking over possession cannot be urged to exclude the period spent in litigation.

7. Learned counsel for the respondents do not deny the essential facts pertaining to the dates of notification under Section 4 of the old Act, declaration & preparation of award, etc. Nor do they deny that on 11.04.2002, the interim order staying dispossession was made by this Court and that order has continued in force even as on date. It is also not their case that possession of the suit land was ever taken from the petitioner. The respondent GNCTD, in fact, states as follows in its reply to C.M. No.7190/2014:

“9. That before the possession of the land could be taken, the Petitioner filed present Writ Petition in this Hon’ble Court wherein this Hon’ble Court by an order dated 11.04.2002 stayed dispossession from the subject land. Though the Award has been announced but due to stay on possession of the acquired land, the possession of the same could not be taken. In view of the stay on dispossession, no payment of compensation in lieu of the said land has been made to the land owner till date.”
(emphasis supplied)

8. What is urged, however, is that the act of the Court, i.e. grant of interim order made in equity, cannot be used by the petitioner to say that possession was not taken by the Government. In other words, urged counsel, that this is a clear case of *actus curiae neminem gravabit* (an act of the Court shall prejudice no man). Elaborating on this, learned counsel urged that the interim order of the Court prevented the State from fulfilling

the objective sought to be achieved through the notification of taking over possession. Such being the case, for no fault on its part, Section 24(2) ought not to be applied in such a case. It is submitted that Section 24(2) would be attracted only in cases where the acquiring authority fails to take possession despite being in a position to do so, and fails to pay/offer the compensation though there may be no valid justification for its not being paid/offered.

9. The Supreme Court in *Pune Municipal Corporation* (supra) dealt with another situation, i.e. as to whether compensation amount has to be actually paid, or deposited. That decision clarified that mere deposit of the amount in the Treasury would not fulfil requirement of Section 24(2) and that there should be a positive step to appropriate the concerned amount and make it available to the land owner, i.e. by way of payment under Section 31(2) of the old Act, or by deposit of the compensation in Court. In a similar context, when the issue, which is sought to be urged in this case, i.e. possession being denied by interim order, was raised in *Sree Balaji Nagar* (supra), the Supreme Court had this to say:

“8. 2013 Act puts in place entirely new regime for compulsory acquisition of land and provides for new scheme for compensation, rehabilitation and resettlement to the affected families whose land has been acquired or proposed to be acquired or affected by such acquisition.

9. To turn, now, to the meaning of the expression “compensation has not been paid” in Section 24(2) of the 2013 Act and its effect on the subject acquisition, it is necessary to refer to Section 24 which reads as follows:

“24. (1) Notwithstanding anything contained in this Act, in any case of land acquisition

proceedings initiated under the Land Acquisition Act, 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, 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 holding 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.”

10. Insofar as sub-section (1) of Section 24 is concerned, it begins with non obstante clause. By this, Parliament has given overriding effect to this provision over all other provisions of 2013 Act. It is provided in clause (a) that where the land

acquisition proceedings have been initiated under the 1894 Act but no award under Section 11 is made, then the provisions of 2013 Act shall apply relating to the determination of compensation. Clause (b) of Section 24(1) makes provision that where land acquisition proceedings have been initiated under the 1894 Act and award has been made under Section 11, then such proceedings shall continue under the provisions of the 1894 Act as if that Act has not been repealed. ”

10. It would also be appropriate to record that there is some merit in the submission that Parliament consciously factored in contingencies where acquisition proceedings are held up on account of interim orders of court, and excluded time wherever prescribed. One such instance is proviso to Section 19 (6) which reads as follows:

*"19. (1) When the appropriate Government is satisfied, after considering the report, if any, made under sub-section (2) of section 15, that any particular land is needed for a public purpose, a declaration shall be made to that effect, along with a declaration of an area identified as the "resettlement area" for the purposes of rehabilitation and resettlement of the affected families, under the hand and seal of a Secretary to such Government or of any other officer duly authorised to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same preliminary notification irrespective of whether one report or different reports has or have been made (wherever required). ******

(6) The declaration referred to in sub-section (1) shall be conclusive evidence that the land is required for a public purpose and. after making such declaration, the appropriate Government may acquire the land in such manner as specified under this Act.

(7) Where no declaration is made under sub-section (1) within twelve months from the date of preliminary notification, then such notification shall be deemed to have been rescinded:

Provided that in computing the period referred to in this sub-section any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded:

Provided further that the appropriate Government shall have the power to extend the period of twelve months, if in its opinion circumstances exist justifying the same:

Provided also that any such decision to extend the period shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned."

11. Likewise, while prescribing the mechanism for calculation of compensation (in the award) Parliament directed exclusion of time taken on account of interim orders, by way of Explanation to Section 69 (2). That provision reads as follows:

"69. (1) In determining the amount of compensation to be awarded for land acquired including the Rehabilitation and Resettlement entitlements, the Authority shall take into consideration whether the Collector has followed the parameters set out under section 26 to section 30 and the provisions under Chapter V of this Act.

(2) In addition to the market value of the land. as above provided, the Authority shall in every case award an amount calculated at the rate of twelve per cent. per annum on such market value for the period commencing on and from the date of the publication of the preliminary notification under section 11 in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier

Explanation.- In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.

(3) In addition to the market value of the land as above provided, the Authority shall in every case award a solatium of one hundred per cent. over the total compensation amount."

12. A close analysis of the above provisions would reveal that Section 19 enables the acquisition process by the appropriate Government issuing a declaration, Section 19 (6) is an important exception in that it imposes a limitation on the power itself (i.e limitation for making declaration). In case the time limit is not adhered to, the acquisition lapses. The proviso to Section 19 (6) recognizes that sometime Court intervention by interim orders impede the appropriate Government from issuing declarations. Section 69 (2) enables increased compensation; yet, the explanation provides that if the landowner secures an interim order, the period spent in litigation, particularly when the interim order subsists, cannot be given benefit to him while calculating interest. Thus, limitation of power freshly conferred or created by the Act does not follow a uniform pattern. The object of the provision in question defines how the allusion to interim orders of court are dealt with. However, Section 24 (2) is a special provision that but for its enactment, would have resulted in the operation of the General Clauses Act, 1897 in that all action taken under the old law would have been preserved. It therefore had to be construed in the context of the old enactment which clearly contemplated exclusion of time at the different stages when interim orders subsisted (i.e to make declaration after preliminary notification and also extended period for making the award). These perspectives are indicative of a contrary interpretation. However, this Court notices that the ruling of the Supreme Court on this aspect is decisive; it consequently binds it.

13. In view of the above discussion, this Court is of the opinion that the application and the writ petition have to be allowed. It is hereby declared that the land acquisition proceedings in relation to the suit lands under the old Act are deemed to have lapsed pursuant to coming into force of Section 24 of the new LA Act.

14. The writ petition is allowed in the above terms. Order dasti.

S. RAVINDRA BHAT, J

VIPIN SANGHI, J.

NOVEMBER 13, 2014

B.S. Rohella /ajk

