

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 28.10.2014

W.P.(C) 2210/2010 & CM 3088/2014

RANJANA BHATIA

..... Petitioner

versus

GOVT. OF NCT OF DELHI & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Ravinder Sethi, Senior Advocate with Mr Rajiv Kumar Ghawana,
Mr Pramod Kumar Dubey, Mr A S Rathore and Ms Namita Wali.
For the Respondents : Mr Siddharth Panda and Mr Sahu for LAC/L&B.
Ms Karuna Chhatwal with Mr J Sukhija for R-3.

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

BADAR DURREZ AHMED, J (ORAL)

1. Originally this petition was filed challenging the notice dated 07.01.2010 issued under the signatures of respondent No. 2 purportedly under Section 17(2) of the Land Acquisition Act, 1894 (hereinafter referred to as the '1894 Act'). The petition was also directed against the order dated 03.04.2010 passed by respondent No. 2. It is pertinent to note that earlier an

Award No. 2193 dated 13.01.1969 had been made by the Land Acquisition Collector in respect of, *inter alia*, the petitioner's land in Khasra No. 1103/283 (Min) comprising of 66.66 sq. yards in village Jhilmil Tahirpur.

2. During the pendency of the writ petition, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the 2013 Act') came into effect on 01.01.2014. The petitioner, feeling that it was entitled to the benefit of Section 24(2) of the 2013 Act, moved an application being CM No. 3088 of 2014 stating that the award in respect of the subject land had been passed more than five years prior to the commencement of the 2013 Act. It was further stated that the possession of the said land continued to be with the petitioner and that the compensation had also not been paid. Consequently, it was submitted on the basis of these submissions that the acquisition in respect of which the award dated 13.01.1969 had been made be declared as having lapsed in view of the deeming provision of Section 24(2) of the 2013 Act. Mr Sethi, the learned senior counsel, appearing on behalf of the petitioner submitted that all the ingredients of Section 24(2) of the 2013 Act as interpreted by the Supreme Court and this court in the following decisions stand satisfied:-

- (1) **Pune Municipal Corporation and Anr v. Harakchand Misirimal Solanki and Ors:** (2014) 3 SCC 183;
- (2) **Union of India and Ors v. Shiv Raj and Ors:** (2014) 6 SCC 564;
- (3) **Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors:** Civil Appeal No. 8700/2013 decided on 10.09.2014;
- (4) **Surender Singh v. Union of India & Others:** WP(C) 2294/2014 decided on 12.09.2014 by this Court;
- (5) **Jagjit Singh and Ors v. Union of India and Ors:** W.P.(C) Nos. 2806/2004, 2807-2934/2004 decided by this court on 27.05.2014; and
- (6) **Gyanender Singh & Ors v. Union Of India & Ors:** WP(C) 1393/2014 decided by this court on 23.09.2014.

3. The learned counsel appearing on behalf of respondent Nos. 1 and 2 submitted that the possession of the subject land was not taken because of the subsistence of the interim orders passed by this court. He further submitted that the petitioner had not come forward to receive the compensation as she had filed the present petition and had obtained interim orders. He further submitted that in any event, compensation had been deposited in the competent court after obtaining directions from this court in

CM (Main) No. 1406/2013 tilted *Union of India v. ADJ, Shahdra* by virtue of the order dated 30.12.2013 passed by a Vacation Judge of this court.

4. The learned counsel appearing on behalf of the respondents further submitted that the writ petition ought to be thrown out on the ground that it has been filed on behalf of a subsequent purchaser. The learned counsel submitted that the petitioner had purchased a land after the issuance of the notifications under section 4 and 6 of the 1894 Act. He also submitted that it is settled law that a subsequent purchaser has no right to challenge the acquisition proceeding and has only a limited right to receive compensation. He placed reliance on the Supreme Court decision in the case of *KN Aswathnarayana Setty (D) Tr. LRs.& Ors. Vs. State of Karnataka & Ors.* **AIR 2014 SC 279**. According to the learned counsel, the Supreme Court held that a person who purchases land subsequent to the issuance of a notification for acquisition is not competent to challenge the validity of the acquisition proceedings on any ground whatsoever. He contended that the sale deed executed in favour of the subsequent purchaser does not confer upon him any title and at the most he could claim compensation on the basis of the vendors title. A reference was also made to the Supreme Court

decision: **Meera Sahni v. Lieutenant Governor of Delhi and Ors.:** (2008) 9 SCC 177.

5. After having considered the submissions made by the learned counsel for the parties it is evident that possession of the subject land has not been taken by the respondents. Although the learned counsel for the respondent contended that the possession could not be taken because of the subsistence of an interim order, this ground is no longer available to the respondents in view of our decision in the case of **Jagjit Singh & Ors.** (supra) wherein it was held as under:-

“9. We have already set out section 24 of the new Act in its entirety. It is evident that section 24(2) of the new Act is a non-obstante provision. The conditions which are required to be satisfied before the deeming provision is triggered are:-

(i) The award should have been made under section 11 of the old Act, more than five years prior to the commencement of the new act; and

(ii) Physical possession of the land in question should not have been taken; or

(iii) The compensation should not have been paid.

These conditions are unqualified. It does not matter as to what was the reason behind the non-payment of compensation or for not taking possession. If the legislature wanted to qualify the

above conditions by excluding the period during which the proceedings of acquisition of land were held up on account of stay or injunction by way of an order of a Court, it could have been expressly spelt out. In fact, whenever the legislature thought that it was necessary to spell out such an intention, it did. An example of this is to be found in the first proviso to section 19 (7) of the new Act which is as under:-

"19(7).....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."

10. Furthermore, it would be instructive to refer to the decision of the Supreme Court in the case of **Pandurang Vinayak** (supra) which has been relied upon by Mr Sethi, the learned senior counsel appearing on behalf of the petitioners. In that decision the purpose and meaning of a statutory fiction was being considered. While doing so, the Supreme Court referred to an English decision in the case of **East End Dwelling Co. Ltd. v. Finsbury Borough Council**: (1952) A.C. 109 and in particular to an observation of Lord Asquith which was to the following effect:-

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative, state of affairs had in fact existed, must inevitably have flowed from or accompanied it. The statue says that you must imagine a certain state of affairs; it does not say that having

done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

11. Following the above observation, it is obvious that the deeming provision of section 24(2) is a legal fiction which is a created and an imagined situation. We ought not to be concerned with the inevitable corollaries that may flow out of it unless there is a clear prohibition in the statute itself. Once the state of affairs is imagined as real, the consequences and instances would also have to be imagined as real. Therefore, the fact that the possession could not have been taken by the respondents because of interim orders of the Court, would not in any way prevent this Court from imagining the state of affairs stipulated in Section 24(2) of the new Act. The only conditions that are required for the deeming provisions to be triggered are that the award must have been made five years or more prior to the commencement of the new Act and that either physical possession of the land has not been taken or that the compensation has not been paid. In fact in these writ petitions all the conditions stand satisfied. Therefore, the contention of the learned counsel for the respondent cannot be accepted."

6. As a result, the respondents cannot contend that section 24(2) shall not apply to the benefit of the petitioner in view of the fact that possession could not have been taken because of an interim order. Similarly, inasmuch as compensation has not been tendered to the petitioner on account of an interim order with regard to possession, the respondents cannot contend that

section 24(2) would not come to the aid of the petitioner. This aspect was also considered in Jagjit Singh as would be evident from para 7 of the said decision wherein it has been noted that the respondent had raised the contention that due to the interim orders passed by the Court, and because of the fact that possession could not be taken, compensation had also not been paid.

7. The learned counsel for the respondent further contended that in any event the compensation has been deposited in Court after obtaining direction from this Court in CM 1406/2013 wherein an order dated 30.12.2013 had been passed. This aspect of the matter also stands covered against the respondents and in favour of the petitioner in **Gyanender Singh** (supra) wherein CM 1406/2013 is clearly mentioned in para 7 under the heading 'District Shahdara'. This Court also held as under:-

“It is absolutely clear from the above extracts that unless and until the compensation is tendered to the persons interested, mere depositing of the compensation in the court would not be sufficient. To be clear, compensation cannot be regarded as having been paid merely on the deposit of the same in court unless and until it has first been offered to the person interested and he has refused to accept the same. In the present case, it is an admitted position that the compensation amount was tendered in this court without first being offered to

*the persons interested (petitioners). Therefore, in view of the clear dictum of the Supreme Court in **Pune Municipal Corporation** (supra), such deposit of compensation in court cannot be regarded as a payment of compensation as contemplated under the provisions of Section 24(2) of the 2013 Act. The Supreme Court has categorically held that for the purposes of Section 24(2), the compensation shall be regarded as “paid” if the compensation “has been offered” to the person interested and such compensation has been deposited in the court where a reference under Section 18 can be made on the happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act. The contention of Mr Poddar, the learned senior counsel, appearing in this matter, that compensation has first to be offered to the interested person is not a mandatory requirement is without any substance and is in clear contradiction to the ruling of the Supreme Court which has construed the expression of compensation having been paid in the context of Section 24(2) of the 2013 Act.”*

8. Since no offer of compensation was made to the petitioner, it is evident that compensation has not been paid to the petitioner as interpreted by this Court in **Gyanendra Singh** (supra) following the decision of the Supreme Court in **Pune Municipal Corporation** (supra).

9. We are left to consider the contention raised by the learned counsel for the respondent that the present petition would not be maintainable by the petitioner because the petitioner is a subsequent purchaser. While it is true

that, in the context of 1894 Act, the Supreme Court has held that a subsequent purchaser would not have a right to challenge the acquisition and would only have a right to compensation, we agree with Mr Sethi that the present petition as it now stands is not a challenge to the acquisition proceedings but a petition seeking declaration of rights which had accrued to the petitioner by virtue of the deeming provision of section 24(2) of 2013 Act. Once the acquisition has lapsed because of the triggering of the deeming provision of section 24(2) of 2013 Act, the benefit of the same cannot be denied to the petitioner on the ground that she is a subsequent purchaser.

10. In view of the foregoing we declare that the acquisition of the subject land has lapsed in view of the provisions of section 24(2) of the 2013 Act. The writ petition is allowed to this extent. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

OCTOBER 28, 2014
SU/vld