

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.19150 of 2015

Date of decision:11.9.2015

M/s N.C.J. Estate Solutions Pvt. Ltd.

....Petitioner

VERSUS

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. Kartik Gupta, Advocate for the petitioner.

HEMANT GUPTA, J.

The petitioner has invoked the writ jurisdiction of this Court to claim compensation of its acquired land in terms of the provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short '2013 Act').

The petitioner is the owner of 72 kanals 3 marlas of land situated in the revenue estate of village Binola, Tehsil and District Gurgaon. A notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') was published to acquired land measuring 205 acres 5 kanals and 15 marlas for the public purpose namely for development and utilization of land for National Defence University including the land of the petitioner. The Notification under Section 6 of the Act was issued on 12.01.2012 and the award announced on 24.09.2012.

Earlier the petitioner filed a writ petition before this Court challenging the publication of Section 6 notification for the reason that

sufficient opportunity of hearing has not been granted before publication of notification under Section 6 of the Act. The said writ petition bearing CWP No.14064 of 2012 was dismissed on 06.05.2013. Even Special Leave Petition was dismissed on 21.07.2013.

The petitioner claims that it is entitled to compensation under 2013 Act which came into force on 01.01.2014 relying upon proviso in the said Section 24(2). It is contended that such proviso is proviso to sub-Section (1). Therefore, the petitioner whose land vested in the State with the announcing of award on 24.09.2012 is entitled to compensation under 2013 Act. The petitioner relies upon an order passed by Division Bench of Delhi High Court in W.P. (C) No.8596 of 2014 titled Tarun Pal Singh and another v. Lt. Governor, Govt. of NCT of Delhi and others, decided on 21.05.2015 (Annexure P-6).

To appreciate the contention of the petitioner, it would be relevant to extract Section 24 of 2013 Act:-

“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,-

(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.”

Section 24 is in two parts i.e. both starting with non-obstante clauses. Section 24(1) contemplates that notwithstanding contained in 2013 Act, the land acquisition proceedings initiated under the Act, where an award has been made, then such proceedings shall continue under the provisions of the said Act [see clause (b)]. Sub-clause (a) deals with a situation where no award has been made, then the provisions of 2013 Act would be applicable. The wording of the statute is clear and contemplates both the situations where the award has been announced and where the award has not been announced. In a situation where award has not been announced, the compensation has to be determined under 2013 Act but where award has been announced, the proceedings shall continue under the Land Acquisition Act, 1894 such as reference under Section 18 of the Act etc.

Sub-Section (2) provides for lapsing of land acquisition proceedings initiated under the Act, where award has been made five years or more prior to the commencement of 2013 Act in situations –(1) where physical possession of the land has not been taken and (2) where compensation has not been paid. Therefore, sub-section (2) deals with a

situation of not taking over possession or of non-payment of compensation in respect of awards announced 5 years prior to commencement of 2013 Act. The proviso creates an exception in relation to payment of compensation. It contemplates that if the majority of land-owners have not been paid compensation, then all the beneficiaries specified in the notification shall be entitled to compensation in accordance with the provisions of 2013 Act. Thus, even if a land-owner has been paid compensation, but not the majority of the land-owners, then the compensation has to be paid as per 2013 Act.

The entire reliance of the petitioner is on the judgment of Delhi High Court in Tarun Pal Singh's case (supra). Firstly, on a question of fact, admittedly in the case before the Delhi High Court, the compensation awarded was more than Rs.64 crores whereas only Rs.21 crores was paid towards compensation. Whereas, except a bald statement that majority of the land-owners have not been paid compensation, there is no such assertion. Delhi High Court held that the proviso is in fact a proviso to Section 24(1) and is required to be read together with clause (b) of the said Section and that it is not a proviso to Section 24(2) of 2013 Act.

We are unable to agree with the view expressed. Sub-section (2) starts with a non-obstante clause giving overriding effect to the said sub-section notwithstanding anything contained in sub-section (1). The proviso is the proviso to sub-section (2) alone. It operates in different field and deals with different situations. Section 24(2) starts with non-obstante clause that is to anything contained in Sub Section (1) of Section 24 of 2013 Act. Such subsection thus operates over and above subsection (1) of

Section 24 of the 2013 Act. It is sub-section (1) of Section 24 which is applicable when an award has been announced, then the proceedings have to be taken as contemplated under the Act.

In Pune Municipal Corporation and another v. Harakchand Misirimal Solanki and others, AIR 2014 (SC) 982, the Court held that the compensation amount is required to be deposited with a Reference Court. The Court considering the proviso appended to Section 24(2) held that it deals with a situation where in respect of the acquisition initiated under the Act, an award has been made and compensation in respect of a majority of landholdings has not been deposited in the account of the beneficiaries then all the beneficiaries specified in the Section 4 notification are entitled to compensation under the 2013 Act. The Court held as under:-

“11. Section 24(2) also begins with non obstante clause. This provision has overriding effect over Section 24(1). Section 24(2) enacts that in relation to the land acquisition proceedings initiated under the 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied viz. (i) physical possession of the land has not been taken, or (ii) the compensation has not been paid; such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the appropriate Government still chooses to acquire the land which was the subject-matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the 2013 Act. *The proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act an award has been made and compensation in respect of a majority of landholdings has not been deposited in the account of the beneficiaries then all the beneficiaries specified in the Section 4 notification become entitled to compensation under the 2013 Act. (Emphasis supplied)*

Thus, the judgment of Delhi High Court is clearly in conflict with the binding precedent of the Supreme Court. Therefore, if the amount of compensation has not been paid to the land-owners or deposited with

the reference court as contemplated under Section 24(2) of 2013 Act, the proviso will become operative. This Court while interpreting the statutory provisions cannot substitute the proviso to another sub-section when the sub-section starting with non-obstante clause does not contains such proviso. By interpretation, a proviso cannot be lifted and incorporated to any other sub-section.

In view thereof, we do not find any merit in the present writ petition.

Dismissed.

(HEMANT GUPTA)
JUDGE

SEPTEMBER 11, 2015
‘D. Gulati’

(RAJ RAHUL GARG)
JUDGE