

\$~ 50

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 17.08.2015

+ **W.P.(C) 3494/2002**

**SWARN SINGH CHAWLA** ... Petitioner

versus

**UOI & ORS.** ... Respondents

**Advocates who appeared in this case:-**

|                             |                                                                             |
|-----------------------------|-----------------------------------------------------------------------------|
| For the Petitioner          | : Mr Prakash Gautam with Mr Vivek Ojha                                      |
| For the Respondent Nos. 3&4 | : Mr Sanjay Kumar Pathak with Mr Sunil<br>Kumar Jha and Mr Kushal Raj Tater |
| For the Respondent DDA      | : Ms Shobhana Takiar                                                        |

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE SANJEEV SACHDEVA**

**JUDGMENT**

**BADAR DURREZ AHMED, J (ORAL)**

**W.P.(C) 3494/2002 & CM No. 20944/2014**

1. The reply affidavit on behalf of the respondent nos. 3 and 4 to CM No. 20944/2014 has been handed over by Mr Sanjay Kumar Pathak and the same is taken on record. The learned counsel for the petitioner does not wish to file any rejoinder as the necessary averments are contained in the application and the writ petition.

2. We may point out that the writ petition had been filed in 2002 challenging the acquisition proceedings under the Land Acquisition Act, 1894. During its pendency, 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. In these circumstances, the petitioner filed CM No.20944/2014 seeking a declaration to the effect that the acquisition proceeding, which is the subject matter of the present writ petition, ought to be deemed to have lapsed in view of Section 24(2) of the 2013 Act.

3. The Award under the Land Acquisition Act, 1894 (hereinafter referred to as 'the 1894 Act') was made vide Award No. 26/2002-03 dated 23.10.2002 and it was in respect of, *inter alia*, the petitioner's land comprised in Khasra No. 40/12 (4-16), 40/13 (4-18), 40/18/2/1 (0-17), 40/19/1 (1-10) and 40/27 (0-06) measuring 12 bighas and 7 biswas in all in village Bharthal, New Delhi.

4. It is an admitted position that the physical possession of the subject land has not been taken by the land acquiring agency. However, the learned counsel for the respondents contend that the physical possession could not be taken because of the operation of the stay order passed in this very petition [i.e., W.P.(C) No.3494/2002] which has continued to operate since 05.04.2002. Clearly, the stay order was in operation on 01.01.2014 when the 2013 Act came into effect. In fact it continues to operate till today. This aspect of the matter concerning the submission that possession could not be taken because of the operation of the stay order and that in such a situation the respondents should not be prejudiced, was considered by this Court in the case of **Jagjit Singh & Ors. vs. UOI & Ors: W.P.(C) 2806/2004** and other connected matters

which were decided by this Court on 27.05.2014. In that decision, this Court observed as under:-

“8. The learned counsel for the respondents also submitted that no party can be put to a disadvantage because of an act of the Court. Since this Court had passed interim orders, it cannot work to the disadvantage of the respondents.

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 statute 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 stands satisfied. Therefore, the

contention of the learned counsel for the respondent cannot be accepted.”

5. As a consequence, it has to be held that the respondents did not take physical possession of the subject land. With regard to the element of compensation, it is an admitted position that compensation has not been paid in respect of the said land. The Award was also made more than five years prior to the commencement of the 2013 Act. Therefore, 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; and
- (5) **Jagjit Singh & Ors. vs. UOI & Ors:** W.P.(C) 2806/2004 decided on 27.05.2014.

6. The respondents also seek to invoke the second Proviso to Section 24(2) of the 2013 Act, which was introduced by virtue of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2015 (hereinafter referred to as the said Ordinance).

7. So far as the applicability of the second Proviso to Section 24(2) of the 2013 Act is concerned, the same cannot be relied upon by the respondents inasmuch as it is prospective in nature and does not take away vested rights. In respect of the second proviso introduced by virtue of the Ordinance of 2014, the Supreme Court in a recent decision in **M/s Radiance Fincap (P) Ltd. & Ors. Vs. Union of India & Ors.** decided on **12.01.2015 in Civil Appeal No. 4283/2011**, held the same to be prospective and not retrospective. The Supreme Court observed as under:-

“The right conferred to the land holders / owners of the acquired land under Section 24(2) of the Act is the statutory right and, therefore, the said right cannot be taken away by an Ordinance by inserting proviso to the abovesaid sub-section without giving retrospective effect to the same.”

8. The same was reinforced by the Supreme Court in **Karnail Kaur & Ors. Vs. State of Punjab & Ors.** **Civil Appeal No. 7424/2013** decided on **22.01.2015**.

9. From the above decisions, it is evident that the said Ordinance is prospective in nature and the rights created in favour of the petitioner as on 01.01.2014 by virtue of the 2013 Act are undisturbed by the second Proviso to Section 24(2) of the 2013 Act, which has been introduced by the said Ordinance.

10. As a result, the petitioner is entitled to a declaration that the said acquisition proceedings initiated under the 1894 Act in respect of the subject land are deemed to have lapsed. It is so declared.

11. The writ petition and the said CM No.20944/2014 are allowed to the aforesaid extent. There shall be no order as to costs.

**BADAR DURREZ AHMED, J**

**AUGUST 17, 2015/kb**

**SANJEEV SACHDEVA, J**

