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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 06.07.2015

+ **W.P.(C) 2163/2015 & CM 3899/2015**

SURESH B. KAPUR

... Petitioner

versus

UNION OF INDIA & ORS.

... Respondents

Advocates who appeared in this case:-

For the Petitioner

: Mr Bharat Beriwal

For the Respondent No.1

: Mr Anuj Aggarwal

For the Respondent L&B/LAC

: Mr Yeeshu Jain with Ms Jyoti Tyagi

For the Respondent DDA

: Mr Sanjeev Sabharwal

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. The counter affidavit handed over by Mr Yeeshu Jain, the learned counsel appearing on behalf of respondent nos. 2 & 3, is taken on record. The learned counsel for the petitioner does not wish to file any rejoinder affidavit inasmuch as all the necessary averments are contained in the writ petition.

2. By way of this writ petition, the petitioner seeks the benefit of Section 24(2) of the Right to Fair Compensation and Transparency in Land

Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the “2013 Act”) which came into effect on 01.01.2014. The petitioner, consequently, seeks a declaration that the acquisition proceeding initiated under the Land Acquisition Act, 1894 (hereinafter referred to as the “1894 Act”) and in respect of which Award No. 15/1987-88 dated 05.06.1987 was made, *inter alia*, in respect of the petitioner’s land, comprised in Khasra Nos. 717 (3-02), 718/1 (3-05), 756/2/1 (2-17) and 757/1 (3-07) measuring 12 bighas and 11 biswas in all, in village Chattarpur, New Delhi, shall be deemed to have lapsed.

3. In this case, it has been admitted by the concerned Land Acquisition Collector that physical possession of the subject land has not been taken. It is, however, contended that compensation was deposited in Court in CM (Main) No.1411/2013 on 30.12.2013 pursuant to an order passed by this Court in the said matter. Insofar as the question of deposit in Court is concerned, the same has already been considered by us in **Gyanender Singh v Union of India & Ors**: **W.P.(C) 1393/2014** decided on 23.09.2014 wherein this Court held that unless and until the compensation is tendered to the persons interested, mere depositing of the compensation in court would not be sufficient and cannot be regarded as having been paid. Therefore, following the decision in **Gyanender Singh** (*supra*), the deposit in Court cannot, in this case, be regarded as compensation having been paid to the petitioner.

4. The learned counsel for the respondents placed reliance on the second proviso to Section 24(2) of 2013 Act, which has been 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”). The newly added proviso reads as under:-

“Provided further that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a Tribunal for taking possession or such period where possession has been taken but the compensation lying deposited in a court or in any designated account maintained for this purpose shall be excluded.”

(underlining added)

5. On a plain reading of the proviso, it is evident that its purpose is to compute the period of five years referred to in Section 24(2) of the 2013 Act. Certain periods are to be excluded in computing the said period referred to in Section 24(2) of the 2013 Act. The periods to be excluded are:-

- (1) the period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court; or
- (2) the period specified in the Award of a Tribunal for taking possession; or
- (3) such period where possession has been taken but the compensation is lying deposited in a court or in any designated account maintained for this purpose.

6. The learned counsel for the respondents are relying on the third alternative inasmuch as it has been contended that the amount of compensation has been deposited in court. Consequently, it is urged that the entire period during which this amount was lying deposited in court ought to be excluded. But, that would be of no help to the respondents inasmuch as the amount was deposited in court on 30.12.2013 and the Act of 2013 came into force on 01.01.2014, just one day later. Therefore, the only benefit, even if it is assumed for the sake of argument that such benefit can be given to the respondents, would be of one day. The award was passed way back in 1987 and, therefore, the exclusion of one day would not be of any use to the respondents.

7. In any event, the question of compensation lying deposited in court would only arise in a case where possession had been taken. In the present case, admittedly, the possession has not been taken. This being the situation, the newly inserted proviso has no application. We agree with the submission made by the learned counsel for the petitioner that unless and until possession is taken, the third alternative mentioned in the second proviso does not get triggered even though compensation may be lying deposited in a court or in any designated account maintained for such purposes.

8. Furthermore, the second proviso to Section 24(2) is similar to the proviso introduced by the 2014 Ordinance which has been held to be prospective by virtue of the Supreme Court decision in **M/s Radiance Fincap (P) & Ors. v. Union of India & Ors.** decided on 12.01.2015 in **Civil Appeal No.4283/2011** and **Karnail Kaur & Ors. Vs. State Of Punjab & Ors.** decided on 22.01.2015 in **Civil Appeal no.7424 of 2013**. The same would apply to the said Ordinance of 2015. The rights vested in the petitioner as on 01.01.2014 by virtue of the 2013 Act have not been taken away by virtue of the introduction of the second proviso to Section 24(2) of the said Ordinance.

9. That being the position, the question of payment of compensation will have to be construed in the light of the various decisions rendered by the Supreme Court and this Court in:-

- (i) **Pune Municipal Corporation and Anr v. Harakchand Misirimal Solanki and Ors:** (2014) 3 SCC 183;
- (ii) **Union of India and Ors v. Shiv Raj and Ors:** (2014) 6 SCC 564;
- (iii) **Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors:** Civil Appeal No. 8700/2013 decided on 10.09.2014; and
- (iv) **Surender Singh v. Union of India and Ors.:** W.P.(C) 2294/2014 decided 12.09.2014 by this Court.

In **Pune Municipal Corporation** (*supra*), it has been held that unless and until the compensation was tendered to the persons interested, mere deposit of the

compensation amount in a court would not amount to payment of compensation. This aspect has also been considered in **Gyanender Singh & Others v. Union Of India & Others: WP (C) 1393/2014** decided by a Division Bench of this Court on 23.09.2014. Consequently, the mere deposit in the court, without being offered or tendered to the persons entitled would not *ipso facto* amount to payment of compensation.

10. As such, in the present case, neither physical possession of the subject land has been taken nor has any compensation been paid to the petitioner. The Award was made more than five years prior to the coming into force of the 2013 Act. No period is liable to be excluded inasmuch as the second proviso, which has been newly inserted by virtue of the said Ordinance, is not applicable, as indicated above.

11. 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 lands are deemed to have lapsed. It is so declared.

12. The writ petition is allowed to the aforesaid extent. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

JULY 06, 2015

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