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

% Judgment delivered on: 07.07.2015

\+ **W.P.(C) 2363/2015 & CM No.4246/2015**

JAGJIWAN CO-OPP. GROUP HOUSING SOCIETY LTD. .... Petitioner

Versus

UNION OF INDIA AND ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner	:	Mr P.V. Kapoor, Sr Advocate with Mr S.K. Gupta, Mr Manish Gupta, Mr Abhinav Gupta and Mr R.K. Gupta, Advocates.
For the Respondents	:	Mr Prasanta Varma and Mr Anirudh Shukla, Advocates for respondent No.1. Mr Siddharth Panda with Mr Priyabrat Sahu, Advocates for respondent Nos.2, 3 & 4. Mr Dhanesh Relan, Mr Arush Bhandari and Ms Akshita Manocha, Advocates for respondent No.5. Ms Arti Bansal with Ms Rishika Katyal, Advocates for respondent No.6.

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 Panda on behalf of respondent Nos.2, 3 & 4 is taken on record. The learned counsel for the petitioner does not wish to file any rejoinder affidavit inasmuch as he would be relying on the averments already contained in the writ petition.

2. 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. A declaration is sought 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.1/2007-08 dated 08.11.2007 and it was in respect of, *inter alia*, the petitioner's land comprised in Khasra Nos. 130(7-9), 131(7-6), 132(3-9), 133(2-8), 134(4-0), 135 min (8-13), 136(5-17), 137(5-10), 138(8-13) and 139(5-8) measuring 42 bighas 16 biswas in all in the Revenue Estate of Village Mehrauli.

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 W.P.(C) No. 7332/1999, W.P.(C) No.23654/2005, W.P.(C) No.434/2011 and W.P.(C) No. 7412/2011 in which the stay order is still continuing. It is an admitted position that the stay order continued to operate till 01.01.2014 when the 2013 Act came into effect. 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.
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> 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:-
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> (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.
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> 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:-
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> > "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."
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> 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 stands satisfied. Therefore, the contention of the learned counsel for the respondent cannot be accepted."

5. As a consequence, for the purposes of Section 24 (2) of the 2013 Act, it has to be held that the respondents did not take physical possession of the subject land. With regard to the issue of compensation, it is the case of the respondents that the same was deposited in Court pursuant to an order passed by

this Court in CM(M) 1399/2013. The said amount is said to have been deposited in Court on 30.12.2013. 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.

6. 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."
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> (underlining added)

7. On a plain reading of the proviso, it is evident that its purpose is to

compute the period of five years referred to in Section24(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.

8. The learned counsel for the respondents are, *inter alia,* 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 2007 and, therefore, the exclusion of one day would not be of any use to the respondents.

9. In any event, in the case of the third alternative, 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.

10. 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 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. This would be equally applicable in respect of the said Ordinance of 2015. Therefore, the plea founded on the first alternative of there being a stay order would also not be available to the respondents.

11. 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.

12. 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.

13. 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.

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

BADAR DURREZ AHMED, J

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SANJEEV SACHDEVA, J

JULY 07, 2015
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