

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 23.11.2015

+ **W.P.(C) 2723/2015**

VINAY KUMAR GUPTA AND ANR

... Petitioners

versus

UNION OF INDIA & ORS

... Respondents

Advocates who appeared in this case:

For the Petitioners	: Mr Dheeraj Garg
For the Respondent UOI	: Ms Manisha Agarwal Narain with Ms Mansi Gupta
For the Respondents LAC/L&B	: Mr Siddharth Panda
For the Respondent DDA	: Mr Arjun Pant

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 & 4 is taken on record. The learned counsel for the petitioners does not wish to file any rejoinder affidavit inasmuch as he would be relying on the averments made in the writ petition.

2. By way of this writ petition, the petitioners seek 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 petitioners, consequently seek 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 the Award No. 15/1987-88 dated 05.06.1987 was made, inter alia, in respect of the petitioners' land comprised in khasra numbers 1798 min (4-07) and 1809/1 (0-18) measuring 5 bighas 5 biswas in village Chhattarpur, New Delhi, shall be deemed to have lapsed.

3. It is an admitted position that the physical possession of the subject land has not been taken by the land acquiring agency. However, insofar as the compensation is concerned, it is the case of the petitioners that the same has not been paid to them whereas it is the case of the respondents that the said compensation was deposited in court pursuant to an order passed by a Vacation Judge of this court in C.M.(Main) 1411/2013 passed on 30.12.2013. By virtue of that order, the said C.M.(Main), amongst others, was disposed of by recording that without prejudice to the rights and contentions of the land holders the cheque tendered in each petition would be treated as tendered to the court of the learned Additional District Judge, Delhi as of that date i.e. 30.12.2013. According to the respondents this amounts to payment of compensation. However, this issue has already been settled by a decision of this court in **Gyanender Singh & Ors v. Union of India & Ors.** WPC 1393/2014 decided on 23.09.2014 wherein this court held that unless and until the compensation was tendered to the persons interested, mere deposit of the compensation in court would not be sufficient. The 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 in the said C.M (Main) 1411/2013 without first being offered to the petitioners herein. Therefore the same, following the decision in **Gyanender Singh (supra)**, cannot be regarded as compensation having been paid to the petitioners.

4. The learned counsel for the respondents also contend that this petition is not maintainable by the present petitioners in view of the fact that they are subsequent purchasers. The learned counsel for the respondents submitted that it is settled law that a subsequent purchaser cannot challenge the acquisition proceedings and he is only entitled to seek compensation. They 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. The learned counsel for the respondents submitted that the transfer whereby the original owners are alleged to have transferred their right in favour of the current petitioners would not confer any title upon the petitioners and at the most the petitioners would be entitled only to claim compensation on the basis of the original owner's title. A reference in this connection was also made to the Supreme Court decision in the case of **Meera Sahni v. Lieutenant Governor of Delhi and Ors.**: (2008) 9 SCC 177.

5. There is no doubt that in the context of the 1894 Act the Supreme Court clearly held that a subsequent purchaser would not have a right to challenge the acquisition and would only have a right to seek compensation. But, the position obtaining at present is different. This is a petition which does not seek to challenge the acquisition proceedings but

seeks a declaration of a right which has enured to the benefit of the petitioner by virtue of the operation of Section 24(2) of the 2013 Act. Once the acquisition is deemed to have lapsed because of the operation of the deeming provision of Section 24(2) of the 2013 Act, the benefit of the same cannot be denied to the petitioners on the ground that the petitioners are subsequent purchasers. This is, of course, provided that the conditions precedent for the application of the deeming provision contained in Section 24(2) of the 2013 Act are satisfied.

6. In these circumstances, it is clear that neither physical possession of the subject land has been taken by the land acquiring agency nor has any compensation been paid to the petitioners. The award was made more than five years prior to the commencement of the 2013 Act. All the ingredients necessary for the applicability of section 24(2) of the 2013 Act, as interpreted by the Supreme Court and this court in the following decisions, stand satisfied:-

- (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
- (iv) **Surender Singh v. Union of India & Others:** WP(C) 2294/2014 decided on 12.09.2014 by this Court; and

(v) **Gyanender Singh & Ors v. Union of India & Ors:**
W.P.(C) 1393/2014.

7. As a result, the petitioners are 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.

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

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

NOVEMBER 23,2015
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